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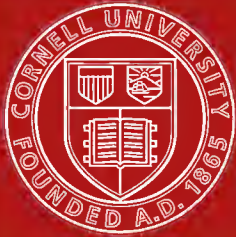
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# DIGEST OF CASES

DETERMINED IN THE

## SUPREME COURT OF CANADA

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COMPRISING ALL THE CASES REPORTED IN VOLUMES 34 TO 54 OF THE  
OFFICIAL REPORTS, CAMERON'S SUPREME COURT CASES,  
COUTLEE'S SUPREME COURT CASES, AND  
CAMERON'S SUPREME COURT  
PRACTICE.

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COMPILED BY  
EDWARD ROBERT CAMERON

ONE OF HIS MAJESTY'S COUNSEL  
REGISTRAR OF THE SUPREME COURT OF CANADA

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TORONTO:  
THE CARSWELL CO., LIMITED, 19 DUNCAN STREET  
1918

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SWEET & MAXWELL, LIMITED

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## P R E F A C E

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The last Digest of the Supreme Court was compiled by the late Louis William Coutlée, one of the Official Reporters of the Court, and comprises the cases reported in volumes 34 to 40, inclusive, of the Official Reports.

Fourteen additional volumes have since been published and a digest of these later decisions has become a matter of necessity to the judges and officers of the Court as well as to the legal profession generally.

It has been deemed advisable to have all the decisions of the Court contained in two volumes and the present work therefore comprises all the cases reported in volumes 34 to 54 of the Official Reports.

The general features of the previous digests have been followed except a Catch-word index (Appendix A) has been prepared, which gives a reference to another title in the digest where the decision is more fully reported.

There will be found in Appendix B an index to the Supreme Court decisions which have been carried to the Judicial Committee of the Privy Council since the publication of Coutlée's first digest in 1903.

E. R. CAMERON.

Ottawa, September 1st, 1918.



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CHIEF JUSTICES, JUDGES AND PRINCIPAL OFFICERS  
OF THE SUPREME COURT OF CANADA  
SINCE 17<sup>TH</sup> DECEMBER, 1903.

*Chief Justices.*

- Right Honourable Sir Henri Elzéar Taschereau, Knight, appointed 21st November, 1902; resigned 2nd May, 1906.  
Right Honourable Sir Charles Fitzpatrick, G.C.M.G., appointed 4th June, 1906; resigned 22nd October, 1918.  
Hon. Sir Louis Henry Davies, K.C.M.G., appointed puisne judge 25th September 1901; took oath of office as Chief Justice November 4th, 1918.

*Judges.*

- Hon. Robert Sedgewick, appointed 18th February, 1893; died 4th August, 1906.  
Hon. Desiré Girouard, appointed 28th September, 1895; died 22nd March, 1911.  
Hon. Wallace Nesbitt, appointed 16th May, 1903; resigned 4th October, 1905.  
Hon. Albert Clements Killam, appointed 8th August, 1903; resigned 6th February, 1905.  
Hon. John Idington, appointed 10th February, 1905.  
Hon. James Maclellan, appointed 5th October, 1905; resigned 13th February, 1909.  
Hon. Lyman Poore Duff, appointed 27th September, 1906.  
Hon. Francis Alexander Anglin, appointed 26th February, 1909.  
Hon. Louis Philippe Brodeur, appointed 11th August, 1911.  
Hon. Pierre Basile Mignault, appointed 31st October, 1918.

*Registrar.*

- Edward Robert Cameron, K.C., appointed 2nd July, 1898.

*Law Reporters.*

- Charles Harding Masters, K.C., appointed Assistant Law Reporter 3rd March, 1886; appointed Chief Law Reporter 2nd October, 1895.  
Louis William Coutlée, K.C., Civil Law Reporter, appointed Assistant Law Reporter 2nd December, 1895, died 3rd May, 1917.  
Armand Grenier, K.C., appointed Assistant Law Reporter, 16th May, 1918.

*Librarians.*

Harris Harding Bligh, K.C., appointed 26th July, 1892, died 22nd August, 1918.

Elzéar Taschereau, LL.B., Advocate, joint Librarian, appointed 19th August, 1904.

*Sheriffs.*

John Sweetland, Sheriff of the County of Carleton, *ex-officio*, from 11th December, 1879; died 5th May, 1907.

George Clarke Richardson, Sheriff of the County of Carleton, *ex-officio*, from 28th September, 1907.

## ABBREVIATIONS USED IN THIS DIGEST

A.C. or App. Cas.....	Law Reports, House of Lords and Privy Council Appeal Cases.
Art. ....	Article.
B.C. ....	British Columbia.
B.N.A. ....	British North America.
c., ch., or cap.....	Chapter.
C.C. ....	Civil Code of Lower Canada.
C.C.P. ....	Code of Civil Procedure, Lower Canada (1867).
Cf. ....	Compare ( <i>Conferre</i> ).
C.J. ....	Chief Justice.
C.P.Q. ....	Code of Civil Procedure, Province of Quebec (1897).
C.P.R. ....	Canadian Pacific Railway.
C.S.C. ....	Consolidated Statutes of Canada.
C.S.L.C. ....	Consolidated Statutes, Lower Canada.
C.S.M. ....	Consolidated Statutes of Manitoba.
C.S.U.C. ....	Consolidated Statutes, Upper Canada.
Cam. Cas.....	Cameron's Collection of Judgments in Supreme Court Cases (1905).
Cam. S. C. Prac.....	Cameron's Supreme Court Act, Rules and Practice Decisions (1907).
Cam. Prac.....	Cameron's Supreme Court Practice (2nd Ed).
Cam. S. C. Rules.....	Cameron's Rules of the Supreme Court of Canada (1907).
Can. Ry. Cas.....	MacMurchy & Denison's Canadian Railway Cases.
Can or (C.).....	Canada (1840-1867).
Can. S.C.R.....	Canada, Supreme Court Reports.
Cass. Dig.....	Cassels's Digest, Supreme Court Cases, 2nd edition (1893).
Cass. Sup. Ct. Prac.....	Cassels's Supreme Court Practice, 2nd edition, by Masters.
Ch. ....	Chancery.
Ch. App.....	Law Reports, Chancery Appeals.
Ch. D.....	Law Reports, Chancery Division.
Cout. Dig.....	Coutlée's Digest, Supreme Court Cases (1903).
Cout. Cas.....	Coutlée's Collection of Unreported Cases in the Supreme Court of Canada (1907).
(D.) ....	Dominion of Canada.
D.L.R. ....	Dominion Law Reports.
DeG.M. & G.....	DeGex, McNaughton & Gordon's Reports.
Div. Ct.....	Divisional Court.
Dor. Q.B.....	Dorion, Queen's Bench Reports (Quebec).
East. L.R.....	Eastern Law Reporter.
E. & I.....	House of Lords, English and Irish appeals.
ed. ....	Edition.
Ed. & Ord.....	Edits & Ordonnances (Lower Canada).
Ex. C.R.....	Reports of the Exchequer Court of Canada.
F. & F.....	Foster & Finlayson's Reports.
Gr. ....	Grant's Chancery Reports.
G.T.R. ....	Grand Trunk Railway of Canada.
H.L. ....	House of Lords.
Imp. ....	Imperial.
J. ....	Justice.
JJ. ....	Justices.
K.B. ....	King's Bench.
L. C. ....	Lower Canada.
L.C. Jur.....	Lower Canada Jurist.
L.C.R. ....	Lower Canada Reports.
L.R. ....	Law Reports (English).
Man. ....	Manitoba.

Man. L.R. or Man. R.	Manitoba Law Reports.
Mast. S. C. Prac.	Masters's Practice of the Supreme Court of Canada (1907).
Mer.	Merivale's Reports, Chancery.
M.L.R.	Montreal Law Reports (Queen's Bench and Superior Court).
Mun. Code Que.	Municipal Code, Quebec.
N.B.	New Brunswick.
N.B. Rep.	New Brunswick Reports.
N.W.	North-West.
N.W.T. or N.W. Ter.	North-West Territories of Canada.
N.W.T. Rep.	North-West Territories Reports (Canada).
N.S.	Nova Scotia.
N.S. Rep.	Nova Scotia Reports.
O. or Ont.	Ontario.
Ont. App. R.	Ontario Appeal Reports.
Ont. L.R.	Ontario Law Reports.
Ont. P.R.	Ontario Practice Reports.
O.W.N.	Ontario Weekly Notes.
Ont. W.R.	Ontario Weekly Reporter.
O.R.	Ontario Reports (Queen's Bench, Chancery and Common Pleas Divisions of the High Court of Justice for Ontario).
O. S.	Upper Canada Reports, old series.
P.D.	Probate, Divorce and Admiralty Division.
P.E.I.	Prince Edward Island.
Q., or Que.	Quebec.
Q.B.	Queen's Bench.
Q.L.R.	Quebec Law Reports.
Q.P.R.	Quebec Practice Reports.
Q.R.	Official Reports, Province of Quebec.
R. or Rep.	Reports (or Coke's Reports according to text).
R.L.	Revue Legale.
Rev. de Jur.	Revue de Jurisprudence (Quebec).
Rev. de Leg.	Revue de Legislation (Quebec).
Rev. Ord. N.W.T.	Revised Ordinances, North-West Territories (1888).
R.S.B.C.	Revised Statutes of British Columbia.
R.S.C.	Revised Statutes of Canada (1886).
R.S.M.	Revised Statutes of Manitoba.
R.S.N.B.	Revised Statutes of New Brunswick.
R.S.N.S.	Revised Statutes of Nova Scotia.
R.S.O.	Revised Statutes of Ontario.
R.S.Q.	Revised Statutes of Quebec.
s. and ss.	Section, sections.
s-s.	Sub-section.
S.C.	Superior Court.
ser.	Series.
Sim.	Simon's Reports, Chancery.
U. C.	Upper Canada.
U.C.C.P.	Upper Canada, Common Pleas Reports.
U.C.Q.B.	Upper Canada, Queen's Bench Reports.
West. L.R.	Western Law Reporter.
W.W.R.	Western Weekly Reports.
Yuk.	Yukon Territory.



# ANALYTICAL DIGEST OF CASES

## IN THE

# SUPREME COURT OF CANADA

DECISIONS OF THE COURT FROM OCTOBER, 1903, TO  
FEBRUARY, 1917; VOLUMES XXXIV. TO LIV.

INCLUSIVELY

### ABANDONMENT.

1. *Marine insurance — Repairs—Boston clause — Findings of jury — New trial — Practice — Evidence taken by commission—Judicial discretion—Ins. Co. of North America v. McLeod, Cout. Cas. 214.*

2. *Sheriff—Cause of action—Execution of writ of attachment—Abandonment of seizure—Estoppel, Cam. Cas. 78.*

See ATTACHMENT.

See INSOLVENCY.

### ABSTRACT.

*Vendor and purchaser—Sale of land—Condition dependent — Deferred payment—Disclosure of title—Refusal to complete—Lapse of time—Defeasance — Specific performance. xlix., 14.*

See VENDOR AND PURCHASER.

### ACCIDENT INSURANCE.

See INSURANCE, ACCIDENT.

### ACCORD AND SATISFACTION.

1. *Company—Sale of shares—Misrepresentation—Fraud—Action for deceit.*—G., a director in an industrial company, transferred 290 shares of the capital stock to the president to be sold for him. The president instructed an agent to sell said shares along with some of his own and some belonging to the company. The agent sold 25 shares of G.'s stock to J. G. representing, and believing, that it was treasury stock, and getting a note for the price in favour of the company. The note was indorsed over to G. Later J. G. discovered that the stock he had bought was not treasury stock, and had some correspondence with the secretary of the com-

pany in which he complained of having been deceived by the agent. Eventually he gave a four months' note in renewal of that given for the price of the stock, but when it fell due, refused to pay it, the company having in the meantime become insolvent. In an action on the renewal note he filed a counterclaim for damages based on the misrepresentation and deceit. Judgment was given against him on the note and for him on the counterclaim: *Held*, that G. was responsible for the fraud practised on the purchaser of his shares by the misrepresentations of the agent who sold them.—*Held*, also, Girouard and Davies, JJ., dissenting, that the settlement of the claim for the price of the shares by giving the renewal note and thus obtaining further time for payment was not a release of the purchaser's right of action for deceit. *Goald v. Gillies, xl., 437.*

2. *Company — Payment for shares — Transfer of business—Debt due partnership —Set-off — Counterclaim—Liability on subscription for shares. R. S. B. C. c. 44, ss. 50, 51, xxxiv., 160.*

See COMPANY.

3. *Trust — Banking—Hypothecation of securities—Terms of pledge—Duty of pledgee, xli., 561.*

See BANKS AND BANKING.

4. *Municipal corporation — City and county—Separation—Agreement as to assets —Subsequent discovery of funds not included —Action for city's share.*

See MUNICIPAL CORPORATION.

5. *Right of action — "Lord Campbell's Act"—Death by accident—Action by widow, xlix, 577.*

See RELEASE.

### ACCOUNT.

1. *Action for account—Partition of estate —Requête civile—Amendment of pleadings—*

*Supreme Court Act, sec. 63—Order nunc pro tunc — Final or interlocutory judgment—Form of petition in revocation—Res judicata.*]—On a reference to amend certain accounts already taken, a judgment rendered on 30th September, 1901, adjudicated on matters in issue between the parties, and on the accountant's report, homologated 25th October, 1901, judgment was ordered to be entered against the appellant for \$26,136, on 30th January, 1902. The appellant filed a *requête civile* to revoke the latter judgments, within six months after it had been rendered, but without referring to the first judgment in the conclusions of the petition. It was objected that the first judgment had the effect of *res judicata* as to the matters in dispute and was a final judgment *inter partes*: *Held*, that whether the first judgment was final or merely interlocutory, the petition in revocation must be taken as impeaching both former judgments relating to the accounts upon which it was based; that it came in time if it had been filed within six months of the rendering of the said last judgment, and that it virtually raised anew all the issues relating to the taking of the accounts affected by the two former judgments. *Hill v. Hill*, xxxiv., 13.

AND see REQUÊTE CIVILE.

2. *Breach of trust — Accounts—Evidence—Nova Scotia "Trustee Act," 2 Edw. VII. c. 13 — Liability of trustee — N. S. Order XXXII., r. 3—Judicial discretion—Statute of Limitations.*]—By his last will N. bequeathed shares of his estate to his daughters A. and C., and appointed A. executrix and trustee. C. was weak-minded and infirm and her share was directed to be invested for her benefit and the revenue paid to her half-yearly. A. proved the will, assumed the management of both shares, and also the support and care of C. at their common domicile, and applied their joint incomes to meet the general expenses. No detailed accounts were kept sufficient to comply with the terms of the trust or to show the amounts necessarily expended for the support, care and attendance of C., but A. kept books which shewed the general household expenses and consisted, principally, of admissions against her own interests. After the decease of A. and C. the plaintiffs obtained a reference to a master to ascertain the amount of the residue of the estate coming to C. (who survived A.) and the receipts and expenditures by A. on account of C. On receiving the report, the judge referred it back to be varied, with further instructions and a direction that the books kept by A. should be admitted as *prima facie* evidence of the matters therein contained. (See 37 N. B. Rep. pp. 452-464.) This order was affirmed by the Supreme Court of Nova Scotia *in banco*: *Held*, affirming the judgment appealed from (37 N. B. Rep. 451), that the allowances for such expenditures need not be restricted to amounts actually shewn to have been so expended; that, under the Nova Scotia Statute, 2 Edw. VII. c. 13, and Order xxxii., rule 3, a Judge may exercise judicial discretion towards relieving a trustee from liability for technical breaches of trust and, for that purpose, may direct the admission of any evidence which he may deem

proper for the taking of accounts. *Cairns v. Murray*, xxxvii., 163.

3. "*Account stated*" — *Admission of liability — Promise to pay — Collateral agreement—Parol evidence.*]—On the dissolution of a partnership, the parties signed a statement shewing a certain amount as due to the plaintiff for his share and declaring that "for the sake of peace and quiet and to avoid friction and bother," the plaintiff waived examination on the firm's books, and agreed that the amount so stated should be deemed to be the amount payable by the defendants to the plaintiff: *Held*, that a promise to pay the amount of the balance so stated to be due should be implied from the admission of liability.—In an action for the amount of the balance the defendants alleged that the plaintiff had verbally agreed that he would not sue upon the account as stated, and that the document should be treated as merely shewing what would be payable to him upon the collection of outstanding debts owing to the firm: *Held*, that as the effect of the alleged collateral agreements was to vary and annul the terms of the written instrument they could not be proved by parol testimony. *Jackson v. Drake, Jackson & Helmcken*, xxxvii., 315.

4. *Suretyship — Collateral deposit — Ear-marked fund — Appropriation of proceeds—Set-off — Release of principal debtor—Constructive fraud—Discharge of surety—Right of action — Common counts—Equitable recourse.*] — K. owed the corporation \$83,527.94 on two judgments recovered on notes for \$10,000 given by him to R., and a subsequent loan to him and R. for \$20,000. M., at the request of and for the accommodation of R., had endorsed the notes for \$10,000 and deposited certain shares and debentures as collateral security on his endorsement. K. and R. deposited further collateral securities on negotiating the second loan, but K. remained in ignorance of M.'s endorsements and collateral deposit until long after the release hereinafter mentioned. These judgments remained unsatisfied for over six years, but, in the meantime, the corporation had sold all the shares deposited as collateral security, and placed the money received for them to the credit of a suspense account, without making any distinction between funds realized from M.'s shares and the proceeds of the other securities, and without making any appropriation of any of the funds towards either of the debts. On 28th February, 1900, after negotiations with K. to compromise the claims against him, the agent of the corporation wrote him a letter offering to compromise the whole indebtedness for \$15,000, provided payment was made some time in March or April, following. This offer was not acted upon until November, 1901, when the corporation carried out the offer and received the \$15,000, having a few days previously appropriated the funds in the suspense account, applying the proceeds of M.'s shares to the credit of the notes he had endorsed. The negotiations and the final settlement with K. were not made known to M. and K. was not informed of his continuing liability towards M. as a surety. *Held*, *per* Sedgewick, Girouard, Davies and

Idington, J.J. (reversing the judgment appealed from (11 B. C. Rep. 402)), that the secret dealings by the corporation with K. and with respect to the debts and securities were, constructively, a fraud against both K. and M.; that the release of the principal debtor discharged M. as surety, and that he was not entitled to recover the surplus of what the corporation received applicable to the notes endorsed by him as money had and received by the corporation to and for his use.—*Held*, by Maclellan, J., that, on proper application of all the moneys received, the corporation had got more than sufficient to satisfy the amount for which M. was surety, and that the surplus received in excess of what was due upon the notes was, in equity, received for the use of M. and could be recovered by him on equitable principles, or as money had and received in an action at law. *Milne v. Yorkshire Guarantee Corporation*, xxxvii., 331.

5. *Statute of limitations—Agents or partners — Reference.*—By agreement between them, the Hamilton Brass Mfg. Co. was appointed agent of the Barr Cash Co. for sale and lease of its carriers in Canada at a price named for manufacture; net profits to be equally divided and quarterly returns to be furnished, either party having liberty to annul the contract for non-fulfilment of conditions. The agreement was in force for three years when the Barr Co. sued for an account, alleging failure to make proper returns and payments: *Held*, reversing the judgment of the Court of Appeal, Girouard and Davies J.J. dissenting, that the accounts should be taken for the six years preceding the action only.—On a reference to the master, the taking of the accounts was brought down to a time at which defendants claimed that the contract was terminated by notice. The Court of Appeal ordered that they should be taken down to the date of the master's report: *Held*, that this was a matter of practice and procedure as to which the Supreme Court would not entertain an appeal, *Hamilton Brass Manufacturing Co. v. Barr Cash and Package Carrier Co.*, xxxviii., 216.

6. *Appeal — Jurisdiction — Débats de compte—Issue on reddition—Amount in controversy.*—An action (taken in the Province of Quebec) was for an order directing the defendant to render an account and, in default of reddition, the plaintiff claimed \$1,000. By the judgment appealed from the *reddition de compte* was ordered and, in default of compliance with the order, the defendant was condemned to pay the plaintiff the amount of \$1,000 demanded. *Held*, that the controversy was limited to \$1,000 and the Supreme Court of Canada had no jurisdiction to entertain an appeal. *Bell v. Vipond* (31 Can. S.C.R. 175) distinguished. *S. Aubin v. Desmarteau*, xliiv., 470.

7. *Sale of land — Principal and agent—Secret profit by broker—Participation in breach of trust — Implied partnership—Liability to account—Purchaser in good faith—Disclosure of suspicious circumstances — Cross-appeal—Parties—Practice.*—C., being aware that B. was an agent for the sale of certain lands, entered into an agreement with him for their purchase on

joint account in his own name, upon the understanding that they should each be owners of one-half of the lands and share profits equally upon a re-sale. B. transferred one-half of his interest to M., who gave valuable consideration therefor with knowledge, at the time, of B.'s agency for the sale of the lands. Shortly after the conveyance of the lands by the owner, P., to C., they were re-sold to another person at a large profit, and P., having discovered the nature of the transactions, brought action against B., C. and M. to recover the amount of the profits which they had realized upon the re-sale of the lands. *Held*, affirming the judgment appealed from (3 Sask. L.R. 417), Fitzpatrick C. J. and Anglin J. dissenting, that the agreement between B. and C. was a partnership transaction; that C. thereby became subject to the fiduciary relationship existing between B. and P. in respect of the sale of the property; that he was disqualified as a purchaser of the lands which were the subject-matter of B.'s agency, and that he was equally responsible with B. to account to P. for the profits realized from the re-sale of the property. In regard to M. it was held, also affirming the judgment appealed from, Idington J. dissenting, that as the evidence did not shew that he was other than a *bonâ fide* purchaser for valuable consideration he was under no obligation to account for profits realized upon the sale of the interest in the lands acquired by him under the transfer from B. *Coy v. Pommerenke*, xliiv., 543.

AND SEE BROKER.

8. *Construction of deed—Ambiguity—Discharge of debtor — Contract—Illegal consideration — Right of action*, xxxvii., 613.

SEE DEED.

9. *Tenant by sufferance—Use and occupation of lands—Art. 1608 C. C.—Promise of sale — Vendor and purchaser—Reddition de compte—Actio ex vendito—Practice*, xxxvii., 627.

SEE ACTION.

10. *Breach of contract—Breach of trust—Assessment of damages — Sale of mining rights—Promotion of company—Failure to deliver securities — Principal and agent — Account — Evidence — Salvage — Indemnity for necessary expenses — Laches—Estoppel*, xxxviii., 198.

SEE TRUSTS.

11. *Officer of the crown—Forged cheques — Payment by bank — Representation by drawee—Implied guarantee—Estoppel—Acknowledgment of bank statements—Mistake*, xxxviii., 258.

SEE BANKS AND BANKING.

12. *Placer mining — Disputed title—Trespass pending litigation — Colour of right—Invasion of claim — Adverse acts — Sinister intention. — Conversion — Blending materials — Assessment of damages — Mitigating circumstances—Compensation for necessary expenses — Estoppel — Standing-by—Acquiescence*, xxxviii., 516.

SEE MINES AND MINING.

13. *Executor and trustee—Moneys of testator—Sale by executor—Under value—Jurisdiction of Probate Court, xxxix., 122.*

See EXECUTORS AND ADMINISTRATORS.

14. *Mandamus—Driving timber—Order to fix tolls—Past user of stream—Appeal—R. S. O. (1897) c. 142, s. 13, xi., 523.*

See MANDAMUS.

15. *Assignment—Insolvency—Fraud—Right of action—Misdirection—New trial—Taking accounts—Practice, Cam. Cas. 245.*

See NEW TRIAL.

16. *Appeal—Special appeal—Matter in controversy—Discretionary order—Practice, Cout. Cas. 382.*

See APPEAL.

17. *Contract—Delegation of payment—Revocation of authority. Bank of Ottawa v. Hood, xlii., 231.*

See CONTRACT.

18. *Shares in partnership business—Associating third persons—Goodwill—Accounting between partners—Art. 1853 C.C. Marwick v. Kerr, liii., 1.*

See PARTNERSHIP.

19. *Construction of statute—N.-W. Ter. Ord., 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—"Bank Act," R.S.C. (1906) c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages, xliiv., 473.*

See CHATTEL MORTGAGE.

## ACCRETION.

1. *Construction of will—Usufruct—Substitution—Partition between institutes—Validating legislation—60 Vict. c. 95 (Q.)—Construction of statute—Restraint of alienation—Interest of substitutes—Devise of property held by institute under partition—Devolution of corpus of estate en nature—Res judicata—Arts. 868, 948 C. C., xxxviii., 1.*

See WILL.

2. *Construction of will—Substitution—Trust—Death of grevé—Partition—Apparitionment in aliquot shares—Distribution of estate—Partial intestacy—Devolution, xlvii., 42.*

See WILL.

## ACQUIESCENCE.

1. *Appeal—Practice—Exceptions—Art. 1220 C. P. Q.—Motion to quash—River improvements—Continuing damages—Contract—Protective works—Discretion of court be-*

*low—Varying minutes of judgment—Costs, xxxiv., 502.*

See PRACTICE.

AND see ESTOPPEL.

2. *Municipal corporation—Assessment and taxes—Meetings of council—Court of Revision—Transaction of business outside limits of municipality—Place of meeting—Revision of assessment rolls—By-laws—Sale for arrears of taxes—Construction of statute—Statutory relief—Estoppel—Laches—Limitation of action, xlv., 425.*

See MUNICIPAL CORPORATION.

AND see ESTOPPEL.

## ACTION.

1. *Joinder of causes of action—Parties—Demande au pétitoire—Specific performance of contract.]—A demande au pétitoire may be made in an action for the specific performance of a contract. (Leave to appeal to Privy Council refused). Meloche v. Déguire, xxxiv., 24.*

AND see TITLE TO LAND.

2. *Vendor and purchaser—Misrepresentation—Fraud—Error—Rescission of contract—Option of party aggrieved—Action to rescind—Actio quantum minoris—Damages—Warranty.]—An action will lie against the vendor to set aside the sale of real estate and to recover the purchase price on the ground of error and of latent defects, even in the absence of fraud.—In such a case, the purchaser alone has the option of returning the property and recovering the price or of retaining the property and recovering a portion of the price paid; he cannot be forced to content himself with the action *quantum minoris* and damages merely, upon the pretext that the property might serve some of his purposes notwithstanding the latent defects.—The action *quantum minoris* and for damages does not apply to cases where contracts are voidable on the grounds of error or fraud, but only to cases of warranty against latent defects if the purchaser so elects, the only recourse in cases of error and fraud being by rescission under art. 1000 of the Civil Code. Pagnuello v. Choquette, xxxiv., 102.*

AND see VENDOR AND PURCHASER.

3. *Contract—Condition precedent—Right of action.]—In a contract for the construction of works, it was provided that the works should be fully completed at a certain time, and that no money should be payable to the contractors until the whole of the works were completed. In an action by the contractors for the full amount of the contract price, the trial judge refused leave to amend the claim by adding a count for *quantum meruit*; he found the works were still incomplete at the time of action, but entered judgment in favour of the plaintiffs for a portion of the contract price with nine-tenths of the costs. The defendant alone appealed from this decision, and the trial court judgment was affirmed by the Court of Review: —Held, reversing the judgment appealed from, that, as the whole of the works had not been completed at the time of the institution of*

the action, the condition precedent to payment had not been accomplished and the plaintiffs had no right of action under the contract. *Whiting v. Blondin*, xxxiv., 453.

4. *Title to land — Sea beaches—Servitude — Possession annule — Possessory action.*]—The possession necessary to entitle a plaintiff to maintain a possessory action must be continuous and uninterrupted, peaceable, public and as proprietor for the whole period of a year and a day immediately preceding the disturbance complained of. *Couture v. Couture*, xxxiv., 716.

5. *Cause of action—Submission to foreign Court — Jurisdiction — Waiver.*] — *Per Taschereau, C.J.* — Where the whole cause of action arose in the North-West Territories, the Court of King's Bench of Manitoba had no jurisdiction to entertain the action or to render the judgment appealed from in the case, and such want of jurisdiction could not be waived. *Canadian Pacific Railway Co. v. Springdale*, xxxv., 550.

AND see CONSTITUTIONAL LAW.

6. *Appeal — Jurisdiction — Possessory action.*]—Possessory actions invoke title to land in a secondary manner and, consequently, are appealable to the Supreme Court of Canada. *Pinsonneault v. Hébert* (13 Can. S. C. R. 450); *Gauthier v. Masson* (27 Can. S. C. R. 575); *Commune de Berthier v. Denis* (27 Can. S. C. R. 147); *Riou v. Riou* (28 Can. S. C. R. 52); *Couture v. Couture* (34 Can. S. C. R. 716) referred to. *Cully v. Ferdois* (30 Can. S. C. R. 330); *The Emerald Phosphate Co. v. The Anglo-Continental Guano Works* (21 Can. S. C. R. 422), and *Davis v. Roy* (33 Can. S. C. R. 345), distinguished. *Delisle v. Arcand*, xxxvi., 23.

7. *Railways — Farm crossings—Jurisdiction of Board of Railway Commissioners for Canada — Statutory contract — Railway Clauses Act of 1851—Grand Trunk Railway Act, 1852—"Railway Act, 1888"—"Railway Act, 1903."*]—Orders directing the establishment of farm crossings over railways subject to "The Railway Act, 1903" are exclusively within the jurisdiction of the Board of Railway Commissioners for Canada.—The right claimed by the plaintiff's action, instituted in 1904, to have a farm crossing established and maintained by the railway company, cannot be enforced under the provisions of the Act, 16 Vict. ch. 37 (Can.), incorporating the Grand Trunk Railway of Canada.—Judgment appealed from reversed, *Idington, J.*, dissenting in regard to damages and costs. *Grand Trunk Railway v. Perrault*, xxxvi., 671.

8. *Railway aid — Municipal by-law — Condition precedent—Part performance—Annulment of by-law—Right of action—Assignment of obligation — Notice — Signification upon debtor—Art. 1571 C. C.*]—An action to annul a municipal by-law will lie although the obligation thereby incurred may be conditional and the condition has not been and may never be accomplished.—Where a resolute condition precedent to the payment of a bonus under a municipal by-law in aid of the construction and operation of a railway has not been fulfilled within the time

limited on pain of forfeiture, an action will lie for the annulment of the by-law, at any time after default, notwithstanding that there may have been part performance of the obligation on the part of the railway company and that a portion of the bonus may have been advanced to the company by the municipality.—In an action against an assignee for a declaration that an obligation has been forfeited and ceased to be exigible, on account of default in the fulfilment of a resolute condition, exception cannot be taken on the ground that there has been no signification of the assignment, as provided by article 1571 of the Civil Code of Lower Canada. The debtor may accept the assignee as creditor and the institution of the action is sufficient notice of such acceptance. *The Bank of Toronto v. The St. Lawrence Fire Insurance Co.* ([1903] A. C. 59), followed. *City of Sorel v. Quebec Southern Railway Co.*, xxxvi., 686.

9. *Suretyship — Collateral deposit—Earmarked fund — Appropriation of proceeds—Set-off — Release of principal debtor—Constructive fraud—Discharge of surety—Right of action — Common counts—Equitable recourse.*]—K. owed the corporation \$33,527.94 on two judgments recovered on notes for \$10,000 given by him to R., and a subsequent loan to him and R. for \$20,000. M., at the request of and for the accommodation of R., had indorsed the notes for \$10,000 and deposited certain shares and debentures as collateral security on his indorsement. K. and R. deposited further collateral securities on negotiating the second loan, but K. remained in ignorance of M.'s indorsements and collateral deposit until long after the release hereinafter mentioned. These judgments remained unsatisfied for over six years, but, in the meantime, the corporation had sold all the shares deposited as collateral security, and placed the money received for them to the credit of a suspense account, without making any distinction between funds realized from M.'s shares and the proceeds of the other securities, and without making any appropriation of the funds towards either of the debts. On 28th February, 1900, after negotiations with K., to compromise the claims against him, the agent of the corporation wrote him a letter offering to compromise the whole indebtedness for \$15,000, provided payment was made some time in March or April following. This offer was not acted upon until November 1901, when the corporation carried out the offer and received the \$15,000, having a few days previously appropriated the funds in the suspense account, applying the proceeds of M.'s shares to the credit of the notes he had indorsed. The negotiations and the final settlement with K. were not made known to M., and K. was not informed of his continuing liability towards M. as a surety.—*Held, per Sedgewick, Girouard, Davies and Idington, JJ.* (reversing the judgment appealed from (11 B. C. Rep. 402)), that the secret dealings by the corporation with K. and with respect to the debts and securities were, constructively, a fraud against both K. and M.; that the release of the principal debtor discharged M. as surety, and that he was entitled to recover the surplus of what the corporation received applicable to the notes indorsed by

him as money had and received by the corporation to and for his use.—*Held* by MacLennan, J., that, on proper application of all the money received, the corporation had got more than sufficient to satisfy the amount for which M. was surety and that the surplus received in excess of what was due upon the notes was, in equity, received for the use of M., and could be recovered by him on equitable principles or as money had and received in an action at law. *Milne v. Yorkshire Guarantee Corporation*, xxxvii., 331.

10. *Promissory note — Deposit receipt—Notice — Demand for payment—Action.*—In an action on an instrument in the following form: "\$1.00. Edmundston, N.B., July 12th, 1899. Received from the Reverend N. P. Babineau the sum of twelve hundred dollars, for which I am responsible, with interest at the rate of seven per cent. per annum, upon production of this receipt and after three months' notice. Fred. LaForest." The court below held (37 N. B. Rep. 156), that the plaintiff could recover as for a promissory note, and that a demand for immediate payment made more than three months before the action was a sufficient notice.—Without calling upon counsel for the respondent, the Supreme Court of Canada dismissed the appeal. *LaForest v. Babineau*, xxxvii., 521.

11. *Cause of action—Limitation of actions—Contract—Foreign judgment—Yukon Ordinance, c. 31 of 1890—Statute of James—Statute of Anne—Lex fori—Lex loci contractus—Absence of debtor.*—Under the provisions of the Yukon Ordinance, c. 31, of 1890, the right to recover simple contract debts in the Territorial Court of Yukon Territory is absolutely barred after the expiration of six years from the date when the cause of action arose notwithstanding that the debtor has not been for that period resident within the jurisdiction of the court. Judgment appealed from reversed. Girouard and Davies, JJ., dissenting. *Rutledge v. United States Savings and Loan Co.*, xxxvii., 546.

12. *Tenant by sufferance — Use and occupation of lands — Art. 1608 C. C.—Promise of sale—Vendor and purchaser—Reddition de compte—Actio ex vendito—Practice.*—The action for the value of the use and occupation of lands does not lie in a case where the occupation by sufferance was begun and continued under a promise of sale; in such a case the appropriate remedy would be by an action *ex vendito* or for *reddition de compte*. *Cantin v. Bérubé*, xxxvii., 627.

13. *Rivers and streams — Floating sawlogs — Use of booms — Vis major — Salvage — Quantum meruit—Riparian rights.*—P. placed booms across a floatable river to hold logs at a place where he had erected a sawmill on land owned by him on the bank of the river. T. had a boom further upstream for storing pulpwood. An unusual freshet broke T.'s boom and brought a quantity of his wood down with the current into P.'s boom, where it was caught and held for some time, until removed by T., without causing any damage or expense to P. In an action by P. to recover salvage or the value of the use of his boom for the time during which T.'s wood had remained therein:—

*Held*, reversing the judgment appealed from (Q. R. 14 K. B. 513), that as P. had no right of property in the waters of the river where he had placed his boom those waters were *publici juris*, notwithstanding the construction of the boom; that T.'s wood came there lawfully; and that, as the service rendered in stopping the wood was involuntary and accidental, P. could recover nothing therefor.—*Per Fitzpatrick, C.J.*—There is no difference between the laws of the Province of Quebec and those of England in respect to the rights of riparian owners to the waters of floatable streams flowing past their lands. *Miner v. Gilmour* (12 Moo. P. C. 131) referred to. *Tanguay v. Price*, xxxvii., 657.

14. *Title to land — Ownership—Artificial watercourse — Canal banks — Trespass — Possessory action — Borneage—Practice.*—The possessory action lies only in favour of persons in exclusive possession *à titre de propriétaire*.—In the present case, the bank of a canal had fallen in at a place adjoining lands belonging to D., and the projection thus formed had been, for some years, occupied by him. A. made an entry for the purpose of removing this obstruction, and re-building a retaining wall to support the bank. In a possessory action by D.—*Held*, that as the original boundary had become obliterated, the decision of the question of possession should be postponed until the limits of the canal bank had been re-established. *Parent v. The Quebec North Shore Turnpike Road Trustees* (31 Can. S. C. R. 556), followed. *Delisle v. Arcaud*, xxxvii., 668.

AND see TITLE TO LAND,

15. *Negligence — Navigation of inland waters — Collision—Government ships and vessels—"Public work"—"The Exchequer Court Act," s. 16—Construction of statute—Right of action.*—His Majesty's steam-tug "Champlain," while navigating the River St. Lawrence at some distance from a place where dredging was being carried on by the Government of Canada, and engaged in towing an empty mud-scow, owned by the Government, from the dumping ground back to the place where the dredging was being done, came in collision with the suppliant's steam barge, which was also navigating the river, and the barge sustained injuries:—*Held*, affirming the judgment of the Exchequer Court of Canada, that there could be no recovery against the Crown for damages suffered in consequence of negligence of its officers or servants, as the injury had not been sustained on a public work within the meaning of the sixteenth section of the "Exchequer Court Act." *Chambers v. Whitehaven Harbour Commissioners* ([1899] 2 Q. B. 132); *Hall v. Snowden, Hubbard & Co.* ([1899] 2 Q. B. 136); *Louth v. Ibbotson* ([1899] 1 Q. B. 1003); *Farnell v. Bowman* (12 App. Cas. 643); and *The Attorney-General of the Straits Settlements v. Weymss* (13 App. Cas. 192), referred to. *Paul v. The King*, xxxviii., 126.

16. *Trespass — Possession — Evidence—Expropriation — Railway.*—The casual use of land for pasturing cattle in common with other persons does not constitute an evidence of possession sufficient to maintain an action

for trespass. Judgment appealed from (1 East. L. R. 524) reversed. *Temiscouata Ry. Co. v. Clair*, xxxviii., 230.

AND see APPEAL.

17. *Action for negligence—Practice—Assessment of damages—Funeral expenses.*—In an action by the father of a person whose death was occasioned by the negligence of the defendants, it was held that the plaintiff could not recover funeral and other expenses incurred, as damages in the action. *Toronto Ry. Co. v. Mulvaney*, xxxviii., 327.

AND see NEGLIGENCE.

18. *Title to land—Promise of sale—Entry in land-register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Possessory action—Compensation for improvements—Rents, issues and profits—Set-off—Tender of deed—Restrictive conditions—Evidence—Commencement de preuve par écrit—Pleading and practice—Arts. 411, 412, 417, 419, 1204, 1233, 1476, 1478 C. C.]—The appellants, plaintiffs, are the grantees of the lands in question, part of the Seignior of Matapédia, the former proprietors of which had an agent resident in the seignior, who administered their affairs there. It had been customary on applications by intending settlers for the purchase of their wild lands, for this agent to take memoranda of their names and permit them to enter upon the lands, and this was done in respect to the lots in question, and the applicants were allowed to hold possession and make improvements thereon without notice of any special conditions limiting the titles which might, subsequently, be granted to them by the owners. The defendants, respondents, acquired the rights of these applicants and, when the plaintiffs tendered deeds of the said lots to them, they refused to accept them on the ground that conditions were inserted which had not been stipulated for at the time of the original entries upon the lots, and of which no notice had been given. In actions, *au pétitoire*, the defendants pleaded that their possession had been in good faith in expectation of eventually receiving titles without such restrictive conditions as were sought to be imposed, and that, in the event of eviction, they were entitled to full compensation for the value of all necessary improvements made on the lands without deductions in respect of rents, issues and profits: *Held*, affirming the judgment appealed from (Q. R. 16 K. B. 127), the Chief Justice and Duff, J., dissenting, (1) that the memoranda made by the agent were *commencements de preuve par écrit* and, having been followed by possession of the lots, were equivalent to a binding promise of sale without unusual conditions in limitation of any titles which might be granted: (2) that the entries made upon the lands, the possession thereof held by the defendants and their *auteurs* and the works done by them thereon could not be held to be in bad faith, nor with knowledge of defective title: (3) that, under the circumstances and, notwithstanding that the defendants had actual notice of prior title, the plaintiffs could not maintain actions *au pétitoire*, although they might be entitled to declarations in confirmation of the deeds*

tendered, if approved, and to recover the price of the lots; and (4) that the defendants could not be evicted without compensation for the full value of the necessary and useful improvements so made upon the lands with the knowledge and consent of the agent, and subject to being retained by the proprietors, without any deductions in respect of the rents, issues and profits derivable from the lands. *Price v. Neault* (12 App. Cas. 110) followed; *Lajoie v. Dean* (3 Dor. Q. B. 69) discussed.—*Per Fitzpatrick, C.J.*—Under article 412 of the Civil Code of Lower Canada, the good faith of a possessor of land is dependent upon a grant sufficient to convey real estate or transmit an interest therein. *Saint Lawrence Terminal Co. v. Hallé; St. Lawrence Terminal Co. v. Rioux*, xxxix., 47.

19. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with water-course—Agreement as to user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages.*—A possessory action will not lie in a case where the *trouble de possession* did not occur in consequence of the exercise of an adverse claim of right or title to the lands in question, and is not of a permanent or recurrent nature. Davies and Idington, J.J., dissenting were of opinion that, under the circumstances of the case, a possessory action would lie.—P. brought an action *au possessoire* against the company for interference with his rights in a stream, for damages and for an injunction against the commission or continuance of the acts complained of. On service of process, the company ceased these acts, admitted the rights and title of P., alleged that they had so acted in the belief that a verbal agreement made with P. some years previously gave them permission to do so, that this license had never been cancelled, but was renewed from year to year and that, although the privilege had not been exercised by them during the two years immediately preceding the alleged trespass in 1904, it was then still subsisting and in force, and tendered \$40 in compensation for any damage caused by their interference with P.'s rights; *Held*, reversing the judgment appealed from, Davies and Idington, J.J., dissenting, that, as there had been no formal cancellation of the verbal agreement or withdrawal of the license thereby given, it had to be regarded, notwithstanding non-user, as having been tacitly renewed, that it was still in force in 1904, at the time of the acts complained of, and that P. could not recover in the action as instituted. The Chief Justice, on his view of the evidence, dissented from the opinion that the agreement had been tacitly renewed for the year 1904. *Chicoutimi Pulp Co. v. Price*, xxxix., 81.

AND see PRACTICE.

20. *Constitutional law—Construction of statute—“Crown Procedure Act.” R. S. B. C. c. 57—Duty of responsible ministers of the Crown—Refusal to submit petition of right—Tort—Right of action—Damages—Pleading—Practice—Withdrawal of case from jury—New trial—Costs.*—Under the provisions of the “Crown Procedure Act,”

R. S. B. C. c. 57, an imperative duty is imposed upon the Provincial Secretary to submit petitions of right for the consideration of the Lieutenant-Governor within a reasonable time after presentation and failure to do so gives a right of action to recover damages.—After a decisive refusal to submit the petition has been made, the right of action vests at once, and the fact that a submission was duly made after the institution of the action is not an answer to the plaintiff's claim.—In a case where it would be open to a jury to find that an actionable wrong had been suffered and to award damages, the withdrawal of the case from the jury is improper and a new trial should be had.—The Supreme Court of Canada reversed the judgment appealed from (12 B. C. Rep. 476), which had affirmed the judgment at the trial withdrawing the case from the jury and dismissing the action and allowing the plaintiff his costs up to the time of service of the statement of defence, costs being given against the defendant in all the courts and a new trial ordered. Davies and MacLennan, JJ., dissented and, taking the view that the refusal, though illegal, had not been made maliciously, considered that, on that issue, the plaintiff was entitled to nominal damages; that, in other respects, the judgment appealed from should be affirmed, and that there should be no costs allowed on the appeal to the Supreme Court of Canada. (Appeal to Privy Council dismissed, 9th July, 1908). *Norton v. Fulton*, lxxxix., 202.

21. *Defamation—Printing report of ghost haunting premises—Slander of title—Fair comment—Disparaging property—Special damages—Evidence—Presumption of malice—Right of action.*—The reckless publication of a report as to premises being haunted by a ghost raises a presumption of malice sufficient to support an action for damages from depreciation in the value of the property, loss of rent and expenses incurred in consequence of such publication. *Barrett v. The Associated Newspapers* (23 Times L. R. 666), distinguished. The judgment appealed from (16 Man. R. 619) was affirmed, the Chief Justice dissenting. *Manitoba Free Press Co. v. Nagy*, xxxix., 340.

22. *ChamPERTY—Maintenance—Malicious motive—Cause of action—Costs of unsuccessful defence—Damages.*—A defendant against whom a lawsuit has been successfully prosecuted cannot recover the costs incurred for his defence as damages for the unlawful maintenance of the suit by a third party who has not thereby been guilty of maliciously prosecuting unnecessary litigation. *Bradlaugh v. Newdegate* (11 Q. B. D. 1), distinguished; *Giegerich v. Fleutot* (35 Can. S. C. R. 327) referred to. Judgment appealed from (12 B. C. Rep. 272) affirmed. *Newswander v. Giegerich*, xxxix., 354.

23. *Municipal corporation—Illegal expenditure—Action by ratepayer—Intervention of Attorney-General—Validating Act—Right of appeal.*—Prior to the passing of the Act of the Legislature of Nova Scotia, 7 Edw. VII. c. 61, the City Council of Halifax had no authority to pay the expenses of the mayor in attending a convention of the

Union of Canadian Municipalities.—Where a municipal council illegally pays away money of the municipality, an action to recover it back may, if the council refuses to allow its name to be used, be brought by a ratepayer suing on behalf of all the ratepayers and need not be in the name of the Attorney-General.—Pending such an action the legislature passed an Act authorizing payment by the council of any sums for principal, interest and costs incurred by the defendant "in the event of the judgment being finally recovered by the plaintiff."—*Held, per Fitzpatrick, C.J., and MacLennan, J.,* that the meaning of the words quoted was that the action might proceed to a finality including any competent appeal, and that they did not put an end to the appeal to this court.—*Per Fitzpatrick, C.J., and MacLennan, J.—Quære.* Should not the action have been brought on behalf of all the ratepayers and inhabitants of the municipality? Judgment appealed from (41 N. S. Rep. 351) affirmed. *MacIreith v. Hart*, xxxix., 657.

24. *Tramway—Contract with municipality—Limited tickets—Specific performance—Injunction—Right of action—Parties.*—The injunction granted by the judgment of Street, J. (8 Ont. L. R. 642), affirmed by the Court of Appeal for Ontario (10 Ont. L. R. 594), was affirmed by the Supreme Court of Canada for the reasons given in the courts below. The order by Street, J., restrained the company from operating trams in which they did not provide "workmen's tickets" good for passenger fares during certain fixed hours of each day in virtue of an agreement with the city. The Court of Appeal held that the agreement was *intra vires*, that the company were obliged to provide such tickets, that it was not necessary to make the Attorney-General a party to the action, and that specific performance could be enforced by injunction. *Hamilton Street Railway Co. v. City of Hamilton*, xxxix., 673.

25. *Railway aid—Provincial subsidy—Construction of statute—60 Vict. c. 4, s. 12 (Que.)—54 Vict. c. 88, s. 1j (Que.)—Breach of conditions—Compromise by Crown officers—Obligation binding on the Crown—Right of action—Extension of railway—Application of subsidy.* The suppliants claimed that by the Quebec statutes, 54 Vict. c. 88, and 60 Vict. c. 4, a balance was due them on subsidy in aid of the Baie des Chaleurs Railway, that the subsidy was attributable to the first 80 miles from Metapédia towards Gaspé Basin, that such subsidy was subject only to the conditions in the second part of s. s. 1j of the Act 54 Vict., and that the Provincial Government was bound by the terms of a transaction with the Lieutenant-Governor in Council compromising for the land subsidy at a rate per acre in cash. The Supreme Court affirmed the judgment appealed from (Q. R. 15 K. B. 320), dismissing the petition of right and holding that the subsidy applied to the 80 miles terminating at or near Gaspé Basin, and that the construction placed on the statutes by officers of the Crown in effecting the compromise and part payment in money, gave the suppliants no right of action against the



Crown for the balance claimed by them. *DeGalindez et al. v. The King*, xxxix., 682.

26. *Rivers and streams—Crown domain—Title to land—“Plottage” —Driving loose logs—Public servitude—Riparian ownership—Action possessoire—Arts. 400, 503, 507, 2192 C. C.—Art. 1064 C. P. Q.* ]—In the Province of Quebec, watercourses which are capable merely of floating loose logs (*flotables à bûches perdues*), are not dependencies of the Crown domain within the meaning of article 400 of the Civil Code. The owners of the adjoining riparian lands are, consequently, the proprietors of the banks and beds of such streams and have the right of action *au possessoire* in respect thereof. Judgment appealed from (Q. R. 16 K. B. 48) affirmed, (Girouard and Idington, J.J., dissenting. *Tanguay v. Canadian Electric Light Co.*, xl., 1.

AND SEE RIVERS AND STREAMS.

27. *Malicious prosecution — Reasonable and probable cause—Bonâ fide belief in guilt—Burden of proof—Right of action for damages—Art. 1053 C. C.—Pleading and practice.* ]—An action for damages for malicious prosecution will not lie where it appears that the circumstances under which the information was laid were such that the party prosecuting entertained a reasonable *bonâ fide* belief, based upon full conviction founded upon reasonable grounds, that the accused was guilty of the offence charged. *Abrath v. North Eastern Railway Co.* (11 App. Cas. 247) and *Cox v. English, Scottish and Australian Bank* ([1905] A. C. 168) referred to.—*Semble*, that, in such cases, the rule as to the burden of proof in the Province of Quebec is the same as that under the law of England, and the plaintiff is obliged to allege and prove that the prosecutor acted with malicious intentions or, at least, with indiscretion or reprehensible want of consideration. *Sharpe v. Willis* (Q. R. 29 S. C. 14; 11 Rev. de Jur. 538) and *Durocher v. Bradford* (13 R. L. [N.S.] 73) disapproved.—Judgment appealed from (Q. R. 16 K. B. 333) affirmed. *Hétu v. Dixville Butter and Cheese Association*, xl., 128.

28. *Negligence of fellow-servant — Operation of railway — Defective switch—Public work — Tort—Liability of Crown—Right of action — Exchequer Court Act, s. 16 (c)—Lord Campbell's Act — Art. 1056 C. C.* ]—In consequence of a broken switch, at a siding on the Intercolonial Railway (a public work of Canada), failing to work properly, although the moving of the crank by the pointsman had the effect of changing the signal so as to indicate that the line was properly set for an approaching train, an accident occurred by which the locomotive engine was wrecked and the engine-driver killed. In an action to recover damages from the Crown, under article 1056 of the Civil Code of Lower Canada: *Held*, affirming the judgment appealed from (11 Ex. C. R. 119), that there was such negligence on the part of the officers and servants of the Crown as rendered it liable in an action in tort; that the “Exchequer Court Act,” 50 & 51 Vict. c. 16, s. 16 (c), imposed liability upon the Crown, in such a case, and gave jurisdiction to the Exchequer Court of Canada to en-

tain the claim for damages; and that the defence that deceased, having obtained satisfaction or indemnity within the meaning of article 1056 of the Civil Code, by reason of the annual contribution made by the Railway Department towards The Intercolonial Railway Employees' Relief and Insurance Association, of which deceased was a member, was not an answer to the action. *Miller v. The Grand Trunk Railway Co.* ([1906] A. C. 187) followed. [Leave to appeal to Privy Council was refused; 18th July, 1908.] *The King v. Armstrong*, xl., 229.

29. *Company — Paid-up shares — Sale by broker — Prospectus—Misrepresentations—Rescission — Delay—Liability of directors.* ]—F. in June, 1903, purchased paid-up shares in the capital stock of an industrial company on the faith of statements in a prospectus prepared by a broker employed to sell them. In January, 1904, he attended a meeting of shareholders and from something he heard there suspected that some of said statements were untrue. After investigation he demanded back his money from the broker and wrote to the president and secretary of the company repudiating his purchase. At subsequent meetings of shareholders he repeated such repudiation and demand for repayment, and in December, 1904, brought suit for rescission: *Held*, that his delay, from January to December, 1904, in bringing suit was not a bar and he was entitled to recover against the company.—*Held*, also, that he could not recover against the directors who had instructed the broker to sell the shares as they were not responsible for the misrepresentations in the prospectus.—Judgment of the Supreme Court of New Brunswick (38 N. B. Rep. 364), affirming the decision at the hearing (3 N. B. Eq. 508) reversed. *Farrell v. Manchester*, xl., 339.

30. *Banks and banking—Forged cheque—Negligence—Responsibility of drawee—Payment — Mistake — Indorsement—Implied warranty—Principal and agent—Money had and received—Change in position—Laches.* ]—A cheque for \$6, drawn on the plaintiff, was fraudulently altered by changing the date and the name of the payee, and by raising the amount to \$1,000. The drawee refused payment for want of identification of the person who presented it. The defendant bank, without requiring identification, advanced \$25 in cash to the forger on the forged cheque, placed the balance, \$975, to his credit in a deposit account, indorsed it and received the full amount of \$1,000 from the drawee. After receipt of this amount, the defendant paid the further sum of \$800 to the forger out of the amount so placed to the credit of his deposit account. The fraud was discovered a few days later and, on its refusal to refund the money it had thus received, the action was brought to recover it back from the defendant as indorser, or as having received money paid under mistake of fact: *Held*, that the drawee of the cheque, although obliged to know the signature of its customer, was not under a similar obligation in regard to the writing in the body of the cheque; that, as the receiving bank had dealt with the drawee as a principal and not merely as the agent for the col-

lection of the cheque and had obtained payment thereof as indorser and holder in due course, it was liable towards the drawee which had, through the negligence of the receiving bank, been deceived in respect to the genuineness of the body of the cheque, and that the drawee was entitled to recover back the money which it had thus paid under a mistake of fact, notwithstanding that, after such payment, the position of the defendant had been changed by paying over part of the money to the forger. *The Bank of Montreal v. The King* (38 Can. S. C. R. 258) distinguished. *Newall v. Tomlinson* (L. R. 6 C. P. 405); *Durrant v. The Ecclesiastical Commissioners for England and Wales* (6 Q. B. D. 234); *The Continental Caoutchouc and Gutta Percha Co. v. Kleinwort, Sons & Co.* (20 Times L. R. 403), and *Kleinwort, Sons & Co. v. The Dunlop Rubber Co.* (23 Times L. R. 696), followed.—Judgment appealed from (17 Man. R. 68), affirmed, Idington, J., dissenting, *Dominion Bank v. Union Bank of Canada*, xl., 366.

31. *Damages—Trespass—Cutting timber—Sale to bonâ fide purchaser—Action by owner of land.*—F. conveyed land to his wife for valuable consideration. Shortly after it was discovered that a trespasser had cut timber on said land and sold it to G., who bought in good faith and sold to another bonâ fide purchaser. In an action by F.'s wife against the two purchasers, the money was paid into court and an interpleader issue granted to decide which of the claimants, the plaintiff or G., was entitled to have it: *Held*, affirming the judgment of the Court of Appeal (16 Ont. L. R. 123), which reversed the decision of the Divisional Court (14 Ont. L. R. 160), that the plaintiff was entitled to the whole sum. Duff, J., expressed no opinion on the question.—*Held*, also, Idington, J., *dubitante*, and Duff, J., dissenting, that if necessary the writ and interpleader order could be amended by adding F. as a co-plaintiff with his wife. *Greer v. Faulkner*, xl., 399.

32. *Builders and contractors—Responsibility for faults in construction—Latent defect—Installations in constructed building—"Automatic Sprinkler System"—Damages by flooding—Injury sustained by subsequent purchaser—Right of action—Assessment of damages—Expertise.*—The plaintiff's *outeur* employed the defendant to install an "automatic sprinkler" in his building (subsequently sold to plaintiff) and, in executing the work, the defendant made insufficient connections with the city water-mains by means of a pipe already existing in the building. As the result of this fault in construction, the pipes became disjointed and the plaintiff's goods, consisting largely of cases containing wines in labelled bottles, were damaged. The plaintiff notified defendant that he would hold him liable for the damages thus sustained and requested him to attend at an expert valuation to be made by fire insurance adjusters and valutors, but plaintiff disregarded the notification and did not attend. The experts assessed the damages, in the manner usually adopted in similar cases of damages caused by fire, at \$3,397.11, and the plaintiff's action was for this amount with amounts added for expenses incurred in repairs to the pipes, fees to the experts

and for expenses of protest. The judgment appealed from (Q. R. 17 K. B. 449) affirmed the trial judgment (14 R. L. [N.S.] 172) maintaining the action, and held that, under arts. 1055, 1688 and 1696 C. C., the contractor was responsible for the damages sustained, that the subsequent purchaser had a right of action against him, as he was the person injured through the latent defects in construction, that the method of assessing damages adopted was a proper mode to follow under the circumstances, and that the repairs, experts' fees and costs of protest were items of damages which could properly be recovered in the action. This decision was affirmed by the Supreme Court, on appeal, Davies, J. *dubitante*, for the reasons given by Tellier, J., at the trial, and Bossé and Trenholme, J.J., in the court appealed from. *Macguire v. Fraser*, xl., 577.

33. *Waterworks—Statutory contract—Exclusive franchise—Condition of defeasance—Forfeiture of monopoly—Demurrer—Right of action by municipality—Rescission—Art. 1065 C. C.—40 Vict. c. 68 (Que.)*.—By the Quebec statute, 40 Vict. ch. 68, Louis Molluer and others, now represented by the defendants, were substituted as sole owners of the waterworks of St. John's in the place of "The Waterworks Co. of St. John's," incorporated under R. S. C. (1859) ch. 65, charged with all the obligations and responsibilities of said company, and, by the said Act, 40 Vict. ch. 68, the new proprietors were granted the exclusive right and privilege of placing pipes or water conduits under the streets and squares of the Town of St. John's (now the City of St. John's the appellant), under certain other conditions and obligations in the last mentioned statute recited, and the monopoly created was, by section 3, liable to be forfeited in case of neglect and refusal in discharging the obligations thereby imposed.—*Held*, that the contract existing between the parties, in virtue of the above recited statutes, was liable to rescission under the provisions of the 1065th article of the Civil Code of Lower Canada, upon default in the specific performance by the defendants of the obligations thereby imposed, and that, upon proof of default in the specific performance of any of the said obligations, the municipal corporation was entitled to maintain an action in its corporate capacity to have the exclusive right and privilege granted by the statute declared forfeited, surrendered and annulled.—The judgment appealed from (Q. R. 16 K. B. 559) deciding that the action would lie only for breach of obligations expressly declared to involve forfeiture, was reversed, Davies, J., dissenting. *Ville de St. Jean v. Molluer*, xl., 629.

34. *Municipal corporation—Highway—Snow cleaning—Care of streets—Bad repair—Loss of profits to omnibus line—Negligence—Right of action—Damages.*—W. was the proprietor of an omnibus line plying in certain streets of the City of Halifax during the winter of 1881-2, under a license from the city. About the 10th January the snow fell very heavily, and by about the 20th, owing to the snow being thrown from the sidewalks into the street, the roadway became filled with pitch holes, some of which

were four feet deep. Other severe snow storms through the winter aggravated the condition of the road. The plaintiff alleged that, by reason of this bad repair of the highway, he had suffered damages to a large amount by the wrecking of his carriages, straining of his horses, breaking of harness, etc., and loss of profits through the diminution in traffic on his 'bus line. Plaintiff complained to the city authorities, asking that men be put to work to level the snow between the sidewalks, but his request was refused. The action was tried before McDonald, C.J., and a jury, when a verdict for the plaintiff for \$600 damages was found. The defendants obtained a rule to set aside the verdict, and for a new trial, which, after argument, was discharged by the Supreme Court of Nova Scotia (16 N. S. Rep. 371). On appeal to the Supreme Court of Canada: *Held*, the Chief Justice and Gwynne, J., dissenting, that the judgment of the court below should be affirmed and the appeal dismissed with costs.—*Per* Strong, J.—Under the Act incorporating the defendants and subsequent Acts amending the same, not only were the defendants liable to indictment for breach of their public duties in respect of the matters complained of, but the plaintiff could also maintain an action as a person especially injured thereby.—The evidence was amply sufficient to warrant the trial judge in leaving the case to the jury, and, the condition of the street being one which might have been remedied by levelling the hillocks which had been formed, and which caused the damage the respondent complained of, the verdict should be upheld.—The loss of profits claimed was not too remote, but was quite as much an immediate and natural cause of the injury as was the loss of custom in *Lancashire & Yorkshire Ry. Co. v. Gidlow* (L. R. 7 H. L. 517).—*Per* Henry, J. — The City of Halifax was liable for the negligence of the street commissioners although they were appointed by the city council and not by the Court of General Sessions as provided by R. S. N. S. (4 ser.) c. 49. *City of Halifax v. Walker* (Cout. Dig. 594, 978), Cam. Cas. 569.

35. *Negligence — Tort—Liability of the Crown — Demise of the Crown—Personal action — Release—Operation of railway—Common employment—Exchequer Court Act, 50 & 51 V. c. 16, s. 16 (c).* — Under sub-sec. (c) of sec. 16 of the "Exchequer Court Act" (50 & 51 Vict. ch. 16), an action in tort will lie against the Crown, represented by the Government of Canada. Under the Civil Code of Lower Canada, in case of death by negligence of servants of the Crown, an action for damages may be maintained by the widow of the deceased on behalf of herself and her children. The action of the widow is not barred by her acceptance of the amount of a policy of insurance on the life of deceased from the Intercolonial Railway Employees' Relief and Insurance Association, under the constitution, rules and regulations of which the Crown is declared to be released from liability to make compensation for injuries to or death of any member of the association. *Miller v. Grand Trunk Railway Co.* (1906) A.C. 187 followed. The right of action for compensation for injury or death by negligence of

Government employees does not abate on demise of the Crown. *Viscount Canterbury v. The Queen* (12 L.J. ch. 281) referred to *The King v. Desrosiers*, xli., 71.

AND see NEGLIGENCE.

36. *Appeal—Actio Pauliana—Controversy involved—Title to land—R. S. C. [1906] a. 139, s. 46.* In the Province of Quebec, the *actio Pauliana*, though brought to set aside a contract for sale of an immovable, is a personal action and does not relate to a title to lands so as to give a right of appeal to the Supreme Court of Canada. *Lamothe v. Davcluy*, xli., 80.

37. *Sale of stock — Evidence of title — Duty of vendor — Defective certificate.* — When shares in the stock of a company are sold for cash and a certificate delivered with a form of transfer indorsed purporting to be signed by the holder named therein who is not the seller, the latter must be taken to affirm that a title which will enable the purchaser to become the legal holder is vested in him by virtue of such certificate and transfer. A transfer was signed by the wife of the holder at his direction but not acted upon until after his death. *Held*, that the authority of the wife to deal with the certificate was revoked by the holder's death and on a cash sale of the shares the purchaser who received the certificate and transfer so signed being unable, under the company's rules, to be registered as holder had a right of action to recover back the purchase money from the seller. The fact that the purchaser endeavoured to have himself registered as holder of the shares was not an acceptance by him of the contract of sale which deprived him of his right of action to have it rescinded. Nor was his action barred by loss of the defective certificate by no fault of his nor of the seller. Judgment appealed from (13 B. C. Rep. 351) reversed. *Castleman v. Waghorn, Gwyn & Co.*, xli., 88.

38. *Damages — Denial of traffic facilities — Injury by reason of operation of railway — Limitation of actions—"Railway Act," 3 Edw. VII. c. 58, s. 242 — Construction of statute.* — Injuries suffered through the refusal by a railway company to furnish reasonable and proper facilities for receiving, forwarding and delivering freight, as required by the "Railway Act," to and from a shipper's warehouse, by means of a private spur-track connecting with the railway, do not fall within the classes of injuries described as resulting from the construction or operation of the railway, in sec. 242 of the "Railway Act," 3 Edw. VII. c. 58, and, consequently, an action to recover damages therefor is not barred by the limitation prescribed by that section for the commencement of actions and suits for indemnity.— Judgment appealed from (19 Man. R. 300) affirmed. *Girouard and Davies, JJ.*, dissenting. *Canadian Northern Railway Co. v. Robinson*, xliiii., 387.

39. *Construction of contract — Condition precedent—Arbitration and award—Right of action.* — A contract for the sale of timber limits contained a guarantee by the vendor that the quantity of timber thereon at the time of the sale would prove equal to that

shewn in a statement annexed and a covenant that he would re-pay to the purchasers the amount of any shortage found in proportion to the price at which the sale was made. In another clause, provision for arbitration was made in case of dispute as to the amount of any such shortage but it did not in express terms deprive the purchaser of the right to recover any claim for shortage until after an award had been obtained.—*Held*, affirming the judgment appealed from (15 B. C. Rep. 70), Idington, J., dissenting, that an award by arbitrators had not been made a condition precedent to recovery for the amount of any deficiency in the quantity of timber guaranteed to be upon the limits. *David v. Swift*, xliv., 179.

40. *Industrial improvements—Raising height of dam—Nuisance—Damages—Expertise and arbitration—Right of action—Condition precedent—Pleading—New objections on appeal—Prescription—Arts. 2242, 2261 C. C.*—The mode of ascertainment of damages by the arbitration of experts provided by article 5536 of the Revised Statutes of Quebec, 1888, does not exclude the right of action to recover compensation in the courts.—In such cases the measure of damages is the amount of compensation for injuries sustained up to the time of the action; they ought not to be assessed once for all, *en bloc*, but recourse may be reserved in regard to future damages arising from the same cause.—*Per* Idington and Anglin, JJ.—Objections based upon provisions of enabling statutes which have not been set up in the pleadings nor relied upon in the courts below cannot be entertained upon an appeal to the Supreme Court of Canada. *Hamelin v. Bannerman* (31 Can. S. C. R. 534), followed.—*Per* Anglin, J.—An action, brought in 1903, for recovery of damages in respect of injuries occasioned by improvements executed in 1904, upon works constructed many years before that time, is not subject to the prescription of thirty years; nor can the prescription provided by article 2261 of the Civil Code be applied where the action has been commenced within two years from the time the injuries complained of were sustained. *Gale v. Bureau*, xliv., 305.

AND *see* RIVERS AND STREAMS.

41. *Vendor and purchaser—Condition of agreement—Sole of land—Payment on account of price—Cancellation—Notice—Return of money paid—Rescission—Form of action—Practice.*—An agreement for the sale of lands acknowledged receipt of \$600 on account of the price and provided, in the event of default in the payment of deferred instalments, that the vendor might, on giving a certain notice, declare the agreement null and void and retain the moneys paid by the purchaser. On default by the purchaser to make payments according to the terms of the agreement the vendor served him with a notice for cancellation, which incorrectly recited that the contract contained a stipulation for its cancellation, in case of default, "without notice," and concluded by declaring the contract null and void "in accordance with the terms thereof as above recited." The vendor, subsequently, refused a tender of the unpaid balance of the price

and re-entered into possession of the lands. In an action by the purchaser for specific performance or the return of the amount paid, rescission was not asked for.—*Held*, that, as the vendor had not given the notice required by the conditions of the agreement he could not retain the money as forfeited on account of the purchaser's default; that, as the payment had not been made as earnest, but on account of the price, the purchaser was entitled to recover it back on the cancellation of the contract, and that, as the relief sought by the action could not be granted while the contract subsisted, a demand for rescission must necessarily be implied from the plaintiff's claim for the return of the money so paid. *March Bros. & Wells v. Banton*, xiv., 338.

42. *Mining Act—Grant of mining land—Reservation of pine timber—Right of grantee to cut for special purposes—Trespass—Cutting pine—Right of action.*—The Ontario Mining Act, R. S. O., [1897] ch. 36, as amended by 62 Vict. ch. 10, sec. 10, provides in sec. 39, sub-sec. 1, that "the patents for all Crown lands sold or granted as mining lands shall contain a reservation of all pine trees standing or being on the lands, which pine trees shall continue to be the property of Her Majesty, and any person holding a license to cut timber or saw logs on such lands may at all times, during the continuance of the license, enter upon the lands and cut and remove such trees and make all necessary roads for that purpose." By the other provisions of the section, the patentee may cut and use pine required for necessary building, fencing and fuel and other mining purposes and remove and dispose of what is required to clear the land for cultivation, but for any cut except for such building, fencing and other mining purposes he shall pay Crown dues.—*Held*, Idington and Duff, JJ., dissenting, that a patentee and a lessee of mining lands who had taken possession thereof, but were not at the time of the trespasses complained of in actual physical possession, have, notwithstanding such reservation, or exception, such possession of the pine trees, or such an interest therein, as would entitle them to maintain actions against a trespasser cutting and removing them from the land. *Glenwood Lumber Co. v. Phillips* ([1904] A. C. 405), followed; *Casselman v. Hersey* (32 U. C. Q. B. 333), discussed.—In this case the defendants cut and removed the pine timber from plaintiffs' mining lands without license from the Crown, but claimed that they subsequently acquired the Crown's title to it and should be regarded as licensees from the beginning.—*Held*, Idington and Duff, JJ., dissenting, that assuming that the Crown could after the trees had been cut and removed, take away by its act the plaintiffs' vested right of action the evidence shewed that defendants were cutting on adjoining Crown land as well as on plaintiffs' locations and did not clearly establish that any title acquired by defendants included what was cut on the latter. *National Trust Co., Ltd. v. Miller*, xlv., 45.

43. *Appeal—Final judgment—Reference.*—In an action claiming rescission of a contract for the sale of timber lands and other

equitable relief and, in the alternative, damages for deceit, the trial Judge held that it was a case for damages only and gave judgment accordingly and referred to a referee matters arising out of a counterclaim ordering him also to take an account of moneys paid, an inquiry as to liens and incumbrances and as to the quantity of standing timber on the lands and other proper accounts. Further consideration of the cause was reserved. This judgment was affirmed by the full court and the defendants sought to appeal to the Supreme Court of Canada.—*Held*, that the action tried and determined was the common law action for deceit only; that the judgment given therein was not a final judgment within the meaning of that term in the "Supreme Court Act"; and that the court had no jurisdiction to entertain the appeal. *Clarke v. Goodall* (44 Can. S. C. R. 284), and *Crown Life Ins. Co. v. Skinner* (44 Can. S. C. R. 616), followed. *Dunn v. Eaton*, xlvii., 205.

44. *Public officer—Notice—Notary public—Principal and agent—Mandate—Pleadings—Practice—New objections on appeal—Case on appeal—Notes of reasons by judges—Findings of fact—Art. 88 C. P. Q.*—If a defendant has not, in the courts below, taken exception to want of notice of action, as required by article 88 of the Code of Civil Procedure of Quebec, it is doubtful whether the objection can be urged on an appeal to the Supreme Court of Canada. *Devine v. Holloway* (14 Moo. P. C. 290), referred to.—Where the defendant has not been sued in an action for damages by reason of an act done in the exercise of a public function or duty, the provision of article 88 C. P. Q., as to notice of action against a public officer, has no application.—The Supreme Court of Canada ought not, in ordinary cases, to take into consideration the notes of reasons for judgments in the courts below which have not been delivered before the settling of the case on the appeal: *Mayhew v. Stone* (26 Can. S. C. R. 58), followed. In a proper case, however, when the non-delivery of such notes is satisfactorily accounted for, the court may permit them to be filed and made use of as part of the record on the appeal: *Canadian Fire Insurance Co. v. Robinson* (Cout. Dig. 1105), referred to. The court refused to reverse the concurrent findings of fact by the courts below. *Dufresne v. Desforges*, xlvii., 382.

45. *Damages—Timber on pre-empted lands—Rights of pre-emptor—B. C. "Land Act," R. S. B. C. 1911, c. 129, ss. 77 et seq. and 132.*—A pre-emptor of Crown lands, under the provisions of the British Columbia "Land Act," R. S. C. 1911, ch. 129, who has not forfeited his rights, is entitled to maintain an action for such damages as he has sustained in consequence of the destruction of timber growing upon his pre-empted lands. *Canadian Pacific Railway Co. v. Kerr*, xlix., 33.

AND see PRACTICE AND PROCEDURE.

46. *Sale of lands—Agreement to pay commission—Named price—Introduction by agent—General retainer—Sale at lower price—Right of action—Alberta statute, 6 Edw. VII., c. 27, s. 1.*—The Alberta statute. 6

Edw. VII., ch. 27, respecting sales of real estate, denies recovery by action, for services rendered in connection with such sales by way of commission or otherwise, unless upon a memorandum in writing signed by or on behalf of the person to be charged. In a letter to the plaintiff, signed by the defendant, the latter agreed to sell a hotel for \$40,000 and added, "I will pay you 5 per cent. commission on purchase price." Defendant subsequently sold the property to a purchaser introduced by the plaintiff for \$34,000.—*Held*, affirming the judgment appealed from (10 D. L. R. 498; 4 West. W. R. 83), that "purchase price," as used in the letter, had reference to any price for which a sale might be made, and that, construed in connection with the conduct of the parties, the memorandum was sufficient, under the statute, to entitle the plaintiff to recover a commission at the rate mentioned for his services in regard to the sale made at the reduced price; to the purchaser introduced by him. *Toulmin v. Millar* (58 L. T. 96), and *Burchell v. Gowrie and Blackhouse Collieries* ([1910] A. C. 614), referred to. *Howard v. George*, xlix., 75.

47. "Militia Act"—R. S. C. [1896] c. 41 —"Senior officer . . . present at any locality"—*Military district—Right of action—5 Edw. VII., c. 23, s. 86.*—By sec. 16 of the "Militia Act" (R. S. C. [1896] ch. 41), Canada is divided into military districts of which the Province of Nova Scotia is one. By sec. 34 "the senior officer present at any locality" may, on requisition from three justices of the peace, call out the troops in aid of the civil power wherever a riot or disturbance of the peace has occurred or is anticipated.—*Held*, Brodeur, J., dissenting, that the "senior officer present at any locality" is not necessarily the senior officer of a corps stationed at the place where the riot occurs or is likely to occur. The justices, in their discretion, may requisition the senior officer of any available force.—Judgment appealed from (46 N. S. Rep. 527) reversed, Brodeur, J., dissenting. *Attorney-General of Canada v. City of Sydney*, xlix., 148.

AND see MILITIA.

48. *Money received under prohibited contract—Recovery of funds—Right of action.*—*Held*, also, that, in the circumstances of the case, the plaintiff's right of action was not affected by the illicit nature of the agreement and that he was entitled to recover the amount so retained in an action for money had and received to his use by the defendant, or under the provisions of sec. 11 of the Quebec statute, 58 Vict. ch. 42.—Judgment appealed from reversed. *Consumers' Cordage Co. v. Connolly* (31 Can. S. C. R. 244), followed. (Leave to appeal to Privy Council granted, 7th July, 1914). *Lapointe v. Messier*, xlix., 271.

AND see MUNICIPAL CORPORATION.

49. *Right of action—Lord Campbell's Act—Death by accident—Action by widow—Accord and satisfaction.*—Where the death of a person is caused by the wrongful act, neglect or default of another an action for damages does not lie under Lord Campbell's Act unless the deceased could have main-

tained an action if death had not ensued.—C. was a temporary employee on the Intercolonial Railway and, as such, a member of the "Employees' Relief and Insurance Association." By the rules of the Association the object of the Temporary Employees' Accident Fund was to provide for members suffering from bodily injury and for the family or relatives of deceased members. Each member had to contribute to the fund and the Railway Department gave the annual sum of \$8,000 in consideration of which it was to be "relieved of all claims for compensation for injury or death of any member." C. was killed by a railway train and his widow was paid \$250 out of this fund. She then brought an action under "Lord Campbell's Act."—*Held*, affirming the judgment of the Exchequer Court (14 Ex. C. R. 472), that as by his contract with the Association C. could not have maintained an action had he lived the widow's right of action was barred. *Conrod v. The King*, xlix., 577.

50. *Municipal corporation — Powers of council — Highways—Exclusive privilege—Necessity of by-law—Validity of contract—Right of action—Status of plaintiff—Shareholder in joint-stock company—Ratepayer—Special injury—Public interest—Prosecution by Attorney-General — Practice — Art. 978 C.P.Q.*—Assuming to act under authority of an existing by-law regulating traffic by autobuses and in virtue of a special statute (2 Geo. V., ch. 56 (Que.)), and the general powers conferred by the city charter the municipal council passed a resolution authorizing the corporation of the municipality to enter into a contract granting a joint stock company the exclusive privilege of operating autobus lines on certain streets in the city and charging fares for the carriage of passengers. An action was brought by a shareholder in a tramway company (which held similar privileges), who was also a municipal ratepayer, attacking the validity of the by-law and of a contract made by the municipal corporation in pursuance of the resolution on the grounds that there was no authority for the granting of such exclusive privileges, that such powers, if they existed, could only be exercised by means of a by-law, and that a provision in the contract whereby the municipality became entitled to certain shares in the stock of the autobus company, was *ultra vires* of the municipal corporation.—*Held*, affirming the judgment appealed from (Q. R. 23 K. B. 338), Idington and Anglin, J.J., dissenting, that in the absence of evidence of special injury sustained by the plaintiff, he had no status entitling him to bring the action.—*Per* Idington, J., dissenting.—The plaintiff was entitled to institute the action by virtue either of his quality as a shareholder in the tramway company, the privileges of which might be injuriously affected, or as a ratepayer of the municipality.—*Per* Anglin, J., dissenting.—The plaintiff could bring the action in his capacity as a ratepayer of the municipality.—*Per* Fitzpatrick, C.J., and Duff and Brodeur, J.J.—An appropriate remedy in such a case would be by action prosecuted by the Attorney-General of the province under article 978 of the Code of Civil Procedure.—*Per* Duff, J.—Such an action might

be prosecuted either by the municipal corporation itself or by an authority representing the general public.—Validity of the by-law, resolution and contract in question discussed by Idington, Duff and Anglin, J.J. *Robertson v. Montreal*, lii., 30.

51. *Contract — Inapplicable conditions—Action for quantum meruit. Toronto Hotel Co. v. Sloan*, Cout. Cas. 356.

52. *Railways — Negligence—Braking apparatus — Sand valves — Defects in machinery — Employer's liability — Provident society — Condition of indemnity — Lord Campbell's Act—Right of action*, xxxiv., 45.  
See NEGLIGENCE.

53. *Decision of commissioner of mines—Appeal — Final judgment — Estoppel—Res judicata—Mandamus — Appropriate remedy*, xxxiv., 328.

See APPEAL.

54. *Contract by municipal corporation—Powers—By-law or resolution—Right of action — Confession of judgment—Evidence—Admissions—Pleading — Estoppel by record — Art. 1245 C. C.—Concurrent findings of fact—Practice on appeal*, xxxiv., 495.

See EVIDENCE.

55. *Public work — Lands injuriously affected—Closing highway—Inconvenient substitute—Right of action*, xxxiv., 570.

See PUBLIC WORK.

56. *Title to land—Trespass—Possession—Right of action — Enclosure by fencing*, xxxv., 185.

See TITLE TO LAND.

57. *Right to appeal — Interest of appellant—Parties to action—Art. 77 C. P. Q.—Sales of substituted lands—Will — Prohibition against alienation—Arts. 252, 953a, 968 et seq. C. C.—Res judicata*, xxxv., 193.

See APPEAL.

58. *Contract of fire insurance—Re-insurance policy—"Rider"—Condition — Trade custom—Limitations of actions—Commencement of prescription*, xxxv., 208.

See LIMITATIONS OF ACTIONS.

59. *Title to land—Sale of mineral rights — Litigious rights—Champerty*, xxxv., 327.

See TITLE TO LAND.

60. *Title to land—Conveyance in fee—Reservation of life estate — Possession — Ejectment*, xxxvi., 231.

See TITLE TO LAND.

61. *Limitation of actions — Unregistered deed—Subsequent registered mortgage—Possession—Right of entry*, xxxvi., 455.

See LIMITATIONS OF ACTIONS.

62. *Contract — Breach of conditions — Liquidated damages—Penalty — Cumulative remedy*, xxxvii., 430.

See TRAMWAY.

63. *Operation of railway—Negligence—Moving train—Regulations—Personal liability of employee—Estoppel.*—The plaintiff was injured in attempting to board a moving train after the conductor had given the signal "all aboard":—*Held*, that she was entitled to recover in an action against the conductor personally for his failure to observe rules and look after the safety of passengers. *McFadden v. Hall* (Cout. Dig. 961; 1191) Cam. Cas. 589.

64. *Practice—Pleading—Amendment ordered by court—Married woman—Legal community—Right of action—Reprise d'instance—Arts. 78, 174, 176 C. P. Q.—R. S. C. c. 135, ss. 63, 64. North Shore Power Co. v. Duguay, xxxvii., 624.*

65. *Contract—Supply of material—Payment—Certificate of engineer—Condition precedent—Improper interference—Fraud—Hindering performance of condition—Monthly estimate—Final decision. Temiskaming and Northern Ontario Ry. Comm. v. Wallace, xxxvii., 696.*

66. *Actio negatoria servitutis—Boundary ditch—Estoppel—Waiver of objections—Evidence. Breton v. Gonthier dit Bernard, Cout. Cas. 350.*

67. *Construction of deed—Ambiguity—Discharge of debtor—Contract—Illegal consideration—Right of action, xxxvii., 613.*

See DEED.

68. *Breach of trust by Crown—Purchase of debentures out of Common School Fund—Knowledge of misappropriation of moneys—Payment of interest—Statutory prohibition—Evasion of statute—Estoppel against Crown—Adding parties—Practice, xxxvii., 62.*

See QUEBEC NORTH SHORE TURNPIKE ROAD TRUST.

69. *Breach of contract—Breach of trust—Assessment of damages—Sale of mining rights—Promotion of company—Failure to deliver securities—Principal and agent—Account—Evidence—Salvage—Indemnity for necessary expenses—Laches—Estoppel, xxxviii., 198.*

See TRUSTS.

70. *Negligence—Trespass—Horse racing—Intruder upon race-track—Carelessness, xxxviii., 226.*

See NEGLIGENCE.

71. *Vacating judgment—Appeal—Jurisdiction—Matter in controversy—Tierce opposition—Arts. 1185-1188 C. P. Q.—R. S. C. (1886) c. 135, s. 29, xxxviii., 236.*

See OPPOSITION.

72. *Crown—Banks and banking—Forged cheques—Payment—Representation by drawee—Implied guarantee—Estoppel—Acknowledgment of bank statements—Liability of indorsers—Mistake—Money had and received, xxxviii., 258.*

See BANKS AND BANKING.

73. *Admiralty law—Foreign bottoms—Collision in foreign waters—Jurisdiction of Canadian Courts, xxxviii., 303.*

See SHIPS AND SHIPPING.

74. *Public work—Contract—Change in plans and specifications—Waiver by order in council—Powers of executive—Construction of statute—Directory and imperative clauses—Words and phrases—"Stipulations"—Engineer Court Act s. 33—Extra works—Engineer's certificates—Instructions in writing—Schedule of prices—Compensation at increased rate—Damages—Right of action—Quantum meruit, xxxviii., 501.*

See CONTRACT.

75. *Subaqueous mining—Crown grants—Dredging lease—Breach of contract—Subsequent issue of placer mining licenses—Damages—Pleading and practice—Statement of claim—Cause of action, xxxviii., 542.*

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76. *Vendor and purchaser—Sale of land—Formation of contract—Conditions—Acceptance of title—New term—Statute of Frauds—Principal and agent—Secret commission—Avoidance of contract—Fraud—Specific performance, xxxviii., 588.*

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77. *Construction of deed—Title to land—Servitude—Acquiescence—Estoppel by conduct—Actio negatoria servitutis—Operation of waterworks, xxxix., 244.*

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78. *Promissory note—Fraud in procuring—Discount—Good faith—Evidence—Onus of proof, xxxix., 541.*

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79. *Insurance—Sprinkler system—Damage from leakage or discharge—Injury from frost—Application—Interim receipt, xxxix., 558.*

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80. *Title to land—Interest in mining areas—Sale by trustee—Recovery of proceeds of sale—Agreement in writing—Statute of Frauds—R. S. N. S. (1900) c. 141, ss. 4 and 7—Part performance—Acts referable to contract—Evidence—Pleading, xxxix., 608.*

See TITLE TO LAND.

81. *Trust—Company law—Extra remuneration—Ultra vires act of directors—Ratification—Recovery of moneys illegally paid—Mistake of law, xxxix., 614.*

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82. *Shipping—Material men—Supplies furnished for "last voyage"—Privilege of dernier équipage—Round voyage—Charter party—Personal debts of hirers—Seizure of ship—Arts. 2383, 2391 C. C.—Art. 931 C. P. Q.—Construction of statute—Ordonnances de la Marine, 1681, xl., 45.*

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83. *Principal and agent—Secret profit—Trust—Clandestine transactions by broker—*

*Sham purchaser — Commission — Quantum meruit*, xl., 134.

See PRINCIPAL AND AGENT.

84. *Title to land—Construction of deed—Easement appurtenant—Use of common lane—Overhanging fire-escape — Encroachment on space over lane — Trespass—Right of action*, xl., 188.

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85. *Admiralty law — Jurisdiction of the Exchequer Court of Canada—Claim under mortgage on ship—Action in rem—Pleading—Abatement of contract price—Defects in construction—Damages*, xl., 418.

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86. *Negligence — Petition of right—Government railway—Operation over other lines—Agreement for running rights — Extensions and branches—"Public work"—Construction of statute — "Government Railways Act"—R. S. C. 1906, c. 36, s. 80—"Exchequer Court Act"—R. S. C. 1906, c. 140, s. 20 (c), xl., 431.*

See RAILWAYS.

87. *Company — Sale of shares—Misrepresentation—Fraud — Action for deceit—Accord and satisfaction*, xl., 437.

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88. *Promissory note — Negotiability—Indorsement—Liability of maker — Equitable claim*, Cam. Cas. 129.

See BILLS AND NOTES.

89. *Title to land—Trespass—Conventional line—Boundary—Agreement at trial—Pleading—Practice*, Cam. Cas. 171.

See TRESPASS.

90. *Assignment — Insolvency — Fraud—Right of action—Misdirection—New trial—Accounts—Practice*, Cam. Cas. 245.

See NEW TRIAL.

91. *Sale of goods—Insolvency—Bonâ fides—Fraudulent preference—Interpleader—Res judicata — Estoppel — Pleading — Bar to action*, Cam. Cas. 306.

See SALE.

92. *Husband and wife—Institution of action by divorced wife — Judicial authorization—Arts. 176, 178 C. C.—Art. 14 C. C. P.—Divorce—Decree by foreign tribunal—Jurisdiction—Effect in Quebec—Comity of nations*, Cam. Cas. 392.

See DIVORCE.

93. *Ships and shipping—Material used in construction — Sale of goods—Contract—Principal and agent — Misrepresentations—Mistake—Conversion — Trover — Evidence — Misdirection—New trial—Ship's husband — Pleading — Credit of owners—Necessary outfitting at home port*, Cout. Cas. 131.

See SHIPS AND SHIPPING.

94. *Appeal—Jurisdiction—Title to land—Action possessoire—Demolition of works—Matter in controversy*, Cout. Cas. 141.

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95. *Municipal corporation — Drainage — Construction of sewers—Nuisance—Injunction—Damages—Right of action—Practice*, Cout. Cas. 162.

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96. *Railways — Negligence—"Fatal Accidents Act"—Cumulative actions*, Cout. Cas. 347.

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97. *Company—Sale of shares—Resolutive condition—Hypothecary security—Construction of contract—Rescission*, xli., 185.

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98. *Contract—Agreement for sale of land—Deferred conveyance—Default in payment—Remedy of vendor — Reading "or" as "and," xli., 607.*

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99. *Breach of contract—Place of performance—Foreign judgment—Action. Canada Wood v. Moritz*, xlii., 237.

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100. *Agreement for sale of lands—Construction of contract — Right of action — Partition — Administration by co-owners—Trust—Interim account—Partial discharge of trustees. Angus v. Heinz*, xlii., 416.

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101. *Appeal — Jurisdiction — Rivers and streams—Right of floating logs—Servitude—Faculty or license—Possessory action — Injunction—Matter in controversy — Practice—Costs*, xlii., 133.

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102. *Railways—Construction and operation—Location plans—Delay in notice to treat—Action to compel expropriation — Compensation in respect of lands not acquired—Mandamus—Use of highway—Crossing public lane—Nuisance*, xliii., 65.

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103. *Appeal—Nature of action—Equitable relief—"Supreme Court Act," s. 38c—Appeal from referee—Final judgment—Assessment of damages*, xliii., 284.

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104. *Condition of contract—Notice—Policy of accident insurance—Tender before action — Waiver*, xliii., 386.

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105. *Petition of right—Contract—Powers of Commissioners of the Transcontinental Railway—Liability of Crown—Construction of statute—3 Educ. VII, c. 71 (D.)*, xliii., 448.

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106. *Lease—Water lot—Status of lessee—Riparian owner — Injunction — Action to have access to lot*, xliii., 629.

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107. *Municipal corporation—Highways—Nuisance—Repair of sidewalks—Negligence*



—Statutory duty — Nonfeasance—Personal injury—Civil liability—Right of action — Construction of statute—"Vancouver City Charter," xlv., 194.

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108. Construction of statute—Fishery and game leases—Personal servitude—Possession — Use and occupation—Right of action—Action en complainte — Renewed leases — Priority—Watercourses—Works to facilitate lumbering operations—Driving logs—Storage dams—Penning back waters out of track of transmission—Damages—Rights of lessees — Injury to preserves—Injunction—Demolition of works, xlv., 1.

See RIVERS AND STREAMS.

109. Repair of municipal highway—Statutory duty—"Unfenced trap" in sidewalk—Misfeasance—Negligence—Notice — Knowledge—Liability of corporation—"Res ipsa loquitur," xlvii., 457.

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110. Broker—Sale of land—Principal and agent — Disclosing material information—Secret profit — Vendor and purchaser — Agent's right to sell or purchase—Specific performance, xlvii., 477.

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111. Life insurance—Endowment policy—Surrender—Cash value—Rescission—Representation by agent—Inducement to insure, xlvii., 606.

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112. Action against minor—Exception of minority—Practice—Irregularity in procedure—Waiver after majority—Ratification—Prejudice—Nullity — Review by appellate court, xlvii, 103.

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113. Sale of land—Deceit—Misrepresentation—Honest belief—Pleading—Amendment — Adding new cause of action, xlvii., 399.

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114. Payment by insolvent—Preference—Recovery back by curator—Gaming transaction—Illegal contract — Right of action—Arts. 1031, 1032, 1036, 1927 C. C.—Arts. 853 et seq. C. P. Q. xlix., 91.

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115. Rivers and streams—Industrial improvements—Penning back waters—Permanent works—Damages — Measure of damages — Expertise—Arbitration — Reparation — Loss of water-power — Future damages — Compensation once for all—Right of action — Practice—Statute—R. S. Q., 1909, arts. 7295, 7296, xlix., 344.

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116. Practice — Action by dependents — "Families Compensation Act" — Release by deceased—Defence to action—Repudiation—Fraud—Setting aside release — Personal representative—Right of action—Return of money paid—Limitation of actions—

General statutory provision—Carriers—Private Act — B. C. "Consolidated Railway Company's Act" — Statute — R. S. B. C. 1911, c. 82—Lord Campbell's Act"—(B.C.) 59 V. c. 55, s. 60, xlix., 470.

See PRACTICE AND PROCEDURE.

117. Assessment and taxes — Lease of Crown lands — Interest of occupier—Constitutional law—Exemption from taxation—Construction of statute — "B. N. A. Act, 1867," s. 125—(Sask.) 6 Edw. VII., e. 36, "Local Improvement Act"—(Sask.) 7 Edw. VII., e. 3, "Supplementary Revenue Act"—Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts, xlix., 563.

See CONSTITUTIONAL LAW.

118. Statute—"Colonial Courts of Admiralty Act, 1890," (Imp.) 53 & 54 V. c. 27—"Public Authorities Protection Act, 1892," (Imp.) 56 & 57 V. c. 61—Limitation of actions—Effect of statutes—Practice and procedure—Jurisdiction, xlix, 627.

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119. Partnership—Lease—Scope of authority — Resiliation — Form of—Appropriate relief—Pleading—Practice, 1, 295.

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120. Negligence — Operation of railway—Unsafe roadbed—Speed of trains—Disobedience of orders—Answers by jury—"Lord Campbell's Act"—Injury sustained outside province—Right of action in Manitoba, lii., 227.

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## ADMIRALTY LAW.

1. Maritime law—Collision — Inland waters—Narrow channel—Boston harbour.]—Rule 35 of the United States "Inland rules to prevent Collision of Vessels" provides that "in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel."—Held, affirming the judgment appealed against (9 Ex. C. R. 160), that the inner harbour of Boston, Mass., is not a narrow channel within the meaning of said rule. The "*Calvin Austin*" v. Lovitt, xxxv., 616.

2. Admiralty law — Navigation — Negligence—Overtaking vessel—Finding of fact—Cause of collision.]—The Supreme Court of Canada affirmed the decision of the trial judge who, on appreciation of conflicting evidence, found that the appellant ship was entirely to blame for the collision complained of by attempting to pass the vessel injured in close proximity and at undue speed, thereby causing the smaller vessel to sheer to port and collide with her in a narrow channel. The "*C. F. Bielman*" v. Cadwell, Cout. Cas., 405.

3. Navigation—Narrow channel—Rule of the road—Look-out—Meeting ships—Colli-

sion—*Special rule of port—Sorel harbour regulations—Lights and signals—Negligence—Evidence—Damages—Practice—Improper comments in factum—Appeal to Privy Council—Order for bail.*—A pilot in charge of a ship, or a man at the wheel, is not a sufficient look-out within the rules of navigation for preventing collisions in narrow channels. Judgment appealed from (9 Ex. C. R. 76), affirmed.—Where meeting ships are in collision and one of them has neglected to observe the regulations, there must be evidence of gross dereliction of duty or want of skill in navigation in order to make out a case for apportionment of damages against the other ship.—Where a ship navigating a narrow channel has no proper look-out and neglects to signal her course at a reasonable distance, thus perplexing and misleading a meeting ship, the former is alone responsible for all damages caused by collision, even if, in the agony of collision, a different manœuvre on the part of the other ship might have avoided the accident. Judgment appealed from (9 Ex. C. R. 67), reversed, Girouard, J., dissenting.—Comments in the appellants' factum relating to a judgment of the Wreck Commissioner's Court, which did not form any part of the record, were ordered to be struck out, with costs to the respondents. (Appeal to Privy Council dismissed, [1907] A. C. 112:—see note to No. 5, *post*). *S.S. "Cape Breton" v. Richelieu and Ontario Navigation Co.*, xxxvi., 564.

See PRIVY COUNCIL.

4. *Maritime law—Collision—Crossing ships—Admiralty rules, 1897, rule 19.*—The *SS. "Parisian,"* making for Halifax Harbour, came along the western shore, sailing almost due north to a pilot station, on reaching which she slowed down, finally stopping her engines. The "*Albano*," a German steamship for the same port, approached some miles to the eastward, sailing first by error, to the north-east, and then changing her course to the south-west, apparently making for the eastern passage to the harbour. She again altered her course, however, and came almost due west towards the pilot station. When about a quarter of a mile from the "*Parisian*" she slowed down, and on coming within eight or nine ship's lengths gave three blasts of her whistle, indicating that she would go full speed astern. The "*Parisian*" then, seeing that a collision was inevitable, went full speed ahead for about 200 feet when she was struck on the starboard quarter and had to make for the dock to avoid sinking outside. The "*Parisian's*" engines were stopped about six minutes before the collision, and a boat from the pilot cutter was rowing up to her when she was struck. At the time of the collision, about 5 p.m., the wind was light, weather fine and clear, there was no sea running and no perceptible tide.—*Held*, affirming the judgment of the local judge, that the captain of the "*Albano*" had no right to regard the "*Parisian*" as a crossing ship within the meaning of rule 19 of the Admiralty Rules, 1897; and that the "*Parisian*" having properly stopped to take a pilot on board, and being practically in the act of doing so at the time, the "*Albano*" was bound to avoid her and was alone to blame for the collision. (Ap-

peal to Privy Council allowed, [1907] A. C. 193:—see next para.) *Owners SS. "Albano" v. Owners SS. "Parisian,"* xxxvii., 284.

5. *Appeal to Privy Council—Colonial Courts of Admiralty Act, 1890 (Imp.)—Right of appeal de plano—Bail for costs—Practice.*—Upon the application of the appellants (30th March, 1906), for an order to fix bail on a proposed appeal, direct to His Majesty in Council, under the rules established by the Colonial Courts of Admiralty Act, 1890 (Imp.), the Supreme Court of Canada, sitting *in banco*, after hearing counsel for and against the application, made an order, *pro forma* (without expressing any opinion as to the right of appealing *de plano*), that the appellants should give bail to answer the costs of the proposed appeal in the sum of £300, sterling, to the satisfaction of the Registrar of the Supreme Court of Canada, on or before the 4th of April, 1906. *The "Albano" v. The "Parisian."* (No. 3 *ante*), xxxvii., 301.

(In *The "Cape Breton" v. Richelieu and Ontario Nav. Co.* (36 Can. S. C. R. 592: No. 2 *ante*), a similar order was made by a judge in chambers and the Judicial Committee heard the appeal without requiring the appellants to obtain leave or give other security (48 Can. Gaz. 279).

6. *Shipping—Collision—Violation of rules not affecting accident—Steering wrong course.*—The Supreme Court will not set aside the finding of a nautical assessor on questions of navigation adopted by the local judge unless the appellant can point out his mistake and shew conclusively that the judgment is entirely erroneous. *The "Picton,"* (4 Can. S. C. R. 648), followed.—A steamer coming up Halifax harbour ran into a schooner striking her stern on the port side. No sound signals were given. The green light on the schooner was seen on the steamer's port bow and the latter starboarded her helm to pass astern and then ported. She then was so close that the engines were stopped, but too late to prevent the collision.—*Held*, that the steamer alone was to blame for the collision.—*Held*, also, that though under the rules the schooner should have kept her course, and also was to blame for not having a proper look-out, neither fault contributed to the collision. (Appeal to Privy Council stood dismissed for want of prosecution, 27th May, 1907, under Privy Council Rule V. of 13th June, 1853). *SS. "Arranmore" v. Rudolph*, xxxviii., 176.

7. *Foreign bottoms—Collision in foreign waters—Jurisdiction of Canadian Courts.*—A foreign vessel passing through waters dividing Canada from the United States under a treaty allowing free passage to ships of both nations is not, even when on the Canadian side, within Canadian control so as to be subject to arrest on a warrant from the Admiralty Court.—A warrant to arrest a foreign ship cannot be issued until she is within the jurisdiction of the Court.—*Quere*, have the Canadian Courts of Admiralty the same jurisdiction as those in England to try an action *in rem* by one foreign ship against another for damages caused by a collision in

foreign waters?—Judgment of the Exchequer Court, Toronto Admiralty District (10 Ex. C. R. 1) reversed, Idington, J., dissenting. *The Ship "D. C. Whitney" v. St. Clair Navigation Co.* xxviii., 303.

8. *Maritime law—Collision—Negligence—Tug and tow—Negligence of tow.*—A tug with the ship "Wandrian" in tow left a wharf at Parrsboro', N.S., to proceed down the river and get to sea. The schooner "Helen M." was at anchor in the channel and the tug directed its course so as to pass her on the port side when another vessel was seen coming out from a slip on that side. The tug then, when near the "Helen M.," changed her course without giving any signal and tried to cross her bow to pass down on the starboard side and, in doing so, the "Wandrian" struck her, inflicting serious injury. In an action against the "Wandrian" by the owners of the "Helen M." the captain of the former insisted that the schooner was in the middle of the channel, which was about 400 feet wide, but the local judge found as a fact that she was on the eastern side.—*Held*, affirming the judgment of the local judge (11 Ex. C. R. 1), that the navigation of the tug was faulty and shewed negligence; that if the "Helen M." was on the eastern side of the channel as found by the judge there was plenty of room to pass on her port side, and if, as contended, she was in the middle of the channel she could easily have been passed to starboard; and that in attempting to cross over and pass to starboard when she was so near the "Helen M." as to render a collision almost inevitable was negligence on the tug's part; and that the "Helen M." exercised proper vigilance and was not negligent in failing to slacken her anchor chain as the "Wandrian" was too close and had not signalled.—*Held*, also, that the tow was liable for such negligence in the navigation of the tug. *The "Wandrian" v. Hatfield*, xxxviii., 431.

9. *Preliminary act—Amendment—Collision—Evidence.*—In an action in admiralty claiming damages for injury to plaintiffs' ship, the "Neepawak," through collision with the "Westmount" belonging to defendants the preliminary act and statement of claim alleged that the port quarter of the latter struck the stern of the "Neepawak." The local judge, in his judgment, held that the evidence shewed a collision between the two ships stern to stern and, against objection by defendants' counsel, of his own motion allowed the statement of claim to be amended to conform to such evidence, stating that its admission had not been objected to and that defendants were not misled.—*Held*, that such amendment should not have been made; that it set up a new case and one entirely different from that presented by the preliminary act and statement of claim and greatly prejudiced the defence; and that the local judge was wrong in stating that the evidence was admitted without objection as it was protested against at the trial.—*Held*, also, that errors in the preliminary act may be corrected by the pleadings but, if not, the parties will be held most strongly to what is contained in their act.—*Held*, *per Davies, MacLennan and Duff, JJ.*, that the plaintiffs had not satis-

factorily established that the collision, even that charged under the amendment, had actually occurred.—*Per Fitzpatrick, C.J.*, that the evidence proved that no collision between the vessels took place.—Idington, J., concurred in the judgment allowing the appeal. *Montreal Transportation Co. v. New Ontario S.S. Co.*, xl., 160.

10. *Jurisdiction of the Exchequer Court of Canada—Claim under mortgage on ship—Action in rem—Pleading—Abatement of contract price—Defects in construction—Damages.*—In an action in rem by the builders of a ship to enforce a mortgage thereon, given to them on account of the contract price for its construction, the owners, for whom the ship was built, may plead as a defence *pro tanto* that the ship was not constructed according to specifications and claim an abatement of the price in consequence of such default and that the loss in value of the ship, at the time of delivery, attributable to such default, should be deducted from the claim under the mortgage. *Bow, McLachlon and Co. v. The "Camosun"*, xl., 418.

[Leave to appeal to Privy Council was granted by the Supreme Court of Canada: see note at end of report, p. 430.]

11. *Maritime law—Collision—Negligence—Failure to hear signal—Evidence.*—The S.S. "Senlac" was coming out of Halifax harbour taking the eastern side of the channel. There was a dense fog at the time and the fog signals were sounded at regular intervals. She was making about six knots and having passed George's Island heard the whistle of an incoming steamer. Fog signals were given in reply and when the incoming vessel, the "Rosalind," was estimated to be about half a mile off, the "Senlac" gave a single short blast and directed her course to starboard. The "Rosalind" replied to this signal and stopped her engines. Within a few seconds the "Senlac" was seen about a ship's length away on the port bow and almost at the same moment the latter gave two short blasts on her whistle and swung to port threatening to cross the "Rosalind's" bow. The "Rosalind's" engines were immediately put "full speed astern," but too late to avoid a collision in which the "Senlac" was seriously damaged. At the trial of an action by the latter reliance was placed on the failure of the "Rosalind" to respond to her signals, but the first signal admitted to have been heard on the "Rosalind" was the one short blast when the "Senlac" went to starboard. The result of the trial was that both vessels were found in fault, and on appeal by the "Rosalind":—*Held*, that the "Senlac" was in fault in continuing on her course when the vessels were quite near together instead of stopping and reversing and was alone to blame for the collision, and that the failure to hear her signals was not negligence on the part of the "Rosalind" and did not contribute in any material degree to the accident. *SS. "Rosalind" v. Steamship Senlac Co.*, xli., 54.

12. *Appeal—New grounds—Admiralty law—Collision.*—A court of appeal should not consider a ground not previously relied on unless satisfied it has all the evidence bearing upon it that could have been produced

at the trial and that the party against whom it is urged could not have satisfactorily explained it under examination.—In this case damages were claimed from the owners of the "Euphemia" for collision with plaintiffs' ship, and the latter in their preliminary act charged that the "Euphemia" was in fault for not reversing her engines. The Exchequer Court judgment held plaintiffs' ship alone in fault and on appeal the majority of the Supreme Court refused to consider the ground not previously urged that the "Euphemia" when she saw the other ship attempting to cross her bow held too long on her course instead of reversing. Fitzpatrick, C. J., and Davies, J., were of opinion that under the circumstances this point was open to the plaintiffs. *SS. "Tordenskjold" v. SS. "Euphemia,"* xli., 154.

13. *Admiralty law—Salvage—Injury to salvaging ship—Necessities of service—Seamanship—Appeal on nautical question.*—In an admiralty case the Supreme Court of Canada must weigh the evidence for itself unassisted by expert advice and will, if the evidence warrants it, reverse the judgment appealed against on a question of seamanship or navigation.—The ship "M." brought an action for the value of salvage services rendered to the "N." part of the damages claimed being for injury to the "M." in performing such services.—*Held*, Girouard and MacLennan, JJ., dissenting, that the evidence established that said injury was not caused by necessities of the service but by unskilful seamanship and improper navigation; the judgment appealed against should, consequently, be varied by a substantial reduction of the damages allowed by the local judge.—The dissenting judges were of opinion that sufficient ground was not shown for disturbing the findings of the trial judge. *The "Nanna" v. The "Mystic,"* xli., 168.

14. *Maritime law—Tug and tow—Contract of navigation—Collision of tug—Liability of tow—Foreign ship—Proceedings in foreign court—Jurisdiction in Canada.*—The American tug "A. L. Smith" was ascending the River St. Clair having in tow the barge "Chinook," the two being engaged in the business of their common owner. The "Chinook" having no propelling power nor steering apparatus the navigation was controlled by the officers and crew of the tug, the tow being attached by a line fifteen feet long. They kept on the American side and the "Smith" sheered and collided with a barge being towed down, causing it to sink.—*Held*, affirming the judgment of the Exchequer Court (15 Ex C. R. 111), Davies and Anglin, JJ., dissenting, that the tug and tow must be regarded as one ship and each was liable for the consequences of the collision. *The "American" and the "Syria"* (L. R. 6 P. C. 127), discussed and distinguished.—*Per* Davies and Anglin, JJ., dissenting, that as the "Chinook" took no part in the navigation, and there being no master and servant relationship between her and the "Smith," she should not be held liable.—Shortly after the collision the owner brought action in a United States court to limit the liability of the "Smith" and the extent of her liability was fixed at

\$1,500. Later the two ships were seized in Canadian waters, taken into a Canadian port and released on receipt of a bond by a guarantee company conditioned to pay any amount awarded against either or both. The action *in rem* was then proceeded with, resulting in both ships being condemned:—*Held*, that the proceedings in the United States did not oust the Canadian court of jurisdiction:—*Held, per* Idington, J.—The defendants are not entitled to limitation of the damages under United States or Canadian statutes, the same not having been pleaded nor any evidence of it produced.—*Per* Davies and Anglin, JJ.—As the collision occurred in the domestic waters of the foreign ship held at fault the extent of her liability must be determined by the *lex loci commissi delicti*, and the damages should be limited to the value of the "Smith" immediately after the collision:—*Held, per* Duff, J., following the "Dictator" ([1892 P. 304] and the "Gemma" ([1899] P. 285), that as the owners appeared and contested the liability of the ships they became parties to the action and subject to have personal judgment pronounced against them for the amount of damages properly recoverable for the negligence of their servants. The trial judge having held, on the sole issue of fact raised at the trial, that the "Smith," as between her and the "Moyles," was solely to blame, the appellant owners were *prima facie* liable for the full amount of damages suffered. Assuming, however, that if the "Chinook" was free from blame, they were entitled to the benefit of the United States laws limiting their liability to the value of the offending *res*, then, as this issue was not raised or tried in the Exchequer Court, they could only succeed if the facts in evidence conclusively demonstrated the innocence of the "Chinook," or, in other words, that the "Smith" and "Chinook" were not identified for the purpose of assigning liability, the question of identification being a question of fact depending upon the particular circumstances. *Ships "A. L. Smith" v. Ontario Gravel Freighting Co.,* li., 39.

15. *Negligence—Navigation of inland waters—Collision—Government ships and vessels—"Public Work"—The Exchequer Court Act, s. 16—Construction of statute—Right of action, xxxviii., 126.*

See NEGLIGENCE.

16. *Statute—"Colonial Courts of Admiralty Act, 1899 (Imp.) 53 & 54 V. c. 27—"Public Authorities Protection Act, 1892," (Imp.) 56 & 57 V. c. 61—Limitation of actions—Effect of statutes—Practice and procedure—Jurisdiction, xlix., 627.*

See STATUTE.

17. *Navigation of canal—"Narrow channel"—Marine Department Regulations, rule 25—Starboard course—Fairways and mid-channels—"Canada Shipping Act," R. S. C. 1906, c. 113, s. 916—Collision—Liability for damages—Canal Regulations, rule 22—Right of way, liv., 51.*

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1. *Contract by municipal corporation—Powers—By-law or resolution—Right of action—Confession of judgment—Evidence—Pleadings—Estoppel by record—Art. 1245 C. C.—Concurrent findings of fact—Practice on appeal, xxxiv., 495.*

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2. *Crown case reserved—Admission of evidence—Res gestæ, xxxviii., 284.*

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1. *Charter party—Time limited for loading ship—Loading at port—Custom—Obligation of charterer, xxxiv., 578.*

See SHIPS AND SHIPPING.

2. *Marine insurance—Loss of freight—Detention by ice—Perils insured against, Cam. Cas. 86.*

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*Title to land—Servitude—Construction of deed—Reservations—"Representatives"—Owners par indivis—Common lanes—Right of passage—Private wall—Windows and openings on line of lane. Arts. 533-538 C. C., xxxvi., 618.*

See SERVITUDE.

**ALBERTA "LIQUOR LICENSE ORDINANCE."**

*Appeal—Jurisdiction—Special leave—"Judicial proceeding"—Discretionary order—Matter of public interest—Practice, s. 57—"Originating summons"—R. S. C. 1906, c. 139, s. 37—8 Edw. VII. (Alta.), c. 7, ss. 1, 2, 6.*

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**ALLUVION.**

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## 1. APPEAL BOND.

1. *Time for bringing appeal—Delays occasioned by the court—Jurisdiction—Controversy involved—Title to land.*—An action *ou pétitoire* was brought by the City of Hull against the respondents claiming certain real property which the Government of Quebec had sold and granted to the city for the sum of \$1,000. The Attorney-General for Quebec was permitted to intervene and take up the *fait et cause* of the plaintiff without being formally summoned in warranty. The judgment appealed from was pronounced on the 25th of September, 1903. Notice of appeal on behalf of both the plaintiff and the intervenant was given on 3rd November, and notice that securities would be put in on 10th November, 1903, on which latter date the parties were heard on the applications for leave to appeal and for approval of securities, before Würtele, J., who reserved his decision until one day after the expiration of the sixty days immediately following the date of the judgment appealed from and, on the 25th November, 1903, granted leave for the appeals and approved the securities filed. —*Held*, that the appellants could not be prejudiced by the delay of the judge, in deciding upon the application, until after the expiration of the sixty days allowed for bringing the appeals and, following *Couture v. Bouchard* (21 Can. S. C. R. 281), that the judgment approving the securities and granting leave for the appeals must be treated as if it had been rendered within the time limited for appealing when the applications were made and taken *en délibéré*. —*Held*, also, that as the controversy between the parties related to a title to real estate, both appeals would lie to the Supreme Court of Canada notwithstanding the fact that the liability of the intervenant might be merely for the reimbursement of a sum less than \$2,000. *Attorney-General for Quebec and the City of Hull v. Scott*, xxxiv., 282.

2. *Appeal bond—Conditional security.*—An appeal bond conditioned to pay costs "in case the appeal should be dismissed" was refused. No such condition is attached to the security by s. 75 of the S. C. Act, and a respondent is not obliged to accept it. *Bazinet v. Gadomy; Lainé v. Béland, Cameron*, S. C. Prac., 454.

3. *Case on appeal—Security for costs—Waiver—Consent.*—The case on appeal to the Supreme Court of Canada cannot be filed unless security for the costs of the appeal is furnished as required by s. 46 of the Act. The giving of such security cannot be waived by the respondent nor can the amount fixed by the Act be reduced by his consent. *Holsten v. Cockburn*, xxxv., 187.

4. *Delay in approval of security—Jurisdiction—Extension of time—Stay of execution.*—Application for approval of the security on an appeal to the Supreme Court of Canada was made within the time limited by the statute, but the hearing of the application was not completed until afterwards, and the judge made an order, after the expiration of sixty days from the rendering of the judgment appealed from approving of the security offered by the appellants. *Held*, Iding-

ton, J., dissenting, that although the record did not show that the Judge had expressly made an order to that effect he impliedly extended the time by accepting the security offered, and that this was a sufficient compliance with the statute.—An objection that the security approved was not such as contemplated by the 75th and 76th sections of the "Supreme Court Act," (the amount thereof being insufficient for a stay of execution), was not entertained for the reason that the amount in controversy was sufficient to bring the case within the competence of the court and it was immaterial whether or not execution could be stayed. *The Attorney-General of Quebec v. Scott* (34 Can. S. C. R. 282) and *The Halifax Election Cases* (37 Can. S. C. R. 601) referred to. *Great Northern Railway Co. v. Furness, Withy & Co.*, xl., 455.

5. *Dispensing with security for costs—Bringing appeal in formâ pauperis*, Cout. Cas. 6.

See APPEAL.

6. *Extension of time for appealing—Lapse of order—Practice—Refusal to approve security bond*, Cout. Cas. 297.

See APPEAL.

## 2. ARBITRATION AND AWARD.

7. *Railway Act—Expropriation—Appeal from award—Choice of forum—Curia designata.*—By s. 168 of 3 Edw. VII. c. 58, amending the Railway Act, 1903 (R. S. C. (1906) c. 37, s. 209), if an award by arbitrators on expropriation of land by a railway company exceeds \$600 any dissatisfied party may appeal therefrom to a Superior Court which, in Ontario, means the High Court or the Court of Appeal (Interpretation Act, R. S. C. [1906] c. 1, s. 34, s.-s. 26). —*Held*, that if an appeal from an award is taken to the High Court there can be no further appeal to the Supreme Court of Canada which cannot even give special leave. *James Bay Ry. Co. v. Armstrong*, xxxviii., 511.

8. *Municipal arbitration—Order allowing judgment to be entered not appealable to Supreme Court.*—The corporation of the township of Langley, pursuant to the provisions of the Municipal Clauses Act, B.C., passed a by-law for the opening up of a certain roadway through the property of the respondent Duffy, and served a notice calling upon him to appoint an arbitrator to act with the appellants' arbitrator for the purpose of deciding upon what compensation the respondent was entitled to by reason of the expropriation of his property. The arbitrators made an award which was set aside by the court, and the matters in question referred back to the arbitrators for reconsideration and re-determination. The arbitrators reconsidered the matters and awarded the respondent Duffy \$400 and the costs of the arbitration, amounting to \$286.40. The respondent Duffy served a notice upon the municipality that unless they complied with his terms, an application would be made to the court for liberty to enforce the award. The municipality having ignored the notice the respondent Duffy

moved the court for leave to enforce the award, and the appellant gave notice of motion to set aside the award. The two motions were heard by the court when an order was made refusing for the present the application of the respondent to enforce the award, and at the same time referring the award back to the arbitrators for further consideration. An appeal was taken from this order to the full Court when an order was made allowing the respondent Duffy to enter up judgment for the amount of the award. From this order an appeal was taken to the Supreme Court of Canada when a motion to quash was made on behalf of the respondent on the ground that the judgment appealed from was not a judgment upon a motion to set aside an award, nor a judgment upon a motion by way of an appeal from an award, and after argument the appeal was quashed accordingly. *Langley v. Duffy*, 30th May, 1899, Cam. Prac. 144.

### 3. CONTROVERSY INVOLVED.

9. *Jurisdiction—Amount in controversy—Adding interest and costs.*—Action instituted 11th June, 1877, to recover \$1,800, with interest from 10th Nov., 1876, and costs, and dismissed in Superior Court. On appeal this judgment was reversed and the company condemned to pay \$1,800, with interest, \$261, and costs then amounting to \$602.69. It was contended that the amount involved in the controversy upon the judgment appealed from thus amounted to \$2,663.69, and that an appeal would lie to the Supreme Court of Canada. On application to Monk, J., one of the judges of the court appealed from, the approval of the bond of security for costs on appeal was refused on the ground that the amount in controversy was less than \$2,000.—The Supreme Court refused to entertain a petition by way of appeal from this decision.—(See 24 L. C. Jur. 65.) *National Ins. Co. v. Black*, Cout. Cas. 30.

10. *Jurisdiction—Amount in controversy.*—In an action for \$810.54, an overcharge by the society against the plaintiff, on settlement of hypothecary obligations charged upon real estate, plaintiff's action was maintained, and the defendants applied to Tessier, J., in the court appealed from, for approval of security upon an appeal to the Supreme Court of Canada. An application for leave to appeal was refused. *La Société Permanente de Construction des Artisans v. Ouimet*, Cout. Cas. 82.

11. *Jurisdiction—Matter in controversy—Discretionary order—R. S. C. c. 129, s. 76—"Winding-up Act."*—In order to give a right to appeal under section 76 of the "Winding-up Act," the existing real value of the matter in controversy must be shewn to exceed \$2,000, mere supposititious valuations cannot be accepted.—Where no useful result can be obtained as the result of an appeal, the discretion of the judge should be exercised by the refusal of special leave to appeal under the "Winding-up Act." [NOTE.—Cf. *Cushing Sulphite Fibre Co. v. Cushing* (37 Can. S. C. R. 427.) See also

*in re Central Bank of Canada* (28 Can. S. C. R. 192). *Hogaboom v. Central Bank of Canada*, Cout. Cas. 119.

12. *Jurisdiction—Title to land—Trespass—Action possessoire—Demolition of works—Matter in controversy—R. S. C. c. 135, s. 29.*—The plaintiff's action was for trespass against a neighbour in constructing a roof projecting over the plaintiff's land, for the demolition of the projecting portion of the roof, and a declaration that the plaintiff was proprietor of the land on which the trespass had been committed. On motion for the approval of security for the costs of an appeal from the judgment dismissing the action.—*Held*, that, as the title to the land was not in issue nor future rights therein affected, and as it did not appear that the matter in controversy amounted to the sum or value of \$2,000, there could be no appeal to the Supreme Court of Canada.—[NOTE.—Cf. *The Emerald Phosphate Co. v. The Anglo-Continental Guano Works* (21 Can. S. C. R. 422); *Delorme v. Cusson* (28 Can. S. C. R. 66); *Parent v. The Quebec North Shore Turnpike Road Trustees* (31 Can. S. C. R. 556); *Davis v. Roy* (33 Can. S. C. R. 345); *Delisle v. Arcand* (36 Can. S. C. R. 23)]. *Macdonald v. Brush*, Cout. Cas. 141.

13. *Jurisdiction—R. S. C. c. 135, ss. 40, 42—60 & 61 Vict. c. 34 (D.)—Validity of patent—Matter in controversy—Extension of time for appealing—Lapse of order—Practice in office of registrar—Refusal to approve security bond.*—Approval of a bond of security for costs of appeal will be refused in cases where it appears that the court would not have jurisdiction to entertain the appeal.—There can be no appeal to the Supreme Court of Canada in an action in respect to a patent of invention where the validity of the patent is not in question and it does not appear that the matter in controversy exceeds \$1,000, the amount limited by the Act, 60 & 61 Vict. c. 34 (D.), providing for appeals from the Province of Ontario.—Judgment was pronounced on 12th April, 1902, and the time for appealing was extended until 30th June, 1902. By an arrangement between the parties the application for allowance of the security bond was not heard until January, 1903, and, on 31st January, 1903, the application was refused in the court appealed from.—*Held*, that upon the delivery of the judgment, in January, 1903, the order extending the time for appealing lapsed and no further extension having been obtained, there was no jurisdiction in the Supreme Court of Canada to entertain an appeal brought after the expiration of the sixty days limited by section 40 of the Supreme and Exchequer Courts Act.—The power of extending the time for appealing under section 42 of the Supreme and Exchequer Courts Act is vested solely in the court appealed from or a judge thereof. *Walmesley v. Griffith* (13 Can. S. C. R. 434), referred to. [NOTE.—Cf. *The Ontario and Quebec Railway Co. v. Marcheterre* (17 Can. S. C. R. 141), per Stroug, J.; *Barrett v. Le Syndicat Lyonnais du Klondyke* (33 Can. S. C. R. 667), and *The Canadian Mutual Loan and Investment Co. v. Le*

(34 Can. S. C. R. 224)]. *MacLaughlin v. Lake Erie and Detroit River Ry. Co.*, Cout. Cas. 297.

14. *Jurisdiction—Amount in controversy—Adding interest to judgment—60 & 61 Vict. c. 34 (D.)—R. S. O. (1897) c. 51, s. 116.*—In an appeal from the Province of Ontario, interest allowed by statute cannot be added to the amount of the judgment recovered in order to make the case appealable *de plano* under the provisions of the Act, 60 & 61 Vict. c. 34 (D.). *Toussignant v. County of Nicolet* (32 Can. S. C. R. 353), followed. *Bresnan v. Bisnaw*, Cout. Cas. 318.

15. *Jurisdiction—Matter in controversy—Patent of invention—Validity of patent—Special leave—R. S. C. c. 61, s. 46.*—Appeal from the Court of Appeal for Ontario quashed on a motion to quash the appeal for want of jurisdiction on the grounds that (1) the matter in controversy on the appeal, exclusive of costs, was less than \$1,000, (2) the validity of the patent was not affected, but a question involved merely as to the construction of a statute, and (3) that special leave to appeal had not been obtained.—The appellants held letters patent of invention for a punching-bag, and respondents, before the patent issued, had purchased a bag and manufactured a number from it. After the issue of the patent, action was brought for infringement in selling what was left of the goods so manufactured. The respondents relied on R. S. C. (1886), c. 61, s. 46, which provides that a person manufacturing the subject matter of the invention, before issue of patent, could see what he had on hand after its issue, and that such sale would not affect the patent as to other persons unless done with the consent of the patentee. The appellants claimed that the consent referred to *bonâ fide* manufacture only, and not to a case where the sample was procured fraudulently, with the object of infringing the patent, which, to their knowledge, had been applied for. *Victor Sporting Goods Co. v. The Harold A. Wilson Co.*, Cout. Cas. 330.

16. *Special leave—Matter in controversy—Discretionary order—Practice.*—A motion for special leave to appeal was refused on the ground that the questions in controversy would not justify the exercise of such judicial discretion.—The appellants were to manufacture and sell carriers and divide the net profits with the respondents, patentees of the articles. Profits were divided up to August, 1895, when appellants, claiming a breach of the conditions, treated the contract as ended, but continued to manufacture and sell. In an action for account, they pleaded termination of the contract; account stated and settled; statute of limitations, and breach by the respondents. The master, on taking accounts, held appellants were licensees; that the account should only go back to 1901; that it should be taken to the time of the issue of the writ, and that the contract was terminated by notice after the judgment on which the reference was made. This report was affirmed by Street, J., but the Court of Appeal held that appellants were grantees and not licensees;

that the statute of limitations could not be invoked, that the account should be taken to the date of the report and that it was beyond the scope of the Master's functions to decide that the contract was at an end, and even if not, he was wrong, as the facts did not shew a termination.—[NOTE.—Subsequently, an appeal *de plano* (the amount in controversy actually exceeding \$1,000) was heard and allowed in part without costs. (38 Can. S. C. R. 216).] *Hamilton Brass Manufacturing Co. v. Barr Cash and Package Co.*, Cout. Cas. 382.

17. *Jurisdiction—Possessory action—Matter in controversy.*—A motion to quash an appeal was refused in a case where the respondent, by his possessory action, asked to be declared owner of land in dispute, that the defendant (appellant) should be enjoined against troubling him in his possession thereof, that he should be awarded damages against the defendant, and that the defendant should be ordered to construct his building, adjoining said land, in such a manner as to prevent humidity passing through the walls of an ice-house, or remove it to such a distance from the boundary as to stop the penetration of water therefrom through the soil and into the plaintiff's land. *Audette v. O'Caïn*, Cout. Cas. 423.

18. *Jurisdiction—Amount in dispute—Title to land—Future rights—Extending time.*—L. had given a mortgage to the Standard Loan and Savings Co. as security for a loan and had received a certain number of the company's shares. All the business of that company was afterwards assigned to the Canadian Mutual L. and I. Co., and L. paid the latter the amount borrowed with interest and \$460.80 in addition, and asked to have the mortgage discharged. The company refused, claiming that L. as a shareholder in the Standard L. & S. Co., was liable for its debts and demanding \$79.20 therefor by way of counterclaim. At the trial of an action by L. for a declaration that the mortgage was paid and for repayment of the said \$460.80, such action was dismissed (1 Ont. L. R. 191), but on appeal, the Court of Appeal ordered judgment to be entered for L. for \$47.04 (5 Ont. L. R. 471). The defendants appealed to the Supreme Court.—*Held*, that the appeal would not lie; that no title to lands or any interest therein was in question; that no future rights were involved within the meaning of s.s. (d) of 60 & 61 Vict. ch. 34; and that all that was in dispute was a sum of money less than \$1,000 and therefore not sufficient to give jurisdiction to the court.—*Held*, also, that application for special leave to appeal cannot be made after expiration of the sixty days from the pronouncing or entry of the judgment appealed from. *Canadian Mutual Loan and Investment Co. v. Lee*, xxxiv., 224.

19. *Jurisdiction—Amount in dispute—Local improvements—Assessment—Title to land—Future rights.*—In proceedings by the City of Montreal to collect the amount assessed on defendants' land together with other lands assessed for local improvements, the defendants filed an opposition to the seizure of their land, alleging that the claim



was prescribed. The opposition was maintained and the city appealed to the Supreme Court of Canada.—*Held*, that there was nothing in controversy between the parties but the amount assessed on defendants' land, and, that amount being less than \$2,000, the court had no jurisdiction to entertain the appeal. *City of Montreal v. Land and Loan Co.*, xxxiv., 270.

20. *Jurisdiction—Amount in controversy—Future rights.*—[Though the amount in controversy on an appeal from the Province of Quebec may exceed \$2,000 yet if the amount demanded in the action be less the Supreme Court of Canada has no jurisdiction to entertain the appeal.—In an action *en séparation de corps*, the decree granted \$1,500 per annum as alimony to the wife and, her husband having died, she brought suit to enforce the judgment as executory against his universal legatees. Judgment having been given against her by the Court of King's Bench (Q. R. 13 K. B. 97), she sought an appeal to the Supreme Court of Canada.—*Held*, that the further payments to which she would have been entitled had she been successful in her suit were not "future rights" which might be bound within the meaning of R. S. C. c. 135, s. 29. *Winteler v. Davidson*, xxxiv., 274.

21. *Jurisdiction—Amount in controversy—Costs.*—Where the Court of King's Bench affirmed the judgment of the Superior Court dismissing the action but varied it by ordering the defendant to pay a portion of the costs.—*Held*, that, though \$2,217 was demanded by the action, the defendant had no appeal to the Supreme Court of Canada as the amount of the costs which he was ordered to pay was less than \$2,000. *Allan v. Pratt* (13 App. Cas. 780), and *Monette v. Lefebvre* (16 Can. S. C. R. 387), followed. *Beauchemin v. Armstrong*, xxxiv., 285.

22. *Jurisdiction — Life pension—Amount in controversy—Actuaries' tables.*—The action was for \$62.50, the first monthly instalment of a life pension, at the rate of \$750 per annum claimed by the plaintiff; for a declaration that he was entitled to such annual pension from the society, payable by equal monthly instalments of \$62.50 each, during the remainder of his life; and for a condemnation against the society for such payment during his lifetime. On a motion to quash the appeal, the appellant filed affidavits shewing that, according to the mortality tables used by assurance actuaries, upon the plaintiff's average expectation of life, the cost of an annuity equal to the pension claimed would be over \$7,000.—*Held*, following *Rodier v. Lapierre* (21 Can. S. C. R. 69); *Macdonald v. Galivan* (28 Can. S. C. R. 258); *La Banque du Peuple v. Trotter* (28 Can. S. C. R. 422); *O'Dell v. Gregory* (24 Can. S. C. R. 661), and *Talbot v. Guilmartin* (30 Can. S. C. R. 482), that the only amount in controversy was the amount of the first monthly instalment of \$62.50 demanded and, consequently, that the Supreme Court of Canada had no jurisdiction to hear the appeal. (See [1906] A. C. 535). *Lapointe v. Montreal Police Benevolent and Pension Society*, xxxv., 5.

23. *Appeal — Jurisdiction — Amount in controversy on appeal — Retrahit.*—The judgment appealed from condemned the defendants to pay \$775.40 balance of the amount demanded, less \$1,524.60, which had been realized on a conservatory sale of a cargo of lumber made by consent of the parties pending the suit and for which credit was given to the defendants.—*Held* that as the amount recovered was different from that demanded, and the amount of the original demand exceeded \$2,000, there was jurisdiction in the Supreme Court of Canada to entertain an appeal. *Joyce v. Hart* (1 Can. S. C. R. 321); *Levi v. Reed* (6 Can. S. C. R. 482); *Leberge v. The Equitable Life Assurance Society* (24 Can. S. C. R. 59), and *Kunkel v. Brown* (99 Fed. Rep. 593), referred to. *Cowen v. Evans* (22 Can. S. C. R. 328); *Cowen v. Evans, Mitchell v. Trenholme, Mills v. Limoges, Montreal Street Railway Co. v. Carrière* (22 Can. S. C. R. 331, 333, 334 and 335, note); *Lachance v. Société de Prêt et des Placements* (26 Can. S. C. R. 200) and *Beauchemin v. Armstrong* (34 Can. S. C. R. 285), distinguished. *Dufresne v. Fee*, xxxv., 8.

24. *Special leave to appeal—Matter in controversy — Assessment of damages — Costs.*—Motion was made for special leave to appeal from the judgment of the Court of Appeal for Ontario (6 Ont. L. R. 319), reversing the judgment of Ferguson, J. (4 Ont. L. R. 350), and ordering judgment to be entered in favour of the plaintiff for damages, assessed at \$1,000 with costs. The action was for wrongful dismissal of plaintiff, the company's selling agent, who was entitled to a fixed salary for the term of his engagement and also a commission on his sales. Before the expiration of the term he was dismissed, without cause, after sales to a large amount had been effected by him. In the court below, the main question was whether or not, in estimating the damages, an allowance should be made for commissions upon prospective sales, and it was there held that commissions on sales which might have been effected during the unexpired portion of the term should be taken into consideration. The company sought special leave, on the ground of hardship, as costs had accumulated until they exceeded \$2,000, and also that the damages had been assessed by mere guess and were not justified by any reasonable calculation warranted by the circumstances of the case. The Supreme Court dismissed the application with costs. *Goold Bicycle Co. v. Laishley*, xxxv., 184.

25. *Appeal—Jurisdiction—Partial renunciation — Conditions and reservations — Amount in controversy — Supreme Court Act, s. 29—Refusal to accept conditional renunciation—Costs on appeal to court below — Costs of enquête.*—Where a conditional renunciation reducing the amount of the judgment to a sum less than \$2,000 has not been accepted by the defendant, the amount in controversy remains the same as it was upon the original *demande* and, if such *demande* exceeds the amount limited by s. 29 of the Supreme Court Act, an appeal

will lie. *Montreal Water and Power Co. v. Davie*, xxxv., 255.

AND see NUISANCE.

26. *Right of appeal—Jurisdiction—Possessory action.*—Possessory actions always invoke title to land in a secondary manner and, consequently, are appealable to the Supreme Court of Canada. *Pinsonneault v. Hébert* (13 Can. S. C. R. 450); *Gauthier v. Masson* (27 Can. S. C. R. 575); *Communc de Berthier v. Denis* (27 Can. S. C. R. 147); *Riou v. Riou* (28 Can. S. C. R. 52). *Couture v. Couture* (34 Can. S. C. R. 716), referred to. *Cully v. Ferdaïs* (30 Can. S. C. R. 330); *The Emerald Phosphate Co. v. The Anglo-Continental Guano Works* (21 Can. S. C. R. 422), and *Davis v. Roy* (33 Can. S. C. R. 345), distinguished. *Delisle v. Arcand*, xxxvi., 23.

27. *Jurisdiction — Future rights — Toll bridge — Exclusive limits — Infringement of privilege — Matter in controversy.*—The plaintiff's action was for \$1,000 for damages for infringement of his toll bridge privileges, in virtue of the Act, 58 Geo. III. c. 20 (L.C.), by the construction of another bridge within the limit reserved, and for the demolition of the bridge, etc. The judgment appealed from dismissed the action. On motion to quash the appeal:—*Held*, that the matter in controversy affected future rights and, consequently, an appeal would lie to the Supreme Court of Canada. *Galarneau v. Guilbault* (16 Can. S. C. R. 579), and *Chamberland v. Fortier* (23 Can. S. C. R. 371), followed. *Rouleau v. Pouhot*, xxxvi., 26.

28. *Jurisdiction—Matter in controversy—Warranty of title—Future rights—Hypothec for rent charges—R. S. C. c. 135, s. 29.*—In an action for the price of real estate sold with warranty, a plea alleging troubles and fear of eviction under a prior hypothec to secure rent charges on the land does not raise questions affecting the title nor involving future rights so far as to give the Supreme Court of Canada jurisdiction to entertain an appeal. *The Bank of Toronto v. Le Curé et les Marguilliers de la Nativité* (12 Can. S. C. R. 25). *Wineberg v. Hampson* (19 Can. S. C. R. 369); *Jermyn v. Tew* (28 Can. S. C. R. 497); *Waters v. Manigault* (30 Can. S. C. R. 304); *Fréchette v. Simoneau* (31 Can. S. C. R. 131); *Toussignant v. The County of Nicolet* (32 Can. S. C. R. 353), and *The Canadian Mutual Loan and Investment Co. v. Lee* (34 Can. S. C. R. 224), followed. *L'Association Pharmaceutique de Québec v. Livernois* (30 Can. S. C. R. 400), distinguished. *Carrier v. Sirois*, xxxvi., 221.

29. *Appeal—Jurisdiction — Controversy involved.*—The action was to compel the Grand Trunk Railway Company to establish and maintain a farm crossing over their line of railway at the place where it severed the plaintiff's land, and for \$50 damages. The respondent moved to quash the appeal on the ground that the cost of establishing the crossing together with the damages claimed were less than \$2,000, and that the matters in controversy did not

bring the case within the class appealable, from the Province of Quebec, under the provisions of the Supreme Court Act. The motion was dismissed. *Grand Trunk Railway Co. v. Perrault*, xxxvi., 671.

AND see RAILWAYS.

30. *Jurisdiction — Discretionary order—Stay of foreclosure proceedings — Final judgment—Controversy involved—“Winding-up Act”—R. S. C. c. 129, s. 76—R. S. C. c. 135, s. 28.*—Leave to appeal to the Supreme Court of Canada under the seventy-sixth section of the “Winding-up Act” can be granted only where the judgment from which the appeal is sought is a final judgment and the amount involved exceeds two thousand dollars. A judgment setting aside an order, made under the “Winding-up Act,” for the postponement of foreclosure proceedings and directing that such proceedings should be continued is not a final judgment within the meaning of the Supreme Court Act, and does not involve any controversy as to a pecuniary amount. *Re Cushing Sulphite Fibre Co.*, xxxvii., 173.

31. *Jurisdiction — Annulment of procès-verbal—Injunction—Matter in controversy—Art. 560 C. C.—Servitude.*—In a proceeding to set aside resolutions by a municipal corporation giving effect to a *procès-verbal*, the court followed *Toussignant v. County of Nicolet* (32 Can. S. C. R. 343), and quashed the appeal with costs. Art. 560 C. C. referred to. *Leroux v. Parish of Ste. Justine*, xxxvii., 321.

32. *Jurisdiction — Winding-up order — Leave to appeal—Amount involved—R. S. C. c. 129, s. 76.*—In a case under the Winding-up Act (R. S. C. c. 129), an appeal may be taken to the Supreme Court of Canada by leave of a judge thereof if the amount involved exceeds \$2,000. — *Held*, that a judgment refusing to set aside a winding-up order does not involve any amount and leave to appeal therefrom cannot be granted. *Cushing & Sulphite-Fibre Co. v. Cushing*, xxxvii., 427.

33. *Jurisdiction—Intervention — Matter in controversy—Judicial proceeding—R. S. C. c. 135, s. 29—Equal division of opinion —Dismissal without costs.*—An intervention filed under the provisions of the Code of Civil Procedure of the Province of Quebec is a “judicial proceeding” within the meaning of section 29 of the Supreme and Exchequer Courts Act, and a final judgment thereon is appealable to the Supreme Court of Canada where the matter in controversy upon the intervention amounts to the sum or value of \$2,000 without reference to the amount demanded by the action in which such intervention has been filed. *Walcott v. Robinson* (11 L. C. Jur. 303); *Miller v. Déchène* (8 Q. L. R. 18); *Turcotte v. Dansereau* (26 Can. S. C. R. 578); and *King v. Dupuis* (28 Can. S. C. R. 388), followed. *The Atlantic and North-West Railway Co. v. Turcotte* (Q. R. 2 Q. B. 305); *Allan v. Pratt* (13 App. S. C. 780) and *Kinghorn v. Larue* (22 Can. S. C. R. 347) distinguished.—Girouard, J., dissented.—On an equal division of opinion among

the judges, who heard the case on the merits of the appeal, the appeal stood dismissed without costs. *Coté v. The James Richardson Co.*, xxxviii., 41.

34. *Vacating judgment — Jurisdiction—Matter in controversy—Tierce opposition—Arts. 1185-1188 C. P. Q.—R. S. C. c. 135, s. 29.*—A creditor of an insolvent with a claim for \$600 filed a *tierce opposition* to vacate a judgment declaring the respondent to be the owner of the business of a restaurant and the liquor license accessory thereto, alleged to be worth over \$5,000. The opposition was dismissed on the ground that, under the circumstances of the case, the company had no *locus standi* to contest the judgment. On motion to quash an appeal to the Supreme Court of Canada.—*Held*, that as there was no pecuniary amount in controversy an appeal would not lie. *Coté v. The James Richardson Co.* (38 Can. S. C. R. 41), distinguished. *Canadian Breweries Co. v. Cariépy*, xxxviii., 236.

35. *Action for declaration and injunction—60 & 61 V. c. 34, s. 1 (d)—Municipal corporation — Water rates — Discrimination.*—The Act 60 & 61 Vict. 34 (D.) relating to appeals from the Court of Appeal for Ontario does not authorize an appeal in an action claiming only a declaration that a municipal by-law is illegal and an injunction to restrain its enforcement.—A by-law providing for special water rates from certain industries does not bring in question "the taking of an annual or other rent, customary or other duty or fee" under sec. 1 (d) of the Act (R. S. C. 1906, ch. 139, sec. 48 (d)). *City of Hamilton v. Hamilton Distillery Co.*; *City of Hamilton v. Hamilton Brewing Association*, xxxviii., 239.

AND see MUNICIPAL CORPORATION.

36. *Amount in controversy — Creditor's action—Transfer of cheque—Preference.*—An action was brought by creditors, on behalf of themselves and all other creditors, of an insolvent to set aside the transfer of a cheque for \$1,172.27 made by the insolvent to S. & Son as being a preference and therefore void. At the trial the action was dismissed and this judgment was affirmed by the Divisional Court (12 Ont. L. R. 91) and by the Court of Appeal (13 Ont. L. R. 232). On appeal to the Supreme Court of Canada:—*Held*, Girouard, J., dissenting, that the only matter in controversy was the property in the sum represented by the cheque and such sum being more than \$1,000 the appeal would lie. *Robinson, Little & Co. v. Scott & Son*, xxxviii., 490.

37. *Appeal — Jurisdiction — Amount in controversy—Retraxit—R. S. C. (1906) c. 139, s. 46 (o).*—In an action for \$10,000 damages, a few days before trial and after issues were joined and the case set down for hearing, the plaintiff filed a *retraxit* reducing her claim to \$1,999, and gave notice that, at the trial, her claim would be limited to that amount. By the judgment appealed from, the damages awarded to the plaintiff were reduced to \$1,333, on account of contributory negligence found by the jury. A motion to quash, on the grounds that the *retraxit* reduced the amount in con-

troversy to less than the appealable limit and that the case actually tried was for \$1,999 only, and, consequently, that there could be no appeal under R. S. C. (1906) c. 139, s. 46 (c), was allowed and the appeal was quashed with costs. *Montreal Park and Island Ry. Co. v. Labrosse*, xl., 96.

38. *Jurisdiction — Supreme Court Act—Duty or fee — Interest in land — Future rights.*—Under a by-law of the defendant company every person desiring to enter the park was required to pay a fee for admission. An action was brought for a declaration as to the right of the company to exact payment of such fee from the lessee of land in the park.—*Held*, that the matter did not relate to the taking of a "customary or other duty or fee," nor to "a like demand of a general or public nature affecting future rights" under sub-sec. (d) of sec. 48 R. S. C. [1906] nor was "the title to real estate or some interest therein" in question under sub-sec. (a). There was, therefore, no appeal to the Supreme Court of Canada from the judgment of the Court of Appeal in such action (16 Ont. L. R. 386). *Grimsby Park Co. v. Irving*, xli., 35.

39. *Actio Pauliana—Controversy involved—Title to land—R. S. C. [1906] c. 139, s. 46.*—In the Province of Quebec, the *actio Pauliana*, though brought to set aside a contract for sale of an immovable, is a personal action and does not relate to a title to lands so as to give a right of appeal to the Supreme Court of Canada. *Lamothe v. Daveluy*, xli., 80.

40. *Amount in controversy—Reference to assess damages—Final judgment.*—In 1905 L. and others purchased from W. his creameries on the faith of a statement purporting to be made up from the books and shewing an output for the years 1904-5 equal to or greater than that of 1903. Having discovered that this statement was untrue they brought action for rescission of the contract to purchase and damages for the loss in operating during 1906. The judgment at the trial dismissing the action was affirmed by the Divisional Court. The Court of Appeal reversed the latter judgment, held that rescission could not be ordered but the only remedy was damages and ordered a reference to assess the amount. On appeal to the Supreme Court of Canada:—*Held*, Girouard, J., dissenting, that as it can not be ascertained from the record what the amount in controversy on the appeal was, or whether or not it is within the appealable limit, the appeal does not lie.—*Held*, per Idington, J.—The judgment appealed against is not a final judgment. Per Girouard, J., dissenting.—It is established by the evidence at the trial, published on the record, and admitted by the respective counsel for the parties, that the amount in dispute exceeds \$1,000. The court, therefore, has jurisdiction to hear the appeal. *Wenger v. Lamont*, xli., 603.

41. *Jurisdiction — Rivers and streams—Right of floating logs—Servitude—Faculty or license—Possessory action—Injunction—Matter in controversy—Practice—Costs —*

*Action.*]—In the Province of Quebec the privilege of floating timber down water-courses, in common with others, is not a predial servitude nor does it confer an exclusive right of property in respect of which a possessory action would lie, and, in a case where the only controversy relates to the exercise of such a privilege, the Supreme Court of Canada has no jurisdiction to entertain an appeal.—The appeal was quashed without costs as the objection to the jurisdiction was not taken by the respondents in the manner provided by the Rules of Practice. *Price Brothers & Co. v. Tanguay*, xlii., 133.

42. *Jurisdiction—Matter in controversy—Municipal franchise—Demolition of water-works—Title to land—Future rights.*]—The action, instituted in the Province of Quebec, was for a declaration of the plaintiff's exclusive right under a municipal franchise to construct and operate waterworks within an area defined in a municipal by-law, for an injunction against the defendants constructing or operating a rival system of waterworks within that area, an order for the removal of water-pipes laid by them within that area, and for \$86 damages. On an appeal from a judgment maintaining the plaintiff's action: *Held*, Girouard and Idington, JJ., dissenting, that, as it did not appear from the record that the sum or value demanded by the action was of the amount limited by the Supreme Court Act in respect to appeals from the Province of Quebec nor that any title to lands or future rights were affected, an appeal would not lie to the Supreme Court of Canada. *La Compagnie D'Aqueduc de la Jeune-Lorette v. Verrett*, xlii., 156.

43. *Jurisdiction—Amount in controversy—Addition of interest to amount of verdict—Stay of execution. Toronto Railway Co. v. Milligan*, xlii., 238.

44. *Jurisdiction—Matter in controversy—Instalment of municipal tax—Collateral effect of judgment.*]—In an action instituted in the Province of Quebec to recover the sum of \$1,133.53 claimed as an instalment of an amount exceeding \$2,000, imposed on the defendant's lands for special taxes, the Supreme Court of Canada has no jurisdiction to entertain an appeal although the judgment complained of may be conclusive in regard to the further instalments accruing under the same by-law which would exceed the amount mentioned in the statute limiting the jurisdiction of the Court. *Dominion Salvage and Wrecking Co. v. Brown* (20 Can. S. C. R. 203) followed. *Town of Outremont v. Joyce*, xlili., 611.

45. *Jurisdiction—Débats de compte—Issue on reddition—Amount in controversy.*]—An action (taken in the Province of Quebec) was for an order directing the defendant to render an account and, in default of reddition, the plaintiff claimed \$1,000. By the judgment appealed from the reddition de compte was ordered and, in default of compliance with the order, the defendant was condemned to pay the plaintiff the amount of \$1,000 demanded. *Held*, that the contro-

versy was limited to \$1,000 and the Supreme Court of Canada had no jurisdiction to entertain an appeal. *Bell v. Vipond* (31 Can. S. C. R. 175) distinguished. *St. Aubin v. Desmarteau*, xliv., 470.

46. *Jurisdiction—Matter in controversy—Damming watercourse—Flooding of lands—Servitude—Damages—Objection to jurisdiction—Practice—Costs.*]—The plaintiff claimed \$300 (the amount awarded by arbitrators) for damages in consequence of the defendant's dam penning back the water of a stream in such a manner as to flood his lands; he also asked for the demolition of the dam and an order restraining the defendants from thereby causing further injury to his lands. By the judgment appealed from the award was declared irregular, but damages, once for all, were assessed in favour of the plaintiff for \$225, recourse being reserved to him in respect of any further right of action he might have for the demolition of the dam, etc. On an appeal being taken by the defendants the plaintiff did not move to quash, as provided by Supreme Court Rule No. 4, but took objection, in his factum, to the jurisdiction of the Supreme Court of Canada to entertain the appeal. *Held*, that the only issue on the appeal was in respect of damages assessed at an amount below that limited for appeals from the Province of Quebec. The appeal was, consequently, quashed, but without costs, as objection to the jurisdiction of the court had not been taken by motion as provided by the Rules of Practice. *Price Brothers & Co. v. Tanguay* (42 Can. S. C. R. 133) followed. *Brompton Pulp and Paper Co. v. Bureau*, xlv., 292.

47. *Will—Extension of powers of executors—Universal legatee—Special legacy—Jurisdiction—Amount in controversy—Order to take accounts—Interlocutory judgment—Costs.*]—Appeal from the judgment of the Court of King's Bench, appeal side (Q. R. 19 K. B. 507), by which, Archambeault and Carroll, JJ., dissenting, the judgment of Charbonneau, J., in the Superior Court, District of Montreal, was varied. On a motion to quash the appeal for want of jurisdiction on the grounds:—that the judgment appealed from merely ordered that there should be a taking of accounts; that there was in controversy simply a sum of money which could not be shewn to amount to or exceed the sum of \$2,000, being merely a dispute in regard to collection of the rents of buildings by the testamentary executors (respondents) which, at the time of the action, were less than \$800; that no title to lands or future rights could be affected, and that the judgment appealed from was interlocutory only. The hearing of the motion was ordered to stand over until the hearing of the appeal upon the merits, and, on the appeal coming on for hearing, during the following session of the Supreme Court of Canada, the motion was renewed. After hearing counsel on behalf of both parties, the court decided that it had no jurisdiction to hear the appeal and an order was made quashing the appeal with costs to be taxed as if the appeal had been dismissed on the merits. *Généreux v. Bruneau*, xlvii., 400.

48. *Jurisdiction* — “*Matter in controversy*” — *Annuity* — *Quebec Workmen's Compensation Act*, R. S. Q., 1909, Arts. 7321 et seq.—9 *Edw. VII.*, c. 66—“*Supreme Court Act*,” R. S. C., 1906, c. 139, s. 46 (c) —*Construction of statute.*]—Plaintiff's action, under the Quebec “*Workman's Compensation Act*,” claimed \$450 for loss of earnings, for six months, during incapacity occasioned by personal injuries, and also an annuity of \$337 *per annum*. The plaintiff recovered judgment for the specific amount claimed and he was also awarded an annuity of \$247.50, which might be subject to revision, under the statute. The capitalized value of the annuity would, probably, amount to a sum exceeding \$2,000, the appealable limitation fixed by section 46 (c) of the “*Supreme Court Act*,” R. S. C., 1906, ch. 139. *Held*, *Davies, J.*, dissenting, that, in the circumstances of the case, it did not appear that the *demande* amounted to the sum or value of two thousand dollars, within the meaning of section 46 (c) of the “*Supreme Court Act*,” and, consequently, the court had no jurisdiction to entertain the appeal. *Talbot v. Guilmartin* (30 Can. S. C. R. 482); *La Cie. d'Aqueduc de la Jeune Lorette v. Verrett* (42 Can. S. C. R. 156); *Lapointe v. The Montreal Police Benevolent and Pension Society* (35 Can. S. C. R. 5), and *Macdonald v. Galivan* (28 Can. S. C. R. 258), referred to. (Leave to appeal to Privy Council granted, 15th July, 1914). *Canadian Pacific Railway Co. v. McDonald*, *xlix.*, 163.

49. *Jurisdiction*—*Practice*—*Title to land* —*Fraudulent conveyance*—*Statute of Elizabeth*.]—In an action to set aside a conveyance of land by the defendant to his wife as intended to defeat, hinder or delay creditors, no title to real estate is in question to give the Supreme Court of Canada jurisdiction to entertain an appeal under sec. 48 (a) of the Supreme Court Act. *Duff and Brodeur, JJ.*, contra. *Bateman v. Scott*, *liii.*, 145.

50. *Jurisdiction*—*Court of Review*—*Arts. 68 and 69 C. P. Q.*—“*Supreme Court Act*,” R. S. C. 1906, c. 139, s. 40.]—By article 69 of the Quebec Code of Civil Procedure and the third clause of article 68, as amended by 8 *Edw. VII.*, chap. 75, an appeal lies to the Judicial Committee of the Privy Council, in certain cases, from judgments of the Court of Review, where the amount or value of the thing demanded exceeds \$5,000. Section 40 of the “*Supreme Court Act*,” R. S. C., 1906, chap. 139, provides for appeals from the Court of Review to the Supreme Court of Canada, in cases which are not appealable to the Court of King's Bench, but are appealable to the Privy Council. *Held*, *Anglin, J.*, dissenting, that the words “the thing demanded” in the third clause of article 68 of the Code of Civil Procedure refer to the *demande* in the action, and not to the amount recovered by the judgment, if they are different; consequently, an appeal lies, in such cases, from the judgments of the Court of Review to the Supreme Court of Canada where the amount or value claimed in the declaration exceeds five thousand dollars. *Allan v. Pratt* (13 App. Cas. 780). *Dufresne v. Guevremont* (26 Can. S. C. R.

216); and *Citizens Light and Power Co. v. Parent* (27 Can. S. C. R. 316) discussed; *Town of Outremont v. Joyce* (43 Can. S. C. R. 611) and *Dominion Salvage and Wrecking Co. v. Brown* (20 Can. S. C. R. 203) referred to. *Beauvais v. Genge*, *liiii.*, 353.

51. *The Registrar in Chambers*—*Jurisdiction*—*Assessment and taxation*—*Adjudication authorized by provincial authority*—“*Supreme Court Act*,” R. S. C., 1906, s. 41 —*Finality of provincial decision*—“*Court of last resort*.”]—A provincial statute, providing that judgments of courts in the province on appeal from decisions of courts of revision in respect of assessments for taxation purposes shall be final and conclusive on the matters adjudicated upon thereby, does not circumscribe the appellate jurisdiction given to the Supreme Court of Canada in such matters by section 41 of the “*Supreme Court Act*,” R. S. C., 1906, ch. 139. *Crown Grain Co. v. Day* ((1908) A. C. 504) applied. A district court judge, in the Province of Alberta, adjudicating in matters concerning the assessment of property for municipal purposes under the provisions of the North-West Territories Ordinance No. 33, of 1893, as amended by the statutes of Alberta, ch. 9 of 1909 and ch. 27 of 1913, sec. 7, is a “court of last resort created under provincial legislation” within the meaning of section 41 of the “*Supreme Court Act*,” R. S. C., 1906, ch. 139, and, consequently, an appeal from the decision lies to the Supreme Court of Canada when it involves the assessment of property at a value of not less than ten thousand dollars. *City of Toronto v. Toronto Railway Co.* (27 Can. S. C. R. 640) referred to as *effete*, *Canadian Niagara Power Co. v. Township of Stamford* (50 Can. S. C. R. 168) and *Re Heintze, Fleitman v. The King* (52 Can. S. C. R. 15) referred to. *Pearce v. City of Calgary*, *liv.*, 1.

52. *Amount in controversy* — *Joinder of defendants* — *Separate contracts*.]—A., by order of a master, was allowed to prosecute one action against three insurance companies on three separate policies and obtained from the Appellate Division judgment against each for an amount less than \$1,000 though the amounts in the aggregate exceeded that sum. *Held*, following *Bennett v. Havelock Electric Light Co.* (46 Can. S. C. R. 640) in that the defendants were in the same position as if a separate action had been brought against each and as none of them was made liable for a sum exceeding \$1,000 no appeal would lie to the Supreme Court of Canada. *Glen Falls Insurance Co. v. Adams*, *liv.*, 88.

53. *Jurisdiction*—*Matter in controversy*—“*Supreme Court Act*,” s. 46 (b) and (c) —*Action to remove cloud on title*—*Discharge of mortgage* — *Deferment of payment of accruing instalments* — *Title to land* — *Future rights*.] — The judgment appealed from maintained the plaintiff's action brought to obtain an order that it should not be obliged to pay certain deferred instalments of the price of land sold to it by the defendants with warranty against all hypothecs, save one for \$2,000, until the discharge of certain other incumbrances alleged to be registered as affecting the said

lands, and for costs of protest, etc., amounting to \$33.90. On a motion to quash an appeal taken from this judgment to the Supreme Court of Canada. *Held*, (Duff, J., taking no part in the judgment), that, as there was no amount in controversy of the sum or value of \$2,000, nor any matter in controversy relating to the title to the lands or to matters wherein future rights thereto might be bound, the Supreme Court of Canada had no jurisdiction to entertain the appeal under the provisions of section 46, subsections *b* and *c* of the "Supreme Court Act," R. S. C., 1906, ch. 139. *Carrier v. Sirois* (36 Can. S.C.R. 221); applied. *Montarville Land Co. v. Economic Realty, Limited*, *liv.*, 140.

54. The plaintiff Moorehouse brought an action in the Province of Ontario against defendant Mollieur, for balance due on purchase and sale of machinery amounting to \$1,100. By an incidental demand or counterclaim in the same action, the defendant claimed for loss and damage, in respect of the improper condition of the machinery and otherwise, the sum of over \$2,000. The trial judge found for the plaintiff and dismissed the counterclaim. An action on the said judgment was instituted in the Province of Quebec. The defence now set up by defendant was that he was not personally served with the writ, and that he had not had a fair trial in Ontario, and again set up a counterclaim of over \$2,000 and applied to increase same to over \$5,000 on ground of facts which came to the knowledge of defendant subsequent to filing of his plea, although they occurred previous to the institution of the second action. Art. 211 C. P. Q. reads as follows: "Any defence which might have been set up to the original action may be pleaded to an action brought upon a judgment rendered in any other Province of Canada, provided that the defendant was not personally served with the action, within such other province, or did not appear in such action." The plaintiff's action was again maintained and the counterclaim dismissed. This judgment was confirmed by the Court of King's Bench. On appeal to the Supreme Court, after argument of the question of jurisdiction, the following judgment was pronounced by the Chief Justice: "Without expressing any opinion as to whether the defence set up, 'demande re conventionnelle,' could be properly pleaded to this action, in view of art. 212 C.P. (on this point I have grave doubts), I would on the facts agree with the trial judge, confirm the judgment maintaining the plaintiff's action, and dismiss the appeal with costs." *Mollieur v. Moorehouse*, Nov. 17, 1909; not reported. *Cam. Prac.* 257.

55. The plaintiff alleged in his statement of claim that the defendants proposed to form a syndicate for the purchase of 10,000 acres of land in the Province of Saskatchewan, and requested him to subscribe for part of the said 10,000 acres, on the agreement and understanding that the defendants would resell the lands at an advance of \$2.50 per acre for the numbers of acres each member of the syndicate should subscribe for; that in accordance with this agreement the plaintiff became a member of

the proposed syndicate to the extent of \$480. He further alleged that the defendants undertook and agreed that if the syndicate was not completed and the 10,000 acres not subscribed for, or if the lands remained unsold at an advance of \$2.50 per acre, the defendants would return the plaintiff the said \$480 and the agreement would become null and void and of no effect. The plaintiff alleged that the syndicate was not completed, that claimed in his statement of claim. The defendants and he became entitled to the repayment of the \$480, and this was the amount claimed in his statement of claim. The defence was that the plaintiff had agreed to select and purchase a certain number of acres of land at \$10.50 per acre payable in instalments, and that he paid the first instalment amounting to \$480; that the plaintiff refused to select the lands or pay the balance of the instalments and that the \$480 became forfeited under the terms of the agreement as liquidated damages. The trial judge found for the plaintiff. The Divisional Court dismissed an appeal, and a further appeal to the Court of Appeal was also dismissed. Defendants thereupon applied to the Registrar, under Rule 1, to affirm the jurisdiction of the Court, but the motion was refused, the Registrar holding that the pleadings in the action did not raise any question of an interest in land within s. 48 ss. (a) of the Supreme Court Act, but was purely and simply a money demand involving the \$480. *Vide Beauchemin v. Armstrong*, *supra*, p. 264. *Carter v. Canadian Northern Ry. Co.*, Sept. 10, 1911, *Cam. Prac.* 266.

56. *Effect of a retraxit or renunciation.*] — The plaintiff's declaration contained a demand for \$10,000 damages. Before trial the plaintiff filed a retraxit limiting her damages to \$1,990. The defendant refused to consent to the retraxit. The case went down to trial without further objection and the retraxit was referred to in one of the considerations of the judgment in favour of the plaintiff. No objection was taken to the practice or procedure by which the retraxit was given effect to in the court below when the appeal was taken to the Court of Appeal. Upon the judgment in first instance being affirmed the defendant appealed to the Supreme Court, and the respondent moved to quash. After argument the appeal was quashed for want of jurisdiction. *Vide Angers v. Duggin*, *infra*, p. 294. *Montreal Street Ry. v. Labrosse*, Feb. 18, 1908.

57. *Plaintiff's several claims cannot be added together.*] — This was an action brought by the plaintiff on behalf of himself and the shareholders in the defendant company in which it was alleged that the defendants other than the company, had, by a fraudulent scheme, obtained incorporation of the defendant company, of which the defendants other than Matheson became directors, and as such directors, entered into a fraudulent agreement with defendant, Matheson, by which the company was to purchase certain property belonging to Matheson for \$5,000 and to receive from him \$1,000 each, with which each should subscribe and pay for forty shares of the capital stock of the company of the par value of \$25 per share; and asked that the shares so

issued to the said directors should be cancelled, or in the alternative, that they be condemned to pay \$4,700, the amount of their secret and dishonest profits, or the amount unpaid on the stock so subscribed for by them, or that the agreement and the conveyance between the defendant Matheson and the company be rescinded and the defendants ordered to pay the company \$5,000. The trial judgment dismissed the action. The Divisional Court varied this and ordered that the plaintiffs recover against each of the four defendants other than Matheson the sum of \$1,000 and costs, and dismissed the action as against the defendant Matheson. This was reversed by the Court of Appeal and the judgment at the trial restored. The plaintiffs then launched the appeal to the Supreme Court and a motion was made to quash for want of jurisdiction. In the reasons against the appeal the plaintiffs, present appellants, began by the words: "The respondents (plaintiffs) submit that the judgment appealed from is right and should be confirmed for the reasons therein mentioned and for the following among other reasons." The sixth reason against the appeal said: "The liability of the directors in the circumstances to refund the secret profits is joint and several and they should be charged with interest thereon from the date of its receipt, and the plaintiffs should have a salvage lien upon the funds to be paid into court for costs as between solicitor and client throughout the whole of the action." The motion to quash was allowed. *Bennett v. Havelock Electric Light & Holcroft, &c.* Feb. 22, 1912. Cam. Prac. 278. *Vide Glen Falls v. Adams. supra, No. 52.*

58. *Construction of will—Executors and trustees—Power of appointment—Jurisdiction—Matter in controversy—Special leave to appeal refused.* *Bradley v. Saunders*, Cout. Cas., 380.

59. *Jurisdiction—Amount in controversy—Rescission of contract—Adding of interest to give jurisdiction.* *Dougall v. Chouillou*. Cout. Cas. 395.

60. *Petitory action—Intervention—Title to land—Right of appeal*, xxxiv., 282.

61. *Company—Purchase of director's property—Secret profit.* *Bennett v. Havelock Electric Light Co.*, xlvi., 640.

#### 4. COSTS.

62. *Special leave to proceed in formâ pauperis—Dispensing with security for costs—Mode of bringing appeal—Construction of statute—38 Vict. ch. 11 (D.) ss. 24, 28, 31 and 79—Right of appeal.*—The approval of security for costs is the proper mode of granting leave to appeal to the Supreme Court of Canada. Neither the Supreme Court of Canada, nor a judge thereof, has power to grant leave to bring an appeal *in formâ pauperis* or to dispense with security for costs.—The powers given under section 24 of the Supreme and Exchequer Courts Act, 38 Vict. ch. 11 (D.), are restricted to proceedings taken subsequently to the institution of the appeal,

where the statute and existing rules do not apply; the procedure may be in conformity with that followed by the Judicial Committee of the Privy Council, but the right of appeal arises solely under the statute, which can give no power respecting the exercise of prerogative rights such as may be advised by the Judicial Committee. (Cf. *Dominion Cart-ridge Co. v. McArthur*, Cout. Dig. 124; *Fraser v. Abbott*, Cout. Dig. 111.) *In re Fraser*, Cout. Cas. 6.

63. *Matter in controversy on appeal—Satisfaction of claim—Change in position of parties—Question of costs only—Practice—Quashing appeal.*—It appeared that the claim of the appellant, an intervenant, had been settled, while proceedings were pending, and that the only remaining dispute between the parties was as to costs incurred. On motion by the respondent, the appeal was quashed with costs. *Angers v. Duggan*, Cout. Cas. 425.

64. *Breach of contract—Damages—Evidence—Discretionary order by judge at trial—Interference by court of appeal.*—The trial court condemned the defendant to pay \$122.50 damages for breach of contract for the sale of goods, but, in view of unnecessary expenses caused in consequence of exaggerated demands by the plaintiffs, which were rejected, they were ordered to bear half the costs. On an appeal by the defendant, the Court of King's Bench varied the trial court judgment by adding \$100 exemplary damages to the condemnation and giving full costs against the defendant: *Held*, reversing the judgment appealed from, that in the absence of any evidence of bad faith or wilful default on the part of the defendant, there was no jurisdiction for the addition of exemplary damages nor for interference with the judgment of trial court. *Coghlin v. Fon-derie de Joliette*, xxxiv., 153.

65. *Amount in dispute—Interest—Costs—Collateral matter.*—An action having been brought against the maker and indorser of a note for \$2,000 the makers sued the indorser in warranty claiming that no consideration was given for the note and asking that the indorser guarantee them against any judgment obtained in the main action. They also asked that an agreement under which the makers were to become liable for \$3,000 be declared null. The two actions were tried together and judgment given for the plaintiff in the action on the note while the action in warranty was dismissed. On appeal from the latter judgment: *Held*, that the amount in dispute was \$2,000, the value of the note sued on; that the costs of the action in warranty could not be added and without them the sum of £500 was not in controversy even if interest and costs in the main action were added; the appeal, therefore, did not lie. *Held*, also, that the agreement which the plaintiffs in warranty sought to avoid was only a collateral matter to the issues raised on the appeal and could not be considered in determining the amount in dispute. Interest after the commencement of the action, unless specially claimed as damages, cannot be added to the amount claimed in the declaration in determining the amount in controversy for the purposes of giving jurisdiction



upon an appeal to the Supreme Court of Canada. *Labrosse v. Langlois*, xli., 43.

66. The court having withdrawn from the Bench to consider whether more than a question of costs was involved, subsequently pronounced judgment in the terms of *Archbald v. Delisle*, 25 Can. S. C. R. at p. 14, as follows: "The case is quite distinguishable from those of *Moir v. Huntingdon*, 19 Can. S. C. R. 363; and *McKay v. The Township of Hinchinbrooke*, 24 Can. S. C. R. 55. What we held in those cases was that where the state of facts upon which a litigation went through the lower courts has ceased to exist, so that the party appealing has no actual interest whatsoever upon the appeal, but an interest as to costs, and where the judgment upon the appeal, whatever it may be, cannot be executed or have any effect between the parties except as to costs, this court will not decide abstract propositions of law merely to determine the liability as to costs." *Delta v. Vancouver Ry. Co.*, Oct. 11th, 1909. (Not reported.) Cam. Prac. 90.

67. *Appeal from Court of Review—Jurisdiction—Amount in controversy—Addition of cost of exhibits—Practice.*—The cost of exhibits (claimed by the action), which may be taxable as costs in the cause between party and party, cannot be added to the amount of the *demande* in order to increase the amount in controversy to the sum or value necessary to give the right of appeal to the Supreme Court of Canada. *Dufresne v. Guévremont* (26 Can. S. C. R. 216), followed. *Montreal Tramways Co. v. McGill*, liii., 390.

68. In a proper case the Supreme Court will order costs to be paid as between solicitor and client. *In re Sprague*, Cam. Prac. xiii.

69. *Jurisdiction—Amount in controversy*, xxxiv., 285.

*See supra*, 21.

70. *Special leave—Controversy involved*, xxxv., 184.

*See supra*, 24.

71. *Equal division of opinion—Dismissal without costs*, xxxviii., 41.

*See supra*, 33.

72. *Practice—Equal division of opinion—Costs*, Cout. Cas. 325.

*See COSTS.*

73. *Company—Dominion corporation—Provincial registration—Juristic disability—Right of action—Contract—Carrying on business within province—Legislative jurisdiction—R.S. Sask. 1909, c. 73, ss. 3, 10—Non-compliance with S.C. Rules—Costs. Linde Can. Refrig. Co. v. Sask. Creamery Co.*, li., 400.

*See COMPANY.*

## 5. COURT APPEALED FROM.

74. *Mines and minerals—Trespass—Boundary—Hill-side claim—Jurisdiction—*

*Appeal per saltum—Practice.*—Appeal direct from the judgment of Dugas, J., in the Yukon Territorial Court, which maintained the plaintiff's action for trespass and the removal of gold-bearing gravel by the defendants, who tunneled from an adjoining claim into a claim owned by the plaintiffs. The principal dispute was as to the location of the defendant's hill-side claim under the mining regulations of 1898. During the hearing, on suggestion by the court and consent of parties, leave to appeal *per saltum* was granted. *nunc pro tunc*, without costs, as there was some doubt as to the jurisdiction to hear the appeal direct from the decision of the trial court. A cross-appeal by the plaintiffs was abandoned at the hearing. The appeal was dismissed with costs, Armour, J., dissenting. *Trabold v. Miller*, Cout. Cas. 281.

75. *Jurisdiction—Land Titles Act—"Torrens System"—Involuntary transfers—Registry laws—Confirmation of tax sale—Persona designata—Court of original jurisdiction—Interlocutory proceedings.*—The confirmation of a tax sale transfer by a judge of the Supreme Court of the North-West Territories, under section 97 of the "Land Titles Act, 1894," is a matter of proceeding originating in a court of superior jurisdiction and an appeal will lie to the Supreme Court of Canada from a final judgment of the full court affirming the same. *City of Halifax v. Reeves* (23 Can. S. C. R. 340) followed. Sedgewick and Killam, JJ., *contra*. *North British Canadian Inv. Co. v. Trustees of St. John School District No. 16, North West Territories*, xxxv., 461.

76. *Time limit for appeal to King's Bench—Opposite party appealing to Court of Review—Arts. 927, 1203, 1209 C. P. Q.—Practice—Injunction—Discretionary order—Reversal on appeal—Question of costs only.*—An appeal from a judgment of the Superior Court, rendered on the trial of a cause, will lie to the Court of King's Bench, appeal side, if taken within the time limited by article 1209 of the Code of Civil Procedure of Quebec, notwithstanding that, in the meantime, on an appeal by the opposite party, the Court of Review may have rendered a judgment affirming the judgment appealed from.—Although the granting of an order for injunction, under article 957 of the Code of Civil Procedure of Quebec, is an act dependent on the exercise of judicial discretion, the Supreme Court of Canada, on an appeal, reversed the order on the ground that it had been improperly made upon evidence which shewed that the plaintiff could, otherwise, have obtained such full and complete remedy as he was entitled to under the circumstances of the case, *Davies and Idington, JJ.*, dissenting, were of opinion that the order had been properly granted.—On the merits of the appeal, *Davies and Idington, JJ.*, dissented from the majority of the court on the ground that as a question of costs only was involved on the appeal, it should not be entertained. *Chicoutimi Pulp Co. v. Price*, xxxix., 81.

AND *see PLEADING—PRACTICE.*

77. *Appeal—Stated case—Provincial legislation—Assessment—Municipal tax—Foreign company—"Doing business in Hal-*



far.”]—An Ontario company resisted the imposition of a license fee for “doing business in the City of Halifax” and a case was stated and submitted to the Supreme Court of Nova Scotia for an opinion as to such liability. On appeal from the decision of the said court to the Supreme Court of Canada counsel for the City of Halifax contended that the proceedings were really an appeal against an assessment under the city charter, that no appeal lay therefrom to the Supreme Court of the Province, and, therefore, and because the proceedings did not originate in a superior court, the appeal to the Supreme Court of Canada did not lie. *Held, per Fitzpatrick, C.J. and Duff, J.*, that, as the appeal was from the final judgment of the court of last resort in the province, this court had jurisdiction under the provisions of the Supreme Court Act, and it could not be taken away by provincial legislation.—*Per Davies, J.*—Provincial legislation cannot impair the jurisdiction conferred on this court by the Supreme Court Act. In this case the Supreme Court of Nova Scotia had jurisdiction under Order XXXIII., Rule 1 of the Judicature Act. *Per Idington, J.*—If the case was stated under the Judicature Act Rules the appeal would lie, but not if it was a submission under the charter for a reference to a judge at request of a ratepayer. *City of Halifax v. McLaughlin Carriage Co.*, xxxix., 174.

AND see ASSESSMENT AND TAXES.

78. *Collection of municipal taxes—Action in Recorder's Court—Montreal city charter, 62 V. c. 58 (Que.)—Jurisdiction—Judgment by Court of Review—Special tribunal—Court of last resort—Supreme Court Act, R. S. [1906] c. 139, s. 41.*—Under the provisions of the Montreal City Charter, 62 Vict. ch. 58, sec. 484 (Que.), an action was brought by the city, in the Recorder's Court, to recover taxes on an assessment of the company's property in the city. Judgment was recovered for \$30,691.80, and an appeal to the Superior Court, sitting in review, under the provisions of the Quebec statute, 57 Vict. ch. 49, as amended by 2 Edw. VII. ch. 42, was dismissed. On an application by the company to affirm the jurisdiction of the Supreme Court of Canada to hear an appeal from the judgment of the Court of Review, *Held*, that the Superior Court, when exercising its special appellate jurisdiction in reviewing this case, was not a court of last resort created under provincial legislation to adjudicate concerning the assessment of property for provincial or municipal purposes within the meaning of section 41 of “The Supreme Court Act,” R. S. [1906] ch. 139, and, consequently, there could be no jurisdiction to entertain the appeal. *Montreal Street Ry. v. City of Montreal*, xli., 427.

79. *Jurisdiction—Court of Review—Reduction of damages—Confirmation of Superior Court judgment—R. S. C. [1906] c. 139, s. 40.*—There can be no appeal to the Supreme Court of Canada from a judgment of the Court of King's Bench, appeal side, quashing an appeal from the Superior Court, sitting in review, for want of jurisdiction. *City of Ste. Cunégonde v. Gougeon* (25 Can.

S. C. R. 78) followed, Idington, J., dissenting. In an action for damages where the plaintiff obtains a verdict at the trial and the Court of Review reduces the amount awarded thereon the judgment of the Superior Court is confirmed and, therefore, no appeal lies to the Court of King's Bench, but there might be an appeal from the judgment of the Court of Review to the Supreme Court of Canada. *Simpson v. Palliser* (29 Can. S. C. R. 6) distinguished. Idington, J., dissenting. *Hull Electric Co. v. Clement*, xli., 419.

80. *Jurisdiction—Judgment of Court of Review—Modification of trial judgment—Affirmance—“Supreme Court Act,” R. S. C., 1906, c. 139, s. 40.*—An action to restrain the flooding of the plaintiff's land from the defendants' railway ditch, was maintained by the Superior Court and an order made directing the railway company to construct the necessary works to cause the trouble to cease within a time mentioned, failing which the plaintiff was authorised to do the works at the company's expense. On an appeal from this judgment, the Court of Review, of its own motion, added more specific directions as to the works to be done and, instead of authorizing the plaintiff to construct the works, in case of default, reserved his recourse for future damages and dismissed the appeal. *Held*, that the judgment of the Court of Review had confirmed that of the court of first instance and, therefore, an appeal therefrom would lie to the Supreme Court of Canada under the provisions of section 40 of the “Supreme Court Act,” R. S. C. 190, ch. 139. *Hull Electric Co. v. Clement* (41 Can. S. C. R. 419), followed. *Canadian Northern Quebec Ry. Co. v. Gignac*, li., 136.

81. *Jurisdiction—Probate Court—Surrogate Court—R. S. C. [1906] c. 139, s. 37 (d).*—Under the terms of section 37 (d) of the “Supreme Court Act” an appeal lies to the Supreme Court of Canada from the judgment of the Appellate Division of the Supreme Court of Ontario in a case originating in a Surrogate Court of that province. Idington, J., dubitante. On the merits the judgment of the Appellate Division (32 Ont. L. R. 312) was affirmed. *Trusts & Guarantee Co. v. Rundie*, lii., 114.

82. *Held*, that the jurisdiction of the Court of Revision and of the courts exercising the statutory jurisdiction of appeal from the Court of Revision, is confined to the question whether the assessment was too high or too low, and these courts had no jurisdiction to determine the question whether the assessment commissioner had exceeded his powers in assessing property which was not by law assessable. In other words, when the assessment was *ab initio* a nullity, they had no jurisdiction to affirm it or give it validity. *Toronto Ry. Co. v. Toronto* (1904), A. C. 809, Cam. Prac. 187.

83. *Expropriation—Award—Choice of forum—Curia designata*, xxxviii., 511.

See *supra*, 7.

## 6. CRIMINAL APPEALS.

84. *Extradition — Prohibition — Appeal — Jurisdiction — Supreme Court Act, s. 24 (g) — 54 & 55 Vict. c. 25 s. 2 — Construction of statute — Public policy — Criminal proceedings.*]—A motion for a writ of prohibition to restrain an extradition commissioner from investigating a charge of a criminal nature upon which an application for extradition has been made is a proceeding arising out of s. 24 (g) of the Supreme Court Act, as amended by 54 & 55 Vict. c. 25, s. 2, and in such a case, no appeal lies to the Supreme Court of Canada. *In re Woodhall* (20 Q. B. D. 832), and *Hunt v. The United States* (16 U. S. R. 424) referred to. (A petition for leave to appeal to Privy Council was abandoned and dismissed, 26th July, 1905). *Gaynor and Greene v. United States of America*, xxxvi., 247.

85. *Criminal law—Crown case reserved—Appeal—Extension of time for notice of appeal—“Criminal Code” s. 1024—Order after expiration of time for service of notice — Jurisdiction.*]—The power given by section 1024 of the “Criminal Code” (R. S. C. (1096) c. 146) to a judge of the Supreme Court of Canada to extend the time for service on the Attorney-General of notice of an appeal in a reserved Crown case may be exercised after the expiration of the time limited by the code for the service of such notice. *Banner v. Johnston* (L. R. 5 H. L. 157) and *Vaughan v. Richardson* (17 Can. S. C. R. 703) followed. *Gilbert v. The King*, xxxviii., 207.

86. *Practice — Crown case reserved—Reserved questions—Dissent from affirmation of conviction—Jurisdiction.*]—Two questions were reserved by the trial judge for the opinion of the court of appeal but he refused to reserve a third question, as to the correctness of his charge on the ground that no objection to the charge had been taken at the trial. The court of appeal took all three questions into consideration and dismissed the appeal, there being no dissent from the affirmation of the conviction on the first and third questions, but one of the judges being of opinion that the appeal should be allowed and a new trial ordered upon the second question reserved. On an appeal to the Supreme Court of Canada,—The majority of the court, being of opinion that the appeal should be dismissed, declined to express any opinion as to whether or not an appeal would lie upon questions as to which there had been no dissent in the court appealed from, but it was *Held*: *Per* Girouard, J.—That the Supreme Court of Canada was precluded from expressing an opinion on points of law as to which there had been no dissent in the court appealed from. *McIntosh v. The Queen* (23 Can. S. C. R. 180) followed. *Viau v. The Queen* (29 Can. S. C. R. 90). *The Union Colliery Company v. The Queen* (31 Can. S. C. R. 81) and *Rice v. The King* (32 Can. S. C. R. 480) referred to. *Gilbert v. The King*, xxxviii., 284.

AND see CRIMINAL LAW.

87. *Criminal law—Stated case—Dissent in court of appeal—Practice—Special leave for appeal—R. S. C. (1906) c. 139, s. 37 (c).]*

—In an appeal from the judgment of the Supreme Court of the North-West Territories, *in banc*, whereby the conviction of the respondent was quashed, two of the judges dissenting, special leave for the appeal was granted on motion before the full court, under the provisions of R. S. C. (1907) c. 139, s. 39 (c) on the 19th of February, 1907. *Lafferty v. Lincoln*, xxxviii., 620, 625.

AND see CONSTITUTIONAL LAW.

88. *Criminal law—Reserved case—Application “during trial”—Crim. Code s. 1014 (3).*]—By s. 1014 (3) of the Criminal Code either party may “during the trial” of a prisoner on indictment apply to have a question which has arisen reserved for adjudication by the Court of Appeal: *Held*, that for the purposes of such provision the trial ends with the verdict after which no such application can be entertained. *Ead v. The King*, xl., 272.

89. *Criminal law — Stated case—Extension of time — Notice of appeal—Criminal Code, ss. 901, 1014, 1021, 1022, 1024.*]—Where, on an application under section 901 of the Criminal Code, the court, in the exercise of judicial discretion, has refused to allow a postponement of the trial of the person indicted, there can be no review of the decision by an appellate court and the question presented does not constitute a question of law upon which there may be a reserved case under the provisions of section 1014 of the Criminal Code. Judgment appealed from (5 W.W.R. 1229; 26 West. L. R. 955) affirmed. *The Queen v. Charlesworth* (1 B. & S. 460); *Winsor v. The Queen* (L. R. 1 Q. B. 390); *Re v. Lewis* (78 L. J. K. B. 722); *Re v. Blyth* (19 Ont. L. R. 386). *Reg. v. Johnson* (2 C. & K. 354); and *Reg. v. Slavin* (17 U.C.C.P. 205) referred to. *Mulvihill v. The King*, xlix., 587.

90. *Criminal law — Refusal of reserved case—Appeal to Supreme Court of Canada—Conviction in Yukon Territory—Admission of evidence—Procedure at trial. Labelle v. The King, Cout. Cas. 282.*

91. *Criminal law—Trial for murder—Improper admission of evidence—Substantial wrong or miscarriage — Criminal Code s. 1019, xli., 331.*

See CRIMINAL LAW.

92. *Criminal law—Indictment for murder—Trial—Evidence—Criminal intent—Provocation—“Heat of passion”—Charge to jury — Misdirection—Reducing charge to manslaughter — New trial—“Substantial wrong” — Criminal Code ss. 261, 1019—Questions to be reviewed on appeal, xlvii., 1.*

See CRIMINAL LAW.

## 7. CROSS-APPEAL.

93. *Cross-appeal between respondents — Practice.*]—The action was against the two defendants, jointly, and the plaintiff obtained a verdict, at the trial, against both. The Court of Appeal confirmed the verdict as

to McN., and dismissed the action as to the other defendants. McN. appealed to the Supreme Court of Canada, making the other defendants respondents on his appeal.—*Held*, that the plaintiff, respondent, was entitled to cross-appeal against the said defendants, respondents, to have the verdict against them at the trial restored. (Leave to appeal to Privy Council refused, 12th March, 1908.) *McNichol v. Malcolm*, xxxix., 265.

AND see LANDLORD AND TENANT.

94. *Quare*.]—On the appeal by C. against the judgment declaring him liable to account for illegitimate profits on the transactions in question, had the Supreme Court of Canada jurisdiction to entertain a cross-appeal by P. to obtain recourse against M. who had been exonerated in the court below and was not made a party to the appeal taken by C.? *McNichol v. Malcolm* (39 Can. S. C. R. 265) discussed. *Coy v. Pommevinke*, xlv, 543.

AND see BROKER.

## 8. DISCRETIONARY ORDERS.

95. *Practice—Discretion of court below—Amendment—Formal judgment.*]—The Supreme Court should not interfere with the exercise of discretion by a provincial court in refusing to amend its formal judgment. Such amendment is not necessary in a mining case where the mining regulations operate to give the judgment the same effect as it would have if amended. *Creese v. Fleischman*, xxxiv., 279.

96. *Appeal per saltum—Special leave—Discretion—Review of whole case on application for leave—Vexatious proceedings—Want of merits—Expiration of time for appealing.*]—Where it appeared that an appeal was utterly without merits, leave to appeal *per saltum* was refused, and it was declared that, in such a case, the circumstances could not justify an order extending the time for appealing. *Kilner v. Werden*, *Cout. Cas.* 188.

97. *Special leave to appeal—Discretion—Matter in controversy.*]—Motion for special leave to appeal was refused when applied for in regard to a mandatory order respecting the running of cars and extensions of the tramway, the questions not being of a character to warrant the exercise of discretion in giving special leave. *London Street Ry. Co. v. City of London*, *Cout. Cas.* 322.

98. "Winding-up Act"—*Leave to appeal—Discretion—Construction of Dominion statutes—Appeal de plano—R. S. C. (1886) c. 129, s. 76.*]—Where an important question respecting the construction of a Dominion statute is involved, the discretion allowed by section seventy-six of the "Winding-up Act" should be exercised and leave to appeal granted, but that Act does not give the right of appealing *de plano*. *The Lake Erie and Detroit River Railway Co. v. Marsh* (35 Can. S. C. R. 197), followed. *In re Montreal Cold Storage and Freezing Co.; Ward v. Mullin*, *Cout. Cas.* 341.

99. *Practice—Amendment of pleadings—Discretionary order—Procedure—Final judgment.*]—Where no injustice had been done in the refusal of leave to amend pleadings, the court refused to interfere with the orders made by the courts below in the exercise of judicial discretion and quashed the appeals. *Cass v. Couture; Cass v. McCutcheon*, *Cout. Cas.* 386.

100. *Order for new trial—Weight of evidence—Discretion—New grounds on appeal.*]—Where the court whose judgment is appealed from ordered a new trial on the ground that the verdict was against the weight of evidence: *Held*, that this was not an exercise of discretion with which the Supreme Court of Canada would refuse to interfere and the verdict at the trial was restored.—The argument of an appeal to the Supreme Court of Canada must be based on the facts and confined to the grounds relied on in the courts below. *Confederation Life Association v. Borden*, xxxiv., 338.

101. *Fivolous and vexatious proceedings—Quashing appeal—Jurisdiction of Supreme Court of Canada—R. S. C. c. 135, ss. 27, 59—Arts. 651 and 726 C. P. Q.*]—An appeal to the Supreme Court of Canada, taken in bad faith, will be quashed, on motion by the respondent.—*Per*, Girouard, J.—An order by a judge under art. 651 C.P.Q., dismissing an opposition, as being in bad faith, is a matter in the exercise of judicial discretion, and the Supreme Court of Canada, under section twenty-seven of the Supreme Court Act, is deprived of jurisdiction to entertain an appeal therefrom. *Fontaine v. Payette*, xxxiv., 613.

AND see OPPOSITION.

102. *Jurisdiction—Discretion of Governor in Council—Stated case—Railway subsidies—Construction of statute—3 Edw. VII. c. 57—Conditions of contract—Estimating cost of constructing line of railway—Rolling stock and equipment.*]—Where the jurisdiction of the Supreme Court of Canada to entertain an appeal was in doubt, but it was considered that the appeal should be dismissed on the merits, the court heard and decided the appeal accordingly. (Cf. *Bain v. Anderson & Co.* (28 Can. S. C. R. 481). *Canadian Pacific Ry. Co. v. The King; Re Pheasant Hills Branch*, xxxviii., 137.

AND see RAILWAYS.

103. In an accident case, a motion for non-suit was refused and judgment was entered for the plaintiff on the findings of the jury. The defendants appealed, simply asking that the judgment be reversed and the action dismissed. The Court of Appeal granted a new trial. On appeal to the Supreme Court the Chief Justice and Anglin, J., thought the judgment for new trial was made in the discretion of the Court below and no appeal would lie. A majority of the Court dismissed on the merits. *Canadian Pacific Ry. Co. v. Lloyd-Brown*, *Cam. Prac.* 123.

104. *Order by judge at trial—Interference on appeal—Exemplary damages*, xxxiv., 153.

See *supra*, 64.

105. *Appeal — Practice — Exception — Art. 1220 C. P. Q.—Acquiescence—Motion to quash—Discretion of court below—Varying minutes of judgment—Costs, xxxiv., 502.*  
See PRACTICE.

106. *Stay of foreclosure proceedings — Final judgment—"Winding-up Act," xxxvii., 173.*

See *supra*, 30.

107. *Judicial sale of railways—Interested bidder — Disqualification as purchaser — Counsel and solicitors—Art. 1484 C. C.—Construction of statute—Review by appellate court—Discretionary order—4 & 5 Edw. VII. c. 158 (D.)—Public policy, xxxvii., 303.*

See RAILWAYS.

108. *Appeals by both parties — Different Courts of Appeal—Costs—Practice, xxxix., 81.*

See *supra*, 76.

109. *"Winding-up Act"—Insolvent bank — Appointment of liquidators—Appointing another bank — Discretion of judge, Cam. Cas. 200.*

See "WINDING-UP ACT."

110. *Refusal of special leave — Controversy—Winding-up Act, Cout. Cas. 119.*

See *supra*, 11.

111. *Special leave — Controversy—Practice, Cout. Cas. 382.*

See *supra*, 16.

## 9. ELECTION APPEALS.

112. *Controverted election—Right of appeal—Fixing time for trial.]—No appeal lies to the Supreme Court of Canada from an order of the judges assigned to try an election petition fixing the date for trial. Halifax Election Cases, xxxix., 401.*

113. *Election law—Preliminary objections—Interlocutory motions — Construction of statute—"Dominion Controverted Elections Act," R.S.C., 1906, c. 7, s. 64.]—Several of the preliminary objections to a petition against the election of a member of the House of Commons of Canada having remained undisposed of, on the day before the expiration of the six months limited for the commencement of the trial by section 39 of the "Dominion Controverted Elections Act," R. S. C., 1906, ch. 7, the petitioner applied to a judge, by motions, (a) to obtain an enlargement of the time for the commencement of the trial, and, (b) to have a day fixed for the hearing on such preliminary objections. On appeal from the judgment dismissing the motions. Held, that the judgment in question was not appealable to the Supreme Court of Canada under the provisions of section 64 of the "Dominion Controverted Elections Act." L'Assomption Election Case (14 Can. S.C.R. 429); King's County Election Case (8 Can. S.C.R. 192); Gloucester Election Case (8 Can. S. C. R. 204), and Halifax Election Case (39 Can.*

S. C. R. 401) referred to. *Temiscouata Election*, xviii., 211.

114. *Controverted election — Jurisdiction — Practice. Re Stewart, Cout. Cas. 21.*

115. *Controverted election—Abatement of appeal—Dissolution of Parliament—Return of deposit—Practice, Cout. Cas. 314.*

See ELECTION LAW.

116. *Election law — Preliminary objections — Rules of practice—Repeal—Inconsistency with statutory provision—Judgment on preliminary objections—Final determination of stage of cause—Objections—Irregularity by returning officer—Jurisdiction—Issues in question—Construction of statute —(D.) 37 V. c. 10, ss. 44, 45—R. S. C., 1906, c. 7, ss. 16, 19, 20, 85—R. S. C., 1906, c. 1, s. 20, xviii., 625.*

See ELECTION LAW.

## 10. FINAL JUDGMENTS.

117. *Jurisdiction — Supreme Court Act (1875) 38 Vict. c. 11—Demurrer — Final judgment—Costs.]—On appeal from a judgment overruling a demurrer (12 N. S. Rep. 376; Russ. Eq. Dec. 287); Held, per Fournier, Taschereau and Gwynne, JJ. (Ritchie, C.J. and Stroug, J., contra), that, under the circumstances, the judgment appealed from did not dispose of the matters in controversy finally; and the appeal was quashed for want of jurisdiction under the Supreme Court Act of 1875, with costs of a motion to quash. (Cf. 7 App. Cas. 178.) Western Counties Railway Co. v. Windsor and Annapolis Railway Co., Cout. Cas. 11.*

118. *Jurisdiction—Final judgment—Mandamus.]—The respondent applied for a peremptory writ of mandamus to compel appellants to purchase lands for the site of a parish church, and obtained an order, as follows—"Vu la requête ci-dessus, il est ordonné d'emaner un bref de mandamus tel que demandé." An ordinary writ of summons issued, indorsed as a writ of mandamus, but the copy served did not contain any indorsement of the nature of the claim. An exception to the form was dismissed, and the Court of Queen's Bench dismissed an appeal *de plano*. "Parceque 1. Les appellants ont inscript en appel de l'ordonnance du juge permettant l'émission du bref de mandamus en cette cause, sans un préalable obtenir la permission; 2. Parceque la dite ordonnance n'est pas un jugement final, mais une interlocutoire." The registrar, considering that the order was not simply for the issue of a summons, but a peremptory order for the issue of a writ of mandamus, under art. 996 C. P. Q., held that the judgment was final in its nature, and therefore, appealable. This decision was reversed, on appeal, and the application for approval of the security for costs was dismissed. *Syndics de St. Valier v. Catellier*, Cout. Cas. 202.*

119. *Commissioner of Mines—Appeal from decision — Quashing appeal — Final judgment — Estoppel—Mandamus.]—Where an*

appeal from a decision of the Commissioner of Mines for Nova Scotia on an application for a lease of mining land is quashed by the Supreme Court of the province on the ground that it was not a decision from which an appeal could be asserted, the judgment of the Supreme Court is final and binding on the applicant, and also on the commissioner even if he is not a party to it.—The quashing of the appeal would not, necessarily, be a determination that the decision was not appealable if the grounds stated had not shewn it to be so.—In the present case, the quashing of the appeal precluded the commissioner or his successor in office from afterwards claiming that the decision was appealable.—If the commissioner, after such appeal is quashed, refuses to decide upon the application for a lease, the applicant may compel him to do so by writ of mandamus. Judgment appealed from (36 N. S. Rep. 275) affirmed. *Drysdale v. Dominion Coal Co.*, xxxiv., 328.

120. *Opposition afin de charge—Order for security—Interlocutory judgment—Res judicata—Subsequent final order—Revision of merits on appeal—Practice.*—An order requiring opposants *afin de charge* to furnish security that lands seized, if sold in execution subject to the charge, should realize sufficient to satisfy the claim of the execution creditor was held to be interlocutory and non-appealable (33 Can. S. C. R. 340). Subsequently, upon default to furnish such security, the opposition was dismissed. On appeal from the judgment of the Court of King's Bench affirming the order for the dismissal of the opposition: *Held*, that, under the circumstances, the order dismissing the opposition was the only one which could be properly made and that the merits of the former order could not be reviewed on appeal from the final judgment, *Desaulniers v. Payette*, xxxv., 1.

121. *Appeal—Jurisdiction—Interlocutory proceeding—Final judgment.*—There is no appeal to the Supreme Court of Canada from a judgment on a petition for leave to intervene in a cause as the proceeding is merely interlocutory in its nature. *Hamel v. Hamel* (26 Can. S. C. R. 17) followed. *Connolly v. Armstrong*, xxxv., 12.

122. *Infringement of patent of invention—Exchequer Court Act, ss. 51 and 52—Order postponing hearing of demurrer—Judgment—Leave to appeal.*—Unless an order upon a demurrer be a decision upon the issues raised therein, leave to appeal to the Supreme Court of Canada cannot be granted under the provisions of the fifty-first and fifty-second sections of the Exchequer Court Act, as amended by 2 Edw. VII. c. 8. *Toronto Type Foundry Co. v. Mergenthaler Linotype Co.*, xxxvi., 593.

123. *Jurisdiction—Successions—Security by beneficiary—Controversy involved—Future rights—Interlocutory order.*—An application for the approval of security on an appeal to the Supreme Court of Canada from an order directing that a beneficiary should furnish the security required by article 663 of the Civil Code of Lower Canada was refused on the ground that it was in-

terlocutory and could not affect the rights of the parties interested. *Kirkpatrick v. Birks*, xxxvii., 512.

124. *Jurisdiction—Declinatory exception—Interlocutory judgment—Review of judgment on exception—Practice.*—The action was dismissed in the Superior Court upon declinatory exception. The Court of King's Bench reversed this decision and remitted the cause for trial on the merits. On motion to quash a further appeal to the Supreme Court of Canada: *Held*, that such motion should be granted on the ground that the objection as to the jurisdiction of the Superior Court might be raised on a subsequent appeal from a judgment on the merits.—*Per Girouard, J.*—The judgment of the Court of King's Bench was not a final judgment and, consequently, no appeal could lie to the Supreme Court of Canada. *Willson v. Shawinigan Carbide Co.*, xxxvii., 535.

125. *Jurisdiction—Demurrer—Final judgment.*—The declaration in an action by a municipality claiming forfeiture of a franchise for non-fulfilment of the obligations imposed in respect thereof alleged in five counts as many different grounds for such forfeiture. The defendant demurred generally to the declaration and specifically to each count. The demurrer was sustained as to three counts and dismissed as to the other two. On appeal from the decision of the registrar refusing an order to affirm the jurisdiction of the Supreme Court to entertain an appeal from the judgment maintaining the demurrer: *Held*, that each count contained a distinct ground on which forfeiture could be granted and a judgment depriving the municipality of its right to reply on any such ground was a final judgment in respect thereof which could be appealed to the Supreme Court of Canada. *Ville de St. Jean v. Mollieur*, xl., 139.

126. *Jurisdiction—Final judgment—Time for appealing—Exchequer Court Act, R. S. C. (1906) c. 140, s. 82—Exchequer Court rules.*—Notwithstanding that no appeal has been taken from the report of a referee within the fourteen days mentioned in sections 19 and 20 of the General Rules and Orders of the Exchequer Court of Canada (12th December, 1899), an appeal will lie to the Supreme Court of Canada from an order by the judge confirming the report, as required by the said sections, within the thirty days limited by section 82 of the Exchequer Court Act, R. S. C. (1906) c. 140. *Re Atlantic & Lake Superior Ry. Co.; North Eastern Bkg. Co. v. Royal Trust Co.*, xli., 1.

127. *Appeal from order for reference—Jurisdiction—Final judgment.*—In 1903, the U. L. Co. executed a contract for sale to D. of all its lumber lands and interests therein, the price to be payable in three instalments at fixed dates. By a contemporaneous agreement, the company undertook to get out logs for D., who was to make advances for the purpose. The agreement for sale was carried out and two instalments of the purchase money paid. At the time these contracts were executed the Union Bank of Halifax had advanced money to the company and, shortly after the contract for sale was

assigned to the bank as security for such and future advances. The company having assigned in insolvency, the bank brought action against D. for the last instalment of the purchase money, to which he pleaded that he had paid in advances to the company and the bank more than the sum claimed. The trial judge held that the bank had no notice of the second agreement under which D. claimed to have advanced the money and gave judgment for the bank with a reference to ascertain the amount due. The full court set aside this judgment and ordered a reference to ascertain the amount due the bank, and, if anything was found to be due, to ascertain the amount due to D. from the company. The bank sought to appeal from the latter decision.—*Held*, that the judgment of the full court was not a final judgment from which an appeal would lie under the Supreme Court Act to the Supreme Court of Canada. *Union Bank of Halifax v. Dickie*, xli., 13.

128. *Jurisdiction—Final judgment.*—In 1903 the United Lumber Co. executed a contract for sale to D. of all its lumber lands and interests therein the price to be payable in three instalments at fixed dates. By a contemporaneous agreement the company undertook to get out logs for D., who was to make advances for the purpose. The agreement for sale was carried out and two instalments of the purchase money paid. At the time these contracts were executed the Union Bank had advanced money to the company and shortly after the contract for sale was assigned to the bank as security for such and for future advances. The company having assigned in insolvency the bank brought action against D. for the last instalment of the purchase money to which he pleaded that he had paid in advance to the company and the bank more than the sum claimed. The trial judge held that the bank had no notice of the second agreement under which D. claimed to have advanced the money and gave judgment for the bank with a reference to ascertain the amount due. The full court set aside this judgment and ordered a reference to ascertain the amount due the bank and, if anything was found to be due, to ascertain the amount due to D. from the company. The bank sought to appeal from the latter decision. *Held*, that the judgment of the full court was not a final judgment from which an appeal would lie under the Supreme Court Act to the Supreme Court of Canada. *Union Bank of Halifax v. Dickie*, xli., 13.

129. *Jurisdiction — Stated case — Final judgment — Origin in Superior Court—Supreme Court Act, ss. 35 and 37.*—An information was laid before the police magistrate of St. John, N.B., charging the License Commissioners with a violation of the Liquor License Act by the issue of more licenses in Prince Ward than the Act authorized. The informant and the Commissioners agreed to a special case being stated for the opinion of the Supreme Court of New Brunswick on the construction of the Act and that court, after hearing counsel for both parties, ordered that "the Board of License Commissioners for the City of Saint John be, and they are hereby, advised that the said Board

of License Commissioners can issue eleven tavern licenses for Prince Ward in the said City of Saint John and no more (38 N.B. Rep. 508). On appeal by the Commissioners to the Supreme Court of Canada: *Held*, that the proceedings did not originate in a superior court, and are not within the exceptions mentioned in sec. 37 of the Supreme Court Act; that they were *extra cursum curiæ*, and that the order of the court below was not a final judgment within the meaning of sec. 36; the appeal, therefore, did not lie and should be quashed. *Blaine v. Jamieson*, xli., 25.

130. *Nature of action—Equitable relief—“Supreme Court Act,” s. 38 (e)—Appeal from referee — Final judgment.*—Where a statement of claim discloses only a common law cause of action and the cause was so dealt with at the trial the facts that the indorsement on the writ indicates a claim for equitable relief and that the trial judge, in ordering a reference to assess the damages, reserved further directions, do not make it a judicial proceeding in the nature of a suit in equity within the meaning of sec. 38 (c) of the "Supreme Court Act." The judgment of the Court of Appeal varying the report of the referee directed to assess the damages for the plaintiff in an action is not a final judgment from which an appeal lies to the Supreme Court of Canada. *Clarke v. Goodall*, xlv., 284.

131. *Final judgment—Action for commissions — Reference—Reservation of further directions and costs.*—In an action against an insurance company for agent's commissions on policies and renewals the trial judge gave judgment for the plaintiff, ordered an account to be taken and reserved further directions and costs. His judgment was affirmed by the Court of Appeal. *Held*, Fitzpatrick, C.J., dissenting, that the decision of the Court of Appeal was not a final judgment from which an appeal would lie to the Supreme Court of Canada. *Crown Life Ins. Co. v. Skinner*, xlv., 616.

132. *Final judgment—Reference.*—In an action claiming rescission of a contract for the sale of timber lands and other equitable relief and, in the alternative, damages for deceit, the trial judge held that it was a case for damages only and gave judgment accordingly and referred to a referee matters arising out of a counterclaim ordering him also to take an account of moneys paid, an inquiry as to liens and incumbrances and as to the quantity of standing timber on the lands and other proper accounts. Further consideration of the cause was reserved. This judgment was affirmed by the full court and the defendants sought to appeal to the Supreme Court of Canada. *Held*, that the action tried and determined was the common law action for deceit only; that the judgment given therein was not a final judgment within the meaning of that term in the "Supreme Court Act"; and that the court had no jurisdiction to entertain the appeal. *Clarke v. Goodall* (44 Can. S. C. R. 284), and *Crown Life Ins. Co. v. Skinner* (44 Can. S. C. R. 616) followed. *Dunn v. Eaton*, xlvii., 205. *NOTE.*—By 3-4 Geo. V. cap. 51, s. 1, the definition of final judgment

was amended to embrace "any judgment which determines in whole or in part any substantial right of any of the parties in controversy in any action, suit, cause, matter or other judicial proceeding." The decisions prior to this legislation in 1913 are no longer applicable.

133. *Final judgment—Further directions—Master's report.*—On the trial before the Chancellor of Ontario of an action claiming damages for breach of contract judgment was given for the plaintiffs with reference to the Master to ascertain the amount of damages, further directions being reserved. This judgment was affirmed by the Court of Appeal. The Master then made his report which, on appeal to the Chief Justice of the Common Pleas, was varied by reduction of the amount awarded. The Chancellor then pronounced a formal judgment on further directions in favour of the plaintiff for the damages as reduced. The defendants appealed from the judgments of the Chief Justice and the Chancellor and the two appeals were, by order, heard together, but not formally consolidated. Both judgments were affirmed by the Court of Appeal and the defendants sought to appeal from the judgment affirming them and also from the original judgment sustaining the decision at the trial, having applied without success to the court below for an extension of time to appeal from the latter judgment. See *Nelles v. Hesselstine* (27 Ont. L.R. 97). *Held*, Brodeur, J., dissenting, that the only judgment from which an appeal would lie was that affirming the judgment of the Chancellor on further directions; that the Chancellor could not review the original judgment of the Court of Appeal nor that varying the Master's report and the Court of Appeal was equally unable to review them on the appeal from the Chancellor's decision and the Supreme Court being required by statute to give the judgment that the Court of Appeal should have given was likewise debarred from reviewing these earlier decisions. *Hesselstine v. Nelles*, xlvii., 230.

134. *Final judgment — Jurisdiction—Interim injunction — Interlocutory order.*—On motion to quash an appeal from the judgment (Q. R. 20 K. B. 411), dismissing an appeal from the judgment of the Superior Court, District of Montreal, granting an application by the plaintiff, respondent, for an interim injunction, counsel for the appellant admitted that the judgment appealed from was not a final judgment. The appeal was, therefore, quashed with costs, for want of jurisdiction. *Rh eaume v. Stuart*, xlvii., 394.

135. *Jurisdiction — Provincial election—“Alberta Controversed Elections Act” — Preliminary objections—“Judicial proceeding” — “Final judgment.”*—*Held*, per Davies, Idington, and Anglin, J.J., that under the provisions of the "Alberta Controversed Elections Act" the judgment of the Supreme Court of the province in proceedings to set aside an election to the legislature is final and no appeal lies therefrom to the Supreme Court of Canada. *Held*, per Davies, Anglin and Brodeur, J.J., that the judgment of the Supreme Court of Alberta on appeal from the decision of a judge on preliminary

objections filed under the "Controversed Elections Act" is not a "final judgment" from which an appeal lies to the Supreme Court of Canada. *Held*, per Duff, J., that a proceeding under said Act to question the validity of an election is not a "judicial proceeding" within the contemplation of section 2 (e) of the "Supreme Court Act" in respect of which an appeal lies to the Supreme Court of Canada. *Cross v. Carstairs, Edmonton Prov. Election*, xlvii., 559.

136. *Company law—Agreement by directors—Onerous contract—Non-disclosure to shareholders—Breach of contract—Damages—Settlement of accounts — Jurisdiction—Reference to master — Final judgment.*—After some subscriptions for stock had been received and the company was about to offer other stock for public subscription, a meeting of the directors was held at which the plaintiff, then one of the directors and the company's manager, resigned his office as a director and was appointed sales agent for the company's output of coal for five years from that date, at a liberal scale of remuneration, with the exclusive right to make such sales in Alberta, Saskatchewan and Manitoba. At the same time an arrangement was made by which the other directors derived advantages in regard to certain matters in dispute, respecting the affairs of the company, between them and the plaintiff. The material facts and circumstances connected with these arrangements were not disclosed to the shareholders who then held stock in the company nor to other persons who subsequently subscribed for shares of its stock. *Held*, affirming the judgment appealed from (7 D.L.R. 96; 2 West. W.R. 986; 22 W.L.R. 128), that, as the plaintiff and his co-directors were in a fiduciary position and complete disclosure of the circumstances in regard to the making of the contract had not been made to all the shareholders, present and future, the agreement was not binding upon the company. The order in the judgment appealed from directing that, on taking the accounts between the parties, an allowance should be made to the plaintiff, on the basis of *quantum meruit*, for services rendered by him while in the employ of the company was not disturbed. Per Fitzpatrick, C.J., and Idington, Anglin and Brodeur, J.J.—Where the judgment sought to be reviewed has finally disposed of one of the issues, forming a distinct and separate ground of action, the Supreme Court of Canada has jurisdiction to hear and determine the appeal. *La Ville de St. Jean v. Mollweur* (40 Can. S. C. R. 139), and *McDonald v. Belcher* ([1904] A. C. 429), followed; *Hesselstine v. Nelles* (47 Can. S. C. R. 230), referred to. *Denman v. Clover Bar Coal Co.*, xlvi., 318.

137. *Jurisdiction — Reserve of further directions — “Final judgment” — Construction of statute—“Supreme Court Act,” R. S. C. 1906, c. 139, s. 2 (c); 3 & 4 Geo. V. c. 41, s. 1.*—Before the amendment, in 1913, to sec. 2 (e) of the "Supreme Court Act," R. S. C. 1906, ch. 139, judgments were rendered maintaining an action on a bond by which two of the defendants were ordered to pay to the plaintiffs an amount not exceeding that secured by the bond to be ascer-



tained upon a reference to the master and further directions were reserved; as to another defendant, recovery of the same amount, to be ascertained in the same manner, was ordered, but there was no reserve of further directions. Upon an appeal by the last mentioned defendant, *Held*, Davies, J., dissenting, that the judgment sought to be appealed from (23 Man. R. 159) did not finally conclude the action as proceedings still remained to be taken on the reference, consequently, it was not a final judgment within the meaning of section 2 (e) of the "Supreme Court Act," prior to the amendment by the statute 3 & 4 Geo. V., ch. 51 (assented to on the 6th of June, 1913), and it was not competent to the Supreme Court of Canada to entertain the appeal. *The Rural Municipality of Morris v. The London and Canadian Loan and Agency Co.*; *Stephenson v. Gold Medal Furniture Co.*, xviii., 497.

138. *Contract — Foreign lands—Sale of lands — Exchange—Specific performance—Jurisdiction of courts of equity—Mutuality of remedy—Relief in personam—Discretionary order—Jurisdiction—"Final judgment" —"Supreme Court Act," R. S. C. 1906 c. 139, s. 38 (c).]*—T., resident in the State of Iowa, U.S.A., brought suit in Saskatchewan for specific performance of a contract by which J., resident in Saskatchewan, agreed to sell him lands in Saskatchewan, part of the price being the conveyance to J. of lands in Iowa by T. The trial judge decreed specific performance of the contract by J., and, on appeal, the full court varied the judgment by ordering that there should be a reference for inquiry and report upon T.'s title to the lands in Iowa, and that, upon the filing of such report, either party should be at liberty to apply for such judgment as he might be entitled to (8 Sask. L.R. 387). On the appeal to the Supreme Court of Canada the material questions were whether or not the fact that the lands to be exchanged were situated outside the province precluded the courts of Saskatchewan from decreeing specific performance for want of mutuality of relief, and whether or not there was error in making the order of reference, which, in effect, gave the plaintiff a second opportunity of proving his title. *Held*, Idington, J., dissenting, that the courts of Saskatchewan, as courts of equity acting *in personam*, have jurisdiction to decree specific performance of contracts for the sale of lands situate within the province where the person against whom relief is sought resides within their jurisdiction; that, in the suit instituted by the foreign plaintiff in Saskatchewan, mutuality of relief existed between the parties, and that the discretion of the court appealed from in ordering the reference before the entry of the formal decree ought not to be interfered with on the appeal. The jurisdiction of the Supreme Court of Canada to entertain the appeal was questioned by the Chief Justice and Idington, J. on the ground that the judgment appealed from was not a "final judgment." Davies, J., was of opinion that, as the suit was "in the nature of a suit or proceeding in equity," an appeal lay to the Supreme Court of Canada in virtue of sub-sec. (c) of sec. 38 of the "Su-

preme Court Act," R. S. C., 1906, ch. 139. Anglin, J. thought that, as a matter of discretion, the court might decline to hear such an appeal. Judgment appealed from (8 Sask. L.R. 387) affirmed, Idington, J., dissenting. *Jones v. Tucker*, liii., 451.

139. Where the Court of Appeal reversed the judgment at the trial and referred the action back to the trial judge to assess damages on the evidence given at the trial in the Supreme Court, counsel for the appellant admitted he was unable to distinguish the case in principle from *Wenger v. Lamont*, 41 S. C. R. 603, and *Crown Life v. Skinner*, 44 S. C. R. 617, and the appeal was quashed accordingly. *Billings v. Cassidy*, Cam. Prac. xi.

149. In a judgment in an interpleader issue the respondent's motion to quash because the judgment was not final was dismissed with costs. See *Supreme Court Act*, sec. 38. *Roberts v. Piper*, Cam. Prac. xi.

141. Lands were sold under a mortgage and a balance remained in court, to which the present appellant claimed to be entitled as second mortgagee, and presented an application to a judge in Chambers for payment out to him of the said surplus. His application was disputed by the present respondent. The appellant's application was granted, but this order was reversed by the full court. A further appeal taken to the Supreme Court was dismissed. The jurisdiction was not questioned. *Miller v. Bent*, Oct. 21st, 1908 (not reported), Cam. Prac. 37.

142. The statement of claim alleged that the defendant had assigned to plaintiff one-third share or interest in certain moneys due from the Dominion Government to the defendant in respect of a quarry; that the defendant received \$13,590, and plaintiff claimed \$4,530. Various defences were set up and a counterclaim asking to have the assignment delivered up to be cancelled, and damages, or that the assignment be rectified and action dismissed as premature. The trial judge gave judgment for plaintiff for \$4,530.97, interest from a certain date at 5 per cent., amounting in all to \$4,776.19, and costs; counterclaim dismissed. In the full court it was ordered that the appeal be allowed with costs to be debited against plaintiff on taking of accounts, and declared that the agreement in question did apply to the \$13,590, and that plaintiff was entitled to one-third interest in same, but subject to a contribution by the plaintiff of one-third of the money properly expended by defendants in prosecuting the claims to the land and money covered by the said documents. It was further ordered that it be referred to the District Registrar to take an account and make inquiry of what moneys had been properly expended by the defendant in prosecuting the claims. Further directions and costs were reserved. An appeal having been taken to the Supreme Court, the respondent moved to quash for want of jurisdiction, relying on *Union Bank v. Dickie*, 41 S. C. R. 13, but the motion was refused. *Sinclair v. Coulthard*, Feby. 15th, 1910 (not reported), Cam. Prac. 20.



143. An action was brought against the appellants claiming for loss and damage under a building contract, the sum of \$7,137 and costs. The trial judge held that the plaintiffs were entitled to be paid for the work done, and that there should be a reference to the Master to take accounts on the footing of a *quantum meruit*. Before the accounts were taken the defendants appealed from this judgment, but the appeal was dismissed. On a further appeal taken to the Supreme Court of Canada the respondents moved to quash for want of jurisdiction.—After argument the majority of the Court held that there was jurisdiction to hear the appeal, and the following reasons for judgment were orally delivered:—"Girouard, J., was of opinion that the amount in controversy exceeded \$1,000.—Davies, J., was of opinion that applying the decision of the Privy Council in *Belcher v. Macdonald* (1903), Appeal Cases, to the present case, an appeal would lie from the judgment *a quo*.—Idington, J., dissenting was of opinion that according to the settled jurisprudence of the Court no appeal would lie in this case, and that the use of the words in 60-61 V. c. 24, s. 1, ss. (c), 'Matter in controversy in the appeal,' made it clear that until the amount in controversy was determined by the courts below no appeal would lie.—MacLennan, J., was of opinion that the Court had jurisdiction." *City of Toronto v. The Metallic Roofing Co.*, Supreme Court, April 4th, 1906, Cam. Prac. 12.

144. The plaintiffs, appellants, were the owners of a parcel of land, and the defendants, respondents, were the owners of an adjoining lot. The action was one of bornage to settle the boundaries between the lots. The plaintiffs asked by the conclusion of their action that the boundary be established in accordance with an original survey and subdivision made by one Pondrier. The defendants did not plead to the action. A judge of the Superior Court, according to the practice in the Province of Quebec, upon motion appointed two surveyors to make an examination and report upon the matters in issue. The surveyors differed in their reports, one being in favour of the plaintiff and the other of the defendant. When the case came on to be heard on the merits, the court, in April, 1904, ordered the bornage to be made according to the subdivision originally laid down by Pondrier. The surveyor went on and carried out the instructions of the court, and his report was homologated by the same judge of the Superior Court in June, 1904. An appeal was taken both from the judgment of April and the judgment of June, and the Court of King's Bench reversed the Superior Court and ordered the case to be remitted to the Superior Court and that the experts proceed to establish the line according to the *pretensions* of the defendants. The plaintiffs thereupon appealed to the Supreme Court, and the defendants moved to quash on the ground that the judgment appealed from was interlocutory and not final. After argument the motion to quash was refused. *Johnson's Company v. Wilson*, Supreme Court, June 5th, 1906, Cam. Prac. 13.

145. *Jurisdiction—Action en bornage—Order for expertise—Final judgment.* *Johnson's Co. v. Wilson*, Court. Cas. 356.

146. *Discretionary order — Stay of foreclosure proceedings — Controversy involved — "Winding-up Act,"* xxxvii., 173.

#### 11. FINDINGS IN COURT BELOW.

147. *Operation of tramway—Negligence—Evidence—Findings of jury.*—Where there was some evidence to support the verdict, the Supreme Court of Canada refused to reverse the findings. *Toronto Ry. Co. v. Mitchell*, Court. Cas. 349.

148. *Findings of fact—Reversing on appeal—Practice.*—Unless the appellant adduces clear proof that there was error in concurrent findings on questions of fact in the courts below, the Supreme Court of Canada ought not to interfere. [*Cf. Whitney v. Joyce* (95 L. T. 74)]. *De Galindez v. Owens*, Court. Cas. 393.

149. *Admiralty law — Navigation—Negligence—Overtaking vessel—Findings of fact—Cause of collision.*—The Supreme Court of Canada affirmed the decision of the trial judge who, guided by the probabilities resulting from his appreciation of conflicting evidence, found that the appellant ship was entirely to blame for the collision complained of by attempting to pass the vessel injured in close proximity and at undue speed, thereby causing the smaller vessel to sheer to port and collide with her in a narrow channel. *The "C. T. Bielma" v. Cadwell*, Court. Cas. 405.

150. *Reviewing questions of fact on appeal—Findings of trial judge.*—The findings of the trial judge who heard the witnesses and had an opportunity of appreciating their demeanour ought not to be disturbed on appeal.—The judgment appealed from was reversed and the judgment at the trial restored. *Robb v. Stafford*, Court. Cas. 411.

151. *Partnership — Evidence — Concurrent findings.*—The Supreme Court refused to interfere with concurrent findings as to facts by the courts below. *Leighton v. Hale*, Court. Cas. 417.

152. *Contract—Deceit and fraud — Rescission—Evidence—Concurrent findings of lower courts—Duty of second court of appeal.*—A sale of timber limits to the plaintiff was effected through a broker for a price stated in the deed to be \$112,500, but the vendor signed an acknowledgment that the true price so far as he was concerned, was \$75,000. At the time of the execution of the deed a statement was made showing how the purchase money was to be paid and the vendor signed an agreement that out of the balance of the \$112,500, viz. \$46,502.02, the plaintiff was to get \$37,500, i.e., the amount of the difference between the true price and that mentioned in the deed. The vendor refused to pay over this \$37,500 on the ground that the plaintiff and the broker had con-

spired together to deceive him as to the actual price to be obtained for the limits, and that the sale was not in fact to the plaintiff for \$75,000, but to the plaintiff's principals, the grantees in the deed, for the full consideration of \$112,500, and that the plaintiff and the broker were acting fraudulently and seeking by deceit and artifice to deprive him of the full price at which the sale had been effected. In an action to recover the \$37,500 from the vendor:—*Held*, affirming the judgments appealed from, that the acknowledgments signed by the vendor settled the rights of the parties unless there was very strong evidence to the contrary and, as there was no such evidence and as the circumstances as found by the courts below tended to shew that plaintiff was entitled to the money in dispute as the natural result of the transaction between the parties, the case was one in which a second court of appeal would not be justified in disturbing the concurrent findings at the trial and of the court appealed from. *Price v. Ordway; Veilleux v. Ordway*, xxxiv., 145.

153. *Practice on appeal—Concurrent findings of fact.*—Upon issues raised as to matters of fact, the court refused to disturb the concurrent findings of the courts below. Judgment appealed from (Q. R. 13 K. B. 19) reversed and judgment at the trial (Q. R. 21 S. C. 241) restored. *Citizens Light and Power Co. v. Town of St. Louis*, xxxiv., 495.

AND *see* EVIDENCE.

154. *Will — Execution — Evidence—Appeal—Findings in courts below.*—In proceedings for probate of a will, the solicitor who drew it testified that it was signed by the testatrix when the subscribing witnesses were absent; that on their arrival he asked the testatrix if the signature to it was hers and if she wished the two persons present to witness it, and she answered, "yes;" each of the witnesses acknowledged his signature to the will but swore that he had not heard such questions asked and answered. The Judge of Probate held that the will was not properly executed and his decision was affirmed by the Supreme Court of Nova Scotia:—*Held*, affirming the judgment appealed from (36 N. S. Rep. 482) that two courts having pronounced against the validity of the will such decision would not be reversed by a second court of appeal. (Leave to appeal to Privy Council refused 18th July, 1905). *McNeil v. Cullen*, xxxv., 510.

155. *Error in courts below—Reversal on appeal—New trial.*—*Held*, per Taschereau, C.J., dissenting, that although not convinced that there was error in the judgment of the trial judge, which the court *en banc* reversed, while at the same time it did not appear that there was error in the judgment *en banc*, yet the latter judgment should stand, as the court *en banc* should not be reversed unless the Supreme Court, on the appeal, be clearly satisfied that it was wrong. (Leave to appeal to Privy Council refused, 4th August, 1905). *Kirkpatrick v. McNamee*, xxxvi., 152.

156. *Concurrent findings in courts below—Reversing on appeal.*—It is the duty of

the Supreme Court, if satisfied that the judgment in appeal, is erroneous, to reverse it even when it represents the concurring view of three, or any number of, successive courts before which the case has been heard. *Hood v. Eden*, xxxvi., 476.

157. *Findings of fact — Practice.*—The judgment appealed from was reversed, on the ground of captation and undue influence, but the Supreme Court of Canada refused to interfere with the concurrent findings of both courts below against the contention as to the testator's unsoundness of mind. *Mayrand v. Dussault*, xxxviii., 460.

AND *see* WILL.

158. *Findings of fact—Reversal by Appellate Court.*—*Per* Anglin, J.—Where error in the findings of the trial judge can be demonstrated wholly by argument it is the duty of an appellate court to review questions of fact even where those findings have been against fraud, and upon oral testimony. *Coghlan v. Cumberland* ([1898] 1 Ch. 704): *The "Gairloch"* ([1899] 2 Ir. R. 1); and *Khoo Sit Hoh v. Lim Thean Tong* ([1912] A. C. 323), followed. *Annable v. Coventry*, xlvi., 573.

AND *see* TITLE TO LAND.

159. *Practice—Findings by trial judge.*—On appeal from the judgment of the Supreme Court of Alberta (3 Alta. L. R. 26), affirming the judgment of Harvey, J., at the trial, maintaining the plaintiff's action with costs, Beck, J., dissenting, it was ordered that a new trial should be had, all costs up to date to abide the result. *Keiser v. Kalmel*, xviii., 402.

160. *Findings of jury—Review by appellate court.*—Where a case has been properly allowed to go to the jury and there is evidence before them from which they could reasonably draw the conclusion at which they arrived, the verdict should not be disturbed on an appeal. Judgment appealed from (18 B. C. Rep. 184) affirmed. *Cottingham v. Longman*, xviii., 542.

161. *Issue on appeal — Practice—Negligence—Fire set by railway locomotive—Assessment of damages — Findings of trial judge.*—As to the quantum of damages, the trial judge, following *Schmidt v. Miller* (46 Can. S. C. R. 45), held that the respondent was entitled to recover the full value of the standing timber destroyed. All evidence bearing upon the question of respondent's interest was omitted in printing the case on appeal and the point was not taken in the Court of Appeal or in the appellant's factum on the present appeal. The decision of the Supreme Court of Canada in *Schmidt v. Miller* was, subsequently, reversed on appeal to the Privy Council, and the point was raised upon the hearing of the present appeal that the respondent's damages should be reduced in consequence of his limited interest in the timber destroyed. — *Held*, that, in these circumstances, the contention in respect to the pre-emptor's limited interest in the property destroyed (the evidence bearing upon it having been omitted from the appeal case)

was not open for consideration in the Supreme Court of Canada.—The court refused to disturb the findings of the trial judge, based upon sufficient evidence, or the assessment of damages made by him as limited by section 298 of the "Railway Act," R. S. C. 1906, ch. 37. The judgment appealed from (12 D. L. R. 425) was affirmed. *Canadian Pacific R. R. Co. v. Kerr*, xlix., 33.

AND see PRACTICE AND PROCEDURE.

162. Evidence — Presumptions—Reversal on findings of fact, xxxvi., 13.

See NEGLIGENCE.

163. Title to land—Ambiguous description of grantee—"Greek Catholic Church"—Evidence—Construction of deed—Reversal of concurrent findings, xxxvii., 177.

See TITLE TO LAND.

164. Negligence — Dangerous operations—Defective system—Findings of fact—Common fault, xxxix., 332.

See NEGLIGENCE.

165. Findings of jury—Questions of fact—Duty of appellate court, xxxix., 336.

See PRACTICE.

166. Operation of railway—Unnecessary combustibles left on right of way—"Railway Act, 1903," ss. 118 (j) and 239—R. S. C. (1906) c. 36, ss. 151 (j) and 297—Damages by fire — Point of origin—Charge by judge—Finding by jury—New trial—Practice—New evidence on appeal — Supreme Court Act, ss. 51 and 73, xxxix., 390.

See RAILWAYS.

167. Life insurance — Warranty — Misstatements—Concealment of material facts—Pleading — Questions at issue—Findings of fact—Amendment—Practice—Successful party moving against findings, Cam. Cas., 463.

See INSURANCE, LIFE.

168. Concurrent findings — Practice — Assessment of damages, Cout. Cas. 409.

See PRACTICE.

169. Findings of fact—Division of partnership profits—Collateral business affairs—Trust. *Horne v. Gordon*, 42 S. C. R. 240. Reversed in the Privy Council, C. R. (1911), 2 A. C. 364.

See PARTNERSHIP.

170. Concurrent findings of fact—Review on appeal.—Concurrent findings of fact in the courts below ought not to be disturbed on appeal unless a mistake is clearly shown. *Dominion Fish Co. v. Isbester*, xliii., 637.

AND see NEGLIGENCE.

171. Findings of fact—Inference by jury—Determining cause of accident—Evidence to support verdict—Practice, xlix., 80.

See PRACTICE AND PROCEDURE.

172. Practice and procedure — Trial by jury—Personal wrongs—Taking new objection — Art. 1056 C. C. — Arts. 421 et seq.

C. P. Q.—"Lord Campbell's Act"—Charge to jury—Opinion on questions of fact, lii., 644.

See PRACTICE.

## 12. HABEAS CORPUS.

173. "Supreme Court Act," s. 39 (c)—Criminal charge — Prosecution under Provincial Act—Application for writ—Judge's order.—By sec. 39 (c), of the "Supreme Court Act" an appeal is given from the judgment in any case of proceedings for or upon a writ of *habeas corpus* not arising out of a criminal charge:—*Held, per Fitzpatrick, C.J., and Davies and Anglin, J.J.*, that a trial and conviction for keeping liquor for sale contrary to the provisions of the "Nova Scotia Temperance Act" are proceedings on a criminal charge and no appeal lies to the Supreme Court of Canada from the refusal of a writ of *habeas corpus* to discharge the accused from imprisonment on such conviction. *Duff, J., contra. Brodeur, J., hesitante.*—By the "Liberty of the Subject Act" of Nova Scotia on an application to the court or a judge for a writ of *habeas corpus* an order may be made calling on the keeper of the gaol or prison to return to the court or judge whether or not the person named is detained therein with the day and cause of his detention. On the return of an order so made, an application for the discharge of the prisoner was refused, and an appeal from this refusal was dismissed by the full court.—*Held, per Idington and Brodeur, J.J.*, that such order is not a proceeding for or upon a writ of *habeas corpus* from which an appeal lies under said sec. 39 (c).—*Per Duff, J.*—That the judgment of the full court was given in a case of proceedings for a writ of *habeas corpus* within the meaning of sec. 39 (c), and that the proceedings did not arise out of a "criminal charge" within the meaning of that provision; but that, on the merits, the appeal ought to be dismissed. *In re McNutt*, xvii., 259.

174. *Habeas corpus*—Criminal appeals—Grand jurors—Selection of talesmen—Jurisdiction. *Re Menard*, Cout. Cas. 313.

## 13. INJUNCTION.

175. Jurisdiction—Injunction—Matter in controversy — Refusal of costs — Supreme Court Rule 4—"Supreme Court Act," s. 46.—In an action for an injunction restraining the defendant from carrying on dangerous operations in a quarry, and for \$100 damages.—*Held*, that the Supreme Court of Canada had no jurisdiction to entertain an appeal. *Price Bros. v. Tanguay* (42 Can. S. C. R. 133), and *City of Hamilton v. Hamilton Distillery Co.* (38 Can. S. C. R. 239), referred to. *Shawinigan Hydro-Electric Co. v. Shawinigan Water and Power Co.* (43 Can. S. C. R. 650), distinguished.—The appeal was quashed but without costs as the respondent had neglected to move for an order to quash the appeal within the time limited by Supreme Court Rule No. 4. *Lachance v. Cauchon*, lii., 223.

See 14. JURISDICTION, *infra* 176 et seq.

## 14. JURISDICTION.

176. *Appeal from Board of Railway Commissioners—Want of jurisdiction—Railway Act, 1903.*—The judge entertained some doubt as to the jurisdiction of the Board of Railway Commissioners for Canada, and, consequently, granted leave for an appeal.—*Cf. The Montreal Street Railway Co. v. The Montreal Terminal Railway Co.* (35 Can. S.C.R. 478.) (NOTE.—For report on merits see 37 Can. S. C. R. 541.) *Canadian Northern Rwy Co. v. T. D. Robinson & Son*, *Cout. Cas.* 394.

177. *Special leave—"Railway Act, 1903"*—*Order of Board of Railway Commissioners—Use of public streets—Removal of tracks—Constitutional law—Property and civil rights—Jurisdiction of board—Imposing terms.*—Where the judge entertained doubt as to the jurisdiction of the Board of Railway Commissioners of Canada to make the order complained of and the questions raised were of public importance, special leave for an appeal was granted, on terms, under the provisions of s. 44 (3) of "The Railway Act, 1903." *Montreal Street Railway Co. v. Montreal Terminal Railway Co.*, xxxv, 478.

178. *Board of Railway Commissioners—Jurisdiction—Appeal to Supreme Court.*—The Board of Railway Commissioners granted an application of the James Bay Railway Co. for leave to carry their line under the track of the G. T. Ry. Co., but, at the request of the latter, imposed the condition that the masonry work of such undercrossing should be sufficient to allow of the construction of an additional track on the line of the G. T. Ry. Co. No evidence was given that the latter company intended to lay an additional track in the near future or at any time. The James Bay Ry. Co., by leave of a judge, appealed to the Supreme Court of Canada from the part of the order imposing such terms, contending that the same was beyond the jurisdiction of the Board.—*Held*, that the Board had jurisdiction to impose said terms.—*Held*, *per* Sedgewick, Davies and Maclellan, J.J., that the question before the court was rather one of law than of jurisdiction and should have come up on appeal by leave of the Board or been carried before the Governor-General in Council. *James Bay Ry. Co. v. Grand Trunk Ry. Co.*, xxxvii, 372.

179. *Jurisdiction—Dismissing appeal.* *Green v. George*, xlii, 219.

180. *Jurisdiction—Matter in controversy—Stare decisis—Municipal by-law—Injunction—Contract—Collateral effect of judgment—Construction of statute—"Supreme Court Act," R. S. C. 1906, c. 139, ss. 36, 39 (e), 46.*—The action was brought by the respondents and other ratepayers of the town of Stawinigan, against the town and the hydro-electric company, to set aside a by-law of the town corporation authorizing the purchase of certain lands with an electric power-house and plant from the hydro-electric company for \$40,750, and for an injunction prohibiting the carrying into effect of the contract of sale. The final judgment in the Superior Court dissolved the injunction

and dismissed the action, but on appeal by the plaintiffs the Court of King's Bench maintained the action and made the injunction permanent. On a motion to quash an appeal by the hydro-electric company to the Supreme Court of Canada:—*Held*, *per* Fitzpatrick, C.J., and Girouard, J., that the Supreme Court was competent to entertain the appeal under the provisions of sec. 39 (e) of the "Supreme Court Act." *The Bell Telephone Co. v. City of Quebec* (20 Can. S. C. R. 230), *disapproved*.—*Per* Duff and Anglin, J.J.—*Semble*.—That the decision in *The Bell Telephone Co. v. City of Quebec* (20 Can. S. C. R. 230), is binding authority on the Supreme Court of Canada, but this case may be decided irrespective of it.—*Per* Idington, Duff and Anglin, J.J. (Davies, J., *contra*).—That, as the appeal was from the final judgment of the highest court of final resort in the Province of Quebec in an action instituted in a court of superior jurisdiction for the purpose of preventing the consummation of a contract for a consideration exceeding \$2,000, the Supreme Court of Canada was competent to entertain the appeal under secs. 36 and 46 of the "Supreme Court Act."—*Per* Davies J. (dissenting).—That the controversy related merely to the validity of the by-law and did not involve the sum or value of \$2,000, that the collateral or incidental effects of the judgment were not in question on the appeal, and that, therefore the Supreme Court of Canada was not competent to entertain the appeal. *The Bell Telephone Co. v. City of Quebec* (20 Can. S. C. R. 230), followed. *Shawinigan Hydro-Electric Co. v. Shawinigan Water and Power Co.*, xliii, 650.

181. *Exchequer Court—Patent—Conflicting claims—Amount in controversy.*—An appeal lies to the Supreme Court of Canada from the judgment of the Exchequer Court overruling an objection to its jurisdiction.—*Per* Anglin, J.—In exercising the jurisdiction conferred by sec. 23 (a) of the "Exchequer Court Act," the court does not act as the substitute for the arbitrators who are given the same jurisdiction by sec. 20 of the "Patent Act," but acts in discharge of its ordinary curial functions and its judgment is appealable to the Supreme Court of Canada.—The appeal to the Supreme Court of Canada provided for by sec. 82 of the "Exchequer Court Act" is not confined to cases where the action is brought to recover a sum of money but extends to those seeking to establish a claim to property or rights. *Burnett v. Hutchins Car Roofing Co.*, liv, 610.

182. *Acquiescement.*—In this case there was *acquiescement* by the appellant in the judgment sought to be appealed from:—*Held*, that there being nothing but a question of costs involved in the appeal, the Court would decline to entertain jurisdiction though not incompetent to do so, and that a motion to quash the appeal was the proper procedure in such a case. *Schlomann v. Douker*, 30 Can. S. C. R. 323.

183. An appeal was quashed on the ground that since the judgment against the appellant in the Superior Court, his interest in the lands in question under a deed of sale à réméré had ceased by

payment and by a deed of retrocession, executed by him to the party entitled to redeem. It was further held that, following *Schlomann v. Dowker*, 30 Can. S. C. R. 323, a motion to quash was a convenient way of disposing of the appeal before further costs had been incurred. *Angers v. Duggan*, February 19th, 1907. (Not reported.) Cam. Prac. 89.

184. *Provincial legislation—Right of appeal*, xxxix.; 174.

See *supra*, 77.

185. *Contract—Purchase of railway bonds—Consideration—Extension of line—Breach of contract—Damages—Personal liability of president of company—Appeal—Jurisdiction*, li., 283.

See CONTRACT.

### 15. LEAVE TO APPEAL.

186. *Special leave to appeal—Matter in controversy.*—The judgment recovered was for \$600. An appeal stood dismissed on an equal division of opinion of the judges, and on the same division of opinion leave for an appeal to the Supreme Court of Canada was refused. The latter court refused special leave to appeal on the ground that no special circumstances had been shewn for granting such leave. *Toronto Street Rwy. Co. v. Robinson*, Cout. Cas. 260.

187. *Special leave—Questions of law—Public interest—60 & 61 Vict. c. 34, s. 1 (D.)*—Special leave to appeal from a judgment of the Court of Appeal for Ontario [60 & 61 Vict. c. 34, s. 1 (D.)], may be granted in cases involving matters of public interest, important questions of law, construction of Imperial or Dominion statutes, a conflict between Dominion and provincial authority, or questions of law applicable to the whole Dominion.—If a case is of great public interest and raises important questions of law leave will not be granted if the judgment complained of is plainly right. *Lake Erie and Detroit River Rwy. Co. v. Marsh*, xxxv., 197.

188. *Special leave—Public interest—Important questions of law—Exemption from taxation—School rates—R. S. C. [1906] c. 139, s. 48—Mandamus.*—By a municipal by-law an industrial company was given exemption from taxation for a term of years. P., a ratepayer of the municipality, applied for a writ of mandamus to compel the council to assess the company for school rates, which, he claimed, were not included in the exemption. The decision to grant the writ was affirmed by the Court of Appeal (20 Ont. L. R. 246). On motion for special leave to appeal from the latter judgment.—*Held*, that the case was not one of public interest, and did not raise important questions of law. It did not therefore, fall within the principles laid down in *Lake Erie & Detroit River Railway Co. v. Marsh* (35 Can. S. C. R. 197), for granting such leave. *Whyte Packing Co. v. Pringle*, xlii., 691.

189. *Leave by judge—Jurisdiction of Railway Board—Doubt as to decision of Board.*—A judge of the Supreme Court of

Canada will not grant leave to appeal from the decision of the Board of Railway Commissioners on a question of jurisdiction if he has no doubt that such decision was correct. *Hulifax Board of Trade v. Grand Trunk Ry. Co.*, xlv., 298.

190. *Setting down for hearing—Form of submission—Defining questions of law.*—The Supreme Court of Canada will not entertain an appeal under sec. 56 (3) of "The Railway Act," R. S. C. (1906), ch. 37, unless some specific question is stated or otherwise defined, in the order granting leave to appeal made by the Board of Railway Commissioners for Canada which, in its opinion, is a question of law. *Canadian Pacific Ry. Co. v. Regina Board of Trade*, xlv., 328.

191. *Winding-up Act—Leave to appeal.*—Leave to appeal to the Supreme Court of Canada from a judgment in proceedings under the "Winding-up Act" will not be granted, though the amount in controversy exceeds \$2,000, if no important principle of law nor the construction of a public Act, nor any public interest is involved, especially if the judgment sought to be appealed against appears to be sound. *Re Ontario Sugar Co.*, xlv., 659.

192. An action was brought to enforce an agreement confirmed by by-law by which the defendants agreed to sell working men's tickets, 8 for 25 cents, to be used between certain limited hours. The plaintiff, in addition to specific performance of the agreement, also claimed a mandatory injunction to compel the defendants to sell the tickets in question. The plaintiffs succeeded at the trial and this was affirmed by the Court of Appeal. When this case was on the list of the Supreme Court for hearing, and when judgment was given in the next preceding case, the appellants applied for and obtained leave to appeal from the Court of Appeal. When the case was called, the Registrar was instructed to enter a minute to the effect that an order of the Court of Appeal granting leave to appeal had been filed. *Hamilton Street Railway Co. v. City of Hamilton*, Nov. 27th, 1906 (not reported.) Cam. Prac. 284.

193. Motion for special leave to appeal from the Court of Appeal for Ontario.—By agreement, the appellants were to manufacture and sell cash and package carriers, and, after charging up the cost of construction, to divide the net profits with the respondent who were patentees of the articles. The profits were divided up to August, 1895, when appellants, claiming a breach of the conditions, treated the contract as ended, but continued to manufacture and sell.—In an action against them for an account, they pleaded termination of the contract; account stated and settled; statute of limitations, and breach by the respondents. On a reference to the Master to take the accounts, he held that appellants were licensees and that the account should only go back to 1901; that it should be taken to the time of the issue of the writ, and that the contract was terminated by notice after the judgment on which the reference was made.—The Master's report was affirmed by Mr. Justice Street, but the Court of Appeal held that the appellants

were grantees and not licensees, and that the statute of limitations could not be invoked; that the Master should take the account to the date of his report, and that it was beyond the scope of his functions to decide that the contract was at an end, and even if not, he was wrong, as the facts did now shew a termination.—The motion was refused by the court on the ground that the questions in controversy upon such an appeal would not justify the exercise of judicial discretion in granting an order for special leave. Motion refused with costs.—NOTE.—Subsequently an appeal was taken from the above judgment *de plano*, the appellants claiming that the pecuniary amount in controversy actually exceeded one thousand dollars. This appeal was heard by the Supreme Court of Canada, on 22nd and 23rd November, 1906, and on 11th December, 1906, the appeal was allowed in part without costs. See 38 Can. S. C. R. 217. *Hamilton Brass Manufacturing Co. v. Barr Cash and Package Co.*, *Cout. Cas.* 382; *Cam. Prac.* 285.

194. A motion for leave to appeal from the judgment of the Court of Appeal, reported 20 O. W. R. 50. A motion was made to a single judge to quash a municipal by-law for erecting and maintaining a continuation school based on a by-law of the county setting aside and establishing the township as a continuation school district. The motion was refused. Further appeals to the Divisional Court and Court of Appeal were also dismissed. The application was dismissed without calling on counsel *contra*. *Henderson v. West Nissouri*, Nov. 17th, 1911, *Cam. Prac.* 287.

195. The defendant was convicted by the police magistrate of Toronto for selling liquor without a license, and an order was made for the destruction of the liquor seized. On *certiorari* the High Court confirmed the conviction but varied the order so far as part of the liquor seized was concerned, on the ground that it was covered by the provisions of 61 V. c. 30, s. 3. His judgment was affirmed by the Court of Appeal (reported Weekly Notes). The private prosecutor applied to the Supreme Court for leave to appeal, which was refused. *Rea v. Ing Kon*, Nov. 17th, 1907, *Cam. Prac.* 288.

196. Motion for leave to appeal where, in another case arising out of the same accident, the defendants were appealing to this court *de plano*, and now ask leave as in this case the amount involved is \$500. The judgment appealed from granted a new trial. *Held*, the case did not fall within *Lake Erie v. Marsh*, *supra* 187, and the majority of the court was of opinion that the circumstances of this case do not afford grounds for extending the cases in which, by the above judgment, leave to appeal should be granted. *Lyman v. Canada Foundry Co.*, Dec. 2nd, 1908. *Cam. Prac.* 288.

197. The court refused a motion for leave as the case did not fall within grounds upon which leave will be granted laid down in *Lake Erie & Detroit River v. Marsh. Whyte v. Pringle*, Feb. 25th, 1911, *Cam. Prac.* 288.

198. An application made on motion to Mr. Justice Teetzel under Judicature Act, s. 58, s-s. 9, and Rule 1091, for a mandatory order compelling company to cause to be transferred to the appellant F. S. Good five shares of fully paid-up stock of the company. A by-law of the company provided that all transfers of stock must be approved by the Board of Directors. Following *Re Imperial Starch Co.*, 10 O. L. R. 22, the order was refused. This was affirmed by the Divisional Court. Leave to appeal to the Court of Appeal was granted by Moss, C.J.O., in terms that the company pay respondent's costs as between solicitor and client in any event of the appeal,—costs of application to be costs to respondent in any event. If not accepted, application dismissed with costs. Leave granted by the Supreme Court upon terms similar to those imposed by Chief Justice below. *Vide* also *Lovell v. Lovell*, 13 O. L. R. 587; *Milligan v. Toronto Rly. Co.*, 18 O. L. R. 109; *Irving v. Grimsby Park Co.*, 18 O. L. R. 114. *Re Shantz*, May 8th, 1911, *Cam. Prac.* 289. *Vide* leave to appeal to the Judicial Committee of the Privy Council. *Cam. Prac.* 322.

199. Application to the Supreme Court for leave must be made within 60 days from the signing, entry or pronouncement of the judgment under section 69.—*Vide Canadian Mutual v. Lee*, 34 Can. S. C. R. 224; *Goodison v. McNabb*. *Cam. Prac.* 289.

200. On an appeal being called, a motion to quash was made on behalf of the respondents on the ground that the case did not fall within any of the provisions of 60-61 V. c. 34 (now section 48), limiting appeals from the Court of Appeal for Ontario to the Supreme Court of Canada. The court reserved the question of jurisdiction and the argument was partially heard, but before its conclusion the Court announced that there was grave doubt as to its jurisdiction, and that as more than 60 days had elapsed since the judgment below, the Supreme Court had no power to grant leave to appeal, but that the application for leave would require to be made to the Court of Appeal. The argument was thereupon directed to stand over until an opportunity was given to the appellants to obtain such leave. Leave having subsequently been granted, the case was heard on the merits. *Cunnell v. Connell*, 9th June, 1905, *Cam. Prac.* 289.

201. A motion was made to the High Court of Justice, Toronto, to quash a by-law of the village of Brussels which provided for the issue of debentures for the purpose of constructing a sewer in the village. The application was refused by the Chancellor, but his judgment was reversed by the Court of Appeal and the by-law quashed. Upon an appeal taken to the Supreme Court of Canada, the court of its own motion raised the question of jurisdiction, and after argument held that no appeal lay to the Supreme Court except by leave of the Court of Appeal for Ontario, or the Supreme Court of Canada, and no leave having been obtained, the appeal should be quashed. The appellants to the Supreme Court thereupon applied to the Court of Appeal for leave to appeal, which

was granted, and the case subsequently was heard by the Supreme Court on the merits. *Brussels v. McCrae*, *supra* 192; *vide Hamilton v. Hamilton Distillery and Hamilton Street Railway v. Hamilton*. Cam. Prac. 289.

202. The plaintiff's declaration alleged that he was the owner of a number of cases of frozen canned eggs of the value of more than \$2,000, that they have been illegally seized by the defendant's officers, who were about to destroy them, asked for an injunction, and for a declaration that the plaintiff was the owner of the same. The defendant's plea ignores the allegation that the plaintiff was the owner and, alleging that the eggs were unfit for human food, they had been seized and directed to be destroyed under the "Health Act." The trial judge adjudged and declared that the plaintiff was the proprietor of the eggs in question and made the injunction perpetual. An appeal was taken to the Court of Appeal which, on Dec. 30th, 1911, affirmed the judgment below and again adjudged and declared the plaintiff proprietor of the eggs in question and that the injunction should be perpetual.—The City of Montreal instituted an appeal to the Privy Council, but, on the 25th February, launched a motion for an order desisting from that appeal and asking for leave to appeal to the Supreme Court. This was granted by Mr. Justice Archambault on the 7th March, who recites that, considering that the application to allow the appeal to the Supreme Court was presented on the 25th February, in 60 days from the pronouncing of the judgment, and that on the 4th March the City of Montreal had filed with the clerk the *désistement* of their appeal to His Majesty in Council, allowed the *désistement* and the appeal to the Supreme Court upon the ordinary conditions as to security. The bail bond was allowed by Mr. Justice Gervais.—A motion to quash the appeal for want of jurisdiction was made in the Supreme Court amongst others on the ground that the filing of a *désistement* did not have the effect without some order of the Judicial Committee of putting an end to the appeal to that body. The Supreme Court was equally divided on this point and motion was dismissed. Subsequently the Registrar of the Supreme Court communicated the facts to the Registrar of the Privy Council and was informed that as there were no proceedings in England in this appeal and nothing recorded on the files of the Judicial Committee, it was not a case in which any order could have been made by that tribunal. *City of Montreal v. Layton* (not reported.) Cam. Prac. 424.

203. *Special leave* — "*Supreme Court Act*," R. S. C. (1906), c. 139, s. 37 (c)—*Interests involved*.]—*Special leave* to appeal from the judgment of the Supreme Court of Alberta (2 Alta. L. R. 446) was granted, under the provisions of sec. 37 (c) of the "*Supreme Court Act*," R. S. C. 1906, ch. 139, because of the magnitude of the interests involved. *Calgary & Edmonton Land Co. v. Attorney-General of Alberta*, xiv., 170.  
AND *see* ASSESSMENT AND TAXES.

204. *Extension of time* — *Special leave*, xxxiv., 224.  
*See supra*, 18.

205. *Special leave* — *Matter in controversy*, xxxv., 184.

*See supra*, 24.

206. *Special leave* — *Expropriation* — *Award—Choice of forum—Curia designata*, xxxviii., 511.

*See supra*, 7.

207. *Criminal cases—Dissent in court below—Practice*, xxxviii., 620, 625.

*See supra*, 87.

208. *Appeal in formâ pauperis—Security for costs*, Cout. Cas. 6.

*See supra*, 66.

209. *Jurisdiction* — *Appeal per saltum—Special leave*, Cout. Cas. 281.

*See supra*, 74.

210. *Validity of patent* — *Special leave*, Cout. Cas. 330.

*See supra*, 15.

211. *Appeal de plano* — *Special leave—“Winding-up Act.”* Cout. Cas. 341.

*See supra*, 98.

212. *Special leave—Controversy—Discretionary order*, Cout. Cas. 382.

*See supra*, 16.

#### 16. MANDAMUS.

213. *Commissioner of Mines* — *Lease of mining areas* — *Quashing appeal* — *Final judgment—Estoppel*, xxxiv., 328.

*See supra*, 119.

214. *Mandamus* — *Driving timber—Order to fix tolls—Past user of stream—Appeal—River improvements* — R. S. O. (1897), c. 142, s. 13, xl., 523.

*See* MANDAMUS.

215. *Jurisdiction—Final judgment—Summons or order*, Cout. Cas. 202.

*See supra*, 118.

#### 17. NEW GROUNDS TAKEN ON APPEAL.

216. *Appeal per saltum* — *Practice—New grounds*.] — *Per Taschereau, C.J.*—Where leave to appeal *per saltum* has been granted on the ground that the court of last resort in the province had already decided the questions in issue the appellant should not be allowed to advance new grounds to support his appeal. *Miller v. Robertson*, xxxv., 80.

AND *see* PRACTICE.

217. *Practice—New points raised on appeal*.] — *Per Killam, J.*—It was improper for the court appealed from to allow the absence of proof to be set up for the first time on the appeal. *Sandon Water Works and Light Co. v. Byron N. White Co.*, xxxv., 309.

AND *see* PRACTICE.

218. *New grounds—Admiralty law—Collision.*—A court of appeal should not consider a ground not previously relied on unless satisfied it has all the evidence bearing upon it that could have been produced at the trial and that the party against whom it is urged could not have satisfactorily explained it under examination.—In this case damages were claimed from the owners of the "Euphemia" for collision with plaintiffs' ship and the latter in their preliminary act charged that the "Euphemia" was in fault for not reversing her engines. The Exchequer Court judgment held plaintiffs' ship alone in fault and on appeal the majority of the Supreme Court refused to consider the ground not previously urged that the "Euphemia" when she saw the other ship attempting to cross her bow held too long on her course instead of reversing. Fitzpatrick, C.J., and Davies, J., were of opinion that under the circumstances this point was open to the plaintiffs. *SS. "Tordenskjold" v. SS. "Euphemia,"* xli., 154.

219. *Pleading — Practice — New objections raised on appeal.*—*Per* Idington, and Anglin, JJ.—Objections based upon provisions of enabling statutes which have not been set up in the pleadings nor relied upon in the courts below cannot be entertained upon an appeal to the Supreme Court of Canada. *Hamelin v. Bannerman* (31 Can. S. C. R. 534) followed. *Gale v. Bureau*, xlv., 305.

AND *see* RIVERS AND STREAMS.

220. *Order for new trial — Taking new grounds on appeal*, xxxiv., 338.

*See supra*, 100.

221. *Bills and notes — Mortgage—Collateral security—Recovery on mortgage—New evidence—Lapse of time*, xlvii., 404.

*See* MORTGAGE.

222. *Practice — New points raised on appeal.* *Laidlaw v. Crow's Nest*, xlii., 355.

*See* PRACTICE.

223. *Negligence — Defective system—Injury to employee—Evidence—Verdict—Practice — Exception to judge's charge—New points on appeal—New trial.* *Creveling v. Can. Bridge Co.*, li., 216.

*See* PRACTICE AND PROCEDURE, 3.

## 18. NEW TRIALS.

224. *Jurisdiction—New trial—Alternative relief.*—Counsel for respondent suggested that the court had no jurisdiction. Counsel for appellant stated that he was unable to distinguish the case from that of *The Mutual Reserve Fund Life Insurance Association v. Dillon* (34 Can. S. C. R. 141), and the appeal was quashed without costs. *Corporation of Delta v. Wilson*, *Cout. Cas.* 334.

225. *Jurisdiction — Application for nonsuit—New trial ordered.*—On appeal to the Court of Appeal for Ontario for entry of nonsuit, plaintiff urged that if any relief was granted, it should only be a new trial. The

Court of Appeal granted a new trial under the judicature rules. The defendants appealed in order to obtain the nonsuit asked for, and respondent contended that the appeal was not from a judgment on a motion for a new trial under the statute, as no such motion was made, also, that it was made in respect to the exercise of a judicial discretion. Appellants claimed that the contention of plaintiffs in the Court of Appeal amounted to a motion for a new trial, and that since the amendment to the statute, in 1891, judicial discretion did not enter into the question. The appeal was quashed without costs. *Toronto Ry. Co. v. McKay*, *Cout. Cas.* 419.

226. *Application in court below — New trial—Alternative relief.*—Where the plaintiff obtains a verdict at the trial and the defendant moves the Court of Appeal to have it set aside and judgment entered for him or in the alternative for a new trial, he cannot appeal to the Supreme Court if a new trial be granted. *Mutual Reserve Fund Life Association v. Dillon*, xxxiv., 141.

227. *Charge to jury — Misdirection—Report by trial judge—Procedure — Review by appellate court.*—One ground of a motion for a new trial was misdirection in the charge to the jury. The trial judge reported to the full court that he had not made the remarks claimed to be misdirection, and stated what he actually did say.—*Held*, that this proceeding was not objectionable and moreover it was a matter to be dealt with by the court appealed from whose ruling was not open to review.—Judgment of the Supreme Court of Nova Scotia (36 N. S. Rep. 40) affirmed. *Dickie v. Campbell*, xxxiv., 265.

228. *New trial — Judgment in court below on motion — Equal division—Jurisdiction—Charge to jury—Misdirection—Bias.*—An appeal will lie to the Supreme Court of Canada from a judgment upon a motion for a new trial which failed on account of an equal division of the court below (37 N. B. Rep. 163) which after the formal recital, stated that "the court having taken time to consider, and being equally divided, the said rule drops and the verdict entered for the plaintiff stands." *Bustin v. Thorne*, xxxvii., 532.

AND *see* NEW TRIAL.

229. *Jurisdiction — New trial — Discretion—Ontario appeals—60 & 61 Vict. c. 34—R. S. O. c. 135, s. 27.*—*Per* Fitzpatrick, C.J., and Duff, J.—Section 27 of R. S. O. c. 135, prohibits an appeal from a judgment of the Court of Appeal for Ontario granting, in the exercise of judicial discretion, a new trial in the action.—*Per* Davies, J.—Under the rule in *Town of Aurora v. Village of Markham* (32 Can. S. C. R. 457), no appeal lies from a judgment of the Court of Appeal for Ontario on motion for a new trial unless it comes within the cases mentioned in 60 & 61 Vict. c. 34 or, special leave to appeal has been obtained.—Appeal from judgment of the Court of Appeal (11 Ont. L. R. 171) quashed. *Canada Carriage Co. v. Lea*, xxxvii., 672.



230. *Alternative relief—Judgment granting one—Final judgment.*] — Where the party failing at the trial moves the court of last resort for the province for judgment or, in the alternative, a new trial, he cannot appeal to the Supreme Court of Canada from the judgment granting the latter relief. *Mutual Reserve Fund Life Ins. Co. v. Dillon* (34 Can. S. C. R. 141) followed. *Ainslie Mining and Ry. Co. v. McDougall*, xl, 270.

231. *Jurisdiction — Action in county court—Concurrent jurisdiction with superior court—Construction of statute—R. S. C. 1906, c. 139, ss. 37b, 70, “Supreme Court Act” — R. S. B. C. 1911, c. 51, “Court of Appeal Act” — R. S. B. C. 1911, c. 53, “County Courts Act” — Motion for new trial — Re-hearing on appeal — Practice.*] — An action in a county court in British Columbia to recover \$578, damages for injuries sustained, alleged to have been caused through negligence, was dismissed by the county court judge after the evidence for the plaintiff had been put in; the defendants offered no evidence, but asked for dismissal on the evidence as it stood. The plaintiff appealed to have judgment entered in his favour or, alternatively, to have the case remitted to the county court to have damages assessed, or for such further order as might be deemed proper by the Court of Appeal. The appeal was dismissed and the judgment appealed from affirmed. The British Columbia “Court of Appeal Act” (R. S. B. C. 1911, c. 51, s. 15, s-s. 3), provides that every appeal shall include a motion for a new trial unless otherwise stated in the notice of appeal. On motion to quash an appeal to the Supreme Court of Canada on the grounds that the notice prescribed by section 70 of the “Supreme Court Act,” R. S. C. 1906, c. 139, had not been given within 20 days from the date of the judgment appealed from and that the action was not of the class in which a county court had concurrent jurisdiction with a superior court, under s. 37b of the “Supreme Court Act” limiting appeals to the Supreme Court of Canada:—*Held*, Duff, J., dissenting, that no appeal could lie to the Supreme Court of Canada.—*Per* Fitzpatrick, C.J., and Idington, J. (Duff and Anglin, J.J., *contra*).—As the case was not one in which a county court is given concurrent jurisdiction with a superior court, under section 40 of the “County Courts Act,” R. S. B. C. 1911, c. 53, the Supreme Court of Canada had no jurisdiction to entertain the appeal. *Champion v. The World Building Co.* (50 Can. S. C. R. 382), referred to.—*Per* Anglin, J.—In the circumstances of the case, the judgment of the Court of Appeal for British Columbia should be regarded as a judgment upon a motion for a new trial, within the meaning of section 70 of the “Supreme Court Act,” R. S. C. 1906, c. 139, and, notice not having been given as thereby provided, there could be no appeal to the Supreme Court of Canada. *Sedgewick v. Montreal Light, Heat and Power Co.* (41 Can. S. C. R. 639), and *Jones v. Toronto and York Radial Railway Co.* (Cam. S. C. Prac. 432), referred to.—*Per* Duff, J., dissenting.—The judgment from

which the appeal is asserted was not a judgment upon a motion for a new trial but a decision on the merits of the case upon an appeal by way of re-hearing by the Court of Appeal for British Columbia, which had before it all the evidence necessary for that purpose. There being no ground on which either party could have demanded a new trial, section 70 of the “Supreme Court Act” had no application to the appeal to the Supreme Court of Canada. *Sedgewick v. Montreal Light, Heat, and Power Co.* (41 Can. S. C. R. 639) followed. Further, the County Court derived its jurisdiction in the case in question from the provisions of section 30, s-s. 1, of the “County Courts Act” (R. S. B. C. 1911, c. 53), and section 22 of that Act shows that this jurisdiction is concurrent; consequently, the County Court possessed “concurrent jurisdiction” with the Supreme Court of British Columbia within the meaning of section 37b of the “Supreme Court Act,” R. S. C. c. 139, notwithstanding that the word “concurrent” is not employed in either of those sections of the “County Courts Act.” *Tait v. British Columbia Electric Railway Co.*, liv., 76.

232. It was held by the registrar as follows: My conception of the law with respect to new trials under the Supreme Court Act in appeals from the Province of Ontario is that a right to appeal lies in cases of new trial under s. 38 unless the judgment appealed from is in the exercise of the judicial discretion of the court, or the right of appeal is taken away by reason of the fact that the case does not fall within one or other of the subsections of s. 48. In other words, that if the Court of Appeal grant or refuse a new trial, or affirm or reverse an order granting or refusing a new trial by the divisional court, and this is not in the exercise of its judicial discretion, an appeal lies from such judgment to the Supreme Court of Canada if: “(a) the title to real estate or some interest therein is in question; (b) the validity of a patent is affected; (c) the matter in controversy in the appeal exceeds the sum or value of one thousand dollars exclusive of costs; (d) the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights; or (e) special leave of the Court of Appeal for Ontario or of the Supreme Court of Canada to appeal to such last mentioned Court is granted.” The motion to affirm the jurisdiction therefore is granted with costs. *Warren v. Forst*, Cam. Prac. 127.

233. *Held*, that the defendant having asked for a nonsuit, and in the alternative for a new trial, and the new trial having been granted by the Court of Appeal, no appeal would lie to the defendant from that judgment to the Supreme Court. *Mutual Reserve v. Dillon*, 34 Can. S. C. R. 141.

234. An action was brought by the appellant against the respondent for overdue taxes under the Municipal Clauses Act of British Columbia. The respondent defended on the ground that the by-laws were invalid, and the assessments unauthorized

and illegal, and also counterclaimed for damages for injuries by reason of the negligent construction, operation and maintenance of the works constructed under the by-law, and for an injunction.—The trial judge dismissed both the claim and counterclaim. The plaintiff appealed to the full Court, his notice of appeal reading, omitting unnecessary words, as follows: "Take notice that the court will be moved by counsel on behalf of the plaintiff that so much of the judgment of the trial judge as dismisses the action of the plaintiff may be reversed on the following amongst other grounds" (setting out the grounds).—The Revised Statutes of British Columbia, c. 56, s. 76, s-s. 3, provides as follows: "Every appeal from a final judgment, order or decree, shall be deemed to include a motion for a new trial unless the notice of appeal expressly states otherwise."—The full Court of British Columbia ordered a new trial, and the plaintiff thereupon appealed to the Supreme Court of Canada. When the case came on for hearing counsel for the respondent moved to quash for want of jurisdiction, and following the decision in *Mutual Reserve v. Dillon*, the appeal was quashed accordingly (*supra*, p. 120). *Corporation of Delta v. Wilson*, March, 1905, Cam. Prac. 121.

235. The Court followed *Mutual Reserve v. Dillon*, Cam. Prac. 120, and as no notice to quash had been given, the appeal was quashed without costs. *Ainslie Mining & Rly. Co. v. McDougall*, 40 Can. S. C. R. 270.

236. An order for new trial was made by the Divisional Court instead of by the Court of Appeal as in the above case, and counsel for appellant attempted to distinguish it on that ground, but the appeal was quashed. *Grand Trunk Rly. Co. v. Gilchrist*, Oct. 6th, 1909, Cam. Prac. 122.

237. Counsel for the respondent in the first place raised the question of jurisdiction, claiming the order for new trial appealed against was discretionary and therefore not appealable under s. 27 (now s. 45), and that there was no motion in the court below for a new trial, the court having granted it *suo motu*. The grounds for granting a new trial given by the Court of Appeal were as follows: "For the reasons stated in the argument, we think the verdict of the jury was unsatisfactory and that it ought not to stand, but it is not a case in which judgment should be directed for the defendants. It appears to us that the proper course is to direct a new trial which we have power to grant under rule 73." The Supreme Court quashed the appeal without costs. *Toronto Rly. Co. v. McKay*, Nov. 29th, 1906 (not reported), Cam. Prac. 199.

*See infra*, 239.

238. Judgment was entered for the plaintiff on the findings of the jury. The defendants appealed to the Court of Appeal on the ground that the plaintiff should have been non-suited and not asking for a new trial. The Court granted a new trial, two of the judges being in favour of dismissing the action and

the other three in favour of a new trial, the grounds stated being as follows: "The trial judge was of opinion that there was no evidence to go to the jury upon that question (namely, that the driver of the car became aware of the man's danger and notwithstanding the latter's negligence might, by the exercise of ordinary care, have avoided the accident), but submitted it to them, and they have plainly found it in the plaintiff's favour. I am not quite able to agree in that opinion, but the whole of the findings of the jury, including the assessment of damages, satisfy me that the plaintiffs (defendants?) had not a fair and unprejudiced trial and that the judgment and verdict should be set aside and a new trial awarded. The defendants appealed to the Supreme Court and the plaintiff moved to quash for want of jurisdiction, claiming the judgment appealed from was given in the exercise of the court's judicial discretion. The motion was granted and the following oral judgment pronounced by Girouard, J., for the Court:—This is a case of the exercise of judicial discretion of the Court of Appeal in granting a new trial. We are governed by *Canada Carriage Co. v. Lea*. As to adjourning the argument in order to give time to the appellant to apply to the Court of Appeal for leave, we believe that this is not a case where we ought to assist them. The point of want of jurisdiction was taken by the respondents several weeks ago and the appellants cannot complain now if his appeal is quashed. The appeal is quashed with costs as of a motion to quash." *Toronto Rly. Co. v. King* (March 26th, 1907) (not reported), Cam. Prac. 199.

239. An appeal having been quashed by the Supreme Court as above, special leave to appeal was granted by the Privy Council, and subsequently the appeal was allowed, the order for new trial set aside, and although the respondent did not cross-appeal, special leave so to do was granted *nunc pro tunc*, and the judgment of the High Court restored with a reduction as to amount, the Committee saying: "No valid reason has been shown for directing a new trial. The facts in the main are admitted or not disputed. The real matters in controversy are the inferences which it is proper to draw from those facts. It appears to their lordships that the verdict and judgment must be entered either for the plaintiffs or for the defendants, and that the middle course of directing a new trial is not open on cross appeal."—"The respondents in their printed case asked that the judgment of the Court of Appeal might be set aside and the verdict of the jury restored. Some doubts have arisen whether they were competent to do so on this appeal, without having first lodged a cross petition in that behalf, their lordships, being of opinion that the necessary relief would undoubtedly have been granted to them if they had applied for it at the time when the appellants obtained special leave to appeal, allowed the respondents at the hearing to put in such a petition *nunc pro tunc*, and they will humbly advise His Majesty to grant this relief." *Toronto Rly. Co. v. King* (1908), A. C. 260, Cam. Prac. 200.

*See supra*, 238.

240. In a negligence action the plaintiff claimed \$15,000 damages. The defence was contributory negligence, or negligence of a fellow workman. Verdict \$10,000. A motion to the Court of Appeal was made to set aside the judgment and to enter judgment for the defendants or for a new trial. A new trial was ordered. On appeal to the Supreme Court the appeal was dismissed with costs as of a motion to quash.—The motion to the Court of Appeal for a new trial was based upon the misdirection or non-direction of the trial judge. The following is extracted from the reasons for judgment of the Honourable Mr. Justice Anglin: "As I read the opinions delivered in the Manitoba Court of Appeal, while Mr. Justice Richards appears to base his judgment exclusively on misdirection, Mr. Justice Phippen equally distinctly proceeds upon discretionary grounds. He says: 'The expense of rehearing will not be great, and on the whole I am of the opinion it is in the interest of justice that a new trial should be ordered.' Mr. Justice Perdue, while of the opinion that there was misdirection in regard to the issue of contributory negligence, says he is 'doubtful whether the question and answer (upon this issue) furnish a properly considered and exact finding in regard to contributory negligence.' He also thinks the damages excessive, and he concludes, 'I agree that there should be a new trial.'—Reading his opinion as a whole this learned judge appears to concur in the judgment for a new trial both on the ground of misdirection and on the discretionary ground more clearly stated by Mr. Justice Phippen.—This Court will not entertain an appeal from an order for a new trial granted on discretionary grounds. If, notwithstanding this objection, the present appeals should be considered on the merits, I would not be prepared to say that upon the case as a whole it is not in the interest of justice that a new trial should be ordered." *Street v. C. P. R.* 1909 (unreported), Dec. 13, 1909, Cam. Prac. 201.

241. An action was brought by the plaintiff, respondent, to recover \$20,000 damages for the death of her husband through the negligence of the defendants. The following questions were submitted to the jury, with the answers: Q. 1. "Under what circumstances do you find that John J. Woolsey came to be run over?" To this the jury answered: The opinion of the jury is that John J. Woolsey, the engineer, came to his death in endeavouring to apply the brake by turning the angle cock on rear end of the tender; in going back to top of tender, it would appear that he lost his balance or tripped and was in some way thrown under wheels at rear of tender." Q. 2. "Did he lose his life by reason of any negligence of the company? A. Yes." Q. 3. "Or was he himself guilty of negligence which was the proximate cause of the accident? A. No." Q. 4. "Or could John J. Woolsey by the exercise of reasonable care have avoided the accident? A. No." Q. 5. "If you answer yes to the second question, wherein did such negligence of the company consist? A. In not supplying the necessary repairs for engine, such as union joint and nut for injector, ratchet on throttle and

drive wheel brakes." Q. 6. "If you find in answer to the last question that defects existed which caused the accident, were those defects known to John J. Woolsey and did he voluntarily incur the risks incidental to them? A. While these defects were known to Woolsey we would say that they were not known to him to the extent that caused the explosion." Q. 7. "If such defects existed and John J. Woolsey knew of them did he report them in the proper way, or did he neglect to do so? A. He did report them repeatedly in the proper way according to the rules of the company." Q. 8. "At what sum do you assess the compensation, if any, to be awarded to the plaintiff? A. \$8,000."—Upon these findings judgment was reserved and subsequently pronounced, in which the trial judge held that there was evidence which would not permit of the same being withdrawn from the jury. On appeal to the Court of Appeal a new trial was ordered. Garrow, J., said: "The course adopted in not submitting specific questions as to the clamp and its effect, and instead covering it up as was done under the heads of questions as to contributory negligence and *volenti non fit injuria* simply, I am afraid gave the jury the desired opportunity of practically ignoring the evidence altogether, and was, in my opinion, in effect misdirection. . . . Upon the evidence as it stands and upon a proper charge it seems to me beyond question that had the jury been asked: was there a clamp? did the deceased remove it? And if he had not done so, would the accident have happened? they must have answered the first two in the affirmative and the last in the negative, or their verdict would have been against the great weight of evidence and in fact perverse."—Osler, J., said: "The question, what caused his death, so far as any proof of the fact is concerned, connected with any negligent act or omission of the defendants, has not, that I can see, been answered. I will not, however, dissent from the conclusion which the other members of the court have arrived at, that a new trial should be granted."—Moss, C.J., and MacLaren, J., agreed in the result. — When the appeal came to be heard in the Supreme Court, the Court raised the question of jurisdiction and pronounced the following judgment by the Chief Justice: "Speaking for the majority of the Court, the Court will hear this appeal on two points, first that there was no evidence to go to the jury, second, that on the findings of the jury the appellant is entitled to judgment. As to the cross-appeal, we will hear the appellant as to whether he is entitled to judgment on the finding of the jury. We will decline to hear an argument that involves any finding supplementary to the jury's findings or inconsistent therewith."—The Chief Justice for himself hands the Registrar his opinion as follows: "I am of opinion that in this case a new trial having been ordered by the Court of Appeal in the exercise of their discretion we should not hear the appeal." *Canadian Northern v. Woolsey*, March 18th, 1909, Cam. Prac. 202.

APPEAL (NEW TRIAL).

242. *Weight of evidence — Discretion*, xxxiv., 338.

See *supra*, 100.

243. *Charge by judge — Findings by jury — New evidence on appeal*, xxxix., 390.

See RAILWAYS.

244. *Sale of goods — Set-off — Debtor and creditor — Partnership — Evidence — Books of account — Practice — New trial — Reducing verdict on appeal*, Cam. Prac. 282.

See NEW TRIAL.

## 19. NON-PROS. JUDGMENT.

245. *Practice — Non-prosecution of motion — Costs.*]—Counsel for respondent informed the court that he appeared pursuant to the notice of motion for special leave to appeal. The appellants did not appear to support the motion, and it was dismissed with costs, fixed at \$50. *Algoma Central & Hudson Bay Ry. Co. v. Fraser*, Cout. Cas. 323.

246. *Dismissing for want of prosecution — Motion in chambers.*]—A motion to dismiss for want of prosecution should not be made to the court, but in chambers. *The "St. Magnus,"* Masters' S. C. Prac. 158.

## 20. PRACTICE.

247. *Appeal per saltum — Jurisdiction. Armour v. Township of Onondaga*, xlii., 218. See Cam. Prac. 193-195, and Procedure in Courts below, *infra*, 264, 268, 309.

248. *Hearing of appeals — Practice in Quebec cases — Opening by senior counsel.*]—The court referred to the practice, in cases on appeal from the Province of Quebec, of allowing junior counsel to open the argument, senior counsel following, and that, during the winter sessions of the court, the Chief Justice, speaking for the court, had remarked upon the inconvenience of this course. It was intimated that it was desirable in future that the opening should be by senior counsel on appeals from Quebec in conformity with the practice prevailing in respect to appeals from all the other provinces of the Dominion. *Dumphy v. Martineau*, 10th June, 1908, Cam. Prac. 542.

249. *Disqualification of judge — Hearing argument in court below.*]—Where a judge of the Supreme Court of Canada had heard the argument in the court appealed from, though he took no part in the judgment, it was considered that he was disqualified to hear the appeal. *Grant v. Maclaren*, Cam. Prac. 71.

250. *Constitutional law — Notice to Attorney-General — Death of judge — Second argument ordered.*]—Where a judge who had heard the first argument died before judgment was pronounced and the other judges were equally divided in opinion, a second argument was ordered.—Where it appeared that a constitutional question was involved, the argument on the appeal was stopped and a new argument took place, after notice to the Attorney-General. *Canadian Pacific Ry. Co. v. Ottawa Fire Ins. Co.*; *Canadian Pacific Ry. Co. v. City of Ottawa*, Cam. Prac. 518.

251. *Notice of appeal — Discontinuance — Cross-appeal.*]—Where one of two defendants, both of whom had given notice of appeal and joined in the appeal bond, gave notice of discontinuance, an objection on the part of the plaintiff, who had given notice of cross-appeal, to the prosecution of the appeal by the other defendant was overruled in the Court of Appeal for Ontario. *Arscott v. Lilley* (14 Ont. App. R. 283); *Masters' S. C. Prac.* 200.

252. *Jurisdiction — Order for stay of proceedings — Matter of procedure — Judgment delivered out of court — Practice.*]—In appeals from judgments ordering stay of proceedings in actions by the appellants, motions were made to quash on the ground that the orders were merely matters of procedure, and not in the nature of final judgments. Judgments were reserved to admit of the filing of written arguments by the parties.—It appeared, later on, that there was urgent necessity for pronouncing judgment upon the motions at an early date, and on 22nd Sept., 1886, the Chief Justice and judges who had heard the arguments, transmitted opinions to the registrar of the court, by mail and telegraph, the majority being of opinion that the appeals should be quashed for want of jurisdiction.—Fournier, J., dissented. On 2nd Oct., 1888, on motion *in banco*, for the entry of judgments in conformity with the opinions so expressed, it was ordered that formal judgments should be entered quashing the appeals with costs for want of jurisdiction. *Canadian Pacific Railway Co. v. Conmee & McLennan*, Cout. Cas. 66.

253. *Record on appeal — Supreme Court Rules — Decree or order of court below.*]—See remarks on absence from the record of the decree of the court of original jurisdiction, *per Davies, J.*, at page 136. *Re Daly; Day v. Brown*, xxxix., 122.

AND *see* EXECUTORS AND ADMINISTRATORS.

254. *Evidence — Provincial laws in Canada — Judicial notice — Conflict of laws.*]—As an appellate tribunal for the Dominion of Canada, the Supreme Court of Canada requires no evidence of the laws in force in any of the provinces or territories of Canada. It is bound to take judicial notice of the statutory or other laws prevailing in every province or territory in Canada, even where they may not have been proved in the courts below, or although the opinion of the judges of the Supreme Court of Canada may differ from the evidence adduced upon those points in the courts below. *Cooper v. Cooper* (13 App. Cas. 88), followed. *Logan v. Lee*, xxxix., 311.

NOTE.—*Cf.* R. S. C. (1906), c. 145, s. 17.

AND *see* PRACTICE.

255. *Jurisdiction — Service out of jurisdiction — Attachment — Manitoba King's Bench Rules 201, 202 — Non-resident foreigner — Detention of goods pending suit — Substitutional service — Consolidating appeals to Supreme Court of Canada — Questions of practice. Emperor of Russia v. Proskouriakoff*, xlii., 226.

256. *Practice — Concurrent findings of fact.*]—The Supreme Court of Canada will

not interfere with concurrent findings on questions purely of fact unless satisfied that the conclusions appealed from are clearly wrong. *Weller v. McDonald-McMillan Co.*, xliii., 85.

257. *Concurrent findings of fact—Negligence—Shipping—Action for damages—Personal injury—Evidence—Res ipsa loquitur—Limitation of liability—“Canada Shipping Act,” R. S. C. 1906, c. 113, s. 921—Practice.*—Concurrent findings on questions of fact in the courts below ought not to be disturbed on appeal unless a mistake is clearly shewn.—A ship lying at her dock caught fire during the night and was destroyed. The officers of the ship failed to arouse passengers in time to permit them to escape in safety and in an action to recover damages for injuries sustained in consequence by a passenger, the owners adduced no evidence to explain the origin of the fire.—*Held*, affirming the judgment appealed from (19 Man. R. 430), that, in the circumstances, the only inference to be drawn was that the owners were grossly negligent.—In such an action the owners of the ship cannot invoke the limitation provided by sec. 921 of the “Canada Shipping Act,” R. S. C. 1906, ch. 113. *The “Orwell”* (13 P. D. 80), and *Roche v. London and South-Western Ryway Co.* [1899] 2 Q. B. 502, referred to. *Dominion Fish Co. v. Isbester*, xliiii., 637.

258. *Recalling judgment—Defect—Correction of omission—Amendment of pleadings—Jurisdiction—Costs—Settlement of minutes.* *Prevost v. Bedard*, li., 629.

See PRACTICE AND PROCEDURE.

259. *Construction of statute — Sales of subdivided lands — Registration of plans—Prohibitive sanction—“Land Titles Act,” 6 Edw. VII., c. 24, s.-s. 7 (Alta.); 4 Geo. V., c. 2, s. 9; 5 Geo. V., c. 2, s. 25 (Alta.)—Retrospective legislation—Illegality of contract—Rescission—Recovery of money paid—Right of action—Practice—Pleading*, lii., 185.

See STATUTE.

## 21. PRIVY COUNCIL APPEALS.

260. *Practice—Postponement pending appeal to Privy Council.*—When the appeal came on for hearing counsel for the respondent suggested to the court that the city had taken an appeal from the same judgment direct to the Privy Council and moved for a stay of proceedings.—The court ordered that until the decision of the appeal to the Privy Council all proceedings should be stayed and suspended. *Ottawa Electric Co. v. City of Ottawa*, Cout. Cas. 409.

261. *Court of review — Appeal to Privy Council—Appealable amount—Amendment to statute—Application—Notice of appeal—New trial—Marine insurance—Constructive total loss — Trial by jury — Misdirection.* *Sedgwick v. Montreal*, xli., 693.

262. *Jurisdiction—Appeal to Privy Council—Stay of proceedings.* *Peters v. Perras*, xlii., 361.

See PRACTICE.

263. *Jurisdiction—Appeal to Privy Council—Stay of proceedings—Practice and procedure*, xlii.

See PRACTICE AND PROCEDURE.

## 22. PROCEDURE IN COURTS BELOW.

264. *Right of appeal—62 Vict. c. 11, s. 27 (Ont.)—Special leave to appeal per saltum—Questions in controversy — Negligence—Damages—Amendment of pleadings—Rule 615—Non-suit — Verdict — Procedure.*—Since the enactment of the 27th section of chapter 11 of the statutes of Ontario, 62 Vict. (1899), a party appealing to a Divisional Court of the High Court, in a case where an appeal lies to the Court of Appeal for Ontario, has no right of appeal from the judgment of such Divisional Court to the Supreme Court of Canada, without special leave. *Farquharson v. The Imperial Oil Co.* (30 Can. S. C. R. 188), distinguished.—In the present case, as the findings of the jury, upon which a verdict was entered, made it apparent that there was no necessity for amending the statement of claim or for any additional finding of a controversial fact the Divisional Court was justified in permitting an amendment claiming damages as well under the Ontario Workmen's Compensation for Injuries Act as at common law. *Dick v. Gordaneer*, Cout. Cas. 326.

265. *Issue of fraud—Failure to plead nihil debet—Objections taken on appeal—Amendment.*—In an action to set aside a conveyance as made in fraud of creditors, the defendant desiring to meet the action by setting up that there was no debt due, and, consequently, that no such fraud could exist, must allege these objections in his pleadings. In the present case the defendant, having failed to plead such defence, was allowed to amend on terms, the Chief Justice dissenting. *Syndicat Lyonnais du Kiondyke v. McGrade*, xxxvi., 251.

AND see PLEADING.

266. *Appeal per saltum—Winding-up Act—Application under s. 76—Defective proceedings.*—Leave to appeal per saltum, under, s. 26 of the Supreme Court Act, cannot be granted in a case under the Dominion Winding-up Act. An application under s. 76 of the Winding-up Act for leave to appeal from a judgment of the Supreme Court of New Brunswick was refused where the judge had made no formal order on the petition for a winding-up order and the proceedings before the full court were in the nature of a reference rather than of an appeal from his decision. *In re Cushing Sulphite Fibre Co.*, xxxvi., 494.

267. *Jurisdiction — Commitment of judgment debtor — Final judgment — Manitoba King's Bench Rules 748, 755—“Matter or judicial proceeding” — Supreme Court Act, s. 2 (e).*—An order of committal against a judgment debtor, under the Manitoba King's Bench Rule 755, for contempt in refusing to make satisfactory answers on examination for discovery is not a “matter” or “judicial proceeding” within the meaning of sub-

sec. (e) of sec. 2 of the Supreme Court Act but merely an ancillary proceeding by which the judgment creditor is authorized to obtain execution of his judgment and no appeal lies in respect thereof to the Supreme Court of Canada. *Danjou v. Marquis*, 3 Can. S. C. R. 258, referred to. *Svensson v. Bateman*, xlii., 146.

268. *Jurisdiction—Alberta Liquor License Act—Cancellation of license—Persona designata—Curia nominatim—“Originating summons”—Court of superior jurisdiction.*—On an application for the cancellation of a liquor license issued under the “Liquor License Act” of the Province of Alberta, a judge of the Supreme Court of Alberta, in chambers, granted an originating summons ordering all parties concerned to attend before him, in chambers, and, after hearing the parties who appeared in answer to the summons, refused the application. The full court reversed this order and cancelled the license. On an appeal by the licensee to the Supreme Court of Canada:—*Held*, that the case came within the principle decided in *The Canadian Pacific Rly. Co. v. The Little Seminary of Ste. Thérèse* (16 Can. S. C. R. 606), and, consequently, the Supreme Court of Canada had no jurisdiction to entertain the appeal. *St. Hilaire v. Lambert*, xlii., 264.

269. *Quo warranto—Action by ratepayer—Municipal corporation—Payment of money—Statutory procedure—Matter of form—“Montreal City Charter,” ss. 42, 33, 338—Construction of statute—3 Edw. VII., c. 62, ss. 6 and 27.*—An action by a ratepayer of the City of Montreal to compel the members of the finance committee of the city council to reimburse the city for moneys which it was alleged they authorized to be illegally expended and asking for their disqualification under sec. 338 of the “City Charter,” is not a proceeding in *quo warranto* under the provisions of articles 987 *et seq.* of the Code of Civil Procedure.—By sec. 334 of the charter (3 Edw. VII., ch. 62, sec. 27), the city council of Montreal must at the end of each year appropriate the revenues of the city for the services during the coming year, including a reserve of five per cent. of the total revenues, three per cent. of which is to provide for unforeseen expenses. By sec. 42 of the charter, as amended by 3 Edw. VII., c. 62, sec. 6, the finance committee of the council must consider all recommendations involving the expenditure of money, unless an appropriation has been already voted for the purpose. An item of unforeseen expenditure came before the council and was passed and sent to the finance committee, which directed the city treasurer to pay the amount, and it was paid accordingly:—*Held*, the Chief Justice and Girouard, J., *contra*, that the reserve of the two per cent. for unforeseen expenses was not an appropriation of the amount so directed to be paid.—*Held*, also, the Chief Justice and Girouard, J., dissenting, that under the provisions of the charter it is essential that every recommendation for the payment of money, where there has been no previous appropriation for the payment to be made, must receive the consideration of the finance committee and be sanctioned or rejected by that committee before being finally acted upon by

the council. That any such payment made without this formality, even when made *bonâ fide* and though, in fact, sanctioned by the finance committee after if had been finally dealt with by the council, and though the city suffered no prejudice in consequence of such payment, is an illegal expenditure and involves the consequences provided in such cases by the 338th section of the “City Charter.” *Larin v. Lapointe*, xlii., 521.

270. *Jurisdiction—Special leave—“Judicial proceeding”—Discretionary order—Matter of public interest—Alberta “Liquor License Ordinance,” s. 57—“Originating summons”—R. S. C. 1906, c. 139, s. 37—8 Edw. VII. (Atta.), c. 7, ss. 1, 2, 6.*—Proceedings on an originating summons issued by a judge of the Supreme Court of Alberta on an application for cancellation of a license under sec. 57 of the “Liquor License Ordinance,” are judicial proceedings within the meaning of sec. 37 of the “Supreme Court Act,” R. S. C. 1906, ch. 139, and, consequently, the Supreme Court of Canada has jurisdiction to entertain an application for leave to appeal from the judgment of the Supreme Court of Alberta thereon.—Where the decisions of the provincial court shew that the judges of that court are equally divided in opinion as to the proper construction of a statute in force in the province and it appears to be desirable in the public interest that the question should be finally settled it is proper for the Supreme Court of Canada to exercise the discretion vested in it for the granting of special leave to appeal under the provisions of sec. 37 of the “Supreme Court Act.” Girouard, J., dissented on the ground that the proceedings in question were intended to be summary and that, in these circumstances, the case was not one in which special leave to appeal should be granted. *Finseth v. Ryley Hotel Co.*, xliii., 646.

271. *Action—Public officer—Notice—Notary public—Principal and agent—Mandate—Pleadings—Practice—New objections on appeal—Case on appeal—Notes of reasons by judges—Findings of fact—Art. 88 C.P.Q.*—If a defendant has not, in the courts below, taken exception to want of notice of action, as required by art. 88 of the Code of Civil Procedure of Quebec, it is doubtful whether the objection can be urged on an appeal to the Supreme Court of Canada. *Devine v. Holloway* (14 Moo. P. C. 290), referred to.—The Supreme Court of Canada ought not, in ordinary cases, to take into consideration the notes of reasons for judgments in the courts below which have not been delivered before the settling of the case on the appeal: *Mayhew v. Stone* (26 Can. S. C. R. 58), followed. In a proper case, however, when the non-delivery of such notes is satisfactorily accounted for, the court may permit them to be filed and made use of as part of the record on the appeal: *Canadian Fire Insurance Co. v. Robinson* (Cout. Dig. 1105), referred to.—The court refused to reverse the concurrent findings of fact by the courts below. *Dufresne v. Desforges*, xlvii., 382.

AND *see* PRACTICE.

272. *Board of Railway Commissioners—Appeals on questions of law—Stated case—*

*Submission of specific question—Practice—Construction of statute—R. S. C. 1906, c. 37, s. 55 and s. 56, s.-s. 3.]—An appeal, under the provisions of sec. 55, or sec. 56, sub-sec. 3, of the "Railway Act," R. S. C. 1906, ch. 37, should not be entertained by the Supreme Court of Canada until the Board of Railway Commissioners for Canada has stated the case in writing and submitted for the opinion of the court some question which, in the opinion of the board, is a question of law. (Cf. "Regina Rates Case," 44 Can. S. C. R. 328, where this case was followed by Anglin, J., and 45 Can. S. C. R. at pp. 323 to 328). *Canadian Pacific Railway Co. v. City of Ottawa*, xviii., 257.*

273. *Jurisdiction—"Supreme Court Act," ss. 36, 37, 46—Judge in Chambers—Originating petition—Arts. 71, 72, 875, 876 C.P.Q.—Liquor laws—"Quebec License Law," R. S. Q., 1900, arts. 924 et seq. — Property in license—Agreement—Ownership in persons other than holder—Invalidity of contract—Public policy.]—A cause, matter or judicial proceeding originating on petition to a judge in chambers, in virtue of articles 875 and 876 of the Quebec Code of Civil Procedure, is appealable to the Supreme Court of Canada where the subject of the controversy amounts to the sum or value of two thousand dollars.—It is inconsistent with the policy of the "Quebec License Law" (R. S. Q., 1909), that the ownership of a license to sell intoxicating liquors should be vested in one person while the license is held in the name of another. An agreement having that effect is void inasmuch as it establishes conditions contrary to the policy of the statute. Judgment appealed from (Q. R. 22 K. B. 58), reversed, Brodeur, J., dissenting. *Turgeon v. St. Charles*, xlviii., 473.*

274. *Case originating in Superior Court—Supreme Court Act, s. 37 (b)—Concurrent jurisdiction—"Mechanics' Lien Act" (B.C.)—Action to enforce lien.]—For an appeal to lie to the Supreme Court in a case not originating in a superior court, as provided in sec. 37, sub-sec. (b) of the "Supreme Court Act," it is not sufficient that the inferior court has concurrent jurisdiction with a superior court in respect to its general jurisdiction; there must be concurrent jurisdiction as respects the particular action, suit, cause, matter or other judicial proceeding in which the appeal is sought.—In British Columbia the County Court alone may maintain an action to enforce a mechanic's lien. In such action, so far as the parties or any of them stand in the relation of debtor and creditor, the court may give judgment for the debt due whatever its amount, and if it exceeds \$250 there may be an appeal to the Court of Appeal.—*Held*, Duff, J., dissenting, that though an action for the debt could be brought in the Supreme Court, the foundation for the County Court action is the enforcement of the lien as to which there is no concurrent jurisdiction, and no appeal lies to the Supreme Court of Canada from the judgment of the Court of Appeal in such an action. *Champion v. World Building Co.*, l., 382.*

275. *Expropriation — Application to appoint arbitrator — Persona designata — Amount in controversy — "Railway Act,"*

*R. S. C. 1906, c. 37, s. 196—Jurisdiction of court—Practice—Railway.] — A railway company served notice of expropriation of land on the owner, offering \$25,000 as compensation. It later served a copy of said notice on S., lessee of said land for a term of ten years. On application to a Superior Court judge for appointment of arbitrators, S. claimed to be entitled to a separate notice and an independent hearing to determine his compensation. The judge so held and dismissed the application, and his ruling was affirmed by the Court of King's Bench. The company sought to appeal to the Supreme Court of Canada.—*Held*, per Fitzpatrick, C.J., and Idington, J., following *Canadian Pacific Railway Co. v. Little Seminary of Ste. Thérèse* (16 Can. S. C. R. 606), and *St. Hilaire v. Lambert* (42 Can. S. C. R. 264), that the Superior Court judge was *persona designata* to hear such applications as the one made by the company; that the case, therefore, did not originate in a superior court and the appeal would not lie.—*Per* Duff, J.—The judge, under section 196 of the "Railway Act" acts as *persona designata* and no appeal lies from his orders under that section; in this case, the application having been made to and the parties having treated the contestation as a proceeding in the Superior Court, which had no jurisdiction, the Court of King's Bench rightly dismissed the appeal from the order refusing to appoint arbitrators; and the appeal to the Supreme Court of Canada being obviously baseless should for that reason be quashed.—*Held*, per Davies, Duff, Anglin and Brodeur, J.J., that as there was nothing in the record to shew that the amount in dispute was \$2,000 or over, and no attempt had been made to establish by affidavit that it was, the appeal failed. *Canadian Northern Ontario Railway Co. v. Smith*, l., 476.*

276. *Jurisdiction—Matter originating in inferior court—Transfer to superior court—Extension of time for appealing—Special leave—"Supreme Court Act," ss. 37c, 71.]—An action commenced in the District Court was, by consent of the parties, transferred to and subsequently carried on in the Supreme Court of Saskatchewan as if a new writ had been issued therein; the statement of claim, pleadings and proceedings being all filed and taken in the latter court.—*Held*, that, although the proceedings, after the issue of the writ, had all been carried on in the court of superior jurisdiction, yet as the cause originated in a court of inferior jurisdiction, an appeal *de plano* would not lie to the Supreme Court of Canada. *Tucker v. Young* (30 Can. S. C. R. 185) followed.—An order in the Supreme Court of Saskatchewan was made extending the time for appealing beyond the sixty days limited for bringing the appeal by the "Supreme Court Act," under sec. 71. On an application, under section 37 (c) of the "Supreme Court Act," for special leave to appeal.—*Held*, also, following *Goodison Thresher Co. v. Township of McNab* (42 Can. S. C. R. 694), that, notwithstanding the order extending the time for appealing made in the court appealed from, the Supreme Court of Canada had no jurisdiction to grant special leave for an appeal after the expiration of*



the sixty days limited for bringing appeals by section 69 of the "Supreme Court Act." *Hillman v. Imperial Elevator & Lumber Co.*, liii., 15.

277. *Final judgment—Substantive right—*"Supreme Court Act," s. 2 (c) — 3 & 4 Geo. V. c. 51 — *Procedure — Service out of jurisdiction — Costs — Practice — Jurisdiction.*] — No appeal lies to the Supreme Court of Canada from a judgment of the Supreme Court of New Brunswick affirming the decision of a judge who refused to set aside his order for service of a writ out of the jurisdiction. *Idington, J.*, dissenting.—*Per Davies and Anglin, JJ.*—The judgment did not dispose of any substantive right . . . in controversy in the action and therefore was not a final judgment as that term is defined in 3 & 4 Geo. V. c. 51.—The appeal was quashed but respondent was only given the general costs of appeal to the date of the motion to quash as he had not conformed to the requirements of Supreme Court Rules 4 and 5. *St. John Lumber Co. v. Roy*, liii., 310.

278. *Quo warranto — Action by rate-payer— Municipal corporation—Payment of money—Statutory procedure—Matter of form — "Montreal City Charter"—Construction of statute.* *Larin v. Lapointe*, xlii., 521.

See *supra*, 269.

279. *Constitutional law—Provincial legislation — Succession duties—Taxation—Property within province—Bona notabilia — Sale of lands—Covenant—Simple contract —Specialty — Construction of statute—Severable provisions — R. S. M. 1902, c. 161, s. 5 — (Man.)—4 & 5 Edw. VII. c. 45, s. 4 (Man.) — Jurisdiction — Surrogate Court—Persona designata, li.*, 428.

See CONSTITUTIONAL LAW.

280. *Misdirection—Report by trial judge —Review on appeal*, xxxiv., 265.

See *supra*, 227.

281. *Discretionary order—Amendment — Formal judgment*, xxxiv., 279.

See *supra*, 97.

282. *Time for appealing—Delays occasioned by court—Approval of security bond*, xxxiv., 282.

See *supra*, 1.

283. *Judgment on appeal — Art. 1241 C. P. Q.—Quorum of judges—Judgment pronounced in absence of disqualified judge—Jurisdiction*, xxxv., 330.

See QUORUM.

284. *Opposition *afra de charge*—Order for security—Interlocutory judgment — Final order—Revision*, xxxv., 1.

See *supra*, 120.

285. *Stay of proceedings — Final judgment*, Cout. Cas. 66.

See *supra*, 252.

### 23. PROHIBITION.

286. *Jurisdiction — Prohibition—Quebec appeals—R. S. C. [1906] c. 139, ss. 39 and 46—Construction of statute.*]—No appeal lies to the Supreme Court of Canada from the judgment of a court of the Province of Quebec in any case of proceedings for or upon a writ of prohibition, unless the matter in controversy falls within some of the classes of cases provided for by section 46 of the "Supreme Court Act," R. S. C. 1906, c. 139. *Shannon v. The Montreal Park and Island Railway Co.* (28 Can. S. C. R. 374) overruled. *Desormeaux v. Ste. Thérèse*, xliii., 82.

### 24. RIGHT OF APPEAL.

287. *Special case—Question for decision—Matters *extra cursum curiæ.**]—The special case must raise a question of law for decision. If submitted to the court below on matters of fact only, the judgment thereon is *extra cursum curiæ* and not susceptible of appeal. *Burgess v. Morton* (1896) A. C. 136), *Masters' S. C. Prac.* 17.

288. *Jurisdiction—Petitory action—Bor-nage—Surveyor's report—Costs—Order as to location of boundary line—Execution of judgment.*]—Where, in an action *au pétitoire* and *en bornage* the question as to title has been finally settled, a subsequent order defining the manner in which the boundary line between the respective properties shall be established is not appealable to the Supreme Court of Canada. *Cully v. Ferdaïs* (30 Can. S. C. R. 330) followed. *City of Hull v. Scott & Walters*, xxxiv., 617.

289. *Right of appeal—Interest of appellant—Parties to action—Art 77 C. P. Q.—Sale of substituted lands—Will—Prohibition against alienation—Arts. 252, 953a, 968 et seq. C. C.—Res judicata.*]—Where a person who might have an eventual interest in substituted lands has not been called to the family council nor made a party in the Superior Court on proceedings for authority to sell the lands, the order authorizing the sale is, as to him, *res inter alios acta*, does not prejudice his rights, and, therefore, he cannot maintain an appeal therefrom. *Prévost v. Prévost*, xxxv., 193.

290. *Special leave—Judge in chambers—Appeal to full court — Jurisdiction.*]—No appeal lies to the Supreme Court of Canada from an order of a judge of that court in chambers granting or refusing leave to appeal from a decision of the Board of Railway Commissioners under s. 44 (3) of the Railway Act, 1903. (Leave to appeal to Privy Council refused, 2nd Aug., 1905). *Williams v. Grand Trunk Railway Co.*, xxxvi., 321.

291. *Appeal to Privy Council—Colonial Courts of Admiralty Act, 1890 (Imp.)—Right of appeal de plano—Bail for costs—Practice.*]—Upon the application of the appellants (30th March, 1906), for an order to fix bail on a proposed appeal direct to His Majesty in Council, under the rules established by the Colonial Courts of Admiralty



Act, 1890 (Imp.), the Supreme Court of Canada, sitting *in banco*, after hearing counsel for and against the application, made an order, *pro formâ* (without expressing any opinion as to the right of appealing *de plano*), that the appellants should give bail to answer the costs of the proposed appeal in the sum of £300 sterling, to the satisfaction of the registrar of the Supreme Court of Canada, on or before the 4th of April, 1906. *The "Albano" v. The "Parisian,"* xxxvii., 301.

292. *Right of appeal—Denial by provincial statute.*—The Supreme Court of Canada refused to quash an appeal on the ground that the right of appealing had been taken away by section 36 of "The Mechanics' and Wage Earners' Lien Act," R. S. M. (1902) c. 110. (Appeal to Privy Council dismissed, 31st July, 1908.) *Day v. Crown Grain Co.,* xxxix., 258.

AND see LIEN.

293. *Decision of Commissioner of Mines—Final judgment—Mandamus,* xxxiv., 328.  
See *supra*, 119.

294. *Interlocutory proceeding — Final judgment,* xxxv., 12.

See *supra*, 121.

295. *Award—Choice of forum—Curia designata,* xxxviii., 511.

See *supra*, 7.

296. *Appeals by both parties—Different courts of appeal—Affirmance in Court of Review,* xxxix., 81.

See *supra*, 76.

297. *Municipal assessment — Provincial legislation—Denial of appeal,* xxxix., 174.

See *supra*, 77.

298. *Proceeding in formâ pauperis—Leave—Security for costs,* Cout. Cas. 6.

See *supra*, 62.

299. *Jurisdiction—Special leave—Appeal per saltum,* Cout. Cas. 281.

See *supra*, 74.

300. *Controversy — Special leave,* Cout. Cas. 326.

See *supra*, 264.

301. "Winding-up Act"—*Discretionary order,* Cout. Cas. 341.

See *supra*, 98.

## 25. TIME FOR APPEALING.

302. *Leave to appeal — Expiration of time.*—Leave to appeal cannot be granted after the expiration of sixty days from the signing, entry or pronouncing of the judgment appealed from. *Stewart v. Skulthorpe; Roberts v. Donovan,* Masters' S. C. Prac. 27. Cam. Prac. 189.

303. *Leave to appeal—Order after extension of time—Indulgence upon appeal entered without such leave.*—The Supreme

Court of Canada refrained from quashing an appeal in order to permit of an application for leave to the court appealed from, upon an extension of time for appealing. *Connell v. Connell,* 9th June, 1905, Masters' S. C. Prac. 51. Cam. Prac. 289.

304. *Expiration of time for appealing—Order extending time — Special circumstances.*—As to what are "special circumstances" for the extension or abridgment of time fixed by sec. 71 of the S. C. Act and S. C. Rule 108, and cases shewing grounds on which applications of this nature may be granted, see Annual Prac., 1907, pp. 875-6, 1116; Wilson's Jnd. Acts (6th ed.), pp. 446, 469; Holmested & Langton, Jud. Acts (3rd ed.), pp. 136, 558, 563; *Langdon v. Robertson* (13 Ont. P. R. 139); *Seivewright v. Leys* (12 Ont. P. R. 200); *Re Gabourie* (12 Ont. P. R. 252); *Platt v. Grand Trunk Ry. Co.* (12 Ont. P. R. 380). Masters' S. C. Prac. 95, 203. Cam. Prac. 437.

305. *Jurisdiction—Expiration of time for appealing.*—Where the time limited for bringing an appeal to the Supreme Court of Canada has expired, there is no jurisdiction in the Supreme Court of Canada or a judge thereof to approve a bond of security for the costs of appeal. — Cf. *The News Printing Company of Toronto v. Maerx* (26 Can. S. C. R. 695); *Canadian Mutual Loan & Investment Company v. Lee* (34 Can. S. C. R. 224). *Fournier v. Leger,* Cout. Cas. 100.

306. *Appeal per saltum — Expiration of time for appealing—Supreme Court Act, s. 40.*—Leave to appeal *per saltum* cannot be granted after the expiration of the time limited by s. 40 of the Supreme and Exchequer Courts Act. *Stewart v. Sculthorpe,* Cout. Cas. 152.

307. *Extension of time—Order by single judge—Jurisdiction—Order by court appealed from—Municipal by-law—Costs.*—An appeal from the judgment of the Court of Appeal for Ontario, reversing the judgment of the Chancellor, which dismissed a motion to quash a by-law for borrowing money for the construction of a sewer was entered under an order made by a judge of the court appealed from, extending the time for bringing the appeal. The court, *suo motu*, quashed the appeal with costs as of a motion to quash, for want of jurisdiction, on the ground that the order should have been made by the court and not by a single judge. *Village of Brussels v. McCrae,* Cout. Cas. 336. Cam. Prac. 289.

308. *Expiration of time for appealing—Special leave—R. S. C. c. 135, s. 29—Jurisdiction.*—After the expiration of the sixty days limited for bringing an appeal there is no jurisdiction in the Supreme Court of Canada to grant special leave for appealing. *Canadian Mutual Loan and Investment Co. v. Lee* (34 Can. S. C. R. 224), and *Connell v. Connell* (Cam. S. C. Prac. 224), followed. *C. Beck Mfg. Co. v. Ontario Lumber Co.,* Cout. Cas. 422. Cam. Prac. 286.

309. *Appeal per saltum — Time limit — Pronouncing or entry of judgment.*—To

determine whether the sixty days, within which an appeal to the Supreme Court must be taken, runs from the pronouncing or entry of the judgment from which the appeal is taken no distinction should be made between common law and equity cases. The time runs from the pronouncing of judgment in all cases except those in which there is an appeal from the registrar's settlement of the minutes or where such settlement is delayed because a substantial question affecting the rights of the parties has not been clearly disposed of by such judgment. *County of Elgin v. Robert*, xxxvi., 27.

310. *Order extending time—Jurisdiction—R. S. C. c. 135, s. 42—Practise.*—The court refused to entertain a motion to quash the appeal on the ground that it had not been taken within the sixty days limited by the statute and that an order by a judge of the court appealed from after the expiration of that time was *ultra vires* and could not be permitted under s. 42 of the Supreme and Exchequer Courts Act, R. S. C. c. 135. *Temiscouata Ry. Co. v. Clair*, xxxviii., 230.

AND see TRESPASS.

311. *Jurisdiction—Final judgment—Time for appealing—Exchequer Court Act, R. S. C. (1906) c. 140, s. 82—Exchequer Court rules.*—Notwithstanding that no appeal has been taken from the report of a referee within the fourteen days mentioned in sections 19 and 20 of the General Rules and Orders of the Exchequer Court of Canada (12th December, 1899), an appeal will lie to the Supreme Court of Canada from an order by the judge confirming the report, as required by the said sections, within the thirty days limited by section 82 of the Exchequer Court Act, R. S. C. (1906), c. 140. *North Eastern Banking Co. v. The Royal Trust Co.; In re Atlantic and Lake Superior Ry. Co.*, xii., 1.

312. *Limitation of time—Railway Commissioners—Question of jurisdiction—Leave by judge—Powers of Board—Completed railway—Order to provide station—R. S. [1906] c. 37, ss. 26, 151, 158-9, 166-7, and 258.*—Except in the case mentioned in Rule 59 there is no limitation of the time within which a judge of the Supreme Court may grant leave to appeal under sec. 56 (2) of the "Railway Act," on a question of the jurisdiction of the Board of Railway Commissioners—The Board of Railway Commissioners has power to order a railway company whose line is completed and in operation to provide a station at any place where it is required to afford proper accommodation for the traffic on the road. *Idington and Duff, J.J., dissenting. Grand Trunk Railway Co. v. Department of Agriculture*, xliii., 557.

313. *Special leave—Time limit—Extension—R. S. C. [1906] c. 139, s. 48 (e).*—After the expiration of sixty days from the signing of entry or pronouncing of a judgment of the Court of Appeal for Ontario, the Supreme Court of Canada is without jurisdiction to grant special leave to appeal therefrom, and an order of the Court of Appeal extending the time will not enable

it to do so. *John Goodison Thresher Co. v. Township of McNab*, xlii., 694.

314. *New right of appeal—Statute—Application to pending actions.*—An Act of Parliament enlarging the right of appeal to the Supreme Court of Canada does not apply to a case in which the action was instituted before the Act came into force. *Williams v. Irvine* (22 Can. S. C. R. 108); *Hyde v. Lindsay* (29 Can. S. C. R. 99) and *Colonial Sugar Refining Co. v. Irving* ([1905] A. C. 369) followed. *Doran v. Jewell*, xlix., 88.

315. *Special leave—Extension of time*, xxxiv., 224.

See *supra*, 18.

316. *Bringing of appeal—Delay occasioned by court*, xxxiv., 282.

See *supra*, 1.

317. *Approval of security bond—Delay by judge—Extension of time*, xl., 455.

See *supra*, 4.

318. *Lapse of order—Extension of time*, Cont. Cas. 297.

See *supra*, 13.

## 26. WINDING-UP ACT.

319. *Jurisdiction—Winding-up proceedings—Time for appealing—Amount in controversy—Construction of statute—"Supreme Court Act," R. S. C. 1906, c. 139, ss. 46, 69, 71—"Winding-up Act," R. S. C. 1906, c. 144, ss. 104, 106—Practice—Affirming jurisdiction—Motion in court—Discretionary order by judge.*—*Per Fitzpatrick, C.J., and Idington and Brodeur, J.J. (Duff and Anglin, J.J., contra).*—The appeal to the Supreme Court of Canada given by section 106 of the "Winding-up Act," R. S. C. 1906, c. 144, must be brought within sixty days from the date of the judgment appealed from, as provided by section 69 of the "Supreme Court Act," R. S. C. 1906, c. 139. After the expiration of the sixty days so limited neither the Supreme Court of Canada nor a judge thereof can grant leave to appeal. *Goodison Thresher Co. v. Township of McNab* (42 Can. S. C. R. 694), and *Hillman v. Imperial Elevator and Lumber Co.* (53 Can. S. C. R. 15), followed; *Grand Trunk Railway Co. v. Department of Agriculture of Ontario* (42 Can. S. C. R. 557), distinguished. — *Per Duff, J. (dissenting).*—Under section 106 of the "Winding-up Act," the application for leave to appeal may be made after the expiration of sixty days from the date of the judgment from which the appeal is sought and, whether it be made before or after the expiration of the sixty days, lapse of time should be considered by the judge applied to and acted on by him, in the exercise of discretion, according to the circumstances of the case.—*Per Anglin, J. (dissenting).*—On such an application for leave to appeal, the provisions of section 71 of the "Supreme Court Act" apply and an extension of the time for appealing may be

obtained thereunder.—*Per Idington, J.*—There is no authority under which an application for an order affirming the jurisdiction of the Supreme Court of Canada to entertain an appeal can be made to the court; the proper and only course is by application to the registrar acting as judge in chambers. *Per Duff, J.*—Although not strictly the proper procedure, the objection to such an application may be waived.—*Per Duff, J.*—Section 106 of the "Winding-up Act" imposes a further condition of the right of appeal over and above those imposed by sections 69 and 71 of the "Supreme Court Act"; an applicant, having obtained leave after the expiration of the time limited for appealing, is still obliged to satisfy a judge of the court appealed from that special circumstances justify an extension of time, and it is the duty of that judge to exercise proper discretion in making such an order on his own responsibility. *Attorney-General v. Emerson* (24 Q. B. D. 56), and *Banner v. Johnston* (L. R. 5 H. L. 157), referred to.—*Per Brodeur, J.*—In the case of appeals from judgments rendered under the "Winding-up Act," the jurisdiction of the Supreme Court of Canada is determined by section 106 of the "Winding-up Act," and is dependent solely upon the amount involved in the judgment appealed from and not upon the amount demanded in the proceedings on which that judgment was rendered. *Ross v. Ross, Barry & McRae*, liii., 128.

320. *Appeal per saltum—Defective proceedings*, xxxvi., 494.

*See supra*, 266.

321. *Controversy — Stay of foreclosure proceedings—Discretionary order — Final judgment*, xxxvii., 173.

*See supra*, 30.

322. *Leave to appeal—Controversy—Refusal of Winding-up order*, xxxvii., 427.

*See supra*, 32.

323. *Appointment of liquidators—Discretionary order*, Cam. Cas. 209.

*See "WINDING-UP ACT."*

324. *Controversy — Discretionary order—Refusal of special leave*, Cout. Cas. 119.

*See supra*, 11.

325. *Appeal de plano—Special leave—Discretionary order*, Cout. Cas. 341.

*See supra*, 95.

## 27. OTHER CASES.

326. *Employer and employee—Compensation for injury — Contributory negligence—Construction of statute—"Workmen's Compensation Act," 2 Edw. VII. c. 74, s. 2, s.-s. 2 (e) and 4, sch. 2, art. 4—Remedial legislation—Refusal of damages — Right of appeal—Evidence.*—In an action in the Supreme Court of British Columbia claiming damages under the "Employers' Liability Act," and, alternatively, under the "Workmen's Compensation Act," the plaintiff, at

the trial, abandoned the claim under the former Act and, thereupon, the judge dealt with the case as a claim under the "Workmen's Compensation Act." found that the plaintiff's deceased husband came to his death solely in consequence of his own "wilful and serious misconduct," and, therefore, under sub-section 2 (e) of section 2 of the Act, held that she was precluded from obtaining compensation in consequence of his death.—*Per Davies, Duff and Anglin, J.J.*—The right of appeal from a decision in the course of proceedings to which article 4 of the second schedule of the "Workmen's Compensation Act" applies is available only for questioning the determination of the court or judge upon some question of law. Decisions upon questions of fact in adjudicating upon a claim brought before the Supreme Court under sub-section 4 of section 2 of that Act are not subject to appeal. Whether or not there is any reasonable evidence to support a finding of wilful and serious misconduct is an appealable question.—In the circumstances of the case the court held, *Davies and Anglin, J.J.*, dissenting, that there was not reasonable evidence to support the finding of wilful and serious misconduct.—The appeal from the judgment of the Court of Appeal for British Columbia (15 B. C. Rep. 198) was dismissed, *Davies and Anglin, J.J.*, dissenting. *British Columbia Sugar Refining Co. v. Grassick*, xlv., 106.

327. *Municipal corporation — Drainage—Construction of sewers—Nuisance—Injunction — Damages — Right of action—Practice.*—An application for leave to appeal *per saltum* was based principally upon the grounds that the case was distinguishable from the case of *Lewis v. Alexander* (24 Can. S. C. R. 551); that the evidence shewed that the sewer in question had been constructed as a general sewer, and that the statute referred to by the learned judge in the court below (R. S. O. 1887, c. 184, s. 489, s.-s. 47), had been cited and commented upon in the case before the Supreme Court of Canada above referred was dismissed. *City of London v. Lewis*, Cout. Cas. 162.

328. *Decree on appeal — Entry of judgment*, xxxvi., 159.

*See JUDGMENT.*

329. *Account—Statute of Limitations — Agents or partners—Reference—Practice*, xxxviii., 216.

*See ACCOUNT.*

330. *Appeals from Board of Railway Commissioners—Practice — References — Form of order by Supreme Court of Canada.*—On motion for directions as to the settlement of the minutes of the judgment by the Supreme Court of Canada on an appeal under section 56 (3) of "The Railway Act," by leave of the Board, with questions referred, the court directed that the registrar should certify the opinion of the court in answer to the question submitted. *Canadian Pacific Railway Co. v. Regina Board of Trade*, xlv., 321.

AND *see* RAILWAYS.

## ARBITRATIONS AND AWARDS.

1. ARBITRATORS, APPOINTMENT AND QUALIFICATION, 1-4.
2. CONDITIONS PRECEDENT, 5-7.
3. SETTING ASIDE AWARD, 8-9.
4. OTHER CASES, 10-15.

### 1. APPOINTMENT AND QUALIFICATION.

1. *Arbitration and award — British Columbia Arbitration Act — Setting aside award—Misconduct of arbitrator—Partiality — Evidence—Jurisdiction of majority—Decision in absence of third arbitrator—Judicial discretion.*—A reference under the British Columbia Arbitration Act authorized two out of three arbitrators to make the award. After notice of the final meeting the third arbitrator failed to attend, on account of personal inconvenience and private affairs, but both parties appeared at the time appointed and no objections were raised on account of the absence of the third arbitrator. The award was then made by the other two arbitrators present:—*Held*, reversing the judgment appealed from (10 B. C. Rep. 48), that, under the circumstances, there was east upon the two arbitrators present the jurisdiction to decide whether or not, in the exercise of judicial discretion, the proceedings should be further delayed or the award made by them alone in the absence of the third arbitrator, and it was not inconsistent with natural justice that they should decide upon making the award themselves.—*Held*, further, that although the third arbitrator had previously suggested some further audit of certain accounts that had already been examined by the arbitrators, there was nothing in this circumstance to impugn the good faith of the other two arbitrators in deciding that further delay was unnecessary.—Where it does not appear that an arbitrator is in a position with regard to the parties or the matter in dispute such as might cast suspicion upon his honour and impartiality, there must be proof of actual partiality or unfairness in order to justify the setting aside of the award. *Doberer v. Megaw*, xxxiv., 125.

2. *Statutory arbitrators — Jurisdiction—Awards “from time to time” — Res judicata.*—The statutes authorizing the appointment of arbitrators to settle accounts between the Dominion and the Provinces of Ontario and Quebec and between the two provinces, provided for submission of questions by agreement among the governments interested; for the making of awards from time to time; and that, subject to appeal, the award of the arbitrators in writing should be binding on the parties to the submission.—The provinces submitted to the arbitrators for determination the amount of the principal of the Common School Fund to ascertain which they should consider not only the sum held by the Government of Canada but also “the amount for which Ontario is liable.” In 1896 by award No. 2, the arbitrators determined that moneys

remitted to purchasers of school lands unless made in fair and prudent administration, and uncollected purchase money of patented lands, unless good cause were shown for non-collection, should be deemed moneys received by Ontario, and in 1899 the amount of liability under these heads was fixed by award No. 4. In 1902 the Privy Council held that the arbitrators had no jurisdiction to entertain a claim by Quebec to have Ontario declared liable for the purchase money of school lands yet unapportioned allowed to remain uncollected for many years. In making their final award in 1907, the arbitrators refused an application by Quebec for inclusion therein of the amounts found due from Ontario for remissions and non-collections and held that they had exceeded their jurisdiction in determining such liability. On appeal from this determination embodied in the final award.—*Held*, Fitzpatrick, C.J., and Duff, J., expressing no opinion, that the arbitrators had no jurisdiction to determine the liability of Ontario for moneys remitted or not collected. *Attorney-General for Ontario v. Attorney-General for Quebec* ((1903) A. C. 39) followed.—*Held*, also, Fitzpatrick, C.J., and Duff, J., dissenting, that awards Nos. 2 and 4 in so far as they determined this liability were absolutely null, and, therefore, not binding on Ontario. *Quebec v. Ontario*, xlii., 161.

3. *Arbitration and award — Procedure—Prolonging date for award—Special circumstances—“Railway Act,” R. S. C., 1906, c. 37, s. 204.*—On an arbitration respecting compensation to be paid for lands taken under the “Railway Act,” R. S. C., 1906, ch. 37, the arbitrators had fixed a day for their award according to the provisions of sec. 204. After some proceedings before them it was arranged, for the convenience of counsel for the parties, that further proceedings should be suspended until the return of counsel who were obliged to be present at the sittings of the Judicial Committee of the Privy Council and nothing further was done until after the return of counsel from abroad at a date later than the time so fixed for the award. The arbitrators had not prolonged the time for making the award but, upon reassembling after the day originally fixed had passed, they fixed a later date for that purpose. The company's arbitrator and counsel then refused to take part in any subsequent proceedings and the two remaining arbitrators continued the hearing and made an award in favour of the claimant greater than that offered by the company for the lands expropriated. In an action by the company to have the award set aside and for a declaration that the sum offered should be the compensation payable for the lands:—*Held*, Fitzpatrick, C.J., and Anglin, J., dissenting, that, in the circumstances of the case, the company should not be permitted to object to the manner in which the arbitrators had proceeded in prolonging the time and making the award. The appeal from the judgment of the Court of King's Bench (Q. R. 22 K. B. 221), declaring the award to have been validly made was, consequently, dismissed with costs. *Canadian Northern Quebec Railway Co. v. Naud*, xlvi., 242.

4. *Expropriation—Agreement to fix compensation or valuation—Powers of referees—Majority decision—Railway.*—Where the land was expropriated for railway purposes the railway company and the owner agreed to have the compensation determined by reference to three named persons called "valuers" in the submission; their decision was to be binding and conclusive on both parties and not subject to appeal; they could view the property and call such witnesses and take such evidence, on oath or otherwise, as they, or a majority of them, might think proper; and either party could have a representative present at the view or taking of evidence, but his failure to attend for any reason would not affect the validity of the decision:—*Held*, Fitzpatrick, C.J., and Duff, J., dissenting, that this agreement did not provide for a judicial arbitration, but for a valuation merely, by the parties to whom the matter was referred, of the land expropriated.—The agreement provided that a valuator should be appointed by each party and a county court judge should be the third; if one of those appointed would or could not act the party who appointed him could name a substitute; if it was the third the parties could agree on a substitute, in which case the decision of any two would be binding and conclusive without appeal; if they could not so agree a High Court judge could appoint. There was no necessity for substitution.—*Held*, that the decision of any two of the valutors was valid and binding on the parties. *Campbellford Railway Co. v. Massie*, 1, 409.

## 2. CONDITIONS PRECEDENT.

5. *Expropriation of land—Arbitration—Authority for submission—Trespass—2 Edw. VII. c. 104 (N.S.).*—By statute in Nova Scotia if land is taken for railway purposes the compensation therefor, and for earth, gravel, etc., removed shall be fixed by arbitrators, one chosen by each party and the third, if required, by those two. A railway company intending to expropriate, their engineer wrote to M., who had acted for the company in other cases, instructing him to ascertain if the owners had arranged their title so that the arbitration could proceed and, if so, to ask them to nominate their man who, with M., could appoint a third if they could not agree. The engineer added, "I will send an agreement of arbitration which each one can subscribe to or, if they have one already drafted, you can forward it here for approval." No such agreement was sent by, or forwarded to, the engineer, but the three arbitrators were appointed and made an award on which the owners of the land brought an action:—*Held*, reversing the judgment appealed from (38 N. S. Rep 80), that as the company had not taken the preliminary steps required by the statute, which therefore did not govern the arbitration proceedings, the award was void for want of a proper submission. *Inverness Railway and Coal Co. v. McIsaac*, xxxvii., 134.

AND see EXPROPRIATION.

6. *Construction of contract—Condition precedent—Right of action.*—A contract for the sale of timber limits contained a guar-

antee by the vendor that the quantity of timber thereon at the time of the sale would prove equal to that shewn in a statement annexed and a covenant that he would repay to the purchasers the amount of any shortage found in proportion to the price at which the sale was made. In another clause, provision for arbitration was made in case of dispute as to the amount of any such shortage, but it did not in express terms deprive the purchaser of the right to recover any claim for shortage until after an award had been obtained:—*Held*, affirming the judgment appealed from (15 B. C. Rep. 70), Idington, J., dissenting, that an award by arbitrators had not been made a condition precedent to recovery for the amount of any deficiency in the quantity of timber guaranteed to be upon the limits. *David v. Swift*, xlv., 179.

7. *Industrial improvements—Raising height of dam—Nuisance—Damages—Expertise and arbitration—Right of action—Condition precedent—R. S. Q., 1888, arts. 5355, 5356.*—The mode of ascertainment of damages by the arbitration of experts provided by article 5356 of the Revised Statutes of Quebec, 1888, does not exclude the right of action to recover compensation in the courts. *Gale v. Bureau*, xlv., 305.

AND see RIVERS AND STREAMS.

## 3. SETTING ASIDE AWARD.

8. *Railways—Expropriation of lands—Appeal—Jurisdiction of court on appeal—Reference back to arbitrators—Proceedings by arbitrators—Receiving opinion testimony—Number of witnesses examined—"Alberta Evidence Act," 1910—Alberta "Arbitration Act," 1909—Alberta "Railway Act," 1907—Setting aside award—Evidence—Admission in prior affidavit—Ascertaining value of lands.*—The provisions of the Alberta "Arbitration Act" of 1909, in relation to references to arbitration, apply to proceedings on arbitrations under the Alberta "Railway Act" of 1907, and give power to the court or a judge, on an appeal from the award made, to remit the matters referred to the arbitrators for reconsideration. Anglin, J., inclined to the contrary opinion.—*Per Davies, Idington and Anglin, JJ.* (Fitzpatrick, C.J., *contra*).—When arbitrators have violated the provisions of sec. 10 of the "Alberta Evidence Act" of 1910 by receiving the testimony of a greater number of expert witnesses than three, as thereby limited, upon either side of the controversy, their award should be set aside by the court upon an appeal.—*Per Fitzpatrick, C.J., and Idington, J.* (Davies, J., *contra*).—An affidavit of the party whose property has been expropriated, made for different purposes several years prior to the expropriation proceedings, cannot properly be taken into consideration by arbitrators as evidence establishing the value of the property at the time of its expropriation.—*Per Idington and Brodeur, JJ.*—In the circumstances of the case the arbitrators were not *functi officio*, as their award had been invalidly made.—The appeal from the judgment of the Appellate Division of the Supreme Court of Alberta (8 Alta. L. R. 379), and the cross-appeal therefrom were

dismissed with costs. *Canadian Northern Western Railway Co. v. Moore*, liii., 519.

## ARCHITECT.

See BUILDERS AND CONTRACTORS; PLANS.

9. *Expropriation—Form of award—Evidence—View of property—Proceeding on wrong principle—Disregarding evidence.*—In expropriation proceedings, under the "Railway Act," the arbitrators in making their award stated that they had not found the expert evidence a valuable factor in assisting them in their conclusions and that, after viewing the property in question, they had reached their conclusions by "reasoning from their own judgment and a few actual facts submitted in evidence." On appeal from the judgment of the Supreme Court of Alberta setting aside the award and increasing the damages:—*Held*, that it did not appear from the language used that the arbitrators had proceeded without proper consideration of the evidence adduced or upon what was not properly evidence and, therefore, the award should not have been interfered with. *Calgary and Edmonton Railway Co. v. MacKinnon*, xliii., 379.

### 4. OTHER CASES.

10. *Appeal—Railway Act—Expropriation—Appeal from award—Jurisdiction—Choice of forum—Curia designata.* xxxviii., 511.

See APPEAL, 7.

11. *Rivers and streams—Industrial improvements—Penning back waters—Permanent works—Damages—Measure of damages—Expertise—Reparation—Loss of water-power—Future damages—Compensation once for all—Right of action—Practice—Statute—R. S. Q., 1909, arts. 7295, 7296, xlix., 344.*

See RIVERS AND STREAMS.

12. *Expropriation—Application to appoint arbitrator—Persona designata—Amount in controversy—"Railway Act," R. S. C., 1906, c. 37, s. 196—Jurisdiction of court—Practice. C. N. O. Railway Co. v. Smith*, l., 476.

See APPEAL.

13. *Expropriation—Business premises—Special value—Mode of estimating compensation. Lake Erie & N.R.R. Co. v. Schooley*, liii., 416.

See EXPROPRIATION.

14. *Municipal expropriation—Statutory powers—Appointment of arbitrator—Towns Corporation Act—Charter of Fraserville—Quebec Expropriation Act. Pouliot v. Fraserville*, liv., 310.

See MUNICIPAL CORPORATION.

15. *Expropriation—Municipal corporation—Statutory powers—Lands outside municipality—Appointment of arbitrators—Procedure—Award—"Towns Corporations Act," R. S. Q. 1888, arts. 4561-4569—Charter of Town of Fraserville—3 Edw. VII. c. 69, 6 Edw. VII. c. 50—Quebec "Expropriation Act." 54 Vict. c. 38—Words and phrases—"Aroisinant"—"Adjoining," liv., 310.*

See EXPROPRIATION.

## ASSESSMENT AND TAXES.

1. APPEALS, 1-3.
2. BUSINESS TAX, 4.
3. CONSTITUTIONAL LAW, 5-7.
4. CONSTRUCTION OF STATUTE, 8-12.
5. EXEMPTIONS, 13-20.
6. PRESCRIPTION, 21-22.
7. SALE OF LANDS, 23-24.
8. SCHOOL RATES, 25.
9. OTHER CASES, 26-33.

### 1. APPEALS.

1. *Construction of statute—"Marsh Act," R. S. N. S. 1900, c. 66, ss. 22, 66—Jurisdiction of marsh commissioners—Assessment of lands—Certiorari—Limitation for granting writ—Practice—Expiration of time—Delays occasioned by judge—Legal maxim—Order nunc pro tunc.*—Where a statute authorizing commissioners to assess lands provided that no writ of certiorari to review the assessment should be granted after the expiration of six months from the initiation of the commissioners' proceedings:—*Held*, Girouard, J., dissenting, that an order for the issue of a writ of certiorari made after the expiration of the prescribed time was void notwithstanding that it was applied for and judgment on the application reserved before the time had expired.—*Held*, per Taschereau, C.J.—That where jurisdiction has been taken away by statute, the maxim *actus curiæ neminem gravabit* cannot be applied after the expiration of the time prescribed so as to validate an order either by antedating or entering it *nunc pro tunc*; that, in the present case, the order for certiorari could issue as the impeachment of the proceedings of the inferior tribunal was sought upon the ground of want of jurisdiction in the commissioners, but the appellants were not entitled to it on the merits.—*Per* Girouard, J. (dissenting).—Under the circumstances, the order in this case ought to be treated as having been made upon the date when judgment upon the application was reserved by the judge. Upon the merits, the appeal should have been allowed as the commissioners had no jurisdiction in the absence of proper notice as required by the twenty-second section of the "Marsh Act." R. S. N. S. s. 1900, c. 66.—*Per* Davies, J.—The statute allows any person aggrieved by the proceedings of the commissioners to remove the same into the Supreme Court by certiorari, the claim for the writ on the ground of jurisdiction was either abandoned or unfounded; and the statutory writ could not issue after the six months had expired. *In re Trecothick Marsh*, xxxvii., 79.

2. *Jurisdiction of provincial tribunal—Consent of parties—Estoppel—Railway bridge over navigable river—R. S. O. [1914]*

c. 195—R. S. O. [1914] c. 186.]—By the Ontario Assessment Act an appeal is given from a decision of the Court of Revision to the county court judge with, in certain cases, a further appeal to the Railway and Municipal Board. A railway company took an appeal direct from the Court of Revision to the Board. When the appeal came up for hearing the chairman stated that the Board was without jurisdiction and the parties joined in a consent to its being heard as if on appeal from the county court judge. The Board then heard the appeal and gave judgment dismissing it. The companies applied for and obtained leave to appeal from said judgment, under section 80 of the "Assessment Act," which allows an appeal on a question of law only, to the Appellate Division which reversed it. On appeal from the last mentioned judgment to the Supreme Court of Canada.—*Held*, Fitzpatrick, C.J., and Idington, J., dissenting, that the case was not adjudicated upon by the Board *extra cursum curiæ*; that it came before the Appellate Division and was heard and decided in the ordinary way; an appeal would therefore lie to the Supreme Court under section 41 of the "Supreme Court Act."—*Per* Duff, J.—The decision of the Board that the option to its jurisdiction could be waived, and that it could lawfully hear the appeal from the Court of Revision direct (and affirm or amend the assessment) given at the invitation of both parties pursuant to an agreement between them and acted upon by the Board in hearing the appeal on the merits, and acted on by the Appellate Division, is binding on the parties and not open to question on this appeal: *Ex parte Pratt* (12 Q. B. D. 334); *Forrest v. Harvey* (4 Bell App. Cas. 197); *Gandy v. Gandy* (30 Ch. D. 57); *Roe v. Mutual Loan Fund Association* (19 Q. B. D. 347); and, consequently, the appellant municipality is precluded from contending on appeal to the Supreme Court of Canada that, in the circumstances, the Appellate Division had no authority under the "Assessment Act" to declare the assessment illegal.—A railway company, under authority of the Parliament of Canada, built an international bridge over the St Lawrence River at Cornwall and have since run trains over it.—*Held*, that such superstructure supported by piers resting on Crown soil and licensed for railway purposes was not included in the railway property assessable under sec. 47 of the "Ontario Assessment Act" (R. S. O. [1914] ch. 195); if it is included it is exempt from taxation under sub-sec. 3 of sec. 47.—Judgment appealed against (34 Ont. L. R. 55) affirmed. *Cornwall v. Ottawa & N. Y. R. R. Co.*, lii., 466.

3. *The Registrar in Chambers—Appeal—Jurisdiction — Adjudication authorised by provincial authority — "Supreme Court Act," R. S. C. 1906, s. 41—Finality of provincial decision—"Court of last resort."*—A provincial statute, providing that judgments of courts in the province on appeal from decisions of courts of revision in respect of assessments for taxation purposes shall be final and conclusive on the matters adjudicated upon thereby, does not circumscribe the appellate jurisdiction given to the Supreme Court of Canada in such mat-

ters by section 41 of the "Supreme Court Act," R. S. C. 1906, ch. 139. *Crown Grain Co. v. Day* (1908) A. C. 504) applied.—A district court judge, in the Province of Alberta, adjudicating in matters concerning the assessment of property for municipal purposes under the provisions of the North-West Territories Ordinance No. 33, of 1893, as amended by the statutes of Alberta, ch. 9 of 1909, and ch. 27 of 1913, sec. 7, is a "court of last resort created under provincial legislation" within the meaning of section 41 of the "Supreme Court Act," R. S. C. 1906, ch. 139, and, consequently, an appeal from the decision lies to the Supreme Court of Canada when it involves the assessment of property at a value of not less than ten thousand dollars. *City of Toronto v. Toronto Railway Co.* (27 Can. S. C. R. 640), referred to as *effetè*; *Canadian Niagara Power Co. v. Township of Stamford* (50 Can. S. C. R. 168), and *Re Heinze, Fleitman v. The King* (52 Can. S. C. R. 15), referred to. *Peace v. City of Calgary*, liv. 1.

## 2. BUSINESS TAX.

4. *Appeal—Stated case—Provincial legislation—Assessment—Municipal tax — Foreign company — "Doing business in Halifax."*—An Ontario company resisted the imposition of a license fee for "doing business in the City of Halifax," and a case was stated and submitted to the Supreme Court of Nova Scotia for an opinion as to such liability. On appeal from the decision of the said court to the Supreme Court of Canada, counsel for the City of Halifax contended that the proceedings were really an appeal against an assessment under the city charter, that no appeal lay therefrom to the Supreme Court of the Province, and, therefore, and because the proceedings did not originate in a superior court, the appeal to the Supreme Court of Canada did not lie.—*Held*, *per* Fitzpatrick, C.J., and Duff, J., that, as the appeal was from the final judgment of the court of last resort in the province, this court has jurisdiction under the provisions of the Supreme Court Act, and it could not be taken away by provincial legislation. — *Per* Davies, J.—Provincial legislation cannot impair the jurisdiction conferred on this court by the Supreme Court Act. In this case the Supreme Court of Nova Scotia had jurisdiction under Order XXXIII, Rule 1 of the Judicature Act. — *Per* Idington, J.—If the case was stated under the Judicature Act Rules the appeal would lie, but not if it was a submission under the charter for a reference to a judge at request of a ratepayer.—By s. 313 of the said charter (54 Vict. c. 58) as amended by 60 Vict. c. 44, "Every insurance company or association, accident and guarantee company, established in the City of Halifax, or having any branch office, office or agency therein shall . . . pay an annual license fee as hereinafter mentioned . . . Every other company, corporation, association or agency doing business in the City of Halifax (banks, insurance companies or associations, etc., excepted) shall . . . pay an annual license fee of one hundred dollars." *Held*, that the words "every other

company" in the last clause were not subject to the operation of the *ejusdem generis* rule, but applied to any company doing business in the city. Judgment appealed from overruled on this point.—A carriage company agreed with a dealer in Halifax to supply him with their goods and give him the sole right to sell the same, in a territory named, on commission, all moneys and securities given on any sale to be the property of the company and goods not sold within a certain time to be returned. The goods were supplied and the dealer assessed for the same as his personal property.—*Held*, Davies and MacLennan, JJ., dissenting, that the company was not "doing business in the City of Halifax" within the meaning of sec. 313 of the charter and not liable for the license fee of one hundred dollars thereunder.—Judgment of the Supreme Court of Nova Scotia (39 N. S. Rep. 403) affirmed, but reasons overruled. *City of Halifax v. McLaughlin Carriage Co.*, xxxix., 174.

### 3. CONSTITUTIONAL LAW.

5. *Constitutional law—Municipal taxation—Official of Dominion Government—Taxation on income—B. N. A. Act, 1867, ss. 91 and 92.*—Sub-sec. 2 of sec. 92 B. N. A. Act, 1867, giving a provincial legislature exclusive powers of legislation in respect to "direct taxation within the province," etc., is not in conflict with sub-sec. 8 of sec. 91, which provides that Parliament shall have exclusive legislative authority over "the fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada." Girouard, J., *contra*.—*Held*, therefore, Gironard, J., dissenting, that a civil or other officer of the Government of Canada may be lawfully taxed in respect to his income as such by the municipality in which he resides. *Abbott v. City of St. John*, xl., 597.

6. *Lease of Crown lands—Interest of occupier—Constitutional law—Exemption from taxation—Construction of statute—"B. N. A. Act, 1867," s. 125—(Sask.) 6 Edw. VII. c. 36, "Local Improvements Act"—(Sask.) 7 Edw. VII. c. 3, "Supplementary Revenue Act"—Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts.*—The Saskatchewan statutes, 6 Edw. VII. ch. 36 ("The Local Improvements Act") and 7 Edw. VII. ch. 3 ("The Supplementary Revenue Act") and their amendments, authorizing the taxation of interests in Dominion lands held by persons occupying them under grazing leases, or licenses from the Minister of the Interior, as not in contravention of the provision of section 125 of the "British North America Act, 1867," exempting from taxation all lands or property belonging to the Dominion of Canada; consequently, these enactments are *intra vires* of the provincial legislature. *The Calgary and Edmonton Land Co. v. The Attorney-General of Alberta* (45 Can. S. C. R. 170), followed.—For the purposes of the collection of taxes so levied the provincial legislature may authorize their recovery by personal action, as for debt, against persons so occupying

such lands, in the civil courts of the province, notwithstanding that the residences of such persons may be outside the limits of the province.—The judgment appealed from (24 West. L. R. 903; 4 West. W. R. 1219) was affirmed. *Smith v. Rural Municipality of Vermilion Hills*, xlix., 563.

7. *Education—School boards—Taxes payable by incorporated companies—Apportionment—Shares for public and separate school purposes—Notice—Construction of statute—Legislative jurisdiction—"B. N. A. Act, 1867," sec. 92—"Saskatchewan Act," 4 & 5 Edw. VII. c. 42, s. 17—"School Assessment Act," R. S. Sask. 1909, c. 101, ss. 93, 93a.*—Section 93 of the Saskatchewan "School Assessment Act," R. S. Sask. 1909, ch. 101, authorizes any incorporated company to give a notice requiring a portion of the school taxes payable by the company to be applied to the purposes of separate schools, and section 93a, as enacted by section 3 of chapter 36 of the Saskatchewan statutes of 1912-1913, authorizes separate school boards themselves to give a notice to any company which fails to give the notice authorized by section 93 requiring that its taxes should be apportioned between the boards according to the assessments of public and separate school supporters in the district. A number of companies neglected to give the notice provided for and the separate school board gave them notices requiring a portion of their taxes to be applied for the purposes of that board. In these circumstances the public school board claimed the whole of the taxes payable by the companies in question and the separate school board claimed a portion of such taxes. On a special case, directed on the application of the municipal corporation, questions were submitted for decision as follows: (a) Had the Saskatchewan Legislature jurisdiction to enact section 93a of the "School Assessment Act"; (b) if question (a) be answered in the negative, has the defendant (the separate school board) the right it claims to a portion of the said taxes; (c) if question (a) be answered in the affirmative, has the defendant the right it claims to a portion of the said taxes?—*Per* Davies and Duff, JJ. (expressing no opinion as to the constitutionality of the legislation), that the effect of the enactments in question was not to give the separate school board any portion of the taxes claimed by it. The Chief Justice and Anglin, J., *contra*.—*Per* Idington, J.—The enactment of section 93a was *ultra vires* of the Legislature of Saskatchewan. The Chief Justice and Anglin, J., *contra*.—*Per* Fitzpatrick, C.J., and Anglin, J.—The Legislature of Saskatchewan had jurisdiction to enact section 93a of the "School Assessment Act," and the taxes payable by the companies in question should be apportioned between the public and the separate school boards in shares corresponding with the total assessed value of assessable property assessed to persons other than incorporated companies for public school purposes and the total assessed value of property assessed to persons other than incorporated companies for separate school purposes respectively.—Judgment appealed from (7 West. W. R. 7) reversed, the Chief Justice and Anglin, J., dissenting. *Trust*



*tees Regina Public School v. Trustees Gratton Separate School*, 1. 589.

#### 4. CONSTRUCTION OF STATUTE.

8. *Construction of statute—Words and phrases* — “Terrain” — “Lot” — *Immovable property* — *Charter of the Town of Westmount* — 56 V. c. 54, s. 100.]—Section 100 of the statute of the Province of Quebec, 56 Vict. ch. 54, referred to as “The Westmount Charter,” authorized the town council to levy assessments “on every lot, town lot, or portion of a lot, whether built upon or not, with all buildings and erections thereon.” The words used in the French version of the statute were, “*toute terrain, lot de ville ou portion de lot.*” The by-law enacted in virtue of the statute purported to impose a tax upon “all real estate” within the municipality, and under the by-law the property of the company, respondents, consisting of their equipment for the transmission of gas and electric currents installed upon and under the public streets, squares, etc., of the town, was assessed as subject to taxation and described on the rolls as “gas-mains and equipment, poles, transformers, wires, etc.” In an action by the municipal corporation for the recovery of the amount of taxes claimed in virtue of the by-law and assessment:—*Held*, Idington, J., dissenting, that neither poles carrying electric wires nor gas-mains, and their respective equipments, placed on or under the public streets, etc., of the town, can be deemed taxable real estate within the meaning of the word “terrain” used in the French version, nor of the word “lot” used in the English version of the provisions made by section 100 of the statute, 56 Vict. ch. 54 (Que.). Judgment appealed from (Q. R. 20 K. B. 244) affirmed. *Town of Westmount v. Montreal Light, Heat and Power Co.*, xlv., 364.

9. *Municipal corporation* — *Meetings of council*—*Court of Revision* — *Transacting business outside limits of municipality* — *Place of meeting*—*Revision of assessment rolls* — *By-laws*—*Sale for arrears of taxes*—*Construction of statute*—55 V. c. 33, s. 83 (a) (B.C.)—*R. S. B. C. 1897, c. 144*—*Statutory relief*—*Estoppel*—*Acquiescence* — *Laches*—*Limitation of action.*] — *Per* Fitzpatrick, C.J., and Idington and Anglin, J.J.—Prior to the amendment of the British Columbia “Municipal Act, 1892,” by the “Municipal Amendment Act, 1894,” 57 Vict. (B.C.) ch. 34, sec. 15, municipal councils subject to those statutes had no power to hold meetings for the transaction of any administrative, legislative or judicial business of the municipal corporation at a place outside of the territorial boundaries of the municipality. —*Per* Fitzpatrick, C.J., and Idington, Duff and Anglin, J.J.—Courts of revision organized under the British Columbia municipal statutes, have no power to exercise their functions as such except at meetings held within the territorial limits of the municipality where the property, described in the assessment rolls to be revised by them, is situate.

—Section 15 of the “Municipal Amendment Act, 1894,” inserted in the “Municipal Act, 1892” (B.C.), a new provision, section 83 (a), as follows: “All meetings of a municipal council shall take place within the limits of the municipality, except when the council have unanimously resolved that it would be more convenient to hold such meetings, or some of them, outside of the limits of the municipality.”—*Held*, Brodeur, J., dissenting, that there was no proof of such a unanimous resolution as the statute requires. — The council of the respondent municipality, without any formal resolution provided by the amended statute, held its meetings during several years at a place outside the limits of the municipality, and organized courts of revision there. These courts held all their meetings at the same place as the council and assumed to revise the municipal assessment rolls at those meetings. The council approved the rolls so revised and enacted by-laws, from year to year, levying rates and authorizing the collection of taxes on the lands mentioned in the rolls, and, after notice as provided by the statutes, sold lands so assessed and alleged to be in arrear for the taxes so imposed.—*Held*, Brodeur, J., dissenting, that the assessment rolls were invalid, that the by-laws levying the rates and authorizing the collection of taxes on the lands mentioned therein were null and void, and that the sales of the lands so made for alleged arrears of taxes were illegal and of no effect. *Per* Duff, and Anglin, J.J., Brodeur, J., *contra*.—The default in payment of taxes, by the appellant, and his subsequent inaction and silence, while aware of the fact that his lands had been sold for alleged arrears of taxes, did not disentitle him from taking advantage of the statutory procedure respecting the contestation of sales for arrears of taxes either by estoppel, acquiescence or laches. The provisions of section 126 (3) of the “Municipal Act, 1892” (now R. S. B. C. 1897, ch. 144, sec. 86 (2)) have no application to invalidate by-laws enacted by municipal councils on occasions when they could not perform legislative functions — The judgment appealed from was reversed Brodeur, J., dissenting, on the ground that, as the council had held its first meeting in each year within the limits of the municipality and adjourned for the purpose of holding its next meetings at the place outside of the municipality where all other meetings were held, the by-laws approving of the assessment rolls and those levying rates and authorizing the collection of taxes were valid and the sales of the lands in question for arrears of such taxes was legal and effective. *Anderson v. Municipality of South Vancouver*, xlv., 425.

10. *Municipal by-law* — *Exemption from taxation* — *Validating legislation*—*School rates*—“*Public School Act*,” 55 V. c. 60, s. 4 (Ont.)—*Special by-law—Taxation.*]—By section 4 of the “Public Schools Act” of Ontario (55 Vict. ch. 60), it is provided that “no municipal by-law hereafter passed for exempting any portion of the ratable property of a municipality from taxation, in whole or in part, shall be held or con-

strued to exempt such property from school rates of any kind whatsoever." A similar provision is contained in the "Municipal Act" (55 Vict. ch. 42, sec. 366), and both are now to be found in the Revised Statutes of Ontario, [1914] ch. 266, sec. 39, and ch. 192, sec. 396 (c). — *Held*, affirming the judgment of the Appellate Division (30 Ont. L. R. 378, 384, 391), Duff, J., dissenting, that the application of this legislation is not confined to the case of a by-law passed under the general powers of a municipality, but it applies to limit the effect of a special by-law exempting a company from all municipal assessment "of any nature or kind whatsoever" beyond an amount specified as its annual assessment, even when the by-law was confirmed by an Act of the legislature which declared it to be legal, valid and binding, "notwithstanding anything contained in any Act to the contrary." *Canadian Pacific Railway Co. v. City of Winnipeg* (30 Can. S. C. R. 558), distinguished. *Held*, per Idington, J.—The by-laws granting exemption did not conform to the statutory requirements and were, therefore, invalid. (Applications for special leave to appeal to the Privy Council by the Canadian Niagara Power Co. and the Electrical Development Co. were refused, 4th August, 1914.) *Canadian Niagara Power Co. v. Stamford*, l, 168.

11. *Interest in land—Recitals in agreement—Validation by statute—Legislative declarations—Construction of contract—R. S. B. C. 1911, c. 222, s. 47—2 Geo. V. c. 37 (B.C.)—3 Geo. V. c. 71, s. 5 (B.C.)*—By an agreement, executed in 1898, H. agreed to sell to A. and S. certain subsidy lands of a railway company and it was therein provided that the moiety of the lands should be subsequently conveyed to H., but no formal instrument was ever executed for the purpose of vesting this interest in him. In 1912, an agreement was entered into by all the persons interested in the lands and the Crown for the re-purchase by the Government of British Columbia of the unsold portions of the lands and this latter agreement was validated by the "Railway Subsidy Lands Re-purchase Act," 2 Geo. V. ch. 37 (B.C.) (to which it was annexed as a schedule), which declared that the provisions of the agreement were to be construed as if expressly thereby enacted. The agreement so validated declared, in recitals therein, that H. was entitled to an undivided one-half interest in the lands in virtue of the agreement executed in 1898, that the portions thereof conveyed to the Crown were subject thereto, and that the title should pass to the Crown subject to such estate or interest.—*Held*, affirming the judgment appealed from (20 B. C. Rep. 99), that, by the effect of the validated agreement as supplemented by the legislative declarations in the "Railway Subsidy Lands Repurchase Act," 2 Geo. V. ch. 37, an interest in the lands became vested in H. which was liable to assessment and taxation under the British Columbia "Taxation Act," R. S. B. C. 1911, ch. 222, sec. 47, as amended by 3 Geo. V. ch. 71, sec. 5. *Angus v. Heinze* (42 Can. S. C. R. 416), referred to. *Re Heinze, Fleitmann v. The King*, lii, 15.

12. *Municipal corporation—Exemptions—Crown lands—Allotment for irrigation purposes—Ungranted concession—Construction of statute—Words and phrases—"Land"—"Owner"—"Occupant"—Constitutional law—"B. N. A. Act," 1867, s. 125—Alberta "Rural Municipality Act," 3 Geo. V. ch. 3—"Irrigation Act," R. S. C. 1906, c. 61.]—Under sections 249, 250 and 251 of the Alberta "Rural Municipality Act," 3 Geo. V. c. 3, as amended by section 30 of the statutes of Alberta, 4 Geo. V. c. 7, a purchaser of lands for irrigation purposes, under the "Irrigation Act," R. S. C. 1906, c. 61, entitled to possession and to complete the purchase and take title thereof (such lands remaining in the meantime, Crown lands of the Dominion of Canada) is an "occupant" of "lands" within the meaning of those terms as defined by the interpretation clauses of the "Rural Municipality Act," and has therein a beneficial and equitable interest in respect of which municipal taxation may be imposed and levied. Such interest is not exempt from taxation under sub-section 1 of section 250 of the "Rural Municipality Act," nor under section 125 of the "British North America Act, 1867." *Calgary and Edmonton Land Co. v. Attorney-General of Alberta* (45 Can. S. C. R. 170), and *Smith v. Rural Municipality of Vermilion Hills* (49 Can. S. C. R. 563), applied. The Chief Justice and Duff, J., dissented.—*Per Fitzpatrick, C.J.*—Sections 250 and 251 of the Alberta "Rural Municipality Act" make no provision for the assessment and taxation of an interest held in lands exempted from taxation.—*Per Anglin, J.*—The provisions of the Alberta "Rural Municipality Act" relating to assessment and taxation which could affect such lands as those in question deal only with interests therein other than those of the Crown and their value.—Judgment appealed from, 23 D. L. R. 88; 31 West. L. R. 725, affirmed, Fitzpatrick, C.J., and Duff, J., dissenting. *Southern Alberta Land Co. v. Rural Municipality of McLean*, liii, 151.*

## 5. EXEMPTIONS.

13. *Assessment and taxes—Exemption—Railways—R. S. N. S. (1900) c. 73—Imposition of tax—Date—Municipal Act—R. S. N. S. (1900) c. 70.]—Sec. 3 of R. S. N. S. (1900) c. 73 (Assessment Act) exempted from taxation "the road, rolling stock, etc. . . . used exclusively for the purpose of any railway, either in course of construction or in operation, exempted under the authority of any Act passed by the legislature of Nova Scotia." Prior to the passing of this Act, the appellants' railway had always been exempt from taxation but all former assessment Acts were repealed by these Revised Statutes so that it was not "exempted" when the latter came into force. By 2 Edw. VII. c. 25, assented to on March 27th, 1902, the word "exempted" was struck out of the above clause, and in May, 1902, the appellants were included in the assessment roll of that year for taxation on their railway:—*Held*, by Taschereau, C.J., that under the above recited clause the railway was*

exempt from taxation.—*Held*, by Sedgewick, Davies, Nesbitt and Killam, J.J., that if the railway could be taxed under the Assessment Act of 1900 the rate was not authorized until the amending of 1902 by which it was exempt had come into force and no valid tax was, therefore, imposed. *Dominion Iron and Steel Co. v. McDonald*, xxxv., 98.

14. *Constitutional law—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of boundaries of Manitoba—Construction of statutes—B. N. A. Acts, 1867 and 1871—33 Vict. c. 3 (D.)—43 Vict. c. 25 (D.)—44 Vict. c. 14 (D.)—44 Vict. cc. 1 and 6 (3rd sess.), (Man.)—Construction of contract—Grant in presenti—Cause of action—Jurisdiction—Waiver.*—The land subsidy of the Canadian Pacific Railway Company authorized by the Act, 44 Vict. c. 1 (D.), is not a grant in presenti, and consequently, the period of twenty years of exemption from taxation of such lands provided by the sixteenth section of the contract for the construction of the Canadian Pacific Railway begins from the date of the actual issue of letters patent of grant from the Crown, from time to time, after they have been earned, selected, surveyed, allotted and accepted by the Canadian Pacific Railway Company.—The exemption was from taxation "by the Dominion, or any province hereafter to be established or any municipal corporation therein."—*Held*, that when, in 1881, a portion of the North-West Territories in which this exemption attached was added to Manitoba the latter was a province "thereafter established," and such added territory continued to be subject to the said exemption from taxation. — The limitations in respect of legislation affecting the territory so added to Manitoba, by virtue of the Dominion Act, 44 Vict. c. 14, upon the terms and conditions assented to by the Manitoban Acts, 44 Vict. (3rd sess.), cc. 1 and 6, are constitutional limitations of the powers of the Legislature of Manitoba in respect of such added territory and embrace the previous legislation of the Parliament of Canada relating to the Canadian Pacific Railway and the land subsidy in aid of its construction.—Taxation of any kind attempted to be laid upon any part of such land subsidy by the North-West Council, the North-West Legislative Assembly or any municipal or school corporation in the North-West Territories is Dominion taxation within the meaning of the sixteenth clause of the Canadian Pacific Railway contract providing for exemption from taxation. *Per* Taschereau, C.J.—In the case of the Springdale School District, as the whole cause of action arose in the North-West Territories, the Court of King's Bench for Manitoba had no jurisdiction to entertain the action or to render the judgment appealed from in that case, and such want of jurisdiction could not be waived. (Leave to appeal to Privy Council refused, 27th February, 1907.) *North Cypress v. Can. Pac. Ry. Co.; Argyle v. Can. Pac. Ry. Co.; Can. Pac. Ry. Co. v. Springdale*, xxxv., 550.

15. *Municipal corporation — Exemption from taxes — Resolution of council—Dis-*

*crimination — Establishment of industry—36 Vict. c. 81, s. 1 (N.B.).*—By s. 1 of 33 Vict. c. 81, the New Brunswick Legislature authorized the Town Council of Woodstock from time to time to "give encouragement to manufacturing enterprises within the said town by exempting the property thereof from taxation for a period of not more than ten years by a resolution declaring such exemption." In 1892 the council passed the following resolution: "That any company establishing a woollen mill in the town of Woodstock be exempted from taxation for a period of ten years.—*Held*, *per* Davies, Idington, and MacLennan, J.J., that this resolution provided for discrimination in favour of companies and against individuals who might establish a woollen mill or mills in the town and was therefore void. *City of Hamilton v. Hamilton Distillery Co.* (38 Can. S. C. R. 239) followed.—*Held*, *per* Davies, J.—The resolution exempting any company and not any property of a company was too indefinite and uncertain to be the basis for a claim for exemption.—In 1893 a woollen mill was established in Woodstock by the Woodstock Woollen Mills Co., and operated for some years without taxation. In 1899 the mill was sold under execution and two months later the Carleton Woollen Co. (appellants) were incorporated and acquired the said mill from the purchaser at the sheriff's sale and have operated it since.—*Held*, that the appellants could not by so acquiring the mill which had been exempted be said to have "established a woollen mill" without shewing that when it was acquired it had ceased to exist as such, which they had not done.—Judgment appealed from, affirming that of Barker, J., at the hearing (3 N. B. Eq. 138) affirmed. *Carleton Woollen Co. v. Town of Woodstock*, xxxviii., 411.

16. *Municipal corporation—Exemption — Charter of Edmonton — Construction of statute—"Licence fee"—N. W. T. Ord. 192 of 1900—N. W. T. Ord. 1904, c. 19—Con. Ord. N. W. T. c. 89.*—The provision of the charter of the Town of Edmonton (N. W. T. Ord. 1904, c. 19) title xxxii., s. 2, s.-s. 4, exempting any person assessed in respect of any business from the payment of "a license fee in respect of the same business" does not apply to fees exigible upon licenses issued by the provincial government under the "Liquor License Ordinance." *Con. Ord. N. W. T. c. 89.*—Judgment appealed from (2 Alta. L. R. 38) affirmed. *York v. City of Edmonton*, xlii., 363.

17. *Municipal corporation — Assessment and taxes — Exemption from taxation — Board of Revision—Judicial functions—Administrative powers—Construction of statute—"Vancouver Incorporation Act." 64 V. c. 54, s. 46, s.-s. 3.*—The "Vancouver Incorporation Act," 65 Vict. c. 54 (B.C.), by s.-s. 3 of s. 46, provides that "the buildings and grounds of and attached to and belonging to . . . any incorporated seminary of learning, public hospital, or any incorporated charitable institution, whether vested in trustees or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise used or

occupied; provided, that such grounds shall not exceed in extent the amount actually necessary for the requirements of the institution. The question as to what amount of land is necessary shall be decided by the Court of Revision, whose decision shall be final."—*Held, per Davies, Duff and Anglin, J.J.*, that the functions in respect of the limitation of exemptions from taxation so vested in the Court of Revision are quasi-judicial and must be exercised in each case with respect to that case alone; it is not vested with power to lay down a general rule based solely upon general considerations.—*Per Idington, J.*—That the provision in question was merely a delegation of a legislative or administrative power, probably carrying with it a duty, but in no manner implying the discharge of a judicial duty subject to review or supervision.—In proceedings, by certiorari, to remove a decision of the Court of Revision, the evidence adduced in support of the contention that the court had failed to dispose of the question in a proper manner consisted merely of a minute of its proceedings whereby it was resolved "that all charitable institutions mentioned in s.-s. 3 of s. 46 of 'Vancouver Incorporation Act' be exempted from taxation to the extent of the area occupied by the buildings thereon and an additional amount of land equal to 25 per cent. of the area, and that the assessment roll for 1900, as amended, be confirmed."—*Held*, affirming the judgment appealed from (15 B. C. Rep. 344), that this minute, in the absence of further evidence, was not incompatible with the view that the Court of Revision had examined each particular case before deciding to act in the sense of the minute and that it would be a proper direction in each individual case.—*Sisters of Charity of Providence v. City of Vancouver*, xlv., 29.

18. *Appeal—Special leave*—"Supreme Court Act," R. S. C. (1916) c. 139, s. 37 (c)—*Interests involved—Construction of statute*—"Alberta Local Improvement Act," 7 *Edw. VII. c. 11, and amendments*—"B. N. A. Act, 1867," s. 125—53 *Vict. c. 4 (D.)—Assessment and taxation—Constitutional law—Railway aid—Land subsidy—Crown lands—Interests of private owner—"Free grant" "Owner"—"Real property."*]—Special leave to appeal from the judgment of the Supreme Court of Alberta (2 *Alta. L. R. 446*) was granted, under the provisions of section 37 (c) of the "Supreme Court Act," R. S. C. 1906, c. 139, because of the magnitude of the interests involved.—Provincial legislatures may authorize the taxation of beneficial or equitable interests acquired in lands wherein the Crown, in the right of the Dominion of Canada, holds some interest and the legal estate. The legislature of a province may provide for the levy and collection of taxes so imposed by the transfer of the interests affected by such taxes.—The Dominion statute, 53 *Vict. c. 4*, authorized the granting of aid for the construction of a railway by a subsidy in Crown lands, and, by section 2, it was declared that such grants should be "free grants" subject only to the payment, on the issue of patents therefor, of the costs of survey and incidental expenses, at the

rate of ten cents per acre. The lands in question formed part of the land-subsidy, earned by the railway company and reserved and set apart for that purpose by order-in-council, which had been conveyed by deed poll to the appellants by the railway company prior to the issue of a Crown grant. While still unpatented, these lands had been rated for taxes and condemned for arrears of taxes under the statute of Alberta, 7 *Edw. VII. c. 11.*—*Held*, that the interest of the appellants in the said lands was subject to taxation and liable to be dealt with under the provincial statute, although letters patent of grant thereof by the Crown had not issued.—*Held*, also, that allotment of these lands as "free grants," under the subsidy Act, related only to exemption from the usual charges made in respect of public lands by or on behalf of the Crown, except the cost of survey, etc., and did not exempt the appellants' interest therein from taxation under the provisions of the provincial statute, although neither the legal estate nor any interest therein remaining in the Crown could be liable to taxation.—Judgment appealed from (2 *Alta. L. R. 446*) affirmed. *Rural Municipality of North Cypress v. Canadian Pacific Railway Co.* (35 *Can. S. C. R. 550*) distinguished. *Calgary & Edmonton Land Co. v. Attorney-General of Alberta*, xlv., 170.

19. *Sale of land for arrears—Purchase by municipality—Failure to give notice—Curative Act—Evidence—Discovery—Death of deponent—Use of deposition at trial.*—By s. 184 (3) of the "Ontario Assessment Act" (R. S. O. [1897] c. 224, where the sale of land for unpaid taxes is adjourned for want of a bid for the full amount of the arrears, the municipality may purchase the land at such adjourned sale if its council, before the day thereof, has given notice of its intention to do so.—*Held*, affirming the judgment of the Appellate Division (29 *Ont. L. R. 73*), that failure to give such notice is cured by the provisions of 3 *Edw. VII. c. 86, s. 8*, and its amendment, 6 *Edw. VII. c. 99, s. 8.* *City of Toronto v. Russell* ([1908] *A. C. 493*) followed.—On the expiration of the time for redemption after sale all rights of the former owner are barred.—The depositions of a party to an action taken on discovery cannot, when the deponent has died in the interval, be used against the opposite party unless the latter has first used it for his own purposes. *Cartwright v. Toronto*, l., 215.

20. *Statute—Construction—Application—Taxation—Exemption—Railway property—Frontage lots—Local improvements, 63 & 64 V. c. 57, s. 18; c. 58, s. 22 (Man.)—R. S. M. 1902, c. 166—10 Edw. VII. c. 74 (Man.)*.]—By the "Railway Taxation Act," c. 57, s. 18, 63 & 64 *Vict. (Man.)*, it was provided that every railway company subject to the Act should be free and exempt from all taxation of every nature and kind within the province except that imposed under its provisions. By c. 58 of the same session of the legislature, c. 57 was amended by adding s. 22 thereto, which provided that nothing therein should deprive any city corporation of any power it had to levy taxes on the real property of a railway company fronting on any street for local

improvements. The two Acts were assented to and came into force on the same day. In 1901 an agreement, confirmed by statute, was entered into between the Manitoba Government and the Canadian Northern Ry. Co. by which the Government agreed to guarantee the company's bonds, the company to pay a percentage of its gross earnings to the Government and to be exempt from taxation provided for by s. 18 of c. 57. The "Railway Taxation Act" of 1900 became c. 166 of the Revised Statutes of Manitoba, 1902, ss. 18 and 19 being identical with s. 18 of c. 57 and s. 22 of c. 58 respectively. In 1910 the Act 10 Edw. VII. c. 74 was passed. Section 1 provided "s. 18 of c. 166 R. S. M. 1902, being 'The Railway Taxation Act,' is hereby further amended by adding, etc.," s. 2 "for the removal of doubt respecting the exemption from taxation granted under clause 16 of the agreement" (of 1901 above mentioned) "it is declared that the exemption so granted was and is the exemption specified in s. 18 of the said 'Railway Taxation Act' existing at the date of the passage of such last mentioned Act, and is unaffected by any amending Act or Acts passed concurrently therewith or subsequently thereto." Under the foregoing legislation the City of Winnipeg assessed frontage lots of the Canadian Northern Ry. Co. for local improvements.—*Held, per Fitzpatrick, C.J.*, that though it is reasonably clear that the reference to s. 18 in the Act of 1910 was intended for s. 18 of c. 57 passed in 1900, yet the language used will not admit of a doubt that c. 166, R. S. M. 1902, s. 18, is really referred to, and under that Act the company is not exempt from taxation for local improvements. Duff and Anglin, JJ., *contra*.—*Per Davies and Idington, JJ.*—Section 18 of c. 57 and s. 22 of c. 58 must be read together, and as if the latter had been made a part of c. 57; so construing them the exemption of the company from taxation does not cover taxes for local improvements, the right to impose which is preserved by s. 22.—*Per Duff, J.*, dissenting.—The "Railway Taxation Act," R. S. M. 1902, c. 166, referred to in the Act of 1910, was passed in 1900 (c. 57), and not repealed and re-enacted in 1902. Chapter 58 of the Act of 1900 was an amendment passed concurrently with or subsequently to c. 57, and does not affect the exemption given by the agreement of 1901; and, therefore, by the express terms of the Act of 1910, the principle of *Salmon v. Duncombe* (11 App. Cas. 627), applied.—*Per Anglin, J.*, dissenting.—The reference in s. 2 of the Act of 1910 to s. 18 of the "Railway Taxation Act" means s. 18 of the original Act of 1900, c. 57, and the exemption given by the agreement was not affected by the provisions of c. 58 amending same.—In 1910 a special survey, under the "Special Survey Act," was made of certain lots, including those in question, belonging to the railway company, and each lot was charged with a proportionate share of the cost of the survey.—*Held, Duff, J.*, dissenting, that the charge so made was taxation and not being a tax for a local improvement the company was exempt from payment.—Judgment appealed from (26 Man. R. 292), affirmed. *Canadian Northern Railway Co. v. City of Winnipeg*, liv., 589.

## 6. PRESCRIPTION.

21. *Municipal corporation—Contestation of roll—Limitations of actions—Interruption of prescription—Suspensive condition—Construction of statute*—52 Vict. c. 79 (Q.)—62 Vict. c. 58, s. 408 (Q.)—*Collection of taxes*—Art. 2236 C. C.]—The prescription of three years in respect of taxes provided by the Montreal City Charter, 52 Vict. c. 79 (Q.), runs from the date of the deposit of the assessment roll, as finally revised, in the treasurer's office, when the taxes become due and exigible, and the prescription is not suspended or interrupted by a contestation of the assessment roll, even although the contestation may have been filed by the proprietor of the land assessed.—Judgment appealed from affirmed, Girouard and Nesbitt, JJ., dissenting. (Affirmed by Privy Council, [1906] A. C. 241). *City of Montreal v. Cantin*, xxxv., 223.

22. *Municipal corporation—Montreal city charter—52 Vict. c. 79, s. 120 (Que.)—Construction of statute—"Current year"—Limitation of action—Local improvements—Special tax.*]—By section 120 of the charter of the City of Montreal, 52 Vict. c. 79 (Que.), the right to recover taxes is prescribed and extinguished by the lapse of "three years, in addition to the current year, to be counted from the time at which such tax, etc., became due." A special assessment for local improvements became due on the 14th of March, 1898, and action was brought to recover the same on the 4th of February, 1902.—*Held*, affirming the judgment appealed from (Q. R. 15 K. B. 479), the Chief Justice and Duff, J., dissenting, that the words "current year" in the section in question, mean the year commencing on the date when the tax became due, and that the time limited for prescription had not expired at the time of the institution of the action. *Vanier v. City of Montreal*, xxxix., 151.

## 7. SALE OF LANDS.

23. *Constitutional law—Conflict of laws—Legislative jurisdiction—Construction of statute—Retroactive effect—Redemption of land sold for taxes—Vesting of title—Interest in lands—Equitable estate*—N. W. T. Ord. 1896, c. 2; 1900, c. 10; 1901, cc. 12, 29 and 30—57 & 58 Vict. c. 28 (D.)—*Practice—Form of order.*]—The provisions of the N. W. T. Ordinance, c. 2, of 1896, vesting titles of lands sold for taxes in the purchaser forthwith upon the execution of the transfer thereof free from all charges and incumbrances other than liens for existing taxes and Crown dues, are inconsistent with the provisions of the 54th, 59th and 97th sections of the "Land Titles Act, 1894," and consequently, *pro tanto, ultra vires* of the Legislature of the North-West Territories. Sedgewick and Killam, JJ., *contra*.—The second section of the N. W. T. Ordinances, c. 12 of 1901, providing for an extension of the time for redemption of lands sold for taxes, deals with procedure only and is retrospective and saves the rights of mortgagees prior to the tax sale so as to permit them to come in as interested persons and

redeem the lands. Sedgewick and Killam, J.J., *contra*. *The Ydun* (15 Times L. R. 361) referred to; *In re Kerr* (5 Terr. L. R. 297) overruled.—*Per* Sedgewick and Killam, J.J. The provisions of the said section 2 cannot operate retrospectively so as to affect cases in which the transfers had issued and the right of redemption was gone as in the present case. *North British Canadian Investment Co. v. Trustees of St. John School District No. 16, N. W. T.*, xxxv., 461.

24. *Sale for delinquent taxes — Tax sale deed—Premature delivery—Statutory authority—Condition precedent — Evidence — Presumption—Curative enactment — “Assessment Act,” B. C. Con. Acts, 1888, c. 111, s. 92—B. C. “Assessment Act, 1903,” 3 & 4 Edw. VII. c. 53, ss. 125, 153, 156—Certificate of title (B.C.) — Registry law.]—The British Columbia “Assessment Act” (Con. Acts, 1888, ch. 111, sec. 92), provides that the owner shall have the right to redeem land sold “at any time within two years from the date of the tax sale or before delivery of the conveyance to the purchaser at the tax sale.” The tax sale deed in question was dated on the day before the expiration of two years from the date of the tax sale. The B. C. “Assessment Act, 1903,” 3 & 4 Edw. VII., c. 53, ss. 125, 153 and 156, declares that all proceedings which may have been heretofore taken for the recovery of delinquent taxes under any Act of the province, by public sale or otherwise, should be valid and of full force and effect; that tax sale deeds should be conclusive evidence of the validity of all proceedings in the sale up to the execution of such deed, and that such sale and the official deed to the purchaser of any such lands shall be final and binding upon the former owners of the said lands and upon all persons claiming by, through or under them.—*Held, per Fitzpatrick, C.J., and Idington and Anglin, J.J.* (reversing the judgment appealed from (9 West. W. R. 440; 24 D. L. R. 851)), Davies and Brodeur, J.J., dissenting, that, in the absence of evidence to the contrary, it must be presumed that the delivery of the conveyance to the tax sale purchaser took place on the date of the tax sale deed; that the execution and delivery thereof were premature, and, therefore, the conveyance was ineffectual and insufficient to justify the issue of a certificate of title under the provisions of the “Land Registry Act” or of the “Torrens Registry Act, 1899,” nor could the curative clauses of sections 125, 153 and 156 of the “Assessment Act, 1903,” be applied so as to have the effect of validating the void conveyance. *Heron v. Lalonde*, liii., 503.*

## 8. SCHOOL RATES.

25. *County school fund — Contributions by incorporated towns — Construction of statute — 8 Edw. VII. c. 6, s. 7.]—The Supreme Court of Nova Scotia held (38 N. S. Rep. 1) that the town of Dartmouth was liable to contribute proportionately towards the School Fund of the County of Halifax for the year 1904. Without calling upon counsel for the respondent, the Supreme Court of Canada dismissed the appeal with*

*costs. Town of Dartmouth v. County of Halifax*, xxxvii., 514.

## 9. OTHER CASES.

26. *Appeal—Action for declaration and injunction—60 & 61 Vict. c. 34, s. 1 (D.)—Municipal corporation — Water rates—Discrimination*, xxxviii., 239.

See MUNICIPAL CORPORATION.

27. *Exemption — Special assessment — Local improvement.*

See MUNICIPAL CORPORATION.

28. *Municipal corporation — Powers — Land tax sales—Purchase by corporation—Vesting of title—Manitoba Real Property Act — Agreement to re-convey—Necessity of by-law*, xli., 18.

See MUNICIPAL CORPORATION.

29. *Collection of municipal taxes—Action in Recorder's Court—Montreal City Charter, 62 V. c. 58 (Que.)—Appeal—Jurisdiction—Judgment by Court of Review—Special tribunal—Court of last resort — Supreme Court Act, R. S. C. 1906, c. 139, s. 41, xli., 427.*

See APPEAL.

30. *Appeal—Special leave—Public interest—Important questions of law—Exemption from taxation—School rates. Whyte Packing v. Pringle*, xliii., 691.

31. *Municipal corporation — Exemption—Charter of Edmonton—Construction of statute—“License fee.” York v. Edmonton*, xliii., 363.

See LIQUOR LAWS.

32. *Municipal corporation — Statutory powers—Electric light and power—Waterworks—Immovable outside boundaries—Purchase on credit—Promissory notes—Hypothec—By-law — Loans — Approval of ratepayers—Special rate—Sinking-fund — Construction of statute — (Que.) 8 Edw. VII. c. 95—R. S. Q. 1909, tit. XI.—“Cities and Towns Act.” xlv., 585.*

See MUNICIPAL CORPORATION.

33. *Municipal corporation — Undertaking with ratepayer — Non-collection of taxes—Discretion*, l., 283.

See MUNICIPAL CORPORATION.

## ASSIGNMENTS.

1. EQUITABLE ASSIGNMENTS, 1-2.
2. PREFERENTIAL ASSIGNMENTS, 3-6.
3. EFFECT OF ASSIGNMENT, 7-17.

### 1. EQUITABLE ASSIGNMENTS.

1. *Debtor and creditor — Assignment of debt—Sheriff's sale—Equitable assignment—Statute of Limitations—Payment—Ratification—Principal and agent.]—In Nova Scotia*

book debts cannot be sold under execution and the act of the judgment debtor in allowing such sale does not constitute an equitable assignment of such debts to the purchaser.—The purchaser received payment on account of a debt so sold which, in a subsequent action by the creditor and others, was relied on to prevent the operation of the Statute of Limitations:—*Held*, that though the creditor might be unable to deny the validity of the payment he could not adopt it so as to obtain a right of action thereon, and the payment having been made to a third party who was not his agent did not interrupt the prescription. *Keighley, Maestrad & Co. v. Durant* ([1901] A. C. 240) followed. *Moore v. Roper*, xxxv., 533.

2. *Banking—Security for advances—Chose in action—Moneys to arise out of contract—Unearned funds—Equitable assignment to third party—Notice—Evidence—Priority of claim—Estoppel—Construction of statute—R. S. M. 1902, c. 40, s. (e), "King's Bench Act"—R. S. C. 1906, c. 29, s. 76, "Bank Act."*—An assignment of a future chose in action, to arise out of a contract, operates as an agreement binding on the conscience and when the subject-matter of the assignment comes into existence, creates a trust. *Talby v. The Official Receiver* (13 App. Cas. 523) followed.—Where a bank, in order to secure present or future advances to a customer, has taken from him an assignment vesting in it the legal title to a chose in action arising out of a contract and, subsequently, receives notice of another assignment thereof for valuable consideration by the customer to a third person, before moneys have been advanced upon the security held by the bank, the claim of the bank for advances made after notice is postponed to that of the other incumbrancer. *Dearle v. Hall* (3 Russ. 1); *Hopkinson v. Rolt* (9 H. L. Cas. 514); *Bradford Banking Co. v. Briggs* (12 App. Cas. 29), and *West v. Williams* (1899) 1 Ch. 132), applied.—Where an assignee of a chose in action with knowledge that the same chose in action has also been assigned to another person for valuable consideration permits the other assignee to rely upon his security by acting on the faith of his assignment, without giving him notice of the former charge, the claim of the latter is entitled to priority over that of the assignee by whose conduct he has been thus misled. *Russell v. Watts* (10 App. Cas. 590), and *Stronge v. Hawkes* (4 DeG. M. & G. 186), applied. *Fraser v. Imperial Bank of Canada*, xlvii., 313.

## 2. PREFERENTIAL ASSIGNMENTS.

3. *Preferential assignment—Debtor and creditor—Pressure—Knowledge of insolvency—Yukon Con. Ord. 1902, c. 38, ss. 1 and 2.*—The effect of the second section of the Yukon Ordinance, chapter 38, Consolidated Ordinances, 1902, is to remove the doctrine of pressure in respect to preferential assignments, and, consequently, all assignments made by persons in insolvent circumstances come within the terms of the ordinance.—In order to render such an assignment void there must be knowledge of the

insolvency on the part of both parties and concurrence of intention to obtain an unlawful preference over the other creditors. *Molsons Bank v. Halter* (18 Can. S. C. R. 88); *Stephens v. McArthur* (19 Can. S. C. R. 446); and *Gibbons v. McDonald* (20 Can. S. C. R. 587) referred to. *Benallack v. Bank of British North America*, xxxvi., 120.

4. *Assignment by mortgagor for benefit of creditors—Priorities—Assignment of claims of execution creditors—Redemption—Assignments and Preferences Act, s. 11 (Ont.).*—After judgment for foreclosure of mortgage or redemption judgment creditors of the mortgagor with executions in the sheriff's hands were added as parties in the master's office and proved their claims. The master's report found that they were the only incumbrancers and fixed a date for payment by them of the amount due to the mortgagees. After confirmation of the report S. obtained assignments of these judgments and was added as a party. He then paid the amount due the mortgagees and the master took a new account and appointed a day for payment by the mortgagor of the amount due S. on the judgments as well as the mortgage. This report was confirmed and, the mortgagor having made an assignment for benefit of creditors before the day fixed for redemption, an order was made by a judge in chambers adding the assignee as a party, extending the time for redemption and referring the case back to the master to take a new account and appoint a new day.—*Held*, affirming the judgment of the Court of Appeal (13 Ont. L. R. 127), that under the provisions of sec. 11 of the Assignments and Preferences Act the assignee of the mortgagor could only redeem on payment of the total sum due to S. under the mortgage and the judgments assigned to him. *Scott v. Swanson*, xxxix., 229.

5. *Insolvency—Preferential transfer of cheque—Deposit in private bank—Application of funds to debt due banker—Sinister intention—Payment to creditor—R. S. O. (1897), c. 147, s. 3 (1).*—McG., a merchant in insolvent circumstances, although not aware of that fact, sold his stock-in-trade and deposited the cheque received for the price to the credit of his account with a private banker to whom he was indebted at the time, upon an overdue promissory note that had been without his knowledge, charged against his account a few days before the sale. Within two days after making the deposit, McG. gave the banker his cheque to cover the amount of the note. In an action to have the transfer of the cheque, so deposited, set aside as preferential and void:—*Held*, affirming the judgment appealed from (13 Ont. L. R. 232) that the transaction was a payment to a creditor within the meaning of the statute, R. S. O. (1897), c. 147, s. 3, s-s. 1, which was not, under the circumstances, void as against creditors. *Robinson, Little & Co. v. Scott & Son*, xxxix., 281.

6. *Assignments and preferences—Chattel mortgage—Hindering and delaying creditors—Assignment of book debts—Surety.*—The Ontario Seed Co. owed a bank some \$8,000 for which J. was surety by bond and indorse-



ment of notes for all but \$500. The bank also held as further security an assignment of the company's book debts. The company gave to A., a brother of J., a chattel mortgage of all its personal property and agreed to assign to him the book debts. A. then gave to the company an amount sufficient to pay the bank's claim, J. having supplied him with funds for the purpose, and the company gave its own cheque to the bank with a direction to assign the book debts to A., which was done.—*Held*, that the evidence justified the finding at the trial that the chattel mortgage was given for the benefit of J., who was aware at the time it was given that the company was insolvent, and that it was void under the provisions of the "Assignments and Preferences Act" and should be set aside.—After the assignment of the book debts to A. the company was allowed to go on collecting them.—*Held*, that such assignment was valid, but that the assignee could not retain the value of what had been collected out of the proceeds of the property covered by the chattel mortgage.—Judgment of the Court of Appeal (24 Ont. L. R. 503) reversed and that of the Divisional Court (22 Ont. L. R. 577) restored. *Stecher Lithographic Co. v. Ontario Seed Co.*, xlvii., 540.

### 3. EFFECT OF ASSIGNMENT.

7. *Assignment of obligation — Notice — Signification upon debtor—Art. 1571 C. C.* —In an action against an assignee for a declaration that an obligation has been forfeited and ceased to be exigible on account of the default in the fulfilment of a resolutive condition, exception cannot be taken on the ground that there has been no signification of the assignment as provided by article 1571 of the Civil Code of Lower Canada. The debtor may accept the assignee as creditor and the institution of the action is sufficient notice of such acceptance. *The Bank of Toronto v. The St. Lawrence Fire Insurance Co.* (1903) A. C. 59 followed. *City of Sorel v. Quebec Southern Railway Co.*, xxxvi., 686.

AND see ACTION.

8. *Construction of statute—Alberta "Assignments Act" for benefit of creditors—Occupation of leased premises — Liability of official assignee.* — The Alberta "Assignments Act," as amended by the Alberta statutes, ch. 4, sec. 14 of 1909 and ch. 2, sec. 12 of 1912, provides that assignments for the general benefit of creditors must be made to an official assignee appointed under the Act and that the assignment shall vest in such assignee all the assignor's real and personal property, credits and effects which may be seized and sold under execution. The lessee of premises held under a lease from the plaintiffs made an assignment to the defendant who took possession thereof and, on threat of distress, agreed that he would guarantee the rent so long as he remained in occupation. After three months, the defendant quitted the premises and notified the landlord that he would no longer be responsible for or pay the rent. In an action for breach of the covenants of the lease and to

recover the rent accruing to the end of the term:—*Held*, reversing the judgment appealed from (8 Alta. L. R. 226), Idington and Brodeur, JJ., dissenting, that by the effect of the assignment and entry into possession, the term of the lease passed to the official assignee who, thereupon, became liable for the whole of the rent accruing for the remainder of the term. *Northwest Theatre Co. v. MacKinnon*, liii., 588.

9. *Insolvency — Preference — Trust — Statute of Frauds.*—On the appeal by the plaintiff from the judgment of the Supreme Court of the Province of Alberta (3 Alta. L. R. 108), reversing the judgment of Beck, J., at the trial (2 Alta. L. R. 442), and dismissing the action, the Supreme Court of Canada, after hearing counsel on behalf of both parties, reserved judgment and, on a subsequent day, the appeal was allowed and the judgment of the trial judge was restored. *Smith v. Sugarman*, xlvii., 392.

10. *Contract — Right to assign—Contracting firm becoming incorporated company—Novation — Breach of contract—Damages. Can. Pac. Lumber Co. v. Patterson Lumber Co.*, xlviii., 398.

See CONTRACT.

11. *Title to land—Conveyance upon conditions—Public park — Trust—Forfeiture — Assignment of interest—Decree in favour of assignee — Champertous agreement*, xxxv., 121.

See TITLE TO LAND.

12. *Banks and banking—Security for advances—Assignment of goods — Claim on proceeds of sale—53 Vict. c. 31, s. 74 (D.)*, xxxviii., 187.

See BANKS AND BANKING.

13. *Insolvency — Fraudulent preference—Security to creditor — Knowledge of insolvency—R. S. O. (1897) c. 147, s. 2, s.-ss. 2 and 3*, xxxviii., 577.

See INSOLVENCY.

14. *Set-off—Application of judgments — Equitable assignment — Practice — Stay of execution*, Cam. Cas. 99.

See SET-OFF.

15. *Assignment of chose in action—Notice — Statute of limitations — Acknowledgment of debt—Interest*, Cam. Cas. 239.

See LIMITATIONS OF ACTIONS.

16. *Insolvency — Fraud — Right of action — Misdirection — New trial—Accounts — Practice*, Cam. Cas. 245.

See NEW TRIAL.

17. *Lessor and lessee—Lease of adjoining lots — Separate demises—Assignment to one person—Termination of lease—Valuation of improvements—Valuation as a whole—Consent of counsel. Irwin v. Campbell; Kooft v. Smith*, li., 358.

See LEASE.

AND see BILL OF SALE.



**ATTACHMENT.**

1. *Sheriff — Cause of action — Execution of writ of attachment—Abandonment of seizure — Estoppel.*] — A writ of attachment against the goods of M. in the possession of S. was placed in the sheriff's hands and goods seized under it. After the seizure the goods, with the consent of the plaintiff's solicitor, were left by the sheriff in charge of S., who undertook that the same should be held intact. The sheriff made a return to the writ, that he had seized the goods. The sheriff subsequently seized and sold the goods under executions of other creditors. In an action against the sheriff:—*Held*, reversing the judgment of the Supreme Court of Nova Scotia, that the act of leaving the goods in possession of S. was not an abandonment by the plaintiff's solicitor of the seizure, and if it was the sheriff was estopped by his return to the writ from raising the question.—*Held*, also, that the act of plaintiff's solicitor acting as attorney for S. in a suit connected with the same goods was not evidence of an intention to discontinue proceedings under the attachment. *Duffus v. Creighton*, (xiv., 740) Cam. Cas. 78.

2. *Conditional sale—Price payable before delivery — Title to goods—Rescission of sale —Action — Legal maxims — Attachment — Execution—Possession by judgment debtor—Ownership—Procedure by bailiff—Guardian to second seizure—Sale super non domino et non possedente — Adjudication upon invalid seizure.*]—The hull of a steamer sunk in a canal had been attached under judicial process and, while standing on the bank at a distance from which he could not see or touch the materials, a bailiff assumed to make a second seizure, gave no notice of his proceedings to those on board the hull, and appointed a guardian other than the one placed in charge of the hull at the time of the first seizure. The execution debtor, named in the second writ, had made a bargain for the purchase of the hull subject to the price being paid before delivery, but had not paid the price nor had the property been delivered into his possession. Subsequently, the bailiff adjudicated the hull to the appellant by judicial sale at auction. — *Held*, that there had been no valid seizure under the second writ; that the purchaser acquired no title to the property, by the adjudication, and the sale to him should be rescinded; that, under the circumstances, there could be no application of the maxim "*en fait de meubles possession vaut titre*," and that the maxim "*main de justice ne dessaisit pas*" must be taken subject to the qualification that a seizure under judicial process places the goods seized beyond the control of an execution debtor. *The Connecticut and Passumpsic Rivers Railroad Co. v. Morris* (14 Can. S. C. R. 319) distinguished, and the judgment appealed from (Q. R. 17 K. B. 193) affirmed. *Brook v. Booker*, xli., 331.

AND see EXECUTION.

3. *Shipping — Material men — Supplies furnished for "last voyage" — Privilege of dernier equippeur—Round voyage—Charter-party—Personal debts of hirers—Seizure of ship—Arts. 2383, 2391 C. C.—Art 931 C. P.*

Q.—*Construction of statute—Ordonnances de la Marine, 1681, 45, xl., 45.*

See SHIPS AND SHIPPING, 7.

AND see ADMIRALTY LAW; EXECUTION.

**ATTORNEY.**

*Notarial profession in Quebec — Custody of deeds—Attorney in fact—Implied mandate, xxx., 14.*

See PRINCIPAL AND AGENT.

AND see SOLICITOR.

**ATTORNEY-GENERAL.**

1. *Taxing costs to the Crown—Fees to counsel and solicitor—Salaried officer representing the Crown.*]—As the statutes of Canada defining the duties and salaries of the Attorney-General and his deputy deny additional compensation for services rendered by them in connection with litigation affecting the Crown, it is improper to allow counsel fees or solicitor's fees in respect of services rendered in such capacities by either of these officers on the taxation of costs awarded in favour of the Crown. *Jarvis v. The Great Western Railway Co.* (8 U. C. C. P. 280), and *The Charlevoix Election Case* (Cout. Dig. 388) followed. *Hamburg-American Packet Co. v. The King*, xxxix., 621.

2. *Municipal corporation — Illegal expenditure — Action by ratepayer — Intervention of Attorney-General validating Act — Right of appeal.*]—Prior to the passing of the Act of the Legislature of Nova Scotia, 7 Edw. VII. c. 61, the City Council of Halifax had no authority to pay the expenses of the mayor in attending a convention of the Union of Canadian Municipalities.—Where a municipal council pays away money of the municipality an action to recover it back may, if the council refuses to allow its name to be used, be brought by a ratepayer suing on behalf of all the ratepayers and need not be in the name of the Attorney-General. *MacBreith v. Hart*, xxxix., 657.

AND see MUNICIPAL CORPORATION.

3. *Contract—Limited tickets on tramway —Specific performance—Injunction—Right of action—Parties.*]—In an action for specific performance on an agreement between a tramway company and a municipal corporation, and to enforce the agreement by injunction, it is not necessary to make the Attorney-General of the province a party. *Hamilton Street Railway Co. v. City of Hamilton*, xxxix., 673.

AND see ACTION.

4. *Criminal Code—6 & 7 Edw. VII. c. 8—Procedure—Alberta and Saskatchewan—Indictable offence—Preliminary inquiry—Preferring charge—Consent of Attorney-General—Powers of deputy—"Lord's Day Act," s. 17. In re Criminal Code, xliii., 434.*

See CRIMINAL LAW.

**AUCTION.**

1. *Mortgage—Sale under power—False bidding—Withdrawal of bid.* *Kaiserhoff Hotel Co. v. Zuber*, xlvii., 651.

2. *Sale of chattels—Disclosure of principal—Liability of auctioneer—Giving credit—Post-dated cheque*, l., 263.

See SALE.

**AUTHORS.**

*Contract—Literary work—Publisher and author—Obligation to publish*, xlv., 95.

See CONTRACT.

**AWARD.**

1. *Appeal—Railway Act—Expropriation—Appeal from award—Jurisdiction—Choice of forum—Curia designata*, xxxviii., 511.

See APPEAL.

2. *Constitutional law—Liabilities of provinces at confederation—Special funds—Rate of interest—Trust funds of debt—Dominion Arbitrators—Award of 1870—B. N. A. Act, 1867, ss. 111 and 142*, xxxix., 14.

See CONSTITUTIONAL LAW.

AND see ARBITRATION AND AWARD.

3. *Municipal corporation—Reservation for highway—Opening first front road—Appropriation—Indemnity—Procès-verbal—Description of lands and owners—Formal defects—Quebec Municipal Code, arts. 16, 903, 906, 914, 918*, xli., 585.

See MUNICIPAL CORPORATION.

4. *Calgary & Edmonton Ry. Co. v. MacKinnon*, xliiii., 379.

See ARBITRATION AND AWARD.

**BAIL.**

*Admiralty law—Collision—Practice—Appeal to Privy Council—Order for bail*, xxxvi., 564.

See ADMIRALTY LAW.

**BAILIFF.**

*Construction of statute—N. W. T. Con. Ord., 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—“Bank Act,” R. S. C. 1906, c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages*, xlv., 473.

See CHATTEL MORTGAGE.

**BAILMENT.**

1. *Negligence—Evidence—Damages—Storage of meat.* *Charrest v. Manitoba Cold Storage Co.*, xliii., 253.

2. *Sale of goods—Suspensive condition—Term of credit—Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Banking—Bailee receipt—Brokers and factors—Principal and agent—Resiliation of contract—Revendication—Damages—Practice—Pleading*, xxxvi., 406.

See BILL OF LADING.

**BALLOTS.**

1. *Controverted election—Secrecy of ballot—Act of Dep. Ret. Officer—Numbering ballot.*]—Under the Dominion Controverted Elections Act, a ballot cast at an election is avoided if there are any marks thereon by which the voter may be identified whether made by him or not. Hence, when the deputy returning officer in a polling district placed on each ballot the number corresponding to that opposite the elector's name on the voter's list the ballots were properly rejected. Judgment appealed from (9 Ont. L. R. 201) affirmed. *Sedgewick and Idington, JJs.*, dissenting. *Wentworth Election Case*, xxxvi., 497.

2. *Election law—Voting—Municipal by-law—Scrutiny—Powers of judge—Inquiry into qualification of voter—Disposition of rejected ballots—“Ontario Municipal Act,” 1903, ss. 369 et seq.—“Voters' Lists Act,” 1907, s. 24*, xlviii., 451.

See ELECTION LAW.

**BANKRUPTCY.**

See INSOLVENCY.

**BANKS AND BANKING.**

1. DEPOSITS, 1.
2. DISCOUNTING BILLS, 2-3.
3. MISTAKE, 4-5.
4. SECURITIES FOR LOANS, 6-11.
5. OTHER CASES, 12-25.

## 1. DEPOSITS.

1. *Executor and trustee—Moneys of testator—Deposit in bank—Authority to draw against—Gift.*]—D. deposited money in bank in the joint names of himself and a daughter with power in either to draw against it. The daughter never exercised this power and when D. died she and her co-executor of his will, in applying for probate, included said money in their statement of the property of the testator.—*Held*,

that the money in bank remained the property of D. and did not pass to the daughter on his death. *Re Daly; Daly v. Brown*, xxxix., 122.

AND see EXECUTORS AND ADMINISTRATORS.

## 2. DISCOUNTING BILLS.

2. *Estoppel—Forgery—Promissory note—Discount—Duty to notify holder.*]—E. & Co., merchants at Montreal, received from the Dominion Bank, Toronto, notice in the usual form that their note in favour of the Thomas Phosphate Co., for \$2,000, would fall due at that bank on a date named, and asking them to provide for it. The name of E. & Co. had been forged to said note which the bank had discounted. Two days after the notice was mailed at Toronto the proceeds of the note had been drawn out of the bank by the Toronto payees:—*Held*, affirming the judgment of the Court of Appeal (7 Ont. L. R. 90), Sedgewick and Nesbitt, JJ., dissenting, that on receipt of said notice E. & Co. were under a legal duty to inform the bank, by telegraph or telephone, that they had not made the note, and not doing so they were afterwards estopped from denying their signature thereto. Leave to appeal to the Privy Council refused: ([1904] A. C. 806). *Ecng v. Dominion Bank*, xxxv., 133.

3. *Promissory note—Special indorsement—Condition—Pledge—Collateral security—Holder in due course—Payment and satisfaction—Liability on current account.*]—The bank having refused further loans to a trading company until its current liability to the bank was reduced, a note by the company in favour of its directors was specially indorsed to the bank by them and handed to the company's manager, who had charge of its financial affairs, with instructions to have the note discounted but without authority to pledge it. Without informing the bank of his restricted power to deal with this note, the manager deposited it with the bank as collateral security for the company's current liability and, in consideration of the deposit, obtained fresh advances from the bank by discounts of the company's trade paper. At maturity of the note the trade paper had been retired and an overdraft on the company's account had been covered, but the general indebtedness of the company for former loans still subsisted. In a suit by the directors for the return of the note the bank counterclaimed for the amount thereof.—*Held*, affirming the judgment appealed from (21 Man. R. 1), that, so far as the bank was aware, the company's manager had ostensible authority to pledge the note as collateral security for the general indebtedness of the company on its current account, that re-payment of the fresh advances by retirement of the trade paper so discounted was not satisfaction of the debt for which the note was pledged, and that the bank was entitled to enforce payment of the note as holder in due course for valuable consideration within the meaning of the "Bills of Exchange Act," and to recover thereon the amount of the com-

pany's general indebtedness remaining unsatisfied. *Cox v. Canadian Bank of Commerce*, xlvi., 564.

## 3. MISTAKE.

4. *Crown—Banks and Banking—Forged cheques—Payment—Representation by drawee—Implied guarantee—Estoppel—Acknowledgment of bank statements—Liability of indorsers—Mistake—Action—Money had and received.*]—A clerk in a department of the Government of Canada, whose duty was to examine and check its account with the Bank of Montreal, forged departmental cheques and deposited them to his credit in other banks. The forgeries were not discovered until some months after these cheques had been paid by the drawee to the several other banks, on presentation, and charged against the Receiver-General on the account of the department with the bank. None of the cheques were marked with the drawee's acceptance before payment. In the meantime, the accountant of the department, being deceived by false returns of checking by the clerk, acknowledged the correctness of the statements of the account as furnished by the bank where it was kept. In an action by the Crown to recover the amount so paid upon the forged cheques and charged against the Receiver-General:—*Held*, affirming the judgment appealed from (11 Ont. L. R. 595), that the bank was liable unless the Crown was estopped from setting up the forgery.—*Per Davies, Idington and Duff, JJ.*, that estoppel could be invoked against the Crown.—*Per Girouard and Maclellan, JJ.*, that, apart from the question of the Crown being subject to estoppel, under the circumstances of this case a private person would not have been estopped had his name been forged as drawer of the cheques.—*Per Davies and Idington, JJ.*—The acknowledgment by the accountant of the department of the correctness of the statements furnished by the bank, being made under a mistake as to the facts, the accounts could be re-opened to have the mistake rectified.—The defendant bank made claims against the other banks, as third parties, as indorsers, or as having received money paid by mistake, for the reimbursement of the several amounts so paid to them, respectively. On these third party issues, it was *Held, per Girouard and Maclellan, JJ.*—The drawee, having paid the cheques on which the name of its customer was forged, could not recover the amounts thereof from holders in due course. *Price v. Neal* (4 Burr. 1355) followed.—*Per Davies and Idington, JJ.*—As the third party banks relied upon the representation that the cheques were genuine, which was to be implied from their payment on presentation, and subsequently paid amounts out of the funds to their depositor or on his order, the drawee was estopped and could not recover the amounts so paid from them either as indorsers as for money paid to them under mistake.—In the result, the judgment appealed from (11 Ont. L. R. 595), was affirmed. *Bank of Montreal v. The King*, xxxviii., 258.

5. *Forged cheque — Negligence—Responsibility of drawee—Payment—Mistake—Indorsement—Implied warranty — Principal and agent — Action — Money had and received—Change in position—Laches.*—A cheque for \$6, drawn on the plaintiff, was fraudulently altered by changing the date, and the name of the payee, and by raising the amount to \$1,000. The drawee refused payment for want of identification of the person who presented it. The defendant bank, without requiring identification, advanced \$25 in cash to the forger on the forged cheque, placed the balance, \$975, to his credit in a deposit account, indorsed it and received the full amount of \$1,000 from the drawee. After receipt of this amount, the defendant paid the further sum of \$800 to the forger out of the amount so placed to the credit of his deposit account. The fraud was discovered a few days later and, on its refusal to refund the money it had thus received, the action was brought to recover it back from the defendant as indorser or as having received money paid under mistake of fact.—*Held*, that the drawee of the cheque, although obliged to know the signature of its customer, was not under a similar obligation in regard to the writing in the body of the cheque; that, as the receiving bank had dealt with the drawee as a principal and not merely as the agent for the collection of the cheque and had obtained payment thereof as indorser and holder in due course, it was liable towards the drawee which had, through the negligence of the receiving bank, been deceived in respect to the genuineness of the body of the cheque, and that the drawee was entitled to recover back the money which it had thus paid under a mistake of fact, notwithstanding that, after such payment, the position of the defendant had been changed by paying over part of the money to the forger. *The Bank of Montreal v. The King* (38 Can. S. C. R. 258), distinguished. *Newall v. Tomlinson* (L. R. 6 C. P. 405); *Durrant v. The Ecclesiastical Commissioners for England and Wales* (6 Q. B. D. 234; *The Continental Caoutchouc and Gutta Percha Co. v. Kleinwort, Sons & Co.* (20 Times L. R. 403), and *Kleinwort, Sons & Co. v. The Dunlop Rubber Co.* (23 Times L. R. 696), followed).—Judgment appealed from (17 Man. R. 68), affirmed, Idington, J., dissenting. *Dominion Bank v. Union Bank of Canada*, xli., 366.

#### 4. SECURITIES FOR LOANS.

6. *Security for advance—Assignment of goods—Claim on proceeds of sale—53 Vict. c. 31, s. 74 (D.).*—A bank to which goods have been transferred as security for advances under s. 74 of the Bank Act, 1890, can follow the proceeds of sale of the goods in the hands of a creditor of the assignor to whom the latter had paid them when the purchaser knew, or must be presumed to have known, that the same belonged to the bank. *Union Bank of Halifax v. Spinney*, xxxviii., 187.

7. *Trust—Hypothecation of securities — Terms of pledge — Duty of pledgee.*—B.

sold property to the Syndicat and took as security for the price mortgages on real and personal property and a promissory note and transferred the securities to the bank to secure his present and future indebtedness to it. He signed a document authorizing the bank to realize on the same in its discretion, to grant extensions and give up securities, accept compositions, grant releases and discharges and otherwise deal with them as it might see fit without prejudice to B.'s liability. The note not being paid at maturity, the bank sued the Syndicat and B. upon it and on the covenants in the mortgages and obtained judgment against both. In the same action, the Syndicat, on counterclaim for damages for deceit, had judgment against B. which was eventually set aside, but, while it existed, the bank made a settlement with the Syndicat and discharged the latter from all payment of over \$20,000 less than the debt. B. was not a party to this settlement and the bank afterwards refused to give him any information about it or to give him a statement of his account with the bank itself. In an action by B. for an account and to have the bank enjoined from further dealings with the securities:—*Held*, that the power given to the bank to deal with the securities was to be exercised for the purpose of liquidating B.'s debt, and, as to the surplus, for B.'s benefit; that, the settlement having been made solely for the benefit of the bank and in sacrifice of B.'s interests, the bank violated its duty, and had not satisfied the onus upon it of shewing that, had the whole amount of the judgment been recovered from the Syndicat, B. would not have benefited thereby. *Canadian Bank of Commerce v. Barrette*, xli., 561.

8. *Security for debt—Assignment of lease —Transfer of business—Operation of bank —R. S. C. [1906] c. 29, s. 76, s.-ss. 1 (d) and 2 (a), s. 81.*—By section 76, sub-section 1 (d) of "The Bank Act" (R. S. C. [1906] ch. 29, a bank may "engage in and carry on such business generally as appertains to the business of banking"; by sub-section 2 (a), it shall not "either directly or indirectly . . . engage or be engaged in any trade or business whatsoever"; section 81 authorizes the purchase of land in certain cases of which a direct voluntary conveyance by the owner is not one.—*Held*, affirming the judgment of the Court of Appeal (17 Ont. L. R. 145), Duff and Anglin, JJ., dissenting, that these provisions of the Act do not prevent a bank from agreeing to take in payment of a debt from a customer an assignment of a lease of the latter's business premises and to carry on the business for a time with a view to disposing of it as a going concern at the earliest possible moment. *Ontario Bank v. McAllister*, xliii., 338.

9. *Security for advances — Assignment—Chose in action — Moneys to arise out of contract—Unearned funds—Equitable assignment to third party—Notice—Evidence —Priority of claim—Estoppel—Construction of statute—R. S. M. 1902, c. 40, s. 39 (e), "King's Bench Act"—R. S. C. 1906, c. 29, s. 76, "Bank Act."*—An assignment

of a future chose in action, to arise out of a contract, operates as an agreement binding on the conscience and, when the subject-matter of the assignment comes into existence, creates a trust. *Tailby v. The Official Receiver* (13 App. Cas. 523), followed.—Where a bank, in order to secure present or future advances to a customer, has taken from him an assignment vesting in it the legal title to a chose in action arising out of a contract and, subsequently, receives notice of another assignment thereof for valuable consideration by the customer to a third person, before moneys have been advanced upon the security held by the bank, the claim of the bank for advances made after notice is postponed to that of the other incumbrancer. *Dearle v. Hall* (3 Russ. 1); *Hopkinson v. Rolt* (9 H. L. Cas. 514); *Bradford Banking Co. v. Briggs* (12 App. Cas. 29), and *West v. Williams* (1899) 1 Ch. 132), applied.—Where an assignee of a chose in action with knowledge that the same chose in action has also been assigned to another person for valuable consideration permits the other assignee to rely upon his security by acting on the faith of his assignment, without giving him notice of the former charge, the claim of the latter is entitled to priority over that of the assignee by whose conduct he has been thus misled. *Russell v. Watts* (10 App. Cas. 590), and *Stronge v. Hawkes* (4 DeG. M. & G. 186), applied.—*Per Fitzpatrick, C.J.*, dissenting.—The circumstances of the case do not justify the finding that there was an equitable assignment of the chose in action to the appellant, and there is no sufficient evidence of notice to the bank that there was any assignment to him; consequently, the assignment to the bank, which was duly notified to the debtor, gave the claim of the bank priority in respect of the advances made by it on that security. *Mutual Life Assurance Co. v. Langley* (32 Ch. D. 460), referred to.—The judgment appealed from (22 Man. R. 58) was reversed, *Fitzpatrick, C.J.*, dissenting.—*Quere.*—Whether, in consequence of the provisions of section 39 (e) of "The King's Bench Act," R. S. M. 1902, ch. 40, the rule in *Dearle v. Hall* (3 Russ. 1) governs the rights of parties under an assignment taking effect by virtue of the operation of the provisions of section 39 (e) of the said Act?—*Quere.*—As to the effect of section 76 of "The Bank Act," R. S. C. 1906, ch. 29, on the assignment of moneys not yet earned under a construction contract as security for present or future advances?—**REPORTER'S NOTE.**—*Cf. Deeley v. Lloyds Bank* ((1912) 756). *Fraser v. Imperial Bank of Canada*, xlvii., 313.

10. *Loans—Security—Wholesale purchaser—"Products of the forest"*—"Bank Act," s. 88.]—By sec. 88 (1) of the "Bank Act," a bank "may lend money to any wholesale purchaser . . . or dealer in products of agriculture, the forest, etc.; or to any wholesale purchaser . . . of live stock or dead stock and the products thereof, upon the security of such products or of such live stock or dead stock and the products thereof."—*Held*, affirming the judgment of the Appellate Division (28 Ont. L. R. 521), which affirmed the decision of a Divisional Court (27 Ont. L. R. 479) by which the judgment of the trial Judge (26

Ont. L. R. 291) was maintained, that a person who purchases lumber by the car-load having on hand at times 200,000 or 300,000 feet and sells it by retail, or uses it in his business is a "wholesale purchaser" within the meaning of the above provision.—*Held*, also, that sawn lumber is a "product of the forest" on which money can be lent under said provisions. *Molsons Bank v. Beaudry* (Q. R. 11 K. B. 213) overruled.—*Held, per Duff and Anglin, JJ.*—The words "and the products thereof" at the end of the above sub-section mean the products of live or dead stock and not of the other articles mentioned. *Townsend v. Northern Crown Bank*, xlix., 394.

11. *Purchase of company's assets—Bill of sale—Description of chattels—B. C. "Bills of Sale Act," R. S. B. C. 1911, c. 29—Registration—Recital in bill of sale—Consideration—Defeasance—Reference to unregistered note—Collateral security—Loan by bank—"Bank Act," 3 & 4 Geo. V. c. 9, s. 76.]—Under the British Columbia "Bills of Sale Act," R. S. B. C. 1911, ch. 20, any description by which the goods affected by a bill of sale can be identified is formally sufficient, as the Act does not require specific description of the chattels comprised therein.—A bill of sale given as security for the payment of a promissory note contained recitals shewing particulars of the note and that interest was payable on the amount thereof, but the rate of interest was not mentioned and the note was not annexed thereto nor registered with the bill of sale.—*Held, per Davies, Idington, Duff and Brodeur, JJ.*, that the recitals stated the consideration in a manner which substantially conformed to the requirements of section 19 of the "Bills of Sale Act." R. S. B. C. 1911, ch. 20, and the omission to annex the note to the instrument as registered therein, in this regard, immaterial. *Credit Co. v. Pott* (6 Q. B. D. 295) followed.—*Per Duff, Anglin and Brodeur, JJ.* (*Idington, J., contra*).—As the assurance was embodied in two documents, the bill of sale and the note, and one of these documents, the note, was not registered as required by section 19 of the B. C. "Bills of Sale Act," the absence of a complete statement of the terms of defeasance in the bill of sale rendered it void as a security to the bank. *Cochrane v. Matthews* (10 Ch. D. 80n); *Ex parte Odell* (10 Ch. D. 84); *Council v. London and Westminster Loan and Discount Co.* (19 Q. B. D. 512); *Edwards v. Marcus* ((1894) 1 Q. B. 587), and *Ex parte Collins* (10 Ch. App. 367), referred to. As part of the consideration of an agreement by which the bank acquired the office site and business of a trust company the bank became responsible for the claims of persons who had deposited money with the company and, to secure the bank in respect to this liability and form a fund to meet payments to depositors, the company gave the bank a promissory note for the amount of the deposits and assigned assets to the bank which included, amongst other securities, the bill of sale above mentioned.—*Held, per Fitzpatrick, C.J.*, and *Davies, Duff, Anglin and Brodeur, JJ.* (*Idington, J., contra*), that the transaction was not a loan of money or an advance*

made by the bank in contravention of section 76, sub-sec. 2 (c), of the "Bank Act," 3 & 4 Geo. V. ch. 9, but a legitimate exercise of the powers conferred by the Act.—*Per Duff, J.*—If the transaction were to be considered as a loan it would, nevertheless, be unobjectionable because it would be a loan upon the security of an "obligation" of a corporation within the meaning of clause (c) of the first sub-section of section 76 of the "Bank Act," and it is immaterial that the "obligation" was secured by a charge upon the property of the corporation.—The judgment appealed from (22 D. L. R. 647; 8 West. W. R. 734) was reversed, *Fitzpatrick, C.J., and Davies, J., dissenting. Bull v. The Royal Bank*, lii., 254.

## 5. OTHER CASES.

12. *Sale of goods—Suspensive condition—Terms of credit—Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Bailec receipt—Brokers and factors—Principal and agent—Resiliation of contract—Rerodication—Damages—Practice—Pleading—52 Vict. c. 30, ss. 64, 73 (D.), xxxvi., 406.*

See BILL OF LADING.

13. *Promissory note—Fraud in procuring—Discount—Good faith—Evidence—Onus of proof, xxxix., 541.*

See BILLS AND NOTES.

14. *Promissory note—Negotiability—Indorsement—Liability of maker—Equitable claim, Cam. Cas. 129.*

See BILLS AND NOTES.

15. "Winding-up Act"—*Insolvent bank—Appointment of liquidators—Appointing another bank—Discretion of judge—Appeal (xviii., 797); Cam. Cas. 209.*

See "WINDING-UP ACT."

16. *Appeal—Jurisdiction—Matter in controversy—Discretionary order—Construction of statute—R. S. C. (1886) c. 129, s. 76, Cout. Cas. 119.*

See APPEAL.

17. *Sale of railway ties—Delivery—Bank Act lien—Trade marks—Timber marks, Cout. Cas. 266.*

See LIEN.

18. *Customer's cheque—Evidence of presentation—Refusal to pay—Action for damages. Rear v. The Imperial Bank, xlii., 222.*

19. *Succession duties—New Brunswick statute—Foreign bank—Special deposit in local branch—Depositor domiciled in Nova Scotia—Debt due by bank—Notice of withdrawal—Enforcement of payment. Lorett v. The King, xliii.*

See SUCCESSION DUTY.

20. *Suretyship—Simple contract—Discharge of one surety under seal—Confirmation of original guarantee—Death of surety*

—*Powers of executors—Continuance of guarantee. Union Bank of Canada v. Clark, xliiii., 106.*

See SURETYSHIP.

21. *Evidence—Burden of proof—Shifting of onus—Sale of bank stock—Allotment to shareholders—Shares refused or relinquished—Sale to public—Authority—R. S. C. (1900) c. 29, s. 31, xlv., 157.*

See EVIDENCE—SHAREHOLDER.

22. *Construction of statute—N. W. T. Con. Ord. 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—"Bank Act," R. S. C. 1906, c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages, xlv., 475.*

See CHATTEL MORTGAGE.

23. *Principal and agent—Partnership funds—Third party—Negotiable instrument—Notice—Inquiry, xlv., 127.*

See PARTNERSHIP.

24. *Promissory note—Signature in blank—Discount—Principal and agent—Condition as to use of note—Bonâ fide holder—"Bills of Exchange Act," R. S. C. 1906, c. 199, ss. 31, 32, xlv., 401.*

See BILLS AND NOTES.

25. *Company law—Trading company Powers—Contract of suretyship—R. S. O. 1897, c. 191. Union Bank v. McKillop, li., 518.*

See COMPANY.

## BENEFIT SOCIETY.

See BENEVOLENT ASSOCIATION.

## BENEVOLENT ASSOCIATION.

1. *Life insurance—By-laws and regulations—Transfers between lodges—Member in good standing—Regularity of affiliation—Payment of dues and assessments—Evidence—Presumption—Waiver.]—Where the constitution of a benefit association provides that members shall not be transferred from one lodge to another unless all dues and assessments have been paid, up to and including those for the month in which the application for affiliation is made, the fact that, upon such an application, a member was transferred from one lodge to another involves the presumption as against the association that the transfer was regularly made when the member was in good standing and in accordance with the regulations. Ancient Order of United Workmen of Quebec v. Turner, xlv., 145.*

2. *Grand council constitution—Incorporation of subordinate lodge—Dissolution—Disposition of property—Benefit society.]—*

The charter of the respondent association provides that upon the dissolution of a subordinate lodge all its property shall vest in the Grand Council to be applied, first, in payment of debts of the lodge and the balance as deemed best for the general interests of the order. There was also a provision allowing any subordinate lodge to become incorporated, and in 1890 Pioneer Lodge No. 1 was incorporated, and all its property vested in the corporate body. In 1908 a vote was taken on the question of amalgamation with a kindred society for which Pioneer Lodge was overwhelmingly in favour. The amalgamation was rejected by the Grand Council and the lodge then surrendered its charter, practically all of its members joining the other body.—*Held*, affirming the judgment appealed against (46 N. S. Rep. 417), that the incorporation of the subordinate lodge did not constitute it an independent body; that it still remained a constituent part of the Association; that the surrender of its charter was a dissolution within the meaning of the provision in respondents' charter above referred to; and that its property on such dissolution became vested in the Grand Council for the purposes mentioned.—Leave to appeal to the Privy Council was refused, 4th Aug. 1914. *McPherson v. Grand Council Provincial Workmen's Association*, 1, 157.

3. *Constitutional law—Railway company—Negligence—Agreements for exemption from liability—Power of Parliament to prohibit*, xxxvi., 136.

See RAILWAYS.

4. *Life insurance—Contract—Payment of assessments—Extension of time—Rules and regulations—Place of payment—Demand—Default—Suspension—Authority to waive conditions—Conduct of officials—Estoppel—Company law*, xlix., 229.

See INSURANCE, LIFE.

### BETTING.

*Criminal law—Disorderly house—Common betting house—Place for betting—Betting booth—Race-course of incorporated association—Crim. Code, 1892, ss. 197, 204—Crim. Code, 1906, ss. 227, 235—Construction of statute—Interpretation of terms*, xxxviii., 382.

See CRIMINAL LAW.

### BIAS.

*New trial—Judgment in court below on motion—Equal division—Appeal—Jurisdiction—Charge to jury—Misdirection—New trial*, xxxvii., 532.

See APPEAL.

### BIDDER.

*Judicial sale of railways—Interested bidder—Disqualification as purchaser—Counsel*

*and solicitors—Art. 1484 C. C.—Construction of statute—Review by appellate court—Discretionary order—4 & 5 Educ. VII. c. 158 (D.)—Public policy*, xxxvii., 303.

See RAILWAYS.

### BIGAMY.

*Construction of will—Description of legatee—Devise “to my wife”—Bigamous marriage—Evidence—Burden of proof*, xl., 210.

See MARRIAGE.

### BILLS AND NOTES.

1. CONSIDERATION, 1.
2. FORM OF NOTE, 2-3.
3. HUSBAND AND WIFE, 4.
4. INDORSEMENTS, 5.
5. NOTICE, 6-7.
6. PAYMENT, 8.
7. RATIFICATION, 9.
8. TRANSFER, 10-12.
9. OTHER CASES, 13-23.

#### 1. CONSIDERATION.

1. *Promissory note—Illegal consideration—Smuggling transaction—Burden of proof—Findings of trial judge.*—The trial judge dismissed the action on the ground that the original note, of which those sued upon were renewals, was given without consideration or in connection with smuggling transactions. He considered the evidence unsatisfactory as the plaintiff did not produce the books of account shewing how the consideration was made up, and that there was evidence to support the plea of illegality. On an equal division of opinion among the judges, on an appeal (39 N. S. Rep. 65) his judgment stood affirmed, and a further appeal to the Supreme Court of Canada was dismissed. *Ross v. Gannon*, xxxix., 675.

#### 2. FORM OF NOTE.

2. *Promissory note—Negotiability—Indorsement—Liability of maker—Equitable claim.*—H., a director of a joint stock company, signed, with other directors, a joint and several promissory note in favour of the company, and took security on a steamer of the company. The note was, in form, non-negotiable, but that fact was not observed by the officials of the bank that discounted it and paid over the proceeds to the company. H. knew that the note was discounted, and before it fell due he had in writing acknowledged his liability on it. In an action on the note by the bank against H.:—*Held*, affirming the judgment of the Court of Appeal and of the trial judge (Strong, J., dissenting), that although the note was non-negotiable on its face, this afforded no defence to the plaintiffs' action in view of what took place between the defendant and his co-makers and between the

defendant and the bank. — *Held, per Gwynne, J.*, although, in fact, the note was not negotiable, the bank, in equity, was entitled to recover, it being shewn that the note was intended by the makers to have been made negotiable, and was issued by them as such, but, by mistake or inadvertence, it was not expressed to be payable to the order of the payees. *Harvey v. Bank of Hamilton* (xvi., 714), Cam. Cas. 129.

3. *Promissory note—Deposit receipt—Notice—Demand for payment—Action.* — In an action on an instrument in the following form:—"1,200. Edmundston, N.B., July 12th, 1899. Received from the Reverend N. P. Babineau the sum of twelve hundred dollars, for which I am responsible, with interest at the rate of seven per cent. per annum, upon production of this receipt and after three months' notice. Fred. LaForest." The court below held (37 N. B. Rep. 156), that the plaintiff could recover as for a promissory note, and that a demand for immediate payment more than three months before the action was a sufficient notice. Without calling upon counsel for the respondent, the Supreme Court of Canada dismissed the appeal. *LaForest v. Babineau*, xxxvii., 521.

### 3. HUSBAND AND WIFE.

4. *Contract—Security for debt—Husband and wife—Parent and child.* — C., a man without means, and W., a rich money lender, were engaged together in stock speculations, W. advancing money to C. at a high rate of interest in the course of such business. C. being eventually heavily in the other's debt it was agreed between them that if he could procure the signatures of his wife and daughter, each of whom had property of her own, as security, W. would give him a further advance of \$1,000. Though unwilling at first the wife and daughter finally agreed to sign notes in favour of C. for sums aggregating over \$7,000, which were delivered to W. Neither of the makers had independent advice.—*Held*, reversing the judgment appealed from, *Taschereau, C.J.*, dissenting, that though the daughter was twenty-three years old she was still subject to the dominion and influence of her father, and the contract made by her without independent advice was not binding.—*Held*, also, *Taschereau, C.J.*, and *Killam, J.*, dissenting, that his wife was also subject to influence by C. and entitled to independent advice and she was, therefore, not liable on the note she signed.—*Held, per Sedgewick, J.*, that the evidence produced disclosed that the transaction was a conspiracy between C. and W. to procure the signatures of the notes, and that the wife of C. was deceived as to his financial position and the purpose for which the notes were required, therefore the plaintiff could not recover. *Cox v. Adams*, xxxv., 393.

### 4. INDORSEMENTS.

5. *Material alterations — Forgery—Partnership—Mandate—Assent of parties—Liability of indorser—Construction of statute*

—"*Bills of Exchange Act.*"—R. induced H. to become a party to and indorser of a demand note for the purpose of raising funds and agreed to give warehouse receipts as security to the bank on discounting the note. It was arranged that the goods covered by the warehouse receipts were to be held and sold on joint account, each sharing equally in the profits or losses on the transaction. Subsequently R. altered the note, without the knowledge or consent of H., by adding thereto the words "*avec intérêt à sept par cent. par an.*," and falsely represented to the bank that H. held the warehouse receipts as collateral security for his indorsement. A couple of months later H., for the first time, became aware that the goods had never been purchased or placed in warehouse, that no warehouse receipt had been assigned to the bank and did not, until some months later, know that the alteration had been made in the note. There was some evidence that H. had asked for time to make a settlement of the amount due to the bank upon the note after he had become aware of the fraud and the alteration so made.—*Held*, by *Idington, Maclellan and Duff, J.J.*, that the instrument was a forgery and could not be ratified by an *ex post facto* assent. *The Merchants Bank v. Lucas* (18 Can. S. C. R. 704; Cam. Cas. 275), and *Brook v. Hook* (L. R. 6 Ex. 89), followed. — *Per Idington, J.* — The circumstances of the case did not shew that there had been any assent to the alteration within the meaning of s. 145 of the "Bills of Exchange Act."—*Per Maclellan, J.*—The assent required to bring an altered bill within the exception provided by s. 145 of the "Bills of Exchange Act," R. S. C. (1906) c. 119, must be given by the party sought to be bound at the time of or before the making of the alteration.—*Held*, also, the Chief Justice and *Davies, J.*, *contra*, that, in the special circumstances of the case, there was no partnership relation between the parties to the note for the purposes of the transaction in question and there could be no implied authorization for the making of the alteration in the note.—*Per Fitzpatrick, C.J.*—The transaction in question was a joint venture or particular partnership for the enterprise in contemplation of the parties and, consequently; R. had a mandate to make whatever agreement was necessary with the bank to obtain the funds and to provide for the payment of interest on the advances required to carry out the business.—Judgment appealed from (Q. R. 16 K. B. 191) reversed, the Chief Justice and *Davies, J.*, dissenting. *Hébert v. La Banque Nationale*, xl., 458.

### 5. NOTICE.

6. *Promissory note — Protest in London, England—Notice of dishonour to indorser in Canada—Knowledge of address—First mail leaving for Canada—Notice through agent—Agreement for time—Discharge of surety—Appropriation of payments — Evidence.* — Notes made in St. John, N.B., were protested in London, England, where they were payable. The indorser lived at Richibucto,



N.B. Notice of dishonour of the first note was mailed to the indorser at Richibucto, and, at the same time, the protest was sent by the holders to an agent at Halifax, N.S., instructing him to take the necessary steps to obtain payment. The agent on the same day that he received the protest and instructions, sent, by post, notice of dishonour to the indorser at Richibucto. As the other notes fell due, the holders sent them and the protests, by the first packet from London to Canada, to the same agent, at Halifax, by whom the notices of dishonour were forwarded to the indorser, at Richibucto.—*Held*, Idington and Duff, JJ., dissenting, that the sending of the notice of dishonour of the first note direct from London to Richibucto, with the precaution of also sending it through the agent, was an indication that the holders were not aware of the correct address of the indorser and the fact that they used the proper address was not conclusive of their knowledge or sufficient to compel an inference imputing such knowledge to them. Therefore, the notices in respect to the other notes, sent through the agent, were sufficient. — *Per* Idington and Duff, JJ., dissenting, that the holders had failed to shew that they had adopted the most expeditious mode of having the notices of dishonour given to the indorser.—The maker of the note gave evidence of an offer to the holder to settle his indebtedness, on certain terms and at a time some two or three years later than the maturity of the last note, and that the same was agreed to by the holders. The latter, in their evidence, denied such agreement and testified that in all the negotiations, they had informed the maker that they would do nothing whatever in any way to release the indorser.—*Held*, that the evidence did not shew that there was any agreement by the holders to give time to the maker and the indorser was not discharged. If the existence of an agreement could be gathered from the evidence, it was without consideration and the creditors' rights against the sureties were reserved.—*Per* Idington and Duff, JJ., that a demand note given in renewal of a time note and accepted by the holders is not a giving of time to the maker by which the indorser is discharged.—Judgment of the Supreme Court of New Brunswick (37 N. B. Rep. 630), reversed, *Fleming v. McLeod*, xxxix., 290.

7. *Instalments of interest—Transfer after default to pay interest—"Overdue" bill—Notice—Holder in good faith—Bills of Exchange Act—Common law rule.*] — Where interest is made payable periodically during the currency of a promissory note, payable at a certain time after date, the note does not become overdue within the meaning of ss. 56 and 70 of the "Bills of Exchange Act," merely by default in the payment of an instalment of such interest.—The doctrine of constructive notice is not applicable to bills and notes transferred for value.—Judgment appealed from reversed, Idington and MacLennan, JJ., dissenting. (Leave to appeal to Privy Council refused, 18th July, 1908.) *Union Investment Co. v. Wells*, xxxix., 625.

## 6. PAYMENT.

8. *Banks and banking — Forged cheque—Negligence—Responsibility of drawee—Payment—Mistake—Indorsement—Implied warranty—Principal and agent—Action—Money had and received—Change in position—Laches.*]—A cheque for \$6, drawn on the plaintiff, was fraudulently altered by changing the date and the name of the payee, and by raising the amount to \$1,000. The drawee refused payment for want of identification of the person who presented it. The defendant bank, without requiring identification, advanced \$25 in cash to the forger on the forged cheque, placed the balance, \$975, to his credit in a deposit account, indorsed it and received the full amount of \$1,000 from the drawee. After receipt of this amount, the defendant paid the further sum of \$800 to the forger out of the amount so placed to the credit of his deposit account. The fraud was discovered a few days later, and, on its refusal to refund the money it had thus received, the action was brought to recover it back from the defendant as indorser or as having received money paid under mistake of fact.—*Held*, that the drawee of the cheque, although obliged to know the signature of its customer, was not under a similar obligation in regard to the writing in the body of the cheque; that, as the receiving bank had dealt with the drawee as a principal and not merely as the agent for the collection of the cheque and had obtained payment thereof as indorser and holder in due course, it was liable towards the drawee which had, through the negligence of the receiving bank, been deceived in respect to the genuineness of the body of the cheque, and that the drawee was entitled to recover back the money which it had thus paid under a mistake of fact, notwithstanding that, after such payment, the position of the defendant had been changed by paying over part of the money to the forger. *The Bank of Montreal v. The King* (38 Can. S. C. R. 258), distinguished. *Newall v. Tomlinson* (L. R. 6 C. P. 405); *Durrant v. The Ecclesiastical Commissioners for England and Wales* (6 Q. B. D. 234); *The Continental Coochthow and Gutta Percha Co. v. Kleinwort Sons & Co.* (20 Times L. R. 403), and *Kleinwort, Sons & Co. v. The Dunlop Rubber Co.* (23 Times L. R. 696) followed.—Judgment appealed from (17 Man. R. 68), affirmed, Idington, J., dissenting. *Dominion Bank v. Union Bank of Canada*, xl., 366.

## 7. RATIFICATION.

9. *Bill of Exchange—Forgery—Ratification—Estoppel.*]—Y., who had been in partnership with the defendants, trading under the name of the H. C. Co., but had retired from the firm and became the general manager for the defendants, but with no power to sign drafts, drew a bill of exchange for his own private purposes in the name of the defendants on a firm in Montreal, which was discounted by the plaintiff bank. Before the bill matured, Y. wrote to defend-





consigned by the bills of lading to "Mutual Orange Distributors (shippers) notify J. J. M." A note was printed on it to deliver without B/L on written order of shippers. When the goods arrived, M. refused to accept them, and an action was brought on the bank's guarantee.—*Held*, affirming the judgment of the Appellate Division (34 Ont. L. R. 531), Idington, J., dissenting, that the Bs/L were not in form to protect the defendant bank; that they left the goods under the entire control of the shippers and the guarantor was deprived of its security on the responsibility of its customer or the carrier; and that, though an action against M. for the price of the goods might have succeeded, that on the guarantee must fail. *Pioneer Bank v. Canadian Bank of Commerce*, liii., 570.

3. *Carrier—Perishable cargo — Climatic conditions — Exemption from liability for negligence—Parties*, liv., 521.

See CARRIER.

### BILLS OF SALE.

1. *Title to goods—Sale or transfer—Retention of ownership — R. S. O. [1897] c. 148, s. 41.*—K., a manufacturing furrier, by agreement with a retail trading company, placed a quantity of his goods with the latter which could sell them as they pleased, paying on each sale, within 24 hours thereafter, the price mentioned in a list supplied by K. K. had the right to withdraw from the company any or all such goods at any time and all remaining unsold at the end of the season were to be returned. While still in possession of a quantity of K.'s goods the company made an assignment for benefit of creditors and they were claimed by the assignee.—*Held*, affirming the judgment of the Court of Appeal (9 Ont. L. R. 164), which maintained the verdict for defendant at the trial (7 Ont. L. R. 356), that the property in and ownership of the goods never passed out of K. and the transaction was not one within the terms of R. S. O. [1897] c. 148, s. 41. *Langley v. Kahnert*, xxxvi., 397.

2. *Mortgage — Registration — Affidavit—Verification—B. C. "Bills of Sale Act," 5 Edw. VII., c. 8, s. 7.*—The defendants rendered financial aid to F. & N. enabling them to purchase the stock-in-trade in the possession of a dealer in Vancouver, including also a quantity of goods ordered by him, but not then delivered, a payment on account being made in cash advanced by the defendants and the balance by four promissory notes, in deferred payments, which the defendants indorsed. At the same time new stock to the amount of \$2,700 was purchased by F. & N. from the defendants which was afterwards delivered to them. A bill of sale by way of chattel mortgage was then given by F. & N. to the defendants for the advances so made and to secure them against liability on the indorsements, the proviso for redemption being on payment of the amounts mentioned and also for all goods thereafter supplied by the defendants to F. & N. during the continuance of the security. The

bill of sale was registered with an affidavit by the acting manager of the defendants, at Vancouver, who therein described himself as "secretary" of the company, which office was also held by him. The affidavit stated that the bill of sale was made *bonâ fide* for valuable consideration, namely, the amounts therein mentioned, and other considerations therein set forth, but it did not state that the grantors were justly and truly indebted to the grantees in such sums. About two years later, F. & N. made an assignment for the benefit of creditors to the plaintiff and, on the same day, after the execution of the assignment, but before the assignee had taken possession, the appellants entered into possession of F. & N.'s stock-in-trade by virtue of the bill of sale and refused delivery to the assignee. In an action by the assignee for a declaration that the bill of sale was void as against him and the creditors and to recover possession of the stock-in-trade:—*Held*, that the registration of the bill of sale was not effective against the assignee or the creditors as it had not been verified in conformity with the provisions of the British Columbia "Bills of Sale Act," 5 Edw. VII., c. 8, s. 7. In regard to the goods supplied after the execution of the bill of sale, the onus was upon the defendants to shew that there were such goods in the possession of the mortgagors at the time of the assignment for the benefit of creditors.—Judgment appealed from (18 B. C. Rep. 487) affirmed.—*Per Duff, J.* (Idington, J., *dubitante*).—The affidavit of *bonâ fides* required by s. 7 of the British Columbia "Bills of Sale Act," 5 Edw. VII., c. 8, may be made by the secretary of a company who, at the time he makes such affidavit, is also *de facto* manager of the company's business. *Gault Bros. v. Winter*, xlix., 541.

3. *Banking — Purchase of company's assets—Description of chattels—B. C. "Bills of Sale Act," R. S. B. C., 1911, c. 20—Registration—Recital in bill of sale—Consideration—Defeasance—Reference to unregistered note—Collateral security—Loan by bank—"Bank Act," 3 & 4 Geo. V., c. 9, s. 76.*—Under the British Columbia "Bills of Sale Act," R. S. B. C., 1911, c. 20, any description by which the goods affected by a bill of sale can be identified is formally sufficient, as the Act does not require specific description of the chattels comprised therein.—A bill of sale given as security for the payment of a promissory note contained recitals shewing particulars of the note and that interest was payable on the amount thereof, but the rate of interest was not mentioned and the note was not annexed thereto nor registered with the bill of sale:—*Held, per Davies, Idington, Duff and Brodeur, JJ.*, that the recitals stated the consideration in a manner which substantially conformed to the requirements of s. 19 of the "Bills of Sale Act, R. S. B. C., 1911, c. 20, and the omission to annex the note to the instrument as registered was, in this regard, immaterial. *Credit Co. v. Pott* (6 Q. B. D. 295), followed.—*Per Duff, Anglin and Brodeur, JJ.* (Idington, J., *contra*).—As the assurance was embodied in two documents, the bill of sale and the note, and of these documents, the note was not registered as required by s. 19 of the B. C. "Bills of Sale Act," the absence of a complete statement of the terms of defeasance in the bill of sale rendered it void as a secu-

urity to the bank. *Cochrane v. Matthews* (10 Ch. D. 80n); *Ex parte Odell* (10 Ch. D. 84); *Counsell v. London and Westminster Loan and Discount Co.* (19 Q. B. D. 512); *Edwards v. Marcus* ((1894) 1 Q. B. 587), and *Ex parte Collins* (10 Ch. App. 367), referred to. As part of the consideration of an agreement by which the bank acquired the office site and business of a trust company the bank became responsible for the claims of persons who had deposited money with the company, and, to secure the bank in respect to this liability and form a fund to meet payments to depositors, the company gave the bank a promissory note for the amount of the deposits and assigned assets to the bank which included, amongst other securities, the bill of sale above mentioned:—*Held*, per Fitzpatrick, C.J., and Davies, Duff, Anglin and Brodeur, J.J., (Idington, J., *contra*), that the transaction was not a loan of money or an advance made by the bank in contravention of s. 76, s.-s. 2 (c). of the "Bank Act," 3 & 4 Geo. V., c. 9, but a legitimate exercise of the powers conferred by the Act.—*Per* Duff, J.—If the transaction were to be considered as a loan it would, nevertheless, be unobjectionable because it would be a loan upon the security of an "obligation" of a corporation within the meaning of clause (c) of the first subsection of s. 76 of the "Bank Act," and it is immaterial that the "obligation" was secured by a charge upon the property of the corporation.—The judgment appealed from (22 D. L. R. 647; 8 West. W. R. 734) was reversed. Fitzpatrick, C.J., and Davies, J., dissenting. *Ball v. The Royal Bank*, lii, 254.

4. *Mines and mining—Mining agreement—Interest in ore to be mined—After-acquired chattels—Transfer and delivery—Registration—B. C. Bills of Sale Act, 1905—Construction of statute. Traves v. Forest*, xlii, 514.

See MINES, 1.

5. *Chattel mortgage—Sale under powers—Notice—Offer to redeem—Tender—Equitable relief—Evidence—Proceedings taken in good faith*, xlv., 302.

See CHATTEL MORTGAGE, 1.

6. *Ownership of horses—Foreign judgment—Interpleader—Secondary evidence—Paral testimony. Evans v. Evans*, l., 262.

See CHATTEL MORTGAGE.

## BILLS OF SALE ORDINANCE, N.W.T.

See CHATTEL MORTGAGE.

## BISHOP.

*Corporation sole—Roman Catholic Bishop—Devise of personal and ecclesiastical properties—Construction of will*, xxxiv., 419.

See WILL.

## BOND.

1. *Vendor and purchaser—Sale of land—Agreement—Bond to secure payment of price—Conditions as to title. Colwell v. Neufeld*, xlviii., 506.

See VENDOR AND PURCHASER.

2. *Insurance—Fidelity bond—Untrue representations—Materiality—R. S. O. [1897] c. 203, s. 141, s.-s. 2. Arnprior v. U. S. Fidelity, etc.*, li., 94.

See INSURANCE, GUARANTEE.

## BORNAGE.

See BOUNDARY.

## BOSTON HARBOUR.

*Maritime law—Collision—Inland waters—Rules of navigation—Narrow channel—Boston inner harbour*, xxxv., 616.

See ADMIRALTY LAW.

## BOUNDARY.

1. *Expropriation of land—Statutory authority—Manufacturing site—Survey—Location—Trespass.*—The town of Sydney was empowered by statute to expropriate as much land as would be necessary to furnish a location for the works of the Dominion Iron and Steel Co., a plan shewing such location to be filed in the office for registry of deeds, and on the same being filed the title to said lands to vest in the town. Engineers of the company were employed by the town to survey the lands required for the site and to make a plan which was filed as required by the statute. M., two years later, after the company had excavated a considerable part of the land, brought an action for trespass claiming that it included five chains belonging to him and, at the trial of such action, the main contention was as to the boundary of his holding. He obtained a verdict which was affirmed by the full court.—*Held*, reversing the judgment appealed from (36 N. S. Rep. 28), that the only question to be decided was whether or not the land claimed by M. was a part of that indicated on the plan filed; that the sole duty of the engineers was to lay out the land which the town intended to expropriate; and whether it was M.'s land or not was immaterial as the town could take it without regard to boundaries. *Dominion Iron and Steel Co. v. McLennan*, xxxiv., 394.

2. *Appeal—Jurisdiction—Petitory action—Bornage—Surveyor's report—Costs—Order as to location of boundary line—Execution of judgment.*—Where, in an action *au pétitoire* and *en bornage*, the question as to title has been finally settled, a subsequent order defining the manner in which the boundary line between the respective properties shall be established is not appealable to the Supreme Court of Canada. *Cully v.*







for the same being assumed by the clearing house and the brokers released upon a settlement for the resulting balances instead of for every separate transaction reported. It was not proved that B. was aware of this practice as to settlements, although he, from time to time, had paid "margins" to the brokers when required to do so by them in order to protect them against losses on his account. B. became in arrears for "margins" and, in an action against him, the brokers recovered the amount of their claim.—*Held*, reversing the judgment appealed from (23 Man. R. 306), the Chief Justice and Duff, J., dissenting, that, as the evidence failed to shew that, by the manner in which the transactions were made, the amounts claimed had been expended in carrying out the commissions according to the instructions the brokers had received from B., they were not entitled to recover the balance so claimed from him.—*Held*, further, *per* Idington and Brodeur, J.J., and *semble per* Anglin, J.—Where, in such transactions, neither party intends that there should be actual delivery made or received of the commodities to which the purchases or sales relate the contracts are illegal and prohibited by the terms of s. 231 of the Criminal Code. *Beamish v. Richardson & Sons*, xlix., 595.

8. *Stock—Purchase on margin—Pledge of stock by broker—Possession for delivery to purchaser.*—C. instructed A. & Co., brokers, to purchase for him on margin 300 shares of a certain stock, paying them \$3,000, leaving a balance of \$6,225 according to the market price at the time. A. & Co. instructed brokers in Philadelphia to purchase for them 600 shares of the stock, paying \$9,000, nearly half the price, and pledged the whole 600 for the balance. The Philadelphia brokers pledged these shares with other securities to a bank as security for indebtedness and later drew on A. & Co. for the balance due thereon, attaching the script to the draft which was returned unpaid and 475 of the 600 shares were then sold and the remaining 125 returned to A. & Co. In an action by the latter to recover from C. the balance due on the advance to purchase the shares with interest and commission:—*Held*, reversing the judgment of the Court of Appeal (12 Ont. L. R. 435, affg. 10 Ont. L. R. 159), Fitzpatrick, C.J., dissenting, that the brokers had no right to hypothecate the shares with others for a greater sum than was due from C. unless they had an agreement with the pledgee whereby they could be released on payment of said sum; that there never was a time when they could appropriate 300 of the shares pledged for delivery to C. on paying what the latter owed; and that, therefore, they were not entitled to recover.—The bought note of the transaction contained this memo: "When carrying stock for clients we reserve the right of pledging the same or raising money upon them in any way convenient to us."—*Held*, *per* Davies and Idington, J.J., that this did not justify the brokers in pledging the shares for a sum greater than that due from the customer.—*Per* Duff, J.—That the shares were purchased before this note was delivered, and it could not alter the character of the authority conferred on the brokers; and that no custom was proved which would modify the common law right and duties of the brokers and their customer

in the transaction. *Conmee v. Securities Holding Co.*, xxxviii., 601.

9. *Stock carried on margin—Right to pledge.*—A broker who carries stock on margin for a customer has a right to pledge it for his own purposes to the extent of the amount he has advanced.—If the broker pledges such stock as security for an amount greater than his advances, whereby he makes no profit and the client suffers no loss, he is not liable as for a conversion provided that on demand of his client he delivers to the latter the number of shares ordered and which he has been carrying for him. Anglin, J., dissenting.—*Per* Duff, J.—The broker is not liable under the above conditions if he pledges the stock believing that his arrangement with his client so authorized.—*Per* Duff, J.—The dealings complained of were in accordance with the ordinary practice of brokers in Toronto in respect to stocks being carried "on margin," and the proper inference from all the evidence was that such dealings were authorized by the arrangement between the parties.—*Per* Anglin, J.—The broker must at all times be in a position to hand over the stock to his client and if, as the result of his pledging it, he puts himself in a position where he may not be able to do so, he is guilty of conversion.—Judgment of the Court of Appeal (20 Ont. L. R. 611), affirming that of the Divisional Court (19 Ont. L. R. 545), affirmed. *Conmee v. The Securities Holding Co.* (38 Can. S. C. R. 601), distinguished. (Leave to appeal to Privy Council was refused, 13th Dec., 1911). *Clarke v. Baillie*, xlv., 50.

10. *Sale of land—Principal and agent—Disclosing material information—Secret profit—Vendor and purchaser—Agent's right to sell or purchase—Specific performance.*—A broker being informed by the owners that they would sell certain lands entered a description of the property in his list of lands for sale through his agency. The lands being still unsold about three months later, the broker, in consideration of a payment of \$50, obtained an exclusive option from the owners for the sale or purchase by himself, within 30 days, of the lands at a price named, which was to include his commission in the event of his effecting a sale, but without disclosing information of which he was then possessed that there was a probability of the lands selling within a short time at an increased price. Within a few days after the date of the option he effected a sale, in his own name, of the lands for double the price named therein, notified the owners that he exercised his option to purchase and demanded a conveyance. In an action for specific performance, brought by the broker on refusal of such conveyance.—*Held*, *per* Fitzpatrick, C.J.—That by the terms of the written agreement the broker became an agent for the sale of the lands with the option of purchasing them for himself; that he could not become purchaser until he had divested himself of his character as agent; that he was, as agent, bound to disclose to his principals the knowledge he had acquired respecting the improved prospects of a sale at enhanced value, and his exercise of the option to purchase did not relieve him of this obligation. He was, therefore, not entitled to a decree for specific performance.—*Per*



Davies, Idington, Anglin and Brodeur, JJ.—That the broker was an agent for the sale of the lands at the time he procured the option, and, having failed in his duty to disclose to his principals all material information he had as to the probability of the lands selling at a higher price than that mentioned, specific performance of the agreement to sell to him should be refused. The judgment appealed from (16 B. C. Rep. 308), was reversed. *Bentley v. Nasmith*, xlvi., 477.

11. *Sale of land—Commission—General employment—Principal and agent—Introduction of purchaser—Interference by principal—Quantum meruit—Variation of written contract—Evidence—(Alta.) 6 Edw. VII., c. 27.*—The Alberta statute of 1906, 6 Edw. VII., c. 27, provides that no action shall lie to recover any commission for services in connection with the sale of land except upon a contract therefor in writing signed by the person sought to be charged or by his agent thereunto authorized in writing. C. by duly assigned memorandum authorized H. to sell a section and a half of land, containing 960 acres, at the named price of \$35 per acre, and to pay him a commission on the sale at the rate of 5 per cent. In attempting to make a sale H. introduced T. to C. and, after they three had inspected the land together, T. made an offer to C. to purchase the section alone at \$40 per acre, provided certain other property should be taken in exchange as part payment. This proposition was accepted by C. and he sold the section alone to T. on those terms.—*Held*, that the sale effected was an entirely new contract which was in no manner referable to the written agreement respecting commission on a sale for a price in money and, as there has been no written contract respecting remuneration to the broker in respect of the transaction which took place, he could not recover compensation for the services rendered by him either by way of commission or as *quantum meruit*.—The judgment appealed from (9 D. L. R. 381; 3 West. W. R. 923), was reversed, Duff and Brodeur, JJ., dissenting.—*Per* Duff, J., The broker should be held strictly to the terms of the written agreement which was drafted by himself; it did not constitute a general authority to sell the lands therein described; he could not, therefore, recover remuneration for his services by way of commission as therein provided. Nevertheless, as such use was made of the introduction of the purchaser that the broker was prevented effecting a sale according to the terms of his agreement, the conduct of the principal in that respect entitled the agent to recover compensation by way of *quantum meruit*.—*Per* Brodeur, J.—The broker had, under the agreement, a general authority for the sale of the lands for which he found and introduced the purchaser; therefore, he should not be denied compensation for his services on account of the conduct of the owner in carrying out the sale on terms different from those to which he had been restricted by the agreement. *Como v. Herron*, xlix., 1.

(Leave to appeal to Privy Council was refused, 20th March, 1914).

12. *Sale of lands—Agreement to pay commission—Named price—Introduction by agent—General retainer—Sale at lower price—Right of action—Alberta statute, 6 Edw.*

VII., c. 27, s. 1.]—The Alberta statute, 6 Edw. VII., c. 27, respecting sales of real estate, denies recovery by action, for services rendered in connection with such sales by way of commission or otherwise, unless upon a memorandum in writing signed by or on behalf of the person to be charged. In a letter to the plaintiff, signed by the defendant, the latter agreed to sell a hotel for \$40,000 and added, "I will pay you 5 per cent. commission on purchase price." Defendant subsequently sold the property to a purchaser introduced by the plaintiff for \$34,000.—*Held*, affirming the judgment appealed from (10 D. L. R. 498; 4 West. W. R. 83), that "purchase price," as used in the letter, had reference to any price for which a sale might be made, and that, construed in connection with the conduct of the parties, the memorandum was sufficient, under the statute, to entitle the plaintiff to recover a commission at the rate mentioned for his services in regard to the sale made at the reduced price to the purchaser introduced by him. *Toulmin v. Millar* (53 L. T. 96), and *Burchell v. Gourie and Blockhouse Collieries* ([1910] A. C. 614), referred to. *Howard v. George*, xlix., 75.

13. *Principal and agent—Gambling in stocks—Advances by agent—Criminal Code, s. 201.*—P. speculated on margin in stocks, grain, etc., through C. & Sons, brokers of Toronto, and in March, 1901, directed them to buy 30,000 bushels of May wheat at stated prices. The order was placed with a firm in Buffalo and, the price going down, C. & Son forwarded money to the latter to cover the margins. P. having written the brokers to know how he stood in the transaction received an answer stating that "no doubt the wheat was bought and has been carried, and whether it has or not our good money has gone to protect the deal for you," on which he gave them his note for \$1,500 which they represented to be the amount so advanced. Shortly afterwards the Buffalo firm failed and P. became satisfied that they had only conducted a bucket shop, and the transaction had no real substance. He accordingly repudiated his liability on the note and C. & Son sued him for the amount of the same.—*Held*, Davies and Killam, JJ., dissenting, that the evidence shewed that the transaction was not one in which the wheat was actually purchased; that C. & Son were acting therein as agents for the Buffalo firm; that the transaction was not completed until the acceptance by the firm in Buffalo was notified to P. in Toronto, and, being consummated in Toronto, it was within the terms of s. 201 of the Criminal Code and plaintiff could not recover.—*Held*, also, Davies and Killam, JJ., dissenting, that, assuming C. & Son to have been agents of P. in the transaction, they were not authorized to advance any moneys for their principal beyond the sums deposited with them for the purpose.—*Held*, per Davies and Killam, JJ., that the transaction was completed in Buffalo and, in the absence of evidence that it was illegal by law there, the defence of illegality could only be raised by plea under rule 271 of the Judicature Act of Ontario. *Pearson v. Carpenter & Son*, xxxv., 380.

14. *Purchase on margin—Non-payment—Sale without notice—Liability of customer—Damages. Sutherland v. Securities Holding Co.*, xxxvii., 694.



by means of a pipe already existing in the building. As the result of this fault in construction, the pipes became disjointed and the plaintiff's goods, consisting largely of cases containing wine and labelled bottles, were damaged. The plaintiff notified defendant that he would hold him liable for the damages thus sustained and requested him to attend at an expert valuation to be made by fire insurance adjusters and valuers, but plaintiff disregarded the notification and did not attend. The experts assessed the damages, in the manner usually adopted in similar cases of damages caused by fire, at \$3,897.11, and the plaintiff's action was for this amount with amounts added for expenses incurred in repairs to the pipes fees to the experts and for expenses of protest. The judgment appealed from (Q. R. 17. K. R. 440) affirmed the said judgment (14 R. L. (N. S.) 172), maintaining the action and held that, under arts. 1053, 1688 and 1696 C. C., the contractor was responsible for the damages sustained, that the subsequent purchaser had a right of action against him, as he was the person injured through the latent defects in construction, that the method of assessing damages adopted was a proper mode to follow under the circumstances and that the vendors' expenses, fees and costs of protest were items of damages which could properly be recovered in the action. This decision was affirmed by the Supreme Court, on appeal, *Davies, J. dubitante*, for the reasons given by *Tellier, J.*, at the trial, and *Bossé and Trenholme, J.* in the court appealed from: *McGillivray v. Fraser*, xl., 377.

3. MECHANICS' LIEN.—*Completion of contract—Time for filing claim—Construction of statute—R. S. N. S. 1902, c. 111, ss. 20 and 30—Right of appeal.*—The time limited for the registration of claims for liens by s. 20 of "The Mechanics' and Wage Earners' Lien Act," R. S. M. 1902, c. 110, does not commence to run until there has been such performance of the contract as would entitle the contractor to maintain an action for the whole amount due thereunder.—The judgment appealed from (16 Man. R. 306) was reversed.—*Davies and MacLennan, JJ.*, dissented on the ground that the evidence was too unsatisfactory to justify any extension of time. The court refused to quash the appeal on the ground that the right of appeal had been taken away by s. 10 of the statute above referred to. Affirmed by the Privy Council (1908) 2 A. C. 504. *Davies v. The Crown Grain Co.*, xxxix., 258.

5. Mechanics' lien—Machinery furnished—Contract price.—Under the Mechanics' Lien Act of Nova Scotia, R. S. N. S. (1900), c. 111, a lien for machinery for a mill does not attach until it is delivered and if the contractor for building the mill has then been fully paid there is nothing upon which the mill can operate as by s. 6 of the Act the owner cannot be liable for a sum greater than that due to the contractor.—B. holder of the stock of a pulp company for which he had paid by cheque, and also a director, offered to sell land to the company to build a mill and furnish work-

ing capital on receipt of all the bond issue and cash on hand. The offer was accepted and all the stock issued as fully paid up, was deposited with a trust company and the owner his own cheque and the price of five shares, given to B. The stock was sold and from the proceeds the land was paid for the working capital promised given to the company and the balance paid to B. from time to time, as the mill was constructed. The machinery was supplied by an American company but when it was delivered all the money had been paid out as above. *Held*, affirming the judgment appealed from (36 N. S. Rep. 348), that as all the money had been paid before delivery the company was not liable under the Mechanics' Lien Act to pay for the machinery.—*Held*, also, that s. 8 of the Act which requires the owner to retain 15 per cent. of the contract price until the work is completed did not apply as no price for building the mill was specified, but the price was associated with other considerations from which it could not be separated. *S. Morgan Smith & Co. v. Sessio & Poirer and Poirer & Co.*, xxxv., 193. *Construction contract—Sub-contract—Dangerous premises—Servant of contractor—Building materials—Duty of principal contractor—Injury to servant—Responsibility for damages—Evidence—Kilgus v. J. G. Co. v. The McG. Co. v. contractors for plumbing and heating in a building under construction. Sub-part of their contract to the B. Co. who manufactured the necessary material at Amherst; N. S. v. mill at same time shipped a boiler plate for use, in executing their sub-contract assigned to the McG. Co. at Montreal. The mill Co. sent the advice notices of shipment to the B. Co.'s local representative, who employed carriers to get the plate from the railway company and carry it to the place where the works were being carried on. It was, under directions of the McG. Co.'s foreman, leaned up against a pillar of the building and remained there for about one day in a position where it projected over a part of the airway used for bringing materials into the buildings and applied for employment as a labourer on the works and was told to return next day which he did and, while waiting to be employed stood near the plate. When a vehicle entered the cartway the plate fell upon it, causing injuries from which he died. In an action by his dependents to recover damages from the B. Co. and the McG. Co.—*Held*, Anglin, J., dissenting, that, in the circumstances, the McG. Co. were responsible for damages, that the fault from which the injury resulted was that of their foreman who, acting as their servant or agent, supervised the placing of the plate in a dangerous position and that the plate itself was nothing which was, at the time, in the care of the McG. Co. *King v. Bawdell* (1914) 21 K. v. B. 318) referred to. *Held*, also, Anglin, J., dissenting, that the evidence showing the circumstances stated justified the jury in finding that deceased was lawfully in the place where the accident occurred; that he had not been guilty of contributory negligence; and that the negligence was due to the negligence of the McG. Co. and the subcontractors in placing the plate in a dangerous position. *W. H. McGilivray v. Bagger*, xl., 377.*

## 4. NEGLIGENCE.

7. *Sale of ruined building—Personal responsibility of vendor.*]—Where a ruined building is sold by A. to B., B. engaging himself to remove the materials from the ground, there is no responsibility imposed upon A., under the provisions of art. 1054 of the Civil Code of Lower Canada, in respect of injuries sustained in consequence of the negligence of B. in the removal of the materials, as A. had no control over the operations of demolition and removal by B. and his workmen.—Judgment appealed from (Q. R. 17 K. B. 232), affirmed. *DeKerangat v. Eastern Townships Bank*, xli., 259.

## 5. SHIP.

8. *Material used in construction of ship—Sale of goods—Contract—Principal and agent—Misrepresentations—Mistake—Conversion—Trover—Evidence—Misdirection—New trial—Ship's husband—Pledging credit of owners—Necessary outfitting at home port.*]—While a three-masted schooner was in course of construction, E. obtained goods on credit from the plaintiffs (appellants) falsely representing that his co-defendants were interested in the ship. The materials were built into the ship and used in rigging and equipping her, she was launched and registered in the name of E. as sole owner, and, subsequently, these co-defendants became *bonâ fide* purchasers of certain shares in the ship, E. was registered as her managing owner, and she was sent to sea.—*Held*, that sending the ship to sea was not such a conversion of the materials worked into the ship as could support an action in trover against the subsequent purchasers of shares in her.—After the purchasers of the above mentioned shares were registered as co-owners, E. obtained, on a further credit, metal sheathing and other goods from the plaintiffs which were used in sheathing and further outfitting the vessel, at the port where she had been built, and where the owners resided, before sending her out to sea.—*Held*, that the managing owner had power to pledge the credit of the owners for such necessary purposes. *The "Huntsman"* (1894), P. D. 214, followed.—The judgment appealed from (32 N. B. Rep. 147), which ordered a new trial on the ground of misdirection, was affirmed. *Troop v. Everett*, Cout. Cas. 131.

9. *Jurisdiction of the Exchequer Court of Canada—Claim under mortgage on ship—Action in rem—Pleading—Abatement of contract price—Defects in construction—Damages.*]—In an action *in rem* by the builders of a ship to enforce a mortgage thereon, given to them on account of the contract price for its construction, the owners, for whom the ship was built, may plead as a defence *pro tanto* that the ship was not constructed according to specifications and claim an abatement of the price in consequence of such default and that the loss in value of the ship, at the time of delivery, attributable to such default, should be deducted from the claim under the mortgage. (Leave to appeal to Privy Council was granted by the Supreme Court of Canada; see note to report, at p. 430). *Bow Mc-*

*Lachlan and Co. v. The "Camosun,"* xl., 418.

## 6. OTHER CASES.

10. *Contract—Supply of material—Payment—Certificate of engineer—Condition precedent—Improper interference—Fraud—Hindering performance of condition—Monthly estimate—Final decision. Temiskaming & Northern Ont. Ry. Co. v. Wallace*, xxxvii., 696.

11. *Railway aid—Provincial subsidy—Construction of statute—Breach of conditions—Compromise by Crown officers—Obligation binding on the Crown—Right of action—Subsidy to extension of line of railway. DeGalindez v. The King*, xxxix., 682.

12. *Contract—Inapplicable conditions—Action for quantum meruit. Toronto Hotel Co. v. Sloane*, Cout. Cas. 356.

13. *Vendor and purchaser—Misrepresentation—Fraud—Error—Rescission of contract—Sale or exchange—Dation en paiement—Improvements on property given in exchange—Option of party aggrieved—Action to rescind—Actio quantum minoris—Latent defects—Damages—Warranty—Agreement in writing—Formal deed*, xxxiv., 102.

See CONTRACT.

14. *Driving logs—Damages—Acts committed by jobber*, xxxiv., 265.

See DAMAGES.

15. *Negligence—Mining operations—Contract for special works—Engagement by contractor—Control and direction of mine owner—Defective machinery—Notice—Failure to remedy defect—Liability for injury sustained by miner*, xxxiv., 177.

See NEGLIGENCE.

16. *Contract—Condition precedent—Right of action*, xxxiv., 453.

See CONTRACT.

17. *Contract—Implied covenant—Damages—New trial*, xxxv., 186.

See CONTRACT.

18. *Board of Railway Commissioners—Jurisdiction—Construction of subway—Apportionment of cost—Person interested or affected—Street railway—Agreement with municipality*, xxxvii., 354.

See BOARD OF RAILWAY COMMISSIONERS.

19. *Mortgage—Money advanced to construct buildings—Lien for materials supplied—Payment to contractor—Transactions in fraud of rights of mortgagor—Redemption—Costs*, xxxviii., 557.

See MORTGAGE.

20. *Landlord and tenant—Negligence—Master and servant—Acts in course of employment—Alterations in plumbing—Damage by steam, etc.—Responsibility of contractors—Control of premises—Cross-appeal between respondents—Practice*, xxxix., 265.

See LANDLORD AND TENANT.

21. *Breach of contract—Measure of damages — Notice of special circumstances — Collateral enterprises — Loss of primary and secondary profits—Costs, xxxix., 575.*

See CONTRACT.

22. *Set-off — Application to judgments—Equitable assignment—Practice, Cam. Cas., 99.*

See SET-OFF.

23. *Mechanics' lien—Construction of statute — "Alberta Mechanics' Lien Act"—6 Edw. VII., c. 21, s. 4, 11—Building erected by lessee—Liability of "owner," xliii., 86.*

See LIEN, 1.

24. *Breach of contract—Action for quantum meruit—Rescission—Cross-action for damages — Appropriate relief — Waiver. Faureau et al. v. Rochon, xlii., 647.*

25. *Tramway company — Construction of works—Independent contractor—Dangerous system—Injury to property — Negligence—Exercise of statutory authority—Correlative duty—Damages—Special release, xlix., 430.*

See NEGLIGENCE.

26. *Negligence—Defective system—Injury to employee—Evidence—Verdict—Practice—Exception to judge's charge — New points on appeal — New trial. Creveling v. Can. Bridge Co., li., 216.*

### BUILDING.

*Construction — Collapse — Vis major, xxxix., 1.*

See NEGLIGENCE.

### BUILDING FUND, UPPER CANADA.

See CONSTITUTIONAL LAW.

### BUILDING LOAN.

*Mortgage — Money advance to construct buildings — Lien for materials supplied — Payment to contractor — Transactions in fraud of mortgagee's rights—Redemption—Costs, xxxviii., 557.*

See MORTGAGE.

### BY-LAW.

1. *Municipal corporation—Water rates—Discrimination.] — A by-law providing for special water rate from certain industries does not bring in question "the taking of an annual or other rent, customary or other duty or fee" under s. 1 (d) of the Act 60 & 61 Vict. ch. 34, [R. S. C. 1906, c. 149, s. 48 (d).]—By 24 Vict. c. 56, s. 3 (Can.) the city council of Hamilton was "empowered from time to time to establish by by-law a tariff of rents or rates for water supplied or ready to be supplied in the said city from the said water works."—Held,*

affirming the judgment of the Court of Appeal (12 Ont. L. R. 75) which sustained the verdict at the trial (10 Ont. L. R. 280) that the rate for water supplied to any class of consumers must be an equal rate to all members of such class, and a by-law providing for a rate on certain manufacturers higher than that to be paid by others was illegal. *Attorney-General v. City of Toronto* (23 Can. S. C. R. 514) followed. *City of Hamilton v. Hamilton Distillery Co.; City of Hamilton v. Hamilton Brewing Association, xxxviii., 239.*

AND see MUNICIPAL CORPORATION.

2. *Municipal corporation—Powers—Land tax sales—Purchase by corporation—Vesting of title — Manitoba Real Property Act — Agreement to re-convey—Necessity of by-law.]—After the City of Winnipeg had become purchaser of lands within the city, sold for arrears of overdue taxes, and had obtained a certificate of title therefor under the Real Property Act, a resolution of the city council was passed agreeing that the land should be re-conveyed to the former owner on payment of the taxes in arrears with interest and costs.—Held, that the corporation was not bound by the resolution as the re-conveyance of the lands could be made only under the authority of a by-law as provided by the city charter. *Waterous Engine Works Co. v. The Town of Palmerston* (21 Can. S. C. R. 556) and *District of North Vancouver v. Tracy* (34 Can. S. C. R. 132) followed. Judgment appealed from (17 Man. R. 497) affirmed. *Ponton v. City of Winnipeg; xli., 18.**

3. *Contract by municipal corporation — Powers — By-law or resolution—Right of action — Confession of judgment — Evidence—Admissions — Pleading — Estoppel by record — Art. 1245 C. C. —Concurrent findings of fact—Practice on appeal, xxxiv., 495.*

See EVIDENCE.

4. *Railway aid—Municipal by-law—Condition precedent — Part performance—Annulment of by-law — Right of action—Assignment of obligation—Notice—Signification upon debtor—Art. 1561 C. C., xxxvi., 686.*

See ACTION.

5. *Municipal Act—Vote on by-law—Local option—Ward divisions — Single or multiple voting — R. S. O. (1897) c. 245, s. 141 —3 Edw. VII. c. 19, s. 355, xxxix., 236.*

See STATUTE.

6. *Constitutional law — Legislative jurisdiction — "Early closing by-law" — Municipal affairs — Property and civil rights—Local or private matters — Regulation of trade and commerce—B. N. A. Act, 1867, s. 91, s-s. 2; s. 92, s-s. 8, 13, 16—57 V. c. 50 (Que.), xlii., 211.*

See CONSTITUTIONAL LAW.

7. *Benefit association — Life insurance — By-laws and regulations — Transfers between lodges—Member in good standing — Regularity of affiliation—Payment of dues*







## 2. CONDITIONS AGAINST LIABILITY.

2. *Railways — Carriage of passenger — Special contract—Notice to passenger of conditions—Negligence — Exemption from liability.*] — P., at Milverton, Ont., purchased a horse for a man in another town who sent R. to take charge of it. P. signed the way-bill in the form approved by the Board of Railway Commissioners, which contained a clause providing that if the consignee or his nominee should be allowed to travel at less than the regular fare to take care of the property the company should not be liable for any injury to him whether caused by negligence or otherwise. R. was not asked to sign the way-bill though a form indorsed provided for his signature and required the agent to obtain it. The way-bill was given to R., who placed it in his pocket without examining it. On the passage he was injured by negligence of the company's servants.—*Held*, that R. was not aware that the way-bill contained conditions.—*Held*, also, Fitzpatrick, C.J., dissenting, that the company had not done all that was incumbent on them to bring notice of the special condition to his attention.—Judgment of the Court of Appeal (27 Ont. L. R. 290) reversed and that of the trial judge (26 Ont. L. R. 437) restored. *Robinson v. Grand Trunk Railway Co.*, xlvi., 622.

## 3. NEGLIGENCE.

3. *Negligence — Dangerous way—Operation of railway — Defective bridge — Gratuitous passengers—Bare license—Evidence —Liability of carrier for damages.*]—In the absence of evidence of gross negligence, a carrier is not liable for injuries sustained by a gratuitous passenger. *Moffatt v. Bate-man* (L. R. 3 P. C. 115) followed, *Harris v. Perry & Co.* [1903] 2 K. B. 219) distinguished.—Although a railway company may have failed to properly maintain a bridge under their control so as to ensure the safety of persons travelling upon their trains, the mere fact of such omission of duty does not constitute evidence of the gross negligence necessary to maintain an action in damages for the death of a gratuitous passenger. Judgment appealed from (9 B. C. Rep. 453) affirmed. *Nightingale v. Union Colliery Co.*, xxxv., 65.

AND *see* RAILWAYS.

4. *Carriers by water—Special contract—Exemption from liability — Construction of terms — “At owner's risk” — “Baggage” —Negligence — Wilful misconduct.*] — The Commercial Travellers' Association of Ontario, by written agreement with the defendants' company, obtained for its members for the season of 1885 special privileges in travelling by the company's boats, one of the terms of the agreement being that the members should receive tickets at a reduced rate “with allowance of 300 lbs. of baggage free, but the baggage must be at the owner's risk against all casualties.” This agreement was continued during 1886 by verbal agreement between the manager of the company and the secretary and traffic manager of the association. D., a commercial tra-

veller, obtained a ticket for a passage on one of the company's boats under this agreement, paying the reduced fare, and took on board three trunks containing the usual outfit of a traveller for a jewellery house, valued at about \$15,000. The trunks were checked in the usual way, and no intimation was given by D. to any of the officials on the boat as to their contents. On the passage the contents of the trunks were damaged by the negligence of the officers of the company, and an action was brought by D. and his employers to recover damages for such injury.—*Held*, affirming the decision of the Court of Appeal (15 Ont. App. R. 647), that the agreement between the association and the company was in force in 1886; that the term “baggage” in the agreement meant not merely personal baggage, such as every passenger is allowed to carry without extra charge, but commercial baggage, and would include the outfit in this case, and that in the expression “must be at owner's risk against all casualties” do not limit, control or destroy, but rather strengthen the protection which the former words “at owner's risk” afforded the defendants. *Dixon v. Richelieu & Ontario Nav. Co.* (xviii., 704), Cam. Cas. 66.

5. *Negligence—Operation of railway—Defective system—Gratuitous passenger—Free pass—Limitation of liability—Employer and employee—Fellow-servant—Evidence—Onus of proof.*] — The plaintiff's husband was an employee engaged as a mechanic in the company's workshops and was travelling thither to his work on one of the company's passenger cars, as a passenger, without payment of fare. A freight car became detached from a train, some distance ahead of the passenger car and proceeding in the same direction; it ran backwards down a grade, collided with the passenger car and the plaintiff's husband was killed. The manner in which the freight car became detached was not shewn. On the body of deceased there was found a permit or “pass,” which was not produced, and there was no evidence to shew any conditions in it, nor over what portion of the company's lines nor for what purposes it was to be honoured. On the close of the plaintiff's case the defendants adduced no evidence whatever, and the jury found that the company was at fault, owing to a defective system of operation of their trains, and assessed damages, at common law, for which judgment was entered for the plaintiff.—*Held*, that there was a presumption that deceased was lawfully on the passenger car and, in the exercise of their business as common carriers of passengers, the company were, therefore, obliged to use a high degree of care in order to avoid injury being caused to him through negligence; that there was nothing in the evidence to shew that deceased occupied the position of a fellow-servant with the employees engaged in the operation of the trains which were in collision; and that, in the absence of evidence shewing any agreement, express or implied, or some relationship between the company, and deceased which would exclude or limit liability, the plaintiff was entitled to recover damages at common law. — Judgment appealed from (16 B. C. Rep. 113) affirmed.



*Nightingale v. Union Colliery Co.* (35 Can. S. C. R. 65) distinguished. *British Columbia Electric Railway Co. v. Wilkinson*, xlv., 263.

6. *Railways—Negligence—Condition limiting liability—Contract to carry passenger*, Cam. Cas. 10.

See RAILWAYS.

#### 4. OTHER CASES.

7. *Railways—International through traffic—Reduction of joint rate—Jurisdiction of Board of Railway Commissioners—Practice—Parties—Costs*, xliii., 277.

See RAILWAYS.

8. *Board of Railway Commissioners—Jurisdiction—Private siding—Construction of statute—“Railway Act,” R. S. C. 1906, c. 37, ss. 26a, 226; 8 & 9 Edw. VII. c. 32, 1, xlv., 346.*

See RAILWAYS.

9. *Practice—Action by dependents—B. C. “Families Compensation Act”—Release by deceased—Defence to action—Repudiation—Fraud—Setting aside release—Personal representative—Right of action—Return of money paid—Limitation of actions—General statutory provision—Carriers—Private Act—B. C. “Consolidated Railway Company’s Act”—Statute—R. S. B. C. 1911, c. 82—“Lord Campbell’s Act”—(B. C.) 59 V. c. 55, s. 60, xlix., 470.*

See PRACTICE AND PROCEDURE.

10. *Railways—Shipping contract—Carrying person in charge of live stock—Frec pass—Release from liability—Approved form—Negligence—Action by dependents—Conflict of laws—“Railway Act,” R. S. C. 1906, c. 37, s. 340. C. P. R. v. Parent*, li., 234.

See RAILWAYS, 4.  
AND see RAILWAYS.

11. *Guarantee by bank—Sale of goods—Payment of draft—Bill of lading—Goods at disposal of consignee. Pioneer Bank v. Bank of Commerce*, liii., 570.

12. *Railways—Shipping. Vipond v. Furness, Withy & Co.*, liv., 521.

#### CASES.

APPEALED TO PRIVY COUNCIL.

See APPENDIX “A.”

#### CAUSE.

See ACTION.

#### CAVEAT.

1. *Constitutional law—Imperial Acts in force in Yukon Territory—Title to land—“Torrens System”—Transfer by registered owner—Fraud—Litigious rights—Notice of lis pendens—Irregular registration—Indorsement upon certificate of title—Construction of statute—Pleading—Objections taken on appeal—Yukon Territorial Court rules—Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117—Waiver—Estoppel*, xxxvi., 251.

See REGISTRY LAWS.

2. *Manitoba “Real Property Act,” ss. 100, 130—Agreement for mortgage—“Interest in land”—Registration subject to incumbrance—Indorsement on instrument registered. Yockney v. Thompson*, l., 1.

See REGISTRY LAWS, 1.

#### CERTIORARI.

1. *Construction of statute—“Marsh Act,” R. S. N. S. 1900, c. 66, ss. 22, 66—Jurisdiction of marsh commissioners—Assessment of lands—Limitation for granting writ—Practice—Expiration of time—Delays occasioned by judge—Legal maxim—Order nunc pro tunc.*—Where a statute authorizing commissioners to assess lands provided that no writ of *certiorari* to review the assessment should be granted after the expiration of six months from the initiation of the commissioners’ proceedings. — *Held*, Girouard, J., dissenting, that an order for the issue of a writ of *certiorari* made after the expiration of the prescribed time was void, notwithstanding that it was applied for and judgment on the application reserved before the time had expired.—*Held, per* Taschereau, C.J.—That where jurisdiction has been taken away by statute the maxim *actus curiæ neminem gravabit* cannot be applied, after the expiration of the time prescribed, so as to validate an order either by ante-dating or entering it *nunc pro tunc*; that, in the present case, the order for *certiorari* could issue as the impeachment of the proceedings of the inferior tribunal was sought upon the ground of want of jurisdiction in the commissioners, but the appellants were not entitled to it on the merits.—*Per* Girouard, J. (dissenting). — Under the circumstances, the order in this case ought to be treated as having been made upon the date when judgment upon the application was reserved by the judge. Upon the merits, the appeal should be allowed as the commissioners had no jurisdiction in the absence of proper notices as required by the twenty-second section of the “Marsh Act,” R. S. N. S. 1900, c. 66.—*Per* Davies, J.—The statute allows any person aggrieved by the proceedings of the commissioners to remove the same into the Supreme Court by *certiorari*; the claim for the writ on the ground of jurisdiction was either abandoned or unfounded; and the statutory writ could not issue after the six months had expired. *In re Trecothick Marsh*, xxxvii., 79.

2. *Habeas corpus—Jurisdiction of judges of Supreme Court of Canada—Reviewing*

evidence—Construction of statute—29 & 30 Vict. c. 45 (Can.)—R. S. C. c. 135, ss. 32, 36. *In re Arabin alias Ireda*, Cout. Cas. 95.

3. *Criminal law—Habeas corpus—Conviction—Keeping house of "ill-fame"—Reviewing evidence—Construction of statute*, Cout. Cas. 35.

See HABEAS CORPUS.

### CHAMPERTY.

1. *Conveyance of land—Description of property sold—Partition—Petitory action—"Quebec Act, 1774"—Introduction of English criminal law—Champerty—Maintenance—Affinity and consanguinity—Parties interested in litigation—Litigious rights—Pacte de quotâ litis—Contract—Illegal consideration—Specific performance—Retrait successoral.*—The heirs of M. induced several persons related to them either by consanguinity or by affinity to assist them as plaintiffs in the prosecution of a lawsuit for the recovery of lands belonging to the succession of an ancestor and, in consideration of the necessary funds to be furnished by these persons, six of the respondents and the *mis en cause*, entered into the agreement sued on by which said plaintiffs conveyed to each of the seven persons giving the assistance one-tenth of whatever might be recovered should they be successful in the lawsuit. In an action *ou pétitoire et en partage*, by the parties who furnished such funds, for specific performance of this agreement:—*Held*, reversing the judgment appealed from (Q. R. 12 K. B. 298), Davies, J., dissenting, that the agreement could not be enforced as it was tainted with champerty notwithstanding that the consanguinity or affinity of the persons in whose favour the conveyance had been made might have entitled them to maintain the suit without remuneration as the price of the assistance.—*Held*, further, that the laws relating to champerty were introduced into Lower Canada by the "Quebec Act, 1774," as part of the criminal law of England and as a law of public order the principles of which and the reasons for which apply as well to the Province of Quebec as to England and the other provinces of the Dominion of Canada. *Price v. Mercier* (18 Can. S. C. R. 303), referred to. [Leave to appeal to the Privy Council refused.] *Meloche v. Déguire*, xxxiv., 24.

AND see TITLE TO LAND.

2. *Title to land—Champertous agreement—Litigious rights.*—In *Briggs v. Newswander* (32 Can. S. C. R. 405), the plaintiff was held entitled to a conveyance from defendants of a quarter interest in certain mineral claims. In that action, *Newswander et al.*, were only nominal defendants, the real interest in the claims being F. After the judgment was given plaintiff conveyed nine-tenths of his interest to G., the expressed consideration being moneys advanced and an undertaking by G. to pay the costs of that action and another brought by Briggs and, by a subsequent deed, which recited the proceedings in the action and the deed of the nine-tenths, he conveyed to G. the remaining one-tenth of his in-

terest, the consideration of that deed being \$500 payable by instalments. Briggs afterwards assigned the above-mentioned judgment and his interest in the claims to F. In an action by G. against F. for a declaration that he was entitled to the quarter interest:—*Held*, affirming the judgment appealed from (10 B. C. Rep. 309), that the transfer to G. of the nine-tenths was champertous and the court would not interfere to assist one claiming under a title so acquired.—*Held*, also, that the transfer of one-tenth was valid, being for good consideration and severable from the remainder of the interest. *Giegerich v. Flutot*, xxxv., 327.

3. *Maintenance—Malicious motive—Cause of action—Costs of unsuccessful defence—Damages.*—A defendant against whom a lawsuit has been successfully prosecuted cannot recover the costs incurred for his defence as damages for the unlawful maintenance of the suit by a third party who has not thereby been guilty of maliciously prosecuting unnecessary litigation. *Bradlaugh v. Neudegate* (11 Q. B. D. 1), distinguished; *Giegerich v. Flutot* (35 Can. S. C. R. 327) referred to. Judgment appealed from (12 B. C. Rep. 272), affirmed. *Newswander v. Giegerich*, xxxix., 354.

4. *Administration proceedings—Statute of Limitations—Champertous agreement—Practice.*—O., a creditor against the estate of A. M. C., a deceased intestate, obtained an order for the administration of the estate of the intestate. On the proceedings in the master's office, a claim which O. made to have an account of the firm of which he was a member allowed was refused, but a further claim presented by him as the assignee of certain promissory notes made in favour of H. & Co. was allowed. The present appellant, wife of the intestate, presented a petition to the court to set aside the administration order on the ground that O. at the time the order was made was not a creditor of the deceased intestate, as the assignment of the notes of H. & Co. to him was part of a champertous agreement. The court held that the judgment for administration enured to the benefit of all the creditors, and, as one at least had established a claim under it, the order could not be set aside, but that O. was not entitled to be allowed in the master's office his claim on the notes, as the transaction between him and H. & Co. in connection therewith was a champertous one. O. retransferred the notes to H. & Co., and the latter obtained leave to prove the claim thereon in the master's office, and on appeal from the master's ruling, it was held that H. & Co. might now assert their title to the notes and prove on them notwithstanding the former champertous agreement with O., and that the order for administration was a bar to the Statute of Limitations running against the notes from the date of the order. Upon appeal this judgment was affirmed by the Court of Appeal.—*Held*, that the judgment of the Court of Appeal should be affirmed and the appeal dismissed with costs.—*Held*, per Gwynne, J., that the maker of an unquestionably valid note could not in proceedings taken by the payee to recover upon the note institute an inquiry as to what the payee

may have done with the note in the interval elapsing between the making of the note and the proceedings taken to recover payment of it, and that the transaction between O. and H. & Co. was not champertous. *Cannon v. Howland & Co.* (Cout. Dig. 234); Cam. Cas. 119.

5. *Title to land—Conveyance upon conditions—Public park—Trust—Forfeiture—Assignment of interest—Decree in favour of assignee—Champertous agreement, xxxv., 121.*

See TITLE TO LAND.

6. *Solicitor and client—Costs—Confession of judgment—Agreement with counsel—Overcharge, xxxv., 168.*

See SOLICITOR.

### CHARTERED SHIP.

*Shipping—Suitability for cargo—Duty of owner—Dead freight—Demurrage, liii., 471.*

See SHIPS.

### CHARTER PARTY.

1. *Shipping—Condition to load and proceed with dispatch—Delay—Loss of cargo—Recovery of freight—Action. Spindler v. Farquhar, Cout. Cas. 364.*

2. *Shipping—Time for loading limited by charter party—Loading at port—Custom—Obligation of charterer, xxxiv., 578.*

See SHIPS AND SHIPPING.

3. *Shipping—Material men—Supplies furnished for "last voyage"—Privilege of dernier équipier—Round voyage—Personal debts of hirers—Seizure of ship—Arts. 2383, 2391 C. C.—Art. 931 C. P. Q.—Construction of statute—Ordonnances de la Marine, 1681, xl., 45.*

See SHIPS AND SHIPPING.

4. *Marine insurance—Loss of freight—Detention by ice—Perils insured against, Cam. Cas. 86.*

See INSURANCE, MARINE.

### CHATTEL.

*Mining lease—Prospector's license—Testing machinery—Annexation to freehold—Trade fixtures—Fi. fa. de bonis—Sale under execution.]—The licensees of a mining area in Nova Scotia erected a stamp mill on wild lands of the Crown for the purpose of testing ores. All the various parts of the mill were placed in position, either resting by their own weight on the soil or steadied by bolts, and the whole installation could be removed without injury to the freehold.—Held, that the mill was a chattel or, at any rate, a trade fixture removable by the licensees during the tenure of their lease or license and, consequently, it was subject to seizure and sale under an execution against goods. Judgment appealed from (36 N. S.*

*Rep. 395)* affirmed, but for different reasons. Leave to appeal to the Privy Council refused; May, 1905. *Liscombe Falls Gold Mining Co. v. Bishop, xxxv., 539.*

AND see MOVABLES.

### CHATTEL MORTGAGE.

1. PREFERENCES, 1-2.

2. REGISTRATION, 3-4.

3. OTHER CASES, 5-10.

#### 1. PREFERENCES.

1. *Interpleader issue—Chattel mortgage—Hire receipt—48 Vict. c. 26, s. 2 (Ont.)—13 Eliz. c. 5—Clarkson v. Sterling (15 A. R. 234), distinguished.]—B. sells to P. on time, a quantity of machinery, and the agreement of sale contains a provision by which P. agrees to give B. a hire receipt or a chattel mortgage as security. A few days after L. had brought an action against P. for the price of goods sold and delivered, P. gives B. a chattel mortgage.—Held, that the mortgage in question was given with intent to delay, hinder and defraud creditors, and was void.—Held, per Taschereau, J., approving the judgment of Hagarty, C.J.O., that the equitable doctrine under which the mortgage was upheld in *Clarkson v. Sterling* (15 Ont. App. R. 234), did not apply, first, because there was no absolute contract to give a chattel mortgage—the contract was alternative, either a hire receipt, or a chattel mortgage;—and, secondly, the mortgage given was not that contracted for but included additional goods. *Brown v. Lamontagne, Cam. Cas. 30.**

2. *Assignments and preferences—Hindering and delaying creditors—Assignment of book debts—Surety.]—The Ontario Seed Co. owed a bank some \$8,000 for which J. was surety by bond and indorsement of notes for all but \$500. The bank also held as further security an assignment of the company's book debts. The company gave to A., a brother of J., a chattel mortgage of all its personal property and agreed to assign to him the book debts. A. then gave to the company an amount sufficient to pay the bank's claim, J. having supplied him with funds for the purpose, and the company gave its own cheque to the bank with a direction to assign the book debts to A., which was done.—Held, that the evidence justified the finding at the trial that the chattel mortgage was given for the benefit of J., who was aware at the time it was given that the company was insolvent, and that it was void under the provisions of the "Assignments and Preferences Act" and should be set aside.—After the assignment of the book debts to A. the company was allowed to go on collecting them.—Held, that such assignment was valid, but that the assignee could not retain the value of what had been collected out of the proceeds of the property covered by the chattel mortgage.—Judgment of the Court of Appeal (24 Ont. L. R. 503) reversed and that of the Divisional Court (22 Ont. L. R. 577)*

restored. *Stetcher Lithographic Co. v. Ontario Seed Co.*, xlvi., 540.

## 2. REGISTRATION.

3. *Chattel mortgage—Renewal—Time for filing—Identification of goods—Sufficiency of description—Proof of judgment and execution.*—The ordinance of the North-West Territories relating to chattel mortgages (Ordinance of 1881, No. 5), provides by s. 9 that "every mortgage filed in pursuance of this ordinance shall cease to be valid as against the creditors of the persons making the same after the expiration of one year from the filing thereof, unless a statement, etc., is again filed within thirty days next preceding the expiration of the said term of one year." A chattel mortgage was filed on 12th August, 1886, and registered at 4.10 p.m. of that day. A renewal of said mortgage was registered at 11.49 a.m. on 12th August, 1887.—*Held*, affirming the decision of the court below, that the renewal was filed within one year from the date of the filing of the original mortgage as provided by the ordinance.—*Per Patterson, J.*—In computing the time mentioned in this section the day of the original filing should be excluded and the mortgage would have had the whole of the 12th August, 1887, for filing the renewal.—Section 6 of the same ordinance provides that: "All the instruments mentioned in this ordinance whether for the mortgage or sale of goods and chattels shall contain such sufficient and full description thereof that the same may be readily and easily known and distinguished." The description in a chattel mortgage was as follows: "All and singular the goods, chattels, stock-in-trade, fixtures and store buildings of the mortgagors, used in or pertaining to their business as general merchants, said stock-in-trade consisting of a full stock of general merchandise now being in the store of said mortgagors on the north half of section six, township nineteen, range twenty-eight, west of the fourth initial meridian." — *Held*, affirming the decision of the court below (1 Terr. L. R. 159), that the description was sufficient. *McCaul v. Wolf* (13 Can. S. C. R. 130), distinguished. *Hovey v. Whiting* (14 Can. S. C. R. 515), followed.—*Per Patterson, J.*, that although the interpleader issue did not contain an express statement that the judgment and execution on which the goods were seized were against the makers of the chattel mortgage, that fact should be inferred. *Thompson, Cadville & Co. v. Quirk* (xviii., 695); *Cam. Cas.* 436.

4. *Chattel mortgage—Registration—Subsequent purchase—Removal of goods.*—For purposes of registration of deeds the North-West Territories is divided into districts, and it is provided by ordinance that registration of a chattel mortgage not followed by transfer of possession, shall only have effect in the district in which it is made. It is also provided that if the mortgaged goods are removed into another district, a certified copy of the mortgage shall be filed in the registry office thereof within three weeks from the time of removal, other-

wise the mortgage shall be null and void as against subsequent purchasers, etc. *Held*, reversing the judgment in appeal, that the "subsequent purchaser" in such case must be one who purchased after the expiration of the three weeks from time of removal, and that though no copy of the mortgage is filed as provided it is valid as against a purchase made within such period. *Hulbert v. Peterson*, xxxvi., 324.

## 3. OTHER CASES.

5. *Contract—Guarantee—Conditional sale—Rescission—Mortgagor and mortgagee—Power of sale—Creditor retaking possession—Continuing liability—Appropriation of money realized by creditor—Release of debtor—Discharge of surety.*—S. leased a hotel for three years and agreed to purchase the furniture therein from plaintiffs (respondents) at \$11,000, payable by instalments, \$3,000 during the first year, \$3,000 during the second year, and \$5,000 during the third year of the term, power to retake and sell the goods, on default, being reserved. The whole debt was secured by chattel mortgage upon the furniture, and, as further security, by an agreement entered into with several other persons, the defendant (appellant), guaranteed the payment of one-sixth of the instalment payable during the second year of the term. It was a condition of the guarantee that it should remain in force notwithstanding that S. might forfeit her right to the furniture under the conditions of any agreement or mortgage. The chattel mortgage, on breach of covenants, provided for forfeiture of all claim of S. to the furniture, and that the plaintiffs might, thereupon, retake possession thereof, and, also, that all payments she should have made would then be forfeited. During the second year of the term, on default by S. to pay part of the first year's instalment, the plaintiffs resumed possession of the hotel and furniture, leased the hotel to another person and sold the furniture for \$6,500; they also notified the guarantors of the default of S. to perform "the conditions of the purchase," that they had, in consequence, repossessed themselves of the furniture, and that they intended holding the guarantors liable for the payment guaranteed. The money received on the resale was appropriated by the plaintiffs, first, in payment of a balance of the first year's instalment; 2dly, in payment of the third instalment, and lastly, towards part payment of the second instalment, thus reducing this last amount by \$105.14. After the expiration of the three years' term of the lease to S., the plaintiffs sued upon the guarantee, and recovered judgment against the defendant.—*Held*, *per Taschereau, Girouard and Davies, JJ.* (Sedgewick and Mills, JJ., *contra*), that the contract represented by the agreement, guarantee and chattel mortgage constituted a relationship of mortgagor and mortgagee between S. and the plaintiffs, and, consequently, that the guarantors continued to be liable under the guarantee, notwithstanding the forfeiture of the rights of S., and the exercise of the powers of resuming possession and re-sale

of the furniture.—*Held, per Sedgewick and Mills, JJ.*, dissenting, that the transaction amounted to a conditional sale of the furniture, that the liability of S. upon her personal covenant ceased upon the exercise of the powers by the plaintiffs, and, consequently, that the sureties were discharged, notwithstanding the special provision that the guarantee should remain in force. — *Held, also, per Sedgewick and Mills, JJ.* (Davies, J., *contra*), that, in either view of the nature of the contract, the receipt of the money on re-sale of the furniture cancelled the debt *pro tanto*, and, upon the second instalment falling due, the plaintiffs were bound forthwith to appropriate the amount of that instalment out of the \$6,500 then in their hands, in satisfaction and discharge of the guaranteed payment, thereby releasing both S. and her sureties from further liability. *Stephen v. Black et al.*, *Cont. Cas.* 217.

6. *Construction of statute*—*N.-W. Ter. Con. Ord. 1898, c. 54—Extra-judicial seizures—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—The "Bank Act," R. S. C. 1906, c. 29, s. 91—Interest—Contract—Excessive charges Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages.*—The parties to a chattel mortgage may waive the provisions of the third section of the North-West Territories Ordinance, 1898, ch. 34, in respect to the expenses of the seizure and sale of the mortgaged property. *Robson v. Biggar* ((1907) 1 K. B. 690), followed. Judgment appealed from (3 Alta. L. R. 166) reversed.—Where interest in excess of the rate of seven per cent. per annum has been voluntarily paid upon the settlement of accounts stated between a bank and its debtor, the amount so paid cannot be recovered back from the bank by the payer. In respect of unsettled accounts between a bank and its debtor, charges of interest in excess of the rate limited by section 91 of the "Bank Act," R. S. C. 1906, ch. 29, made in virtue of an agreement between the parties, should be reduced to the rate of seven per cent. per annum upon the surcharging and falsifying of such accounts. Judgment appealed from (3 Alta. L. R. 166) affirmed, *Idington, J.*, dissenting.—Where loss occurs to mortgaged property in consequence of want of reasonable care in its removal from the place of seizure to the place at which it is sold under the authority of a chattel mortgage, the proper measure of the damages recoverable by the mortgagor is the amount of depreciation in value caused by the negligent manner in which the removal was effected. In the present case, the evidence being insufficient to justify the assessment made by the trial judge, it was referred back to have the damages properly assessed. Judgment appealed from (3 Alta. L. R. 166) varied, *Duff and Anglin, JJ.*, dissenting. *Union Bank of Canada v. McHugh*, *xlv.*, 473.

7. *Sale under powers—Notice—Offer to redeem—Tender—Equitable relief—Evidence—Proceedings taken in good faith.*—To impeach a sale under powers in a chattel

mortgage on the ground that an offer to redeem was made prior to the time fixed by the notice of sale, the person entitled to redeem is obliged to shew that the amount due under the mortgage was actually tendered or that the mortgagee was distinctly informed that the mortgagor was then and there ready and willing to pay what was so due and, being thus informed of the intention to redeem, refused to accept payment.—In the exercise of his power of sale, a mortgagee of chattels is bound merely to act in good faith and avoid conducting the sale proceedings in a recklessly improvident manner calculated to result in sacrifice of the goods.—And *per Duff, J.*, he is not obliged (regardless of his own interests as mortgagee) to take all the measures a prudent man might be expected to take in selling his own property.—Judgment appealed from reversed, the Chief Justice and *Idington, J.*, dissenting. *British Columbia Land and Investment Agency v. Ishitaka*, *xlv.*, 302.

8. *Fraudulent conveyance—Pleading—Practice—Approbating and reprobatng transaction—Right to redeem—Oral evidence to vary deed—Sheriff's sale—Equity of redemption—Execution*, *Cam. Cas.* 251.

See PLEADING.

AND see BILLS OF SALE.

9. *Fire insurance—Insurance on lumber—Conditions—Warranty—Railway on lot—Security to bank*, *xlvii.*, 216.

See INSURANCE, FIRE.

10. *Bill of sale—Mortgage—Registration—Affidavit—Verification—B. C. "Bills of Sale Act," 5 Edw. VII. c. 8, s. 7, xlix.*, 541.

See BILLS OF SALE.

## CHEQUE.

1. *Crown—Banks and banking—Forged cheques—Payment—Representation by drawee—Implied guarantee—Estoppel—Acknowledgment of bank statements—Liability of indorsers—Mistake—Action—Money had and received*, *xxxviii.*, 258.

See BANKS AND BANKING.

2. *Insolvency—Preferential transfer of cheque—Deposit in private bank—Application of funds to debt due banker—Sinister intention—Payment to creditor—R. S. O. (1897) c. 147, s. 3 (1), xxxix.*, 281.

See ASSIGNMENTS.

3. *Banks and banking—Forged cheque—Negligence—Responsibility of drawee—Payment—Mistake—Indorsement—Implied warranty—Principal and agent—Action—Money had and received—Change in position—Laches*, *xl.*, 366.

See BANKS AND BANKING.

4. *Partnership—Principal and agent—Partnership funds—Third party—Banks and banking—Negotiable instrument—Notice—Inquiry*, *xlv.*, 127.

See PARTNERSHIP.

AND see BILLS AND NOTES.

**CHINESE.**

*Constitutional law—Criminal law—Legislation respecting orientals — Chinese places of business—Employment of white females—Statute—2 Geo. V. c. 17—(Sask.)—“B. N. A. Act, 1867,” ss. 91, 92—Local and private matters—Property and civil rights—Naturalized British subject — Conviction under provincial statute, xlix., 440.*

See CONSTITUTIONAL LAW.

**CHOSE IN ACTION.**

1. *Assignment of chose in action—Notice—Statute of Limitations—Acknowledgment of debt—Interest, Cam. Cas. 239.*

See LIMITATION OF ACTIONS.

2. *Banking—Security for advances—Assignment—Moneys to arise out of contract—Unearned funds—Equitable assignment to third party—Notice—Evidence—Priority of claim—Estoppel—Construction of statute—Manitoba “King’s Bench Act” — “Bank Act,” xlviii., 31.*

See BANKING, 2.

**CHURCH.**

*Title to land — Ambiguous description of grantee — “Greek Catholic Church”—Evidence—Construction of deed—Reversal of concurrent findings, xxxviii., 177.*

See TITLE TO LAND.

**CIVIL SERVICE.**

*Constitutional law — Municipal taxation—Official of Dominion Government—Taxation on income—B. N. A. Act, 1867, ss. 91, 92, xl., 597.*

See CONSTITUTIONAL LAW.

**CLEARING HOUSE.**

*Broker — Dealings “on change — Speculative options — Principal and agent—Liability for contracts by agent in his own name—Privy of contract—Purchase and sales on “margin” — Settlements through clearing house—Wagering contract—Malum prohibitum—Criminal Code, sec. 231, xlix., 595.*

See BROKER.

**COLLISIONS AT SEA.**

1. *Admiralty law—Navigation of canal—“Narrow channel” — Marine Department Regulations, rule 25—Starboard course—Fairways and mid-channels — “Canada Shipping Act,” R. S. C. 1906, c. 113, s. 916—Shipping—Liability for damages—Canal Regulations, rule 22—Right of way.]—The steamboat “Honoreva” was under way go-*

ing up the Soulanges Canal and approaching a bridge across the channel which was swung open when she was about 300 feet below it. The steam tug “Jackman” was then observed descending the canal, with the current, at a greater distance above the bridge and also under way. The “Honoreva,” in attempting to pass first through the abutments of the bridge (a space of about 100 feet in width), and keeping a course in mid-channel, came into collision with the barge “Maggie,” which was being towed by the “Jackman,” and the barge was injured and sunk. In an action for damages against the “Honoreva” she counter-claimed for damages sustained by her owner, as alleged, to the negligent navigation of the tug-and-tow.—*Held*, that the vessels thus navigating the canal were, at the place where the collision occurred, in a “narrow channel”; that article 25 of the rules of the Marine Department respecting the passage of vessels, which requires them when safe and practicable to keep to the starboard in fairways and mid-channels, applied to the navigation of the vessels in question, and that the “Honoreva,” having failed to obey that rule, was in fault within the meaning of section 916 of the “Canada Shipping Act,” R. S. C. 1906, ch. 113; that there was no negligence proven on the part of the tug-and-tow, and that the “Honoreva” was, therefore, solely liable for the damages resulting from the collision.—*Per Davies and Anglin, JJ.*—Under sub-section b of article 25 of the rules of the Marine Department, the down-going tug-and-tow had the right of way, notwithstanding that the up-going vessel may have been closer to the bridge when it was opened, and that the tug-and-tow were not obliged to stop and make fast to posts until the up-going vessel had passed, as is required by the 22nd rule of the “Canal Regulations” in regard to vessels approaching a lock. *Bonham v. Ship Honoreva*, liv., 51.

2. *Navigation — Admiralty law — Maritime law—Tug and tow—Contract of navigation—Collision of tug—Liability of tow—Foreign ship—Proceedings in foreign court—Jurisdiction in Canada, li., 39.*

See ADMIRALTY LAW.

**COLLOCATION.**

1. *Liquidation and insolvent corporation—Distribution and collocation—Privileged claim — Expenses for preservation of estate—Fire insurance premiums—Practice—Es parte inscription—Notice—Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2009 C. C., xxxix., 318.*

See COMPANY.

2. *Privileges and hypothecs — Tramway—Operation on highway—Title to land—Im mobilization by destination — Sale of tramway by sheriff as a “going concern” — Unpaid vendor—Lien on price of cars—Pledge—Construction of statute, 3 Edw. VII. c. 91 (Que.)—Priority of claim—Collocation and distribution—Arts. 379, 200 C. C.—Art. 752 Man. Code. O’Hearn & Soper v. N. Y. Trust, xlii., 267.*

**COLONIAL COURTS OF ADMIRALTY.**

See PRIVY COUNCIL.

**COLONIZATION.**

*Crown lands—Location ticket—Transfer by locatee—Sale—Issuc of letters patent—Title to land—Registry laws—Notice—Arts. 1487, 1488, 2082, 2085, 2098 C. C. Howard v. Stewart, l., 311.*

See CROWN LANDS.

**COMITY.**

*Husband and wife—Institution of action by divorced wife—Judicial authorization—Arts. 176, 178 C. C.—Art. 14 C. C. P.—Divorce—Decree by foreign tribunal—Jurisdiction—Effect in Quebec—Comity of nations, Cam. Cas. 392.*

See DIVORCE.

**COMMISSION.**

1. *Principal and agent—Breach of duty—Secret profit, xxxiv., 255.*

See PRINCIPAL AND AGENT.

2. *Principal and agent—Broker's commission—Sale of land—Procuring purchaser—Company law—Commercial corporation—Powers of general manager, xxxv., 301.*

See PRINCIPAL AND AGENT.

3. *Vendor and purchaser—Sale of land—Formation of contract—Conditions—Acceptance of title—New term—Statute of Frauds—Principal and agent—Secret commission—Avoidance of contract—Fraud—Specific performance, xxxviii., 588.*

See CONTRACT.

4. *Principal and agent—Secret profit—Trust—Clandestine transactions by broker—Sham purchaser—Quantum meruit, xl, 134.*

See BROKER.

5. *Principal and agent—Broker—Sale of mining land—Commission—Change of purchaser—Continued transaction, xl, 414.*

See BROKER.

6. *Sale of land—Principal and agent—Commission for procuring purchaser—Sale to person introduced by broker. Bridgman v. Hepburn, xlii., 228.*

See BROKER.

7. *Broker—Principal and agent—Commission on sale of land—Introduction of purchaser—Efficient cause of sale—Completion of contract on altered terms, xliv., 395.*

See BROKER.

**COMMITMENT.**

1. *Criminal law—Summary convictions and orders—Procedure by magistrates—Delay in issuing commitment—Term of imprisonment—Commencement of sentence—32 & 33 Vict. c. 29—"Canada Temperance Act," 1878—32 & 33 Vict., c. 31.]—The Chief Justice of Prince Edward Island had refused to discharge the prisoner from custody on the ground that he had been arrested and was confined under a commitment issued after the expiration of two months from the date when he was convicted and sentenced to a term of two months' imprisonment. A subsequent application by summons in the Supreme Court of Canada, to shew cause why a writ of *habeas corpus* should not issue and the prisoner be discharged, which was supported on similar grounds, was refused.—*Cf. Er p. Smitheman* (35 Can. S. C. R. 189). *Re Curley*, *Cout. Cas.* 71.*

2. *Form of warrant—Imprisonment in penitentiary—Venue—Commencement of sentence, xxxv., 189.*

See CRIMINAL LAW.

3. *Criminal law—Venue—Indictment—Commitment to penitentiary—Form of warrant—Copy of sentence, xxxv., 490.*

See CRIMINAL LAW.

4. *Appeal—Jurisdiction—Commitment of judgment debtor—Final judgment—Manitoba King's Bench rules, 748, 755—"Matter or judicial proceeding"—Supreme Court Act, s. 2 (e). *Svensson v. Bateman*, xlii., 146.*

**COMMON EMPLOYMENT.**

1. *Negligence—Mining operations—Contract for special works—Engagement by contractor—Control and direction of mine—Defective machinery—Notice—Failure to remedy defect—Liability for injury to miner, xxxiv., 177.*

See NEGLIGENCE.

2. *Evidence—Provincial laws in Canada—Judicial notice—Conflict of laws—Negligence—Common employment—Construction of statute—"Longshoreman"—"Workman," xxxix., 311.*

See EVIDENCE; NEGLIGENCE.

3. *Negligence—Railways—Breach of statutory duty—Nova Scotia Railway Act. R. S. N. S. (1900) c. 99, s. 251—Employers' Liability Act—Fatal Injuries Act, xxxix., 593.*

See NEGLIGENCE; EMPLOYERS' LIABILITY.

4. *Negligence—Employer and employee—Duty of employer—Proper system. *Ainslie Mining v. McDougall*, xlii., 420.*

See MASTER AND SERVANT.

5. *Negligence—Employers' liability—Competent superintendence—Contributory negligence. *West Canada Power Co. v. Berglint*, liv., 285.*

See NEGLIGENCE.

### COMMON SCHOOL FUND.

1. *Crown — Breach of trust — Purchase of debentures out of Common School Fund — Knowledge of misappropriation of moneys — Payment of interest — Statutory prohibition — Evasion of statute — Estoppel against Crown — Action — Adding parties — Practice*, xxxviii., 62.

See QUEBEC NORTH SHORE TURNPIKE ROAD TRUST.

2. *Arbitration and award — Statutory arbitrators — Jurisdiction — Awards "from time to time" — Res judicata. Quebec v. Ontario*, xlii., 161.

See ARBITRATION AND AWARD, 1.

### COMMUNITY OF PROPERTY.

1. *Practice — Pleading — Amendment ordered by court — Married woman — Legal community — Right of action — Reprise d'instance — Arts. 78, 174, 176 C. P. Q. — R. S. C. c. 135, ss. 63, 54. — North Shore Power Co. v. Duguay*, xxxvii., 624.

2. *Quebec marriage laws — Dissolution by death — Failure to make inventory — Insolvent estate — Continuation of community — Estoppel — Renunciation — Married woman*, lii.

See HUSBAND AND WIFE.

### COMPANY LAW.

1. BUSINESS OBJECTS, ETC., 1-17.
2. CONSTITUTIONAL LAW, 18-25.
3. DECEIT AND FRAUD, 26-32.
4. DIRECTORS, ETC., 33-37.
5. FOREIGN CORPORATIONS, 38.
6. INCORPORATION AND PROMOTION, 39-42.
7. SHARES AND SHAREHOLDERS, 43-49.
8. WINDING-UP, 50-56.

#### 1. BUSINESS OBJECTS, ETC.

1. *Provincial legislation — Assessment — Municipal tax — Foreign company — "Doing business in Halifax."*]—By s. 313 of the said chapter (54 Vict. ch. 58), as amended by 60 Vict. c. 34, "Every insurance company or association, accident and guarantee company, established in the City of Halifax, or having any branch office, office or agency therein shall . . . pay an annual license fee as hereinafter mentioned . . . Every other company, corporation, association or agency doing business in the City of Halifax (banks, insurance companies or associations, etc., excepted), shall . . . pay an annual license fee of one hundred dollars." — *Held*, that the words "every other company" in the last clause were not subject to the operation of the *ejusdem generis* rule but applied to any company doing business in the city. Judgment appealed from

overruled on this point.—A carriage company agreed with a dealer in Halifax to supply him with their goods and give him the sole right to sell the same, in a territory named, on commission, all monies and securities given on any sale to be the property of the company, and goods not sold within a certain time to be returned. The goods were supplied and the dealer assessed for the same as his personal property.—*Held*, Davies and MacLennan, J.J., dissenting, that the company was not "doing business in the City of Halifax," within the meaning of s. 313 of the charter and not liable for the license fee of one hundred dollars thereunder. — Judgment of the Supreme Court of Nova Scotia (39 N. S. Rep. 403), affirmed, but reasons overruled. *City of Halifax v. McLaughlin Carriage Co.*, xxxix., 174.

AND see ASSESSMENT AND TAXES.

2. *Railways — Freight rates — Discrimination — Rebate — Construction of statute — Quebec Railway Act, R. S. Q. 1888, art. 5172 — Contract by directors — Powers — Approval of tariffs.*] — An agreement by which a railway company undertakes to grant a rebate upon shipments of car lots of goods made by a manufacturer who engages to bear the cost of loading and unloading his freight, unless shewn to be an artifice to secure unjust discrimination, is not in contravention of the provisions of article 5172 of the Quebec Railway Act, R. S. Q. 1888, prohibiting undue advantage, privilege or monopoly being afforded to any person or class of persons in relation to tolls. Judgment appealed from (Q. R. 21 K. B. 85) affirmed, Idington and Anglin, J.J. dissenting.—*Per Brodeur, J.* (approving the judgment appealed from).—The directors of a railway company may bind the company by such an agreement in relation to the business of the railway without having special sanction therefor by the shareholders. *Quebec and Lake St. John Railway Co. v. Kennedy*, xlvi., 520.

3. *Libel — Business reputation — Action by incorporated — Truth of facts alleged — Fair comment — Justification — Public interest — Qualified privilege — Charge to jury — Misdirection — Misleading statements — Practice — Evidence of special damage — New trial.*]—There being a dispute between the parties as to the ownership of certain lauds, the plaintiffs, a commercial corporation, obtained special legislation vesting the lauds in question in the company. On becoming aware of this legislation, the defendant published letters in several newspapers accusing the company of obtaining it by political influence and preventing him vindicating his title in the courts. In an action to recover damages for libel, the trial judge told the jury that the defendant's defence of justification would be established if they were satisfied that, although in fact untrue, the defamatory statements had been made in honest belief of their truth, and that, if the publications were an honest comment on the facts as stated, that, in itself, would be sufficient to establish the defence of fair comment. On the findings of the jury, judgment was entered for the defendant, but this judgment was set aside, on the ground of misdirection, by the judge



ment appealed from and a new trial ordered. — *Held, per curiam*, that where a libel conveys imputations calculated to injure a trading corporation in respect of its business the corporation can maintain an action for damages.—*Per Duff, J.* — The publication complained of was capable of being read as charging the company with having used political influence for the purpose of procuring legislation giving it possession of property in derogation of what, to its knowledge, were the defendant's rights, and this was an imputation calculated to injure the commercial corporation in its business.—*Held, per Idington, Duff, and Brodeur, JJ., Davies, JJ., dissenting.* — That the directions by the trial judge as to the defences of justification and fair comment were erroneous and misleading.—*Per Davies, J., dissenting.* — Taken as a whole, the charge of the trial judge was clear and explicit and placed the material issues fairly before the jury, and, consequently, the judgment entered at the trial on the findings of the jury ought not to be disturbed.—*Per Anglin, J., dissenting.* — That, as a judge could not properly rule or a jury reasonably find that the defendant's letters were calculated to injure the property of the plaintiffs or their business reputation, as a commercial corporation, they could not recover without proof of special damage.—Judgment appealed from (Q. R. 22 K. B. 393) affirmed, *Davies and Anglin, JJ., dissenting. Price v. Chicoutimi Pulp Co., li., 179.*

4. *Dominion corporation — Provincial registration — Juristic disability — Right of action — Contract — Carrying on business within province — Legislative jurisdiction — R. S. Sask. 1909, c. 73, ss. 3, 10 — Non-compliance with S. C. Rule — Costs — Factum — Constitutional law — Practice.* — A company, having its chief place of business in the Province of Quebec and incorporated under the Dominion statute with power to trade and carry on its business throughout the Dominion of Canada, did not comply with the provisions of the "Foreign Companies Act," R. S. Sask. 1909, c. 73, requiring registration previous to carrying on business within the Province of Saskatchewan. In the ordinary course of its business, it sold and brought certain machinery into the province and did the work of installing it therein for a price which included setting it up and starting it working. An action for the contract price was dismissed by the judgment of the trial court (6 West. W. R. 1159), and this judgment was affirmed by the Supreme Court of Saskatchewan, on the ground that the unregistered extra-provincial company was denied the right of action in the courts of the province by the tenth section of the "Foreign Companies Act." — On appeal to the Supreme Court of Canada, the judgment appealed from (7 West. W. R. 89) was reversed.—*Per Idington, J.* — The mere setting up and starting the working of the machinery by the extra-provincial company did not constitute the carrying on of business in the Province of Saskatchewan within the meaning of the "Foreign Companies Act."—*Per Anglin, J.* — The installation of the plant was a substantial part of the consideration of the contract and, consequently, the unregistered extra-

provincial company would be denied the right of enforcing its claim by action in the courts of the province under the provisions of the tenth section of the "Foreign Companies Act," but, inasmuch as the legislation in question had the effect of depriving the extra-provincial company of the status, capacities and powers which were the natural and logical consequences of its incorporation by the Dominion Government, it is *ultra vires* of the provincial legislature and inoperative for the purpose of depriving the company of its right to maintain the action in the provincial courts. *John Deere Plow Co. v. Wharton* ([1915] A. C. 330), applied.—Costs were refused the appellant, on the allowance of the appeal, in consequence of non-compliance with Supreme Court Rule No. 30 in respect of the printing of the statutes regarding which questions were raised. *Linde Canadian Refrigerator Co. v. Saskatchewan Creamery Co., li., 400.*

5. *Trading company — Powers — Contract of suretyship — R. S. O. [1897] c. 191.* — An industrial company incorporated under, and governed by the "Ontario Companies Act," R. S. O. [1897] ch. 191, has no power to guarantee payment of advances by a bank to another company whose sole connection with the guarantor is that of a customer, for the general purposes of the latter's business, and such a contract of suretyship is *ultra vires* and void.—Judgment appealed against (30 Ont. L. R. 87) affirmed. *Union Bank v. McKillop, li., 518.*

6. *Mining company — Corporate powers — "Digging for minerals" — Drilling oil wells — Carrying on operations — Becoming contractors for such works.* — A mining company incorporated under the "Companies Ordinance," ch. 61, N.-W. Terr. Con. Ord. 1905, and certified, according to section 16 of the ordinance, to have limited liability under the provisions of section 63 thereof, has, in virtue of the authority given to such companies by section 63a "to dig for . . . minerals . . . whether belonging to the company or not," power to drill wells for mineral oils on its own property and also to carry on similar work as a contractor on lands belonging to other persons. *Idington and Duff, JJ., dissented.* — *Per curiam.* — Rock oil is a "mineral" within the meaning of section 63 of the "Companies Ordinance."—*Per Duff, J.* — Drilling for oil is not a mining operation within the contemplation of sections 63 and 63a of the "Companies Ordinance." — Judgment appealed from (8 West. W. R. 996) affirmed, *Idington and Duff, JJ., dissenting. Dome Oil Co. v. Alberta Drilling Co., lii., 561.*

7. *Agreement for sale of lands — Construction of contract — Right of action — Partition — Administration by co-owners — Trust — Interim account — Partial discharge of trustees. Angus v. Heinze, xlii., 416.*

See TRUSTS.

8. *Construction of statute — Limitations of actions — Contract for supply of electric light — Negligence — Injury to person not privy to contract — "Consolidated Railway*

*Company Act, 1896,* 59 V. c. 55 (B.C.) ss. 29, 50, 60. *B. C. Electric Ry. Co. v. Crompton*, xliii., 1.

9. *Dangerous works—Defective system—Negligence of employce — Liability of employer for injury*, xlv., 412.

See NEGLIGENCE.

10. *Contract — Public policy—Restraint of trade—Combination—Conspiracy — Construction of statute—"Criminal Code," s. 498—Words and phrases, "unduly" preventing competition, etc.*, xlv., 1.

See CONTRACT.

11. *Contract—Contracting firm becoming incorporated company — Right to assign—Novation — Breach of contract—Damages*, xlvii., 398.

See CONTRACT.

12. *Contract by directors — Powers—Agreement—Freight rates. Quebec & Lake St. John R. R. Co. v. Kennedy*, xlviii., 520.

13. *Benevolent society—Life insurance—Contract—Payment of assessments—Extension of time—Rules and regulations—Place of payment—Demand—Default—Suspension—Authority to waive conditions—Conduct of officials—Estoppel*, xlix., 22.

See INSURANCE, LIFE.

14. *Assessment and taxation—Education—School boards—Taxes payable by incorporated companies—Apportionment—Shares for public and separate school purposes—Notice—Construction of statute—Legislative jurisdiction—"B. N. A. Act, 1867," s. 92—"Saskatchewan Act," 4 & 5 Edw. VII., c. 42, s. 17—"School Assessment Act," R. S. Sask., 1909, c. 101, ss. 93, 93a, 1., 589.*

See ASSESSMENT AND TAXATION.

15. *Libel — Business reputation—Action by incorporated company—Truth of alleged facts—Fair comment—Justification—Public interest — Qualified privilege — Charge to jury—Misdirection — Misleading statements—Practice — Evidence — Special damages—New trial. Price v. Chicutimii*, li., 179.

See LIBEL.

16. *Contract—Purchase of railway bonds—Consideration—Extension of line—Breach of contract—Damages—Personal liability of president of company — Appeal — Jurisdiction. Wood v. Grand Valley Ry.*, li., 283.

See CONTRACT.

17. *Debtor and creditor—Surety—Statute of Frauds—Advance to—Third party's promise to pay*, liii., 557.

See DEBTOR AND CREDITOR.

## 2. CONSTITUTIONAL LAW.

18. *Constitutional law—Legislative jurisdiction—Incorporation of trading companies — Foreign corporations — Judicial opinions on references—Private rights—45 Vict. c. 119 (D.).*—The objects for which the company in question was incorporated, by

the statute 45 Vict. c. 119, are within the jurisdiction of the Canadian Parliament, and are out of the exclusive jurisdiction of provincial legislatures, and consequently such a company may be incorporated by Parliament. *Re Quebec Timber Co.*, Cout. Cas. 43.

AND see CONSTITUTIONAL LAW.

19. *Legislative jurisdiction — Constitutional law — Incorporation of companies—Private bill — Property and civil rights—Construction of statute—B. N. A. Act, 1867, s. 92—45 Vict. c. 107.*—The objects of the Act to incorporate the "Canada Provident Association" (45 Vict. c. 107 (D.)), for carrying on business as a mutual benefit society throughout the Dominion of Canada do not fall within the class of subjects allotted to the provincial legislatures under s. 92 of the "British North America Act, 1867."—*Per Ritchie, C.J.*, and Fournier, J.—There may be a doubt as to whether so much of the first section of the Act as enables the company to hold and deal in real estate beyond what may be required for their own use and accommodation, or so much of the second section as enacts that certain funds shall be exempt from execution for the debt of any member of the association, could be *intra vires* of the Parliament of Canada. *In re Canada Provident Association*, Cout. Cas. 48.

20. *Foreign corporation—Conflict of laws—Incorporation by Dominion authority—Powers — B. C. "Companies Act" — Unlicensed extra-provincial companies—"Carrying on business"—Contract — Transactions beyond limits of province—Promissory notes—Right of action—Juristic disability—Construction of statute—(B.C.) 10 Edw. VII. c. 7, ss. 139, 166, 168.*—The "Companies Act", (B.C.), 10 Edw. VII., c. 7, ss. 139, 166, 168, prohibits companies incorporated otherwise than under the laws of British Columbia carrying on without registration or license in the province any part of their business; penalties are provided for doing so without provincial registration or license; and they are denied the right of maintaining actions, suits or proceedings in the courts of the province in respect of any contract made in whole or in part within the province in the course of or in connection with any business carried on contrary to the provisions of the Act. The appellant company, incorporated under the Dominion "Companies Act," R. S. C., 1906, c. 79, has its head office in Winnipeg, Man., and did not become licensed under the B.C. "Companies Act." In February, 1911, the company entered into an agreement with A., who is domiciled in British Columbia, giving him the exclusive right to sell their goods in British Columbia in pursuance of which he ordered goods from the company to be shipped from Winnipeg to him, f.o.b. Calgary, Alta., assuming all risk and charges himself from that point to Elko, B.C., where the goods were to be received and sold by him. He gave the company his promissory notes, dated at Winnipeg, for the price of these goods, some of the notes being actually signed by him at Elko. In an action by the company to recover the amount of these notes the trial judge held that the action was barred by the statute

and could not be maintained by the company in any court of the Province of British Columbia. On an appeal, *per saltum*, to the Supreme Court of Canada the judgment appealed from (18 D. L. R. 65; 2 West. W. R. 1013; 22 W. L. R. 243) was reversed, and it was—*Held, per Fitzpatrick, C.J., and Davies, Duff, Anglin and Brodeur, J.J.*, that the transactions which had taken place between the company and A. did not constitute the carrying on of business by the company in the Province of British Columbia within the meaning of the B. C. "Companies Act," and, therefore, the disabilities imposed by that statute could have no effect in respect of the right of the company to recover the amount claimed in the action in the provincial court.—*Per Idington, J.*—As the exclusive jurisdiction in respect of bills of exchange and promissory notes has been assigned to the Parliament of Canada, under item 18 of s. 91 of the "British North America Act, 1867," the word "contract" as used in s. 166 of the B. C. "Companies Act," 10 Edw. VII., c. 7, cannot be considered as having any application to promissory notes; the plaintiffs' right of action in the provincial court was, therefore, not barred by the provincial statute. *John Deere Plow Co. v. Agnew*, xviii., 208.

21. *Incorporation of companies*—"*Provincial objects*"—*Limitation—Doing business beyond the province—Insurance company*—"Insurance Act, 1910," 9 & 10 Edw. VII., c. 32, s. 3, s.-s. 3 — *Enlargement of company's powers—Federal company—Provincial license—Trading companies.*—By s.-s. 11, s. 92, of "The British North America Act, 1867," the legislature of any province in Canada has exclusive jurisdiction for "The Incorporation of Companies with Provincial Objects."—*Held, per Fitzpatrick, C.J., and Davies, J.*, that the limitation defined in the expression "Provincial Objects" is territorial and also has regard to the character of the powers which may be conferred on companies locally incorporated.—*Held, per Idington, Anglin and Brodeur, J.J.*, that such limitation is not territorial but has regard to the character of the powers only.—*Per Duff, J.*—Provincial objects means "objects" which are "provincial" in reference to the incorporating province. Whether the "objects" of a particular company as defined by its constitution are or are not "provincial" in this sense is a question to be determined on the facts of each particular case substantially as a question of fact.—*Held, per Fitzpatrick, C.J., and Davies, J.*, that a company incorporated by a provincial legislature has no power or capacity to do business outside of the limits of the incorporating province, but it may contract with parties residing outside those limits as to matters ancillary to the exercise of its powers.—*Per Idington and Brodeur, J.J.*—Such company has, inherently, unless prohibited by its charter, the capacity to carry on the business for which it was created, in any foreign state or province whose laws permit it to do so.—*Per Duff, J.*—A provincial company may conduct its operations outside the limits of the province creating it so long as its business as a whole remains provincial with reference to its province of origin.—*Per*

*Anglin, J.*—Such a company has, inherently, unless prohibited by its charter, the capacity to accept the authorization of any foreign state or province to carry on within its territory the business for which it was created.—*Held, per Fitzpatrick, C.J., and Davies, J.*, that a corporation constituted by a provincial legislature with power to carry on a fire insurance business with no express limitation as to locality has no power or capacity to make and execute contracts for insurance outside of the incorporating province or for insuring property situate outside thereof.—*Per Idington, Anglin and Brodeur, J.J.*—Such a company has power to insure property situate within or without the incorporating province and to make contracts within or without the same to effect any such insurance. In respect of all such contracts it is not material whether the owner of the property insured is, or is not, a citizen or resident of the incorporating province.—*Per Duff, J.*—It is not necessarily incompatible with the provincial character of the "objects" of a provincial insurance company that it should have power to enter into outside the province contracts insuring property outside the province.—*Held, per Fitzpatrick, C.J., and Davies, J.*—A provincial fire insurance company cannot make contracts and insure property throughout Canada by availing itself of the provisions of s. 3, s.-s. 3, of 9 & 10 Edw. VII., c. 32 ("The Insurance Act, 1910.")—*Per Fitzpatrick, C.J., and Davies, J.*—That such enactment is *ultra vires* so far as the provincial companies are affected.—*Per Brodeur, J.*—Such enactment is *ultra vires* of parliament.—*Per Idington, J.*—Part of said sub-section may be *intra vires* but the last part providing for a Dominion license to local companies is not.—*Per Anglin, J.*—The said enactment is *ultra vires* except in so far as it deals with companies incorporated by or under Acts of the legislature of the late Province of Canada.—*Held*, that the powers of a company incorporated by a provincial legislature cannot be enlarged either as to locality or objects, by the Dominion Parliament nor by the legislature of another province.—*Held, per Fitzpatrick, C.J., and Davies, J.*—The legislature of a province has no power to prohibit companies incorporated by the Parliament of Canada from carrying on business within the province without obtaining a license so to do from the provincial authorities and paying fees therefor unless such license is imposed in exercise of the taxing power of the province. And only in the same way can the legislature restrict a company incorporated for the purpose of trading throughout the Dominion in the exercise of its special trading powers or limit the exercise of such powers within the province. *Brodeur, J., contra.*—*Per Idington, J.*—A company incorporated by the Dominion Parliament in carrying out any of the enumerated powers contained in s. 91 cannot be prohibited by a provincial legislature from carrying on business, or restricted in the exercise of its powers, within the province, though subject to exercise of the exclusive jurisdiction to make laws in relation to "direct taxation within the province." But a company incorporated under the general powers of Parliament must conform to all the duly enacted

laws of a province in which it seeks to do business.—*Per* Duff, J.—A company incorporated under the residuary legislative power of the Dominion is not in any province where it carries on business subject to the legislative authority of the province in relation to matters falling within the subject "incorporation of companies;" but as regards all other matters falling within the enumerated subjects of section 92 it is subject to such legislative jurisdiction just as a natural person or an unincorporated association would be in like circumstances. The enactments of ss. 139, 152, 167 and 168 of the British Columbia "Companies Act" are valid.—*Per* Anglin, J.—The provincial legislature may impose a license and exact fees from any Dominion company if the object be the raising of revenue, or obtaining of information, "for provincial, local or municipal purposes," but not if it is to require the company to obtain provincial sanction or authority for the exercise of its corporate powers. And the legislature cannot restrict a company incorporated for the purpose of trading throughout the Dominion in the exercise of its special powers nor limit the exercise of such powers within the province, nor subject such company to legislation limiting the nature or kind of business which corporations not incorporated by it may carry on or the powers which they may exercise within the province. *In re Companies*, xlviil., 331.

See INCORPORATION OF COMPANIES.

22. *Constitutional law — Provincial mining—Power to do mining outside of province—Incorporation "with provincial objects" — Territorial limitation—Comity.*—A mining company incorporated under the law of the Province of Ontario has no power or capacity to carry on its business in the Yukon Territory and an assignment to it of mining leases and agreements for leases is void. *Idington and Anglin, J.J., contra. — Held, per Fitzpatrick, C.J., and Davies, J., that "the incorporation of companies with provincial objects" as to which the provinces are given exclusive jurisdiction ("B. N. A. Act," 1867, s. 92, s.-s.11), authorizes the incorporation of companies whose operations are confined, territorially, to the limits of the incorporating province. —Per Idington and Anglin, J.J.—Such company has capacity to avail itself of the sanction of any competent authority outside Ontario to operate within its jurisdiction.—Per Duff, J.—The term "provincial objects" in said sub-section means provincial with respect to the incorporating province, and the business of mining in the Yukon is not an object "provincial" with respect to Ontario. The question whether capacity to enter into a given transaction is compatible with the limitation that the objects shall be "provincial objects" is one to be determined on the particular facts.—Also, *per* Duff, J.—On the true construction of the Ontario "Companies Act," the appellant company only acquired capacity to carry on its business as an Ontario business; and there was no legislation by the Dominion or the Yukon professing to enlarge that capacity.—*Held, per Fitzpatrick, C.J. (Duff and Anglin, J.J., contra)*, that to enable a joint stock company to obtain a free miner's certificate under the regulations in*

force in the Yukon Territory it must be authorized by an Act of the Parliament of Canada, and at present only a British or foreign company could be so authorized (81 Vict. c. 49, s. 1 (D)). *Bonanza Creek Gold Mining Co. v. The King*, l., 534.

23. *Constitutional law — Provincial companies' powers—Operations beyond province —Insurance against fire — Property insured —Standing timber — Return of premiums—B. N. A. Act, 1867, s. 92 (11), xxxix., 405. See INSURANCE, FIRE.*

24. *Legislative jurisdiction — Constitutional law — Education — Private bills—Questions referred for opinions — Construction of statute, Cout. Cas. 1.*

See LEGISLATION.

25. *Constitutional law — Insurance—Foreign company doing business in Canada—Dominion license—9 & 10 Edw. VII., c. 32, ss. 4, 70, xlviil., 260.*

See CONSTITUTIONAL LAW.

### 3. DECEIT AND FRAUD.

26. *Incorporation — Secret arrangement —Illegal consideration for shares—Fraud—Breach of trust.*—With a view to concealing the financial difficulties of a mining company and securing control of its property, the manager entered into a secret arrangement with the respondent whereby the latter was to acquire the liabilities, obtain judgment thereon, bring the property to sale under execution and purchase it for a new company to be organized in which the respondent was to have a large interest. The manager, who was a creditor of the company, was to have his debt secured and receive an allotment of shares in the new company proportionate to those held by him in the old company and he agreed that he would not reveal this understanding to the other shareholders. — *Held*, affirming the judgment appealed from (11 B. C. Rep. 466), Sedgewick, J., dissenting, that the agreement could not be enforced as the consideration was illegal and a breach of trust by which the other shareholders were defrauded. *Lasell v. Hannah*, xxxvii., 324.

27. *Paid-up-shares — Sale by broker — Prospectus — Misrepresentations — Rescission—Delay—Liability of directors.*—F., in June, 1903, purchased paid-up shares in the capital stock of an industrial company on the faith of statements in a prospectus prepared by a broker employed to sell them. In January, 1904, he attended a meeting of shareholders and from something he heard there suspected that some of the said statements were untrue. After investigation he demanded back his money from the broker and wrote to the president and secretary of the company repudiating his purchase. At subsequent meetings of shareholders he repeated such repudiation and demand for repayment and, in December, 1904, brought suit for rescission.—*Held*, that his delay, from January to December, 1904, in bringing suit was not a bar and he was entitled to recover against the company.—*Held*, also, that he could not

recover against the directors who had instructed the broker to sell the shares as they were not responsible for the misrepresentations in the prospectus.—Judgment of the Supreme Court of New Brunswick (38 N. B. Rep. 364), affirming the decision at the hearing (3 N. B. Eq. 508), reversed. *Farrell v. Manchester*, xl., 339.

28. *Subscription for treasury stock—Contract—Principal and agent—Misrepresentation—Fraud—Transfer of shares—Rescission—Return of payments—Want of consideration.*—V. entered into an agreement to purchase for re-sale the unsold treasury stock of a foreign joint stock company "subscriptions to be made from time to time as sales were made;" it was therein provided that the company should fill all orders for stock received through V. at \$15 for each share; that V. should sell the stock for \$20 per share; that V. should "pay for the stock so ordered with the proceeds of sales made by him or through his agency," and that the contract should continue in force so long as the company had unsold treasury stock with which to fill such orders. The company also gave V. authority to establish agencies in Canada in connection with its casualty insurance business and to appoint medical examiners there. At the time the company had no license to carry on the business of insurance in Canada, or any immediate intention of making arrangements to do so, and V. was an official of the company and was aware of these facts. V. appointed T. the sole medical examiner of the company for Vancouver, B.C., assuring him that the company would commence to carry on its casualty insurance business there within a couple of months, and then obtained from him a subscription for a number of shares of the company's treasury stock which were paid for partly by T.'s cheques, payable to the company, and the balance by a series of promissory notes falling due from month to month following the date of the subscription and made payable to V. A number of shares equal to those so subscribed for by T. were then transferred to him by V. out of the allotment made to him by the above mentioned agreement, the certificates therefor being obtained by V. in the name of T. from the company, but the company did not formally accept T.'s subscription nor issue any treasury stock to him thereunder. The company did not commence business in Vancouver within the time specified by V. nor did it obtain a license to carry on the business of insurance in Canada until many months later. In an action by T. against the company and V. to recover back the money he had paid and for the cancellation and return of the notes:—*Held*, affirming the judgment appealed from (7 D. L. R. 944; 2 West. W. R. 658), *Davies and Anglin, J.J.*, dissenting, that, in the transaction which took place, V. was the company's agent; that the company was, consequently, responsible for the deceit practised in procuring the subscription from T.; that there had been no contract for the purchase of treasury stock completed between the company and T.; that the object of T.'s subscription was not satisfied by the transfer of V.'s shares to him, and that he was entitled to recover back the money he had paid and to have the notes returned for cancellation as having

been paid over and delivered without consideration and in consequence of the fraudulent representations made by V. *International Casualty Co. v. Thomson*, xlviii., 167.

29. *Agreement by directors—Onerous contract—Non-disclosure to shareholders—Breach of contract—Damages—Settlement of accounts—Appeal—Jurisdiction—Reference to master—Final judgment.*—After some subscriptions for stock had been received and the company was about to offer other stock for public subscription, a meeting of the directors was held at which the plaintiff, then one of the directors and the company's manager, resigned his office as a director and was appointed sales agent for the company's output of coal for five years from that date, at a liberal scale of remuneration, with the exclusive right to make such sales in Alberta, Saskatchewan and Manitoba. At the same time an arrangement was made by which the other directors derived advantages in regard to certain matters in dispute, respecting the affairs of the company, between them and the plaintiff. The material facts and circumstances connected with these arrangements were not disclosed to the shareholders who then held stock in the company nor to other persons who subsequently subscribed for shares of its stock.—*Held*, affirming the judgment appealed from (7 D. L. R. 96; 2 West. W. R. 986; 22 W. L. R. 128), that, as the plaintiff and his co-directors were in a fiduciary position and complete disclosure of the circumstances in regard to the making of the contract had not been made to all the shareholders, present and future, the agreement was not binding upon the company.—The order in the judgment appealed from directing that, on taking the accounts between the parties, an allowance should be made to the plaintiff, on the basis of *quantum meruit*, for services rendered by him while in the employ of the company was not disturbed.—*Per Fitzpatrick, C.J.*, and *Idington, Anglin and Brodeur, J.J.*—Where the judgment sought to be reviewed has finally disposed of one of the issues, forming a distinct and separate ground of action, the Supreme Court of Canada has jurisdiction to hear and determine the appeal. *La Ville de St. Jean v. Molleur* (40 Can. S. C. R. 139), and *McDonald v. Becheher* ([1904] A. C. 429), followed: *Hesseltine v. Nelles* (47 Can. S. C. R. 230), referred to. *Denman v. Clover Bar Coal Co.*, xlviii., 318.

30. *Action for deceit—Agreement for sale—False representations—Compromise—Notice.* *Pett v. Dickson*, xlii. 478.

See DECEIT, 1.

31. *Purchase of director's property—Secret profit.* *Bennett v. Havelock Electric Light Co.*, xli., 645.

32. *Subscription for shares—Misrepresentation—Action for calls—Charge to jury—Misdirection—Objection—Pleading.* *Boeckh v. Gouganda Mines*, xli., 645.

#### 4. DIRECTORS, ETC.

33. *Commercial corporation—Contract—Sale of land—Powers of general manager*

—*Broker's commission.*] — *Per* Taschereau, C.J., and Girouard, J. The general manager of a commercial corporation could not make a binding agreement for the sale of its real estate without special authorization for that purpose. *Calloway v. Stobart Sons & Co.*, xxxv., 301.

AND *see* SALE.

34. *Act of directors — Unauthorized expenditure—Liability of innocent directors.*]

—The directors of a limited company, without authority from the shareholders, passed a resolution providing that, in consideration of a firm of which two directors were members carrying on business of a similar character continuing the same until the company could take it over, the company indemnified it from all loss occasioned thereby. K. and F., two members of the firm, refused their assent to the terms of this resolution and declared their intention, of which the majority of the directors were made aware, to retire from the firm. F. subsequently wrote to the president and another director reiterating her intention to retire and declared that she would not be responsible for any further liability. The company afterwards took over the business of the firm, paying therefor \$30,000 and receiving assets worth \$12,000, and, having eventually gone into liquidation, the liquidator brought an action to recover from the members of the firm the difference. The Court of Appeal held that K. and F. were not liable though their partners were:—*Held*, that K. and F., having received the benefit of the money paid by the company, were also liable to repay the loss. *Wade v. Kendrick*, xxxvii., 32.

35. *Trusts — Extra renunciation — Ultra vires act of directors—Ratification—Recovery of moneys illegally paid — Mistake of law.*]—By a resolution of the directors, the secretary of the company had been authorized to sell the company's bonds, for which he was to be paid a commission at the rate of 5 per cent. on the amounts received. Subsequently, at a time when they had no authority to do so, the directors converted the preferred stock held by certain shareholders into bonds, and paid the secretary for his services in making the conversion at the rate of 5 per cent. on the amount of bonds thus disposed of. In an action to recover back from the secretary the moneys so received by him as commission.—*Held*, that, although the secretary had received the commissions under mistake of law, yet, as he must be assumed to have had knowledge of the illegality of the transaction, the moneys could be recovered back by the company.—Subsequently the scheme of conversion was approved of by a resolution of the shareholders, but it did not appear that they had been fully informed as to the arrangement for the payment of a commission to the secretary in that respect, in addition to his regular salary.—*Held*, that the resolution of the shareholders had not the effect of ratifying the payment of the commissions. *Rountree v. Sydney Land & Loan Co.*, xxxix., 614.

36. *Disqualification of directors — Taxing personal profit — Fraud—Illegal contract—Ratification—Right of action—Shareholder*

—*Recourse by minority — Alberta "Companies Ordinance," N.-W. Ter. Ord. No. 20 of 1901—Construction of statute.*]—Where the directors of a joint stock company organized under the Alberta "Companies Ordinance" (N.-W. Ter. Ord. No. 20 of 1901), have violated the provisions of article 57, Table "A," of that enactment (as to vacating the office of directors), the consequences involve not only the disqualification of the directors, but also give a right of action on the part of any shareholder for a declaration of such disqualification and for an account of the moneys improperly received by them as profits under contracts between them and the company. Such contracts, being prohibited by the ordinance, could not be ratified by a majority of the shareholders, as the matter is not one merely of internal management. *Burland v. Earle* ((1902), A. C. 83), distinguished.—The judgment appealed from (25 West. L. R. 905), was affirmed. *Theatre Amusement Co. v. Stone*, l. 32.

37. *Powers—Sale of business premises—Seal—Agreement signed by officer—Principal and agent.*]—An industrial company, unless forbidden by its charter, has power to sell its business premises in order to secure others more suitable, and a contract for such sale may be valid though not under the company's seal.—Where the contract is executed by an officer of the company to whom the necessary authority might be given the other party thereto is not called upon to ascertain if proper steps had been taken to clothe him with such authority; it is sufficient that he is the apparent agent of the company to transact business of the kind and that the power which he purports to exercise is such as, under the constitution of the company, he might possess.—*Per* Idington, J., dissenting.—A person dealing with a minor officer of a company is supposed to know what powers he has by by-law, passed in the manner provided by its charter, to enter into any unusual transaction. In this case it was not proved that the officer signing the contract was empowered to do so, and as the company was not authorized to deal in real estate the transaction was not one within the apparent scope of his authority. The contract was, therefore, not binding on the company.—*Judgment of the Appellate Division* (31 Ont. L. R. 531), affirmed. *McKnight Construction Co. v. Vansickler*, li., 374.

## 5. FOREIGN CORPORATIONS.

38. *Marine insurance — Mutual company — Foreign corporation — Cancellation of policy—Return of unearned premium—Cancellation by operation of law*, xlvi., 429.

*See* INSURANCE, MARINE.

## 6. INCORPORATION AND PROMOTION.

39. *Joint stock company — Payment for shares—Transfer of business assets—Debt due partnership — Set-off — Counterclaim—Accord and satisfaction—Liability on subscription for shares—R. S. B. C. c. 44, 45.*

50, 51.]—On the formation of a joint stock company to take over a partnership business each partner received a proportionate number of fully paid-up shares at their par value, in satisfaction of his interest in the partnership assets. — *Held*, reversing the judgment appealed from (9 B. C. Rep. 301), Davies, J., *dubitante*, that the transaction did not amount to payment in cash for shares subscribed by the partners within the meaning of ss. 50 and 51 of The Companies Act, R. S. B. C. c. 44, and that the debt owing to the shareholders as the price of the partnership business could not be set-off nor counterclaimed by them against their individual liability upon their shares. *Fothergill's Case* (8 Ch. App. 270), followed. *Turner v. Cowan*, xxxiv., 160.

40. *Joint stock company—Subscription for shares—Principal and agent—Authority of agent—Conditional agreement.*]—S. signed a subscription for shares in a company to be formed and a promissory note for the first payment, both of which documents he delivered to the promoter of the company to which they were transferred after incorporation. In an action for payment of calls S. swore that the stock was to be given to him in part payment for the goodwill of his business which the company was to take over. The promoter testified that the shares subscribed for were to be an addition to those to be received for the goodwill.—*Held*, that, though S. could, before incorporation, constitute the promoter his agent to procure the allotment of shares for him and give his note in payment, yet the possession by the promoter did not relieve the company from the duty of inquiring into the extent of his authority and, whichever of the two statements at the trial was true, the promoter could not hind S. by an unconditional application. *Ottawa Dairy Co. v. Sorley*, xxxiv., 508.

41. *Partnership—Syndicate for promotion of joint stock company—Trust agreement—Construction of contract—Administration of majority of partners—Lapse of time limit—Specific performance.*]—A syndicate consisting of seven members agreed to form a joint stock company for the development, etc., of properties owned by two of their number, the defendants, under patent rights belonging to two other members; the three remaining members agreeing to assist in the promotion of the proposed company. In the meantime the lands were acquired by the defendants and patent rights were assigned to them, in trust for the syndicate, and the lands and patent rights were to be transferred to the syndicate or to the company without any consideration save the allotment of shares proportionately to the interest of the parties. The stock in the proposed company was to be allotted, having in view the proprietary rights and moneys contributed by the syndicate members, in proportion as follows, 37½ per cent. to the defendants who held the property, 37½ per cent. to the owners of the patent rights, the other three members to receive each 10 per cent. of the total stock. A time limit was fixed within which the company was to be formed and, in default of its incorporation within that time, the lands were to remain the property of the defend-

ants, the transfers of the patent rights were to become void and all parties were to be in the same position as if the agreement had never been made. The tenth clause of the agreement provided that, in case of difference of opinion, three-fourths in value should control. Owing to difference in opinion the proposed company was not formed but, within the time limited, the plaintiff and the other two members, holding together 30 per cent. interest in the syndicate, caused a company to be incorporated for the development and exploitation of the enterprise and demanded that the property and rights should be transferred to it under the agreement. This being refused, the plaintiff brought action against the trustees for specific performance of the agreement to convey the land and transfer the patent rights to the company so incorporated, or for damages.—*Held*, that the tenth clause of the agreement controlled the administration of the affairs of the syndicate and that, as three-fourths in value of the members had not joined in the formation of a company as proposed, within the time limited, the lands remained the property of the defendants, the patent rights had reverted to their original owners and the plaintiff could not enforce specific performance. *Hopper v. Hoctor*, xxxv., 645.

42. *Breach of contract—Breach of trust—Assessment of damages—Sale of mining areas—Promotion of company—Failure to deliver securities—Principal and agent—Account—Evidence—Salvage—Indemnity for necessary expenses—Laches—Estoppel.*]—The plaintiffs transferred certain mining areas to the defendant in order that they might be sold together with other areas to a company to be incorporated for the purpose of operating the consolidated mining properties, the defendants agreeing to give them a proportionate share of whatever bonds and certificates of stock he might receive for these consolidated properties upon the flotation of the scheme then being promoted by him and other associates. In order to hold some of the areas it became necessary to borrow money and the lender exacted a bonus in stock and bonds which the defendant gave him out of those he received for conveyance of the properties to the company. After deducting a rateable contribution towards this bonus, the defendant delivered to the plaintiffs the remainder of their proportion of stock and bonds, but did not then inform them that such deductions had been made, and they, consequently, made no demand upon him for the balance of the shares and bonds until some time afterwards when they brought the action to recover the securities or their value.—*Held*, affirming the judgment appealed from (1 East. L. R. 54), that, whether the defendant was to be regarded as a trustee or as the agent of the plaintiffs, he was not entitled, without their consent, to make the deductions, either by way of salvage or to indemnify himself for expenses necessarily incurred in the preservation of the properties; and that, under the circumstances, their failure to demand delivery of the remainder of the securities before action did not deprive the plaintiffs of their right to recover.—If the defendant is to be considered a trustee wrongfully withholding securities which he was bound to deliver, he is



liable for damages calculated upon the assumption that they would have been disposed of at the best price obtainable. If, however, he is to be regarded as a contractor who has failed to deliver the securities according to the terms of his agreement, he is liable for damages based on the selling price of the securities at the time when his obligation to deliver them arose. *Nant-Y-Glo and Blaina Ironworks Co. v. Grave* (12 Ch. D. 738); *The Steamship Carrisbrooke Co. v. The London and Provincial Marine and General Ins. Co.* (1901), 2 K. B. 861), and *Michael v. Hart & Co.* (1902), 1 K. B. 482), followed. *McNeil v. Fultz.*, xxxviii., 198.

## 7. SHARES AND SHAREHOLDERS.

43. *Sale of shares — Misrepresentation—Fraud — Action for deceit — Accord and satisfaction.*]—G., a director in an industrial company, transferred 290 shares of the capital stock to the president to be sold for him. The president instructed an agent to sell said shares along with some of his own and some belonging to the company. The agent sold 25 shares of G.'s stock to J. G. representing, and believing, that it was treasury stock and getting a note for the price in favour of the company. The note was indorsed over to G. Later J. G. discovered that the stock he had bought was not treasury stock and had some correspondence with the secretary of the company in which he complained of having been deceived by the agent. Eventually he gave a four months' note in renewal of that given for the price of the stock but when it fell due refused to pay it, the company having in the meantime become insolvent. In an action on the renewal note he filed a counterclaim for damages based on the misrepresentation and deceit. Judgment was given against him on the note and for him on the counterclaim:—*Held*, that G. was responsible for the fraud practised on the purchaser of his shares by the misrepresentations of the agent who sold them.—*Held*, also, *Girouard and Davies, JJ.*, dissenting, that the settlement of the claim for the price of the shares by giving the renewal note and thus obtaining further time for payment was not a release of the purchaser's right of action for deceit. *Goold v. Gillies*, xl., 437.

44. *Sale of stock—Evidence of title—Duty of vendor — Defective certificate.*]—When shares in the stock of a company are sold for cash and a certificate delivered with a form of transfer indorsed purporting to be signed by the holder named therein who is not the seller, the latter must be taken to affirm that a title which will enable the purchaser to become the legal holder is vested in him by virtue of such certificate and transfer.—A transfer was signed by the wife of the holder at his direction but not acted upon until after his death:—*Held*, that the authority of the wife to deal with the certificate was revoked by the holder's death and on a cash sale of the shares the purchaser who received the certificate and transfer so signed being unable, under the company's rules, to be registered as holder had a right of action to recover back the

purchase money from the seller.—The fact that the purchaser endeavoured to have himself registered as holder of the shares was not an acceptance by him of the contract of sale which deprived him of his right of action to have it rescinded. Nor was his action barred by loss of the defective certificate by no fault of his nor of the seller.—Judgment appealed from (13 B. C. Rep. 351), reversed. *Castleman v. Waghorn, Gwyn & Co.*, xli., 88.

45. *Sale of shares—Resolutive condition—Hypothecary security—Construction of contract—Rescission.*]—By the judgment appealed from (Q. R. 18 K. B. 63), affirming the judgment of the Superior Court (Q. R. 30 S. C. 56), it was held that the acceptance of a proposal to purchase shares in a joint stock company for a price payable half in bonds and half in the stock of a new company to be formed to take over the business of the first mentioned company, on condition that the shares so sold should be deposited in trust as security for the payment of the bonds and that, so soon as all the shares of that company were so deposited and its real estate transferred to the new company, a mortgage on the real estate should be executed to secure payment of the bonds, was a sale subject to a resolutive condition to become complete and effective only in the event of the new company acquiring the property of the first company and executing the mortgage, and that, on breach of the condition respecting the security to be given for payment of the bonds, the sale became ineffective and should be rescinded.—On an appeal to the Supreme Court of Canada, the judgment appealed from was affirmed. *Dominion Textile Co. v. Augers*, xli., 185.

46. *Joint stock company — Allotment of shares—Surrender by allottee—Unpaid calls —Transfer — Waiver.*]—S. subscribed for shares in a mining company, was notified of allotment of the same and paid the amount due on a first call as agreed. Later he notified the company that he withdrew his subscription and refusing to pay further calls was sued therefor. It turned out that when S. subscribed for the stock all the shares had been allotted by the company and those given to him had been obtained by surrender from one of the original allottees:—*Held*, that under the Ontario Companies Act, when stock has been allotted by a company, the only case in which the directors can regain control of it, is that of forfeiture for non-payment of calls. As in this case there was no forfeiture, the company did not legally own the stock allotted to S. and could not compel him to pay for it.—*Held*, also, that the provision in said Act that stock on which calls are unpaid cannot be transferred, is imperative and cannot be waived by the company. *Smith v. Gowganda Mines*, xlv., 621.

47. *Issue of shares — Authority to sign certificate — Estoppel — Evidence.*]—*Held*, per Fitzpatrick, C.J., and Duff, J., that where by statute and the by-laws of a joint-stock company certain of its officers are empowered to sign stock certificates, and they sign a certificate under seal in favour of a person who has agreed to change his position on receipt of the shares it represents



and who is declared therein to be the holder of such shares, the company is estopped from denying that it was issued by its authority, even if one of the officers signing it was acting fraudulently for his own purposes in doing so.—*Held, per Anglin, J.*, that the certificate is only *prima facie* evidence of the statements therein and such evidence may be rebutted by shewing that it was issued without authority. In this case, however, Davies and Idington, JJ., *contra*, the company failed to make such proof.—Judgment of the Court of Appeal (23 Ont. L. R. 342) reversed, Davies and Idington, JJ., dissenting. *Mackenzie v. Monarch Life Assoc. Co.*, xlv., 232.

48. *Powers of company—Sale of shares—Mortgage by company—Subsequent creditor—Status.*—Three directors owned all the stock of a mining company to which they had advanced \$43,000 for expenses of operating. Two of them were at variance with the third as to the mode of operating and all refused further advances. The company having no other means of procuring money, it was agreed that the two directors should sell their stock to the third for \$60,000 secured by mortgage on the company's property, the debt of \$43,000 to be discharged and the purchasing director to advance funds for operating and until the first payment had been made on the mortgage no such advances should be a charge on the company's property. Payments were made on the mortgage which afterwards fell into arrears and on action by the mortgagees an order was made for sale and delivery "up of possession." More than a year after the mortgage was made the mining company incurred a debt to the respondent company which brought action for the amount and for a declaration that the mortgage was *ultra vires* of the company and that the judgment in the mortgage action was void. The action was dismissed at the trial. The Appellate Division held the mortgage void but only as to the excess over the indebtedness of the company at the time it was made.—*Held*, reversing the judgment appealed from (31 Ont. L. R. 221) and restoring that of the trial judge, Fitzpatrick, C.J., and Idington, J., dissenting, that the mortgage was valid; that though the expressed consideration was the price of shares sold by one holder to another the real consideration was the discharge of the company's existing indebtedness and securing of financial aid for the future.—*Per Davies, Duff and Brodeur, JJ.*—The judgment in the foreclosure action was a conclusive answer to the attack on the mortgage by the company. *The Great North-Western Railway Co. v. Charlebois* ((1899), A. C. 114) distinguished.—Also *per Davies, Duff and Brodeur, JJ.* — The trial judge having in effect decided that he had jurisdiction to pass upon the validity of the mortgage, that decision was binding on all parties until reversed in appeal, and, having regard to what occurred at the trial, the decision on the point of jurisdiction was not appealable.—*Per Fitzpatrick, C.J.*, and Idington, J., dissenting. — The agreements and records made by the parties concerned in the trans-

action upon which alone the mortgage in question rests shew it to have been given solely to secure to the mortgagees the price of their sales of shares in the company to another shareholder and that, as such, the mortgage was *ultra vires* and void as against any creditors of the company. *Hughes v. Northern Electric & Manfg Co.*, l., 626.

49. *Contract—Sale—Payment in company stock—Unorganized company—Time for delivery.*—J. agreed, by contract in writing, to sell certain coal areas to R., a promoter of a mining company which, it was expected, would eventually take them over. The price was to be paid partly in cash and the balance in stock of the company to be delivered within six months. The promoters were unable to secure the necessary capital and the company had never been organized. In an action claiming damages for breach of the contract to deliver the stock. — *Held*, Duff, J., expressing no opinion, that the time limit in the contract and circumstances disclosed at the trial, shewed that the parties intended that the stock to be delivered was that of a fully organized company.—*Per Fitzpatrick, C.J.*, and Davies, J., that both parties knew when the contract was made that no such stock existed; and as it never came into existence, for which R. was not to blame, the contract could not be enforced. Idington and Anglin, JJ., *contra*.—*Per Davies, J.*—The contract to deliver the stock was not an unqualified one, but was dependent upon the successful flotation of the bonds in the market. — *Per Duff, J.*—The stipulation as to time in the contract was not of its essence, but R. was to have a reasonable time, the nature of the business he was engaged in being considered, for delivery of the stock; some time before the action J. abandoned his claim to the stock and demanded its value in money as damages, but up to that time there had been no breach on R.'s part and he had done nothing to entitle J. to claim that the contract was rescinded.—*Per Idington and Anglin, JJ.*—The contract was absolute for delivery of the shares within six months or a reasonable time thereafter; the Court cannot import into it the condition of successful flotation; R. has not fulfilled his part and J. is entitled to substantial damages for the breach.—Judgment of the Supreme Court of Nova Scotia (49 N. S. Rep. 12), reversed, Idington and Anglin, JJ., dissenting. *Roche v. Johnson*, liii., 18.

## 8. WINDING-UP.

50. *Winding-up Act—Joint stock company—Contributories—Consideration for shares.*—H. and others, interested as creditors and otherwise in a struggling firm, agreed to purchase the latter's assets and form a company to carry on its business, and they severally subscribed for stock in the proposed company to an amount representing the value of the business after receiving financial aid which they undertook to furnish. A power of attorney was given to one of the parties to purchase said assets, which was

done, payment being made by the discount of a note for \$2,000 made by H. and indorsed by another of the parties. The company having been formed, the said assets were transferred and the said note was retired by a note of the company for \$4,000 indorsed by H., which he afterwards had to pay. H. also, or the company in Buffalo of which he was manager, advanced money to a considerable amount for the company, which eventually went into liquidation. After the company was formed, in pursuance of the original agreement between the parties, stock was issued to each of them as fully paid up according to the amounts for which they respectively subscribed, and in the winding-up proceedings they were respectively placed on the list of contributories for the total amount of said stock. The ruling of the local master in this respect was affirmed by a judge of the High Court and by the Court of Appeal.—*Held*, reversing the judgment of the Court of Appeal, Davies, and Nesbitt, JJ., dissenting, that as all the proceedings were in good faith and there was no misrepresentation of material facts, and as H. & S. had paid full value for their shares, the agreement by which they received them as fully paid up was valid and the order making them contributories should be rescinded.—*Held*, per Davies and Nesbitt, JJ., that as they did not pay cash or its equivalent for any portion of the shares as such the order should stand. *Hood v. Eden*, xxxvi., 476.

51. *Liquidation of insolvent corporation—Distribution and collocation — Privileged claim — Expenses for preservation of estate — Fire insurance premiums — Practice—Ex parte inscription—Notice — Arts, 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2009 C. C.]—M. acquired the factory and plant of an insolvent company which had been sold under execution by the sheriff, and, pending litigation during the winding-up of the company, operated and maintained the factory as a going concern. The sheriff's sale was set aside and M. then abandoned the property to the curator of the estate, and filed a claim, as a privileged creditor, for necessary and useful expenses incurred by him in preserving the property for the general benefit of the mass of the creditors, including therein charges for moneys paid as premiums on policies of fire insurance effected in his own name during the time he had held possession.—*Held*, that, in the absence of evidence to shew that such insurances had been so effected otherwise than for his own exclusive interest, he could not be collocated by special privilege, on the distribution of the proceeds of the estate, for the amount of the premiums.—When the appeal first came on for hearing upon inscription *ex parte*, on suggestion by one of the creditors, not made a party to the appeal, the court ordered the postponement of the hearing in order that all interested parties might be notified. *McDougall v. Banque d'Hochelega*, xxxix., 318.*

52. *Winding-up proceedings—Company in liquidation—Sale of assets—Consent to sale of mortgaged ship—Sale by order of court—Mariners' liens—Sale free from incumbrances—Special fund—Privileged charge—*

*Priority — Valuation of security—Release of mortgage—Marshalling securities—Subrogation.]—A ship which belonged to a company in liquidation was mortgaged to a bank and was also subject to maritime liens for seamen's wages due at the time of the winding-up order. The bank consented to the sale of the ship, by the liquidator, free from incumbrances, at the same time as he sold the other assets of the company by direction of the court. He sold the ship separately and free from incumbrances for \$5,000, which was credited, as a special fund, in his accounts. The bank subsequently filed its claim, valuing its security on the ship at \$5,000. The purchasers took the ship to sea and it became a total loss. The bank then made claim to the whole of the fund realized on the sale of the ship and their claim was opposed on behalf of the wage lien-holders claiming the right to be paid by priority out of this fund.—*Held*, affirming the judgment appealed from (4 West. W. R. 1271; 25 West. L. R. 92; 12 D. L. R. 807) that by its consent to the sale of the ship under direction of the court, free from incumbrances, the bank had assented to the conversion thereof released from its mortgage and that the proceeds of the sale of the ship should be apportioned amongst the creditors in the order and according to the priorities provided by law; consequently it was not entitled to any special charge on the fund realized upon its sale.—*Held*, further, that the rights of the wage-earners holding maritime liens were not affected by the loss of the ship after it had been sold by the liquidator under the order of the court and that they were entitled to recover their claims out of the fund realized upon the sale of the ship in priority to the mortgagee.—[MEMO.—The court ordered that the right of the bank, if any, to relief, by way of subrogation or marshalling of securities, should be reserved to be dealt with on further proceedings in the winding-up of the company.] *Traders Bank v. Lockwood*, xlvi., 593.*

53. "Winding-up Act" — Insolvent bank — Appointment of liquidators — Appointing another bank — Discretion of judge — Appeal (xviii., 707); Cam. Cas. 209.

See "WINDING-UP ACT."

54. *Insolvent company—Sale of assets by liquidator—Sale "free from incumbrances"—Conversion—Breach of contract. Dominion Linen Co. v. Langley.*

55. *Winding-up proceedings — Company in liquidation—Sale of assets — Consent to sale of mortgaged ship — Sale by order of court—Mariners' liens—Sale free from incumbrances — Special fund — Privileged charge — Priority — Valuation of security—Release of mortgage—Marshalling securities — Subrogation. Traders Bank v. Lockwood, xlvi., 593.*

56. *Principal and surety—Insolvency of debtor—Action by liquidator against principal creditor—Compromise—Agreement not to rank — Payment by sureties—Right of sureties to rank, l., 100.*

See PRINCIPAL AND SURETY.

**COMPENSATION.**

1. *Pleading—Cross-demand—Arts. 3, 203, 215, 217, C. P. Q.—Practice—Damages—Construction of contract—Liquidated damages—Penal clause—Arts. 1076, 1186, 1188 C. C.—Estoppel—Waiver.*]—A debt which is not clearly liquidated and exigible cannot be set off in compensation of a claim upon a promissory note except by means of a cross-demand made under art. 17 of the Code of Civil Procedure of the Province of Quebec. Judgment appealed from affirmed. *Nesbitt and Idington, J.J.*, dissenting.—By a clause in a contract for the construction of works, the completion thereof was undertaken within a specified time and in default of completion as stipulated it was agreed that the contractor should pay "as liquidated damages, and not as a penalty, the sum of fifty dollars for every subsequent day until the completion." The works were not completed within the time limited, and, in consequence, both parties joined in a petition to a municipal corporation for extension of the time during which subsidies it had granted towards the cost of the works could be earned. The petition was granted and the works were completed within the extension of time allowed by the corporation. *Held*, *Nesbitt and Idington, J.J.*, dissenting, that damages accruing under the clause in question did not, upon mere default, become sufficiently liquidated and ascertained so as to be set off in compensation against a claim upon a promissory note. *Held*, *per Girouard and Davies, J.J.*, (*Nesbitt and Idington, J.J.*, *contra*), that by joining in the petition for extension of time the party in whose favour the penal clause might take effect had waived the right to claim damages thereunder during the period of the extension so obtained in the interests of both parties to the contract. *Ottawa, Northern & Western Railway Co. v. Dominion Bridge Co.*, xxxvi., 347.

2. *Expropriation of lands—Damages. Warburton v. Attorney-General for Canada*, Cout. Cas. 307.

3. *Expropriation of land—Payment—Market value — Potential value — Evidence*, xxxviii., 149.

See EXPROPRIATION.

4. *Title to land—Promise of sale—Entry in land-register — Tenant by sufferance — Squatter's rights—Possession in good faith—Erection—Compensation for improvements—Rents, issues and profits—Set-off*, xxxix., 47.

See TITLE TO LAND.

5. *Set-off — Application of judgments — Equitable assignment — Practice — Stay of execution*, Cam. Cas. 99.

See SET-OFF.

AND see DAMAGES.

See EXPROPRIATION.

**CONDITION.**

1. *Practice — Pleading — B. C. Rule 168—New points raised on appeal—Condition precedent—Construction of statute—59 Viet.*

*c. 62, ss. 9, 25 (B. C.)—Mineral claim—Expropriation—Watercourses — Trespass—Damages—Waiver—Injunction.*]—The B. C. Sup. Ct. Rule 168, provides that "any condition precedent, the performance of which is intended to be contested, shall be distinctly specified in his pleadings by the plaintiff or defendant (as the case may be), and, subject thereto, an averment of the performance or occurrence of all conditions precedent, necessary for the case of the plaintiff or defendant, shall be implied in his pleadings." In an action for trespass and a mandatory injunction, the defendants pleaded the right of entry under a private Act, and the consent or acquiescence of the plaintiffs. The plaintiffs replied setting up the failure of defendants to comply with certain conditions precedent to the privileges claimed but did not set up another condition precedent upon which the judgment appealed from proceeded, though it was not referred to at the trial.—*Held*, *Killam, J.*, *contra*, that the rule refers rather to cases founded on contracts than to those where statutory authority is relied upon and that the plaintiffs need not have replied as they did, but, having done so without setting up the condition specially relied upon, in appeal, thereby possibly misleading the defendants, they were properly punished by the court below by being deprived of their costs in appeal.—*Per Killam, J.*—It was improper for the court appealed from to allow the absence of proof to be set up for the first time on the appeal. *Sandon Water Works and Light Co. v. Byron N. White Co.*, xxxv., 309.

AND see PRACTICE.

2. *Vendor and purchaser—Sale of mortgaged lands—Agreement — Condition precedent—Cash payment—Default—Objection to title — Repudiation — Specific performance.*]—An agreement for the sale of land provided that the purchase-money was to be paid by instalments "\$10,000 cash on the signing of this agreement, the receipt of which is hereby acknowledged," the remaining instalments to be paid in one, two and four years, with interest from the date of the agreement, and there was a proviso making time of the essence of the contract and, on default in performance of conditions and payment of instalments, for the cancellation of the agreement by the vendors on giving written notice to the purchaser. The land in question formed part of a larger area and there was an undischarged mortgage upon the whole property of which both parties had knowledge at the time of the agreement. The cash payment was not made, the purchaser refusing to pay this amount until the mortgage was severed and apportioned so that the land mentioned in the agreement should bear only a determinate share thereof, and the agreement amended to this effect. The vendors then withdrew from the agreement by a letter addressed to the purchaser's solicitor. In an action against the vendors for specific performance,—*Held*, *per Davies and Anglin, J.J.*—The execution of the agreement constituting the relationship of vendors and purchasers was the consideration for the cash payment then to be made and, in default of such payment, the obligation to sell and convey the lands with

a good title did not become binding upon the vendors.—*Per* Duff and Brodeur, JJ.—Payment of the ten thousand dollars in cash was a condition precedent to the constitution of any obligation by the vendors to sell or convey the lands and, consequently, to shew good title.—*Per* Idington, J.—In the circumstances the purchaser's refusal to make the cash payment was a repudiation of the agreement which deprived him of the right to a decree for specific performance.—Judgment appealed from (1 West. W. R. 562) reversed. (Leave to appeal to Privy Council was refused 9th Dec., 1912). *Cushing v. Knight*, xlvii., 555.

3. Rideau canal lands—*Mis-user*—*Forfeiture*—*Condition subsequent*—*Jurisdiction of Exchequer Court of Canada*—*Costs*. *Wright v. The Queen*, Cout. Cas. 151.

4. Crown lands—*Settlement of Manitoba claims*—*Construction of statute*—*Title to lands*—*Operation of statutory grant*—*Transfer in present*—*Condition precedent*—*Ascertainment and identification of swamp lands*—*Revenues and emblems*—*Constitutional law*, xxxiv., 287.

5. Building contract—*Condition precedent*—*Right of action*, xxxiv., 453.

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6. Fire insurance—*Contract of re-insurance*—*Trade customs*—*Conditions of contract*—*"Rider" to policy*—*Limitations of actions*—*Commencement of prescription*—*Art. 2236 C. C.*, xxxv., 208.

See INSURANCE, FIRE.

7. Municipal corporation—*Assessment and taxes*—*Contestation of roll*—*Limitation of actions*—*Interruption of prescription*—*Suspensive condition*—*Construction of statute*—*Collection of taxes*—*Art. 2236 C. C.*, xxxv., 223.

See ASSESSMENT AND TAXES.

8. Appeal—*Jurisdiction*—*Amount in controversy*—*Conditional renunciation*—*Costs on appeal in court below*—*Costs of enquête*—*Nuisance*—*Statutory powers*—*Negligence*—*Legal maxim*, xxxv., 255.

See APPEAL—DAMAGES.

9. Evidence—*Verdict*—*New trial*—*Life insurance*—*Accident policies*—*Conditions of contract*—*Misrepresentations*—*Non-disclosure*—*Words and terms*—*Rule of interpretation*—*Warranties*, xxxv., 266.

See EVIDENCE.

10. Construction of agreement—*Sale of goods*—*Breach of contract*—*Specific performance*—*Damages*, xxxv., 482.

See CONTRACT.

11. Syndicate to promote joint stock company—*Partnership*—*Trust agreement*—*Construction of contract*—*Administration by majority of partners*—*Lapse of time limit*—*Specific performance*, xxxv., 645.

See COMPANY.

12. Composition and discharge—*Construction of deed*—*Novation*—*Reservation of collateral security*—*Delivering up evidence of debt*, xxxvi., 18.

See DEBTOR AND CREDITOR.

13. Sale of goods—*Suspensive condition*—*Terms of credit*—*Delivery*—*Pledge*—*Shipping bills*—*Bills of lading*—*Indorsement of bills*—*Notice*—*Fraudulent transfer*—*Insolvency*—*Banking*—*Bailee receipt*—*Brokers and factors*—*Principal and agent*—*Resiliation of contract*—*Revendication*—*Damages*—*Practice*—*Pleading*, xxxvi., 406.

See SALE.

14. Railway aid—*Municipal by-law*—*Condition precedent*—*Part performance*—*Annulment of by-law*—*Right of action*—*Assignment of obligation*—*Notice*—*Signification upon debtor*—*Art. 1571 C. C.*, xxxvi., 686.

See ACTION.

15. Supply of electric light—*Cancellation of contract*—*Condition for terminating service*—*Interest in premises ceasing*—*"Heirs"*—*"Assigns,"* xxxix., 567.

See CONTRACT.

16. Railway aid—*Provincial subsidy*—*Construction of statute*—*Breach of condition*—*Compromise by Crown officers*—*Obligation binding on the Crown*—*Extension of railway*—*Right of action*—*Application of subsidy*, xxxix., 682.

See ACTION.

17. Title to land—*Sale*—*Construction of deed*—*Reservation of growing timber*—*Rights of vendor and purchaser*—*Resolutive condition*, xl., 98.

See DEED.

18. Mining regulations—*Hydraulic lease*—*Breach of conditions*—*Construction of deed*—*Forfeiture*—*Right of lessees*—*Procedure on inquiry*—*Judicial duties of arbitrator*, xl., 281, 294.

See MINES AND MINING.

19. Contract—*Construction of agreement*—*Fee simple*—*Sale of timber*—*Right of removal*—*Reasonable time*, xl., 557.

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20. Waterworks—*Statutory contract*—*Exclusive franchise*—*Condition of defeasance*—*Forfeiture of monopoly*—*Demurrer*—*Right of action by municipality*—*Rescission*—*Art. 1065 C. C.*—*40 Vict. c. 68 (Que.)*, xl., 629.

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21. Contract—*Supplying electrical energy*—*Delivery*—*Payment at flat rate*—*Obligation to pay for pressure not utilized*—*Sale of commodity*—*Agreement for service*. *Montreal v. Montreal Light, Heat, etc.*, xlii., 431.

See CONTRACT.

22. Construction of contract—*Precedent*—*Arbitration and award*—*Right of action*, xlv., 179.

See CONTRACT.

23. *Construction of statute—Bridges—Crossing by engines—Condition precedent—R. S. O. (1897) c. 242—3 Edw. VII. c. 7 s. 43—4 Edw. VII. c. 10, s. 60, xlv., 187.*  
See STATUTE.

24. *Fire insurance—Conditions of policy—Notice of loss—Imperfect proofs—Non-payment of premium—Waiver—Application of statute—Remedial clause, xlv., 419.*  
See INSURANCE, FIRE.

25. *Irrigation works—Nuisance—Obstruction of highways—Duty to build and maintain bridges—Construction of statute, xlv., 505.*  
See STATUTE.

26. *Municipal corporation—Building by-law—Dangerous constructions—Abatement of nuisance—Condition precedent—Notice—Order to repair—Demolition of structure—Trespass—Forcible entry—Tort—Damages—Construction of statute—Montreal city charter, xlv., 579.*  
See MUNICIPAL CORPORATION.

27. *Accident insurance—Condition of policy—Notice—Tender before action—Waiver, xlv., 386.*  
See INSURANCE, ACCIDENT.

28. *Promissory note—Signature in blank—Discount—Principal and agent—Condition as to use of note—Bona fide holder—"Bills of Exchange Act," S. C. 1906, c. 199, ss. 31, 32, xlv., 401.*  
See BILLS AND NOTES.

29. *Title to land—"Torrens System"—Priority of right—Registration—Caveat—Notice—Construction of statute—Saskatchewan "Land Titles Act," 6 Edw. VII, c. 24—Equities between purchasers—Assignment of contract—Right enforceable against registered owner, xlv., 551.*  
See TITLE TO LAND.

30. *Promissory note—Special indorsement—Pledge—Collateral security—Holder in due course—Payment and satisfaction—Liability on current account, xlv., 564.*  
See BANKING.

31. *Vendor and purchaser—Sale of land—Condition dependent—Deferred payment—Disclosure of title—Abstract—Refusal to complete—Lapse of time—Defeasance—Specific performance, xlv., 114.*  
See VENDOR AND PURCHASER.

32. *Railways—Carriage of passenger—Special contract—Notice—Negligence—Exemptions from liability, xlv., 622.*  
See RAILWAYS.

33. *Cancellation of contract—Expelling contractor—Condition precedent—Possession of plant—Waiver—Seizure in execution—Interpleader—Insolvency—Abandonment of works—Suretyship. Uplands, Limited v. Goodacre, l., 75.*  
See CONTRACT, 2.

34. *Contract—Cancellation—Expelling contractor—Possession of plant—Waiver—Seizure in execution—Interpleader—Insolvency—Abandonment of works—Suretyship, l., 75.*  
See CONTRACT.

35. *Lease of land—Special condition—Promise of sale—Option—Pacte de préférence—Unilateral contract—Real rights—Registry laws—Arts. 2082, 2085 C. C.—Specific performance—Damages—Right of action. St. Denis v. Quevillon, li., 603.*  
See LEASE, 2.

36. *Contract—"Consistent" conditions—Impossibility of performance—Release from liability. Browning v. Masson, lii., 379.*  
See CONTRACT.

## CONFESSION.

1. *Contract by municipal corporation—Powers—By-law or resolution—Right of action—Confession of judgment—Evidence Admissions—Pleading—Estoppel by record—Art. 1245 C. C.—Concurrent findings of fact—Practice on appeal, xxxiv., 495.*  
See EVIDENCE.

2. *Crown case reserved—Admission of evidence—Res geste, xxxviii., 284.*  
See CRIMINAL LAW.

## CONFLICT OF LAWS.

1. *Evidence—Provincial laws in Canada—Judicial notice—Conflict of laws.]—As an appellate tribunal for the Dominion of Canada, the Supreme Court of Canada requires no evidence of the laws in force in any of the provinces or territories of Canada. It is bound to take judicial notice of the statutory or other laws prevailing in every province or territory in Canada, even where they may not have been proved in the courts below, or although the opinion of the judges of the Supreme Court of Canada may differ from the evidence adduced upon those points in the courts below. Cooper v. Cooper (13 App. Cas. 88) followed. — NOTE: Cf. R. S. C. (1906) c. 145, s. 17. Logan v. Lee, xxxix., 311.*

AND see NEGLIGENCE.

2. *Grand Trunk Railway of Canada—Passenger tolls—Third class fares—Construction of statutes—Repeal—16 Vict. c. 37, s. 3 (Can.)—Amendments by subsequent railway legislation, xxxix., 506.*  
See RAILWAYS.

3. *Constitutional law—Provincial companies' powers—Operations beyond province—Insurance against fire—Property insured—Standing timber—Return of premiums—B. N. A. Act, 1867, s. 92 (11), xxxix., 405.*  
See INSURANCE, FIRE.

AND see CONSTITUTIONAL LAW.

4. *Marine insurance—Mutual company—Foreign corporation—Cancellation of policy*

—Return of unearned premium—Cancellation by operation of law, *xlvii.*, 429.

See INSURANCE, MARINE.

5. *Company law—Foreign corporation—Incorporation by Dominion authority—Powers—B. C. “Companies Act”—Unlicensed extra-provincial companies—“Carrying on business”—Contract—Transactions beyond limits of province—Promissory notes—Right of action—Juristic disability—Construction of statute—(B. C.) 10 Edw. VII. c. 7, ss. 139, 166, 168. John Deere Plow Co. v. Agnew, *xlviii.*, 208.*

See CONTRACT, 2.

AND see CONSTITUTIONAL LAW.

6. *Railways—Shipping contract—Carrying person in charge of live stock—Free pass—Release from liability—Approved form—Negligence—Action by dependents—“Railway Act,” R. S. C. 1906, c. 37, s. 340.*

See RAILWAYS.

7. *Debtor and creditor—Agreement for extension—Advantage to one creditor—Security—Endorsement of non-resident—Lex loci. Hochberger v. Rittenberg, *liv.*, 480.*

See DEBTOR AND CREDITOR.

8. *Debtor and creditor—Agreement for extension of time—Preference—Public order—Advantage to creditor—Security for debt—Lex loci, *liv.*, 489.*

See DEBTOR AND CREDITOR.

## CONSPIRACY.

1. *Breach of contract—Conspiracy—Fraud—Assessment of damages.*]—In an action for the price of pills manufactured according to a special formula, supplied by defendants, under a contract with a condition that the formula should not be used for or sold to persons other than defendants, the defendants denied liability and counterclaimed for damages for breach of this condition and conspiracy by the plaintiffs with persons who had infringed their trade-mark and injured their business. The action was maintained in part, without costs, and the incidental demand sustained in respect to damages for loss of profits through sales of the pills to others and expenses of obtaining evidence as to the breach of contract, with costs, but the counterclaim was disallowed in respect to other expenses in the prosecution of the conspirators; it was also found that the plaintiffs had not participated in the conspiracy. On an appeal from the judgment of the Court of King's Bench, affirming this decision, the majority of the judges of the Supreme Court upheld the decision. *Davies and Maclellan, JJ.*, dissented in respect to the damages allowed for the loss of profits in consequence of the sale of pills in breach of the contract. *Hampole v. Simard, xxxix.*, 160.

2. *Contract—Security for debt—Promissory note—Husband and wife—Parent and child, xxxv.*, 393.

See CONTRACT.

## CONSTITUTIONAL LAW

1. DOMINION ACTS, 1-19.
2. ONTARIO ACTS, 19-24.
3. QUEBEC ACTS, 24-27.
4. NOVA SCOTIA ACTS, 27.
5. NEW BRUNSWICK ACTS, 28.
6. MANITOBA ACTS, 29-31.
7. BRITISH COLUMBIA ACTS, 31-36.
8. NORTH-WEST TERRITORIES, ALBERTA, SASKATCHEWAN AND YUKON, 36-54.

### 1. DOMINION ACTS.

1. *Legislative jurisdiction—Constitutional law—Education—Companies—Private bills—Questions referred for opinions—Construction of statute—B. N. A. Act, 1867, ss. 92, 93—38 Vict. c. 11, s. 53 (D.)*—The incorporation of a society as a company of teachers for the Dominion of Canada is *ultra vires* of the Parliament of Canada.—*Per Ritchie, C.J.*—It is doubtful whether the judges of the Supreme Court of Canada should express opinions as to the constitutional right of Parliament to pass a private bill, in virtue of the provisions of s. 53 of the Supreme and Exchequer Courts Act. 38 Vict. c. 11 (D.).—[NOTE.—*Cf. Ex p. Renaud et al.* (14 N. B. Rep. 273; Rev. Crit. 132); *Doutre* on the Constitution of Canada, pp. 325-329. Also R. S. C. (1906) c. 139, s. 61.] *In re “The Brothers of the Christian Schools in Canada,”* *Cout. Cas. 1.*

2. *Penitentiaries—Imprisonment of criminals—Expense of maintenance—B. N. A. Act, 1867—Legislative jurisdiction of Parliament—Provincial legislation—Practice on references by the Governor-General in Council.*]—The legislative jurisdiction of the Parliament of Canada in respect to the establishment, maintenance and management of penitentiaries, cannot be in any way limited, restricted or affected by any provincial legislation in the Province of New Brunswick, either previous or subsequent to the confederation of the provinces under the British North America Act, 1867.—Where no Dominion statute authorizes the confinement in a penitentiary of certain classes of convicts, who, before the B. N. A. Act, 1867, came into force, might, under the laws then in force, have been sentenced to imprisonment and confined in the Saint John Penitentiary, there is no obligation upon the Government of Canada to make provision for their imprisonment and maintenance, at the expense of the Dominion, in the penitentiary.—*Semble*, that, on references by the Governor-General in Council, it is improper for the Supreme Court of Canada to express opinions upon cognate subjects not falling within the terms of the questions as submitted for consideration. *In re New Brunswick Penitentiary, Cout. Cas. 24.*

3. *Legislative jurisdiction—Incorporation of trading companies—Foreign corporations—Judicial opinions on references—Private rights—45 Vict. c. 119 (D.)*—It is inexpedient that opinions should be given upon matters referred for examination and report

under the provisions of the Supreme and Exchequer Courts Act, where the questions may affect private rights that may come before the court judicially, and which ought not to be passed upon without a trial.—The objects for which the company in question was incorporated, by the statute 45 Vict. c. 119, are within the jurisdiction of the Canadian Parliament, and are out of the exclusive jurisdiction of provincial legislatures, and, consequently, such a company may be incorporated by Parliament. *Re Quebec Timber Co.*, Cout. Cas. 43.

4. *Aid to civil power—Pay of militia—Legislative jurisdiction—Civil rights.*—The Supreme Court dismissed an appeal taken on the grounds (1) that the Parliament of Canada had no constitutional right, in the Militia Act, to impose civil obligations upon any provincial municipality for the payment of the troops, and (2) that as the riots in question were confined to Montreal harbour, controlled by Dominion commissioners and outside the corporation limits, the city was not liable under the statute even should it be held constitutional. *City of Montreal v. Gordon*, Cout. Cas. 343.

5. *Criminal law—Jurisdiction of magistrate—Criminal Code, s. 785—Constitution of criminal courts—General Sessions of the Peace.*—By s. 785 of the Criminal Code any person charged before a police magistrate in Ontario with an offence which might be tried at the General Sessions of the Peace, may, with his own consent, be tried by the magistrate and sentenced, if convicted, to the same punishment as if tried at the General Sessions. By an amendment in 1900 (63 Vict. c. 46) the provisions of said section were extended to police and stipendiary magistrates of cities and towns in other parts of Canada.—*Held*, that though there are no courts of General Sessions except in Ontario, the amending Act is not, therefore, inoperative but gives to a magistrate in any other province the jurisdiction created for Ontario by s. 785.—Though the organization of courts of criminal jurisdiction is within the exclusive powers of the provincial legislatures, the Parliament of Canada may impose upon existing courts or individuals the duty of administering the criminal law and its action to that end need not be supplemented by provincial legislation. *In re Vancini*, xxxiv., 621.

6. *Assessment and taxation—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of boundaries of Manitoba—Construction of statutes—B. N. A. Acts 1867 and 1871—33 Vict., 3 (D.)—43 Vict., c. 25 (D.)—44 Vict. c. 14 (D.)—44 Vict. cc. 1 and 6 (3rd sess.) (Man.)—Construction of contract—Grant in presenti—Cause of action—Jurisdiction—Waiver.*—The land subsidy of the Canadian Pacific Railway Company authorized by the Act, 44 Vict. 1 (D.), is not a grant in presenti and, consequently, the period of twenty years of exemption from taxation of such lands provided by the sixteenth section of the contract for the construction of the Canadian Pacific Railway, begins from the date of the actual issue of letters patent of grant from the Crown, from time to time,

after they have been earned, selected, surveyed, allotted and accepted by the Canadian Pacific Railway Company.—The exemption was from taxation "by the Dominion, or any province hereafter to be established or any municipal corporation therein." Held, that when, in 1881, a portion of the North-West Territories in which this exemption attached was added to Manitoba the latter was a province "thereafter established," and such added territory continued to be subject to the said exemption from taxation.—The limitations in respect of legislation affecting the territory so added to Manitoba, by virtue of the Dominion Act, 44 Vict. c. 14, upon the terms and conditions assented to by the Manitoban Acts, 44 Vict. (3rd sess.), cc. 1 and 6, are constitutional limitations of the powers of the Legislature of Manitoba in respect of such added territory and embrace the previous legislation of the Parliament of Canada relating to the Canadian Pacific Railway and the land subsidy in aid of its construction.—Taxation of any kind attempted to be laid upon any part of such land subsidy by the North-West Council, the North-West Legislative Assembly or any municipal or school corporation in the North-West Territories is Dominion taxation within the meaning of the sixteenth clause of the Canadian Pacific Railway contract providing for exemption from taxation.—*Per Taschereau, C.J.* In the case of the Springdale School District, as the whole cause of action arose in the North-West Territories, the Court of King's Bench for Manitoba had no jurisdiction to entertain the action or to render the judgment appealed from in that case and such want of jurisdiction could not be waived.—(Leave to appeal to Privy Council refused, 27th Feby., 1907.) *North Cypress v. Can. Pac. Ry. Co.*; *Argyle v. Can. Pac. Ry. Co.*; *Can. Pac. Ry. Co. v. Springdale*, xxxv., 550.

7. *Constitutional law—Railway company—Negligence—Agreements for exemption from liability—Power of Parliament to prohibit.*—An Act of the Parliament of Canada providing that no railway company within its jurisdiction shall be relieved from liability for damages for personal injury to any employee by reason of any notice, condition or declaration issued by the company, or by any insurance or provident association of railway employees; or of the rules or by-laws of the association, or of privity of interest or relation between the company and the association or contribution of funds by the company to the association; or of any benefit, compensation or indemnity to which the employee or his personal representatives may become entitled to or obtain from such association; or of any express or implied acknowledgment, acquittance or release obtained from the association prior to such injury purporting to relieve the company from liability, is *intra vires* of said Parliament. Nesbitt, J., dissenting. (Appeal to the Privy Council dismissed, [1907] A. C. 65.) *In re Railway Act, 1904*, xxxvi., 136.

8. *Inter-provincial and international ferries—Establishment or creation—License—Franchise—Exclusive right—Powers of Parliament—R. S. C. c. 97—51 Vict. c. 23*

(D.)—Chapter 97 R. S. C. "An Act respecting Ferries," as amended by 51 Vict. c. 23, is *intra vires* of the Parliament of Canada. — The Parliament of Canada has authority to, or to authorize the Governor-General in Council to establish or create ferries between a province and any British or foreign country or between two provinces. The Governor-General in Council, if authorized by Parliament, may confer, by license or otherwise, an exclusive right to any such ferry. *In re International and Inter-Provincial Ferries*, xxxvi., 206.

9. *Constitutional law — Construction of statute — B. N. A. Act, 1867, s. 92, s.-s. 10 (o)—Legislative jurisdiction—Parliament of Canada—Local works and undertakings—Recital in preamble—Enacting clause—General advantage of Canada, etc.—Subject matter of legislation—Presumption as to legislation of Parliament being intra vires—Practice—Motion to refer case for further evidence.*—In construing an Act of the Parliament of Canada, there is a presumption in law that the jurisdiction has not been exceeded.—Where the subject matter of legislation by the Parliament of Canada, although situate wholly within a province, is obviously beyond the powers of the local legislature, there is no necessity for an enacting clause specially declaring the works to be for the general advantage of Canada or for the advantage of two or more of the provinces.—*Seemle*, per Sedgewick and Davies, J.J. (Girouard and Idington, J.J. *contra*). A recital in the preamble to a special private Act, enacted by the Parliament of Canada, is not such a declaration as that contemplated by sub-section 10 (c) of section 92 of the British North America Act, 1867, in order to bring the subject matter of the legislation within the jurisdiction of Parliament.—A motion made, while the case was standing for judgment, to have the case remitted back to the courts below for the purpose of the adduction of newly-discovered evidence as to the refusal of Parliament to make the above-mentioned declaration was refused with costs. *Hewson v. Ontario Power Co.*, xxxvi., 596.

10. *Parliament—Power to legislate—Railways—Railway Act, 1888, ss. 187, 188—Protection of crossings—Party interested—Railway committee—Board of Railway Commissioners—“Railway Act, 1903.”*—Sections 187 and 188 of the "Railway Act, 1888," empowering the Railway Committee of the Privy Council to order any crossing over a highway of a railway subject to its jurisdiction to be protected by gates or otherwise, are *intra vires* of the Parliament of Canada. Idington, J., dissenting.—Sections 186 and 187 of the "Railway Act, 1903," confer similar powers on the Board of Railway Commissioners. These sections also authorize the committee to apportion the cost of providing and maintaining such protection between the railway company and "any person interested."—*Held*, Idington, J., dissenting, that the municipality in which the highway crossed by the railway is situate is a "person interested" under said sections. *City of Toronto v. Grand Trunk Ry. Co.*, xxxvii., 232.

11. *Liabilities of province at Confederation—Special funds—Rate of interest—Trust funds or debt—Award of 1870—B. N. A. Act, 1867, ss. 111 and 142.*—Among the assets of the Province of Canada at Confederation were certain special funds, namely, U. C. Grammar School Fund, U. C. Building Fund and U. C. Improvement Fund, and the province was a debtor in respect thereto and liable for interest thereon. By s. 111 of the B. N. A. Act, 1867, the Dominion of Canada succeeded to such liability and paid the Province of Ontario interest thereon at five per cent. up to 1904. In the award made in 1870 and finally established in 1878, on the arbitration, under s. 142 of the Act to adjust the debts and assets of Upper and Lower Canada, it was adjudged that these funds were the property of Ontario. In 1904 the Dominion Government claimed the right to reduce the rate of interest to four per cent., or if that was not acceptable to the province to hand over the principal.—On appeal from the judgment of the Exchequer Court in an action asking for a declaration as to the rights of the province in respect to said funds:—*Held*, affirming said judgment (10 Ex. C. R. 292), Idington, J., dissenting, that, though before the said award the Dominion was obliged to hold the funds and pay the interest thereon to Ontario, after the award the Dominion had a right to pay over the same with any accrued interest to the province and thereafter be free from liability in respect thereof.—*Held*, also, that until the principal sum was paid over, the Dominion was liable for interest thereon at the rate of five per cent. per annum. *Atty.-Gen. of Ontario v. Atty.-Gen. of Canada*, xxxix., 14.

12. *Indian lands—Extinguishment of Indian title—Payment by Dominion—Liability of Province—Exchequer Court Act, s. 32—Dispute between Dominion and Province.*—Where a dispute between the Dominion and a province of Canada, or between two provinces, comes before the Exchequer Court as provided by s. 32 of R. S. C. [1906] c. 140, it should be decided on a rule or principle of law and not merely on what the judge of the court considers fair and just between the parties.—In 1873 a treaty was entered into between the Government of Canada and the Salteaux tribe of Ojibway Indians inhabiting land acquired by the former from the Hudson Bay Co. By said treaty the Salteaux agreed to surrender to the government all their right, title and interest in and to said lands and the government agreed to provide reserves, maintain schools and prohibit the sale of liquor therein and allow the Indians to hunt and fish, to make a present of \$12 for each man, woman and child in the bands and pay each Indian \$5 per year and salaries and clothing to each chief and sub-chief; also to furnish farming implements and stock to those cultivating land. At the time the treaty was made the boundary between Ontario and Manitoba had not been defined. When it was finally determined, in 1884, it was found that 30,500 square miles of the territory affected by it was in Ontario and in 1903 the Dominion Government brought before the Exchequer Court a claim to be re-imbursed for a pro-



portionate part of the outlay incurred in extinguishing the Indian title. The province disputed liability and, by counterclaim, asked for an account of the revenues received by the Dominion while administering the lands in the province under a provisional agreement pending the adjustment of the boundary.—*Held*, reversing the judgment of the Exchequer Court (10 Ex. C. R. 445), Girouard and Davies, JJ., dissenting, that the province was not liable; that the treaty was not made for the benefit of Ontario, but in pursuance of the general policy of the Dominion in dealing with Indians and with a view to the maintenance of peace, order and good government in the territory affected; and that no rule or principle of law made the province responsible for expenses incurred in carrying out an agreement with the Indians to which it was not a party and for which it gave no mandate. *Province of Ontario v. Dominion of Canada*, xlii., 1.

13. *Tramway — Provincial railway — “Through traffic” — Legislative jurisdiction — Powers of Board of Railway Commissioners — Construction of statute*—R. S. C. (1906), c. 37, s. 8 (b)—“*B. N. A. Act*,” 1867, ss. 91, 92.] — “*The Railway Act*,” R. S. C. (1906), c. 37, does not confer power on the Board of Railway Commissioners for Canada to make orders respecting through traffic over a provincial railway or tramway which connects with or crosses a railway subject to the authority of the Parliament of Canada. Davies and Anglin, JJ., *contra*.—*Per* Fitzpatrick, C.J., and Girouard and Duff, JJ.—The provisions of s.-s. (b) of s. 8 of the “*Railway Act*” are *ultra vires* of the Parliament of Canada. *Montreal Street Railway Co. v. City of Montreal*, xliii., 197.

14. *Construction of statute*—*B. N. A. Act*, ss. 91, 92, 101—“*Supreme Court Act*,” R. S. C. (1906), c. 139, ss. 3, 60—*References by Governor-General in Council — Opinions and advice — Jurisdiction of Parliament — Independence of judges — Judicial functions — Constitution of courts — Administration of the laws of Canada — Provincial legislative jurisdiction.*] — *Per* Fitzpatrick, C.J., and Davies, Duff and Anglin, JJ.—The provisions of s. 60 of the “*Supreme Court Act*,” R. S. C. (1906), c. 139, are within the legislative jurisdiction of the Parliament of Canada.—*Per* Girouard and Idington, JJ.—The provisions of that section assuming to authorize references by the Governor-General in Council to the judges of the Supreme Court of Canada for their opinions in respect to matters within provincial legislative jurisdiction are *ultra vires* of the Parliament of Canada; but, if the governments of the Dominion and of a province unite in the submission of the questions so referred the judges of the Supreme Court of Canada should entertain the reference.—*Per* Idington, J.—The administration of justice in each province having been assigned exclusively to it the power of Parliament in regard to the same is limited to creating a court of appeal and courts for the administration of the laws of Canada.—*Per* Idington, J.—Parliament has no power to authorize the interrogation of the Supreme Court of Canada except where the question submitted relates to some subject or matter respecting which it is competent for Parlia-

ment to legislate and respecting which it has legislated and competently constituted judicial authority in that court to administer or aid in administering the laws so enacted.—*Per* Idington, J.—*Quære*. As to the constitutionality of adopting a system of interrogations of the judiciary even when the questions are confined to subjects of the kind thus indicated. *Re References by the Governor-General in Council*, xliii., 536.

15. “*Marriage and Divorce*”—“*Solemnization of Marriage*”—*Jurisdiction of Parliament — Jurisdiction of legislature — Federal validating Act — Religious belief — Canonical decrees — Civil rights — “B. N. A. Act”* (1867), ss. 91 and 92—*Arts. 127 et seq. C. C.*]—The Parliament of Canada has no authority to enact a bill in the following form:—1. The “*Marriage Act*,” c. 105 of the Revised Statutes, 1906, is amended by adding thereto the following section:—“3. Every ceremony or form of marriage heretofore or hereafter performed by any person authorized to perform any ceremony of marriage by the laws of the place where it is performed, and duly performed according to such laws, shall every where within Canada be deemed to be a valid marriage, notwithstanding any differences in the religious faith of the persons so married and without regard to the religion of the person performing the ceremony. (2) The rights and duties, as married people, of the respective persons married as aforesaid, and of the children of such marriage, shall be absolute and complete, and no law or canonical decree or custom of or in any province of Canada shall have any force or effect to invalidate or qualify any such marriage or any of the rights of the said persons or their children in any manner whatsoever.” (Affirmed by Privy Council, 29th July, 1912).—*Per* Idington, J.—The retrospective part would be good as part of a scheme for concurrent legislation by Parliament and legislatures confirming past marriages which, probably, neither effectively can do. The prospective part, so far as possible to make it an effective prohibition of religious tests, may be good, but doubtful, and the probable purpose can be reached by a better bill.—*Per* Davies, Idington and Duff, JJ.—The law of the Province of Quebec does not render null and void, unless contracted before a Roman Catholic priest, a marriage in such province between two Roman Catholics that would otherwise be binding. Anglin, J., *contra*. Fitzpatrick, C.J., expressing no opinion.—The law of Quebec does not render void, unless contracted before a Roman Catholic priest, a marriage otherwise valid where one party only is a Roman Catholic.—The Parliament of Canada has no authority to enact that a marriage between Roman Catholics, or a “mixed marriage,” not contracted before a Roman Catholic priest and whether heretofore or hereafter solemnized, shall be valid and binding. (Affirmed by Privy Council, 29th July, 1912).—*Per* Idington, J.—Parliament has power to declare valid such a marriage heretofore solemnized to be concurred in by the legislature of the province concerned, and the like power as to a marriage hereafter to be solemnized if and when the province fails to provide adequate means of solemnization. *In re Marriage Laws*, xli., 132.

16. *Provincial tramway—Jurisdiction of Board of Railway Commissioners—Highways—Overhead crossings—Apportionment of cost—Legislative jurisdiction—Ancillary powers—“Interested parties”—Construction of statute—“Railway Act,” R. S. C. 1906, c. 37, ss. 8, 59, 237, 238—(B.C.) 8 & 9 Edw. VII., c. 32—“B. N. A. Act, 1867,” s. 92, item 10.]—On an application by the City of Vancouver, the Board of Railway Commissioners for Canada authorized the Corporation of the City of Vancouver to construct overhead bridges across the tracks of a Dominion railway company, which had been laid down during the years 1909 and 1910 on certain streets in the city, and ordered that a portion of the cost of construction of two of these bridges and of the depression of the tracks at the crossings thereof by the Dominion railway should be borne by a tramway company which derived its powers through provincial legislation and an agreement with the city pursuant to such legislation under which it operated its tramways upon these streets. By the agreement the tramway company became entitled to use the city streets with reciprocal obligations by the city and the company respecting their grading, repair and maintenance, and it was provided that the city should receive a share of the gross earnings of the tramway company. On appeal to the Supreme Court of Canada from the order of the Board:—*Held*, Duff and Brodeur, JJ., dissenting, that, in virtue of ss. 8 (a), 59, 237, and 238 of the “Railway Act.” R. S. C. 1906, c. 37, as amended by c. 32 of 8 & 9 Edw. VII., the Board of Railway Commissioners for Canada had jurisdiction to determine the “interested parties” in respect of the proposed works and to direct what proportion of the cost thereof should be borne by each of them. *The City of Toronto v. Canadian Pacific Railway Co.* ((1908), A. C. 54); *Canadian Pacific Railway Co. v. Parish of Notre Dame de Bonsecours* ((1899), A. C. 367); *City of Toronto v. Grand Trunk Railway Co.* (37 Can. S. C. R. 232); *County of Carleton v. City of Ottawa* (41 Can. S. C. R. 552), and *Re Canadian Pacific Railway Co. and York* (25 Ont. App. R. 65), followed.—*Per* Duff and Brodeur, JJ., dissenting.—(1) The Parliament of Canada, when it assumes jurisdiction, under the provisions of item 10 of s. 92 of the “British North America Act, 1867,” in respect of a provincial railway, *quâ* railway, must assume such jurisdiction over the work or undertaking “as an integer.” (2) The order of the Board cannot be sustained as being made in the exercise of the Dominion power of taxation. (3) As there is no Dominion interest concerned in the provisions of the order under appeal, and the Dominion Parliament has no power to compel the provincial company to assume the burden of the cost of the proposed works, or any portion thereof, the Board of Railway Commissioners had no jurisdiction to assess a proportion of their cost upon the tramway company. (4) The cases cited above must be distinguished as they do not sustain, as a valid exercise of ancillary power by Dominion authority, any enactment professing to control a provincial railway company.—(NOTE.—Leave to appeal to the Privy Council was granted on 14th July, 1913.) *British Columbia Electric Railway**

*Co. v. Vancouver, Victoria Railway Co.*, xlviii., 98.

17. *Insurance—Foreign company doing business in Canada—Dominion license—9 & 10 Edw. VII., ch. 32, ss. 4 and 70.]—Held, per Fitzpatrick, C.J., and Davies, J., that ss. 4 and 70 of the Act 9 & 10 Edw. VII., c. 32 (the “Insurance Act, 1910”) are not *ultra vires* of the Parliament of Canada. *Idington, Duff, Anglin and Brodeur, JJ., contra.*—*Held, per Fitzpatrick, C.J., and Davies, J.*, that s. 4 of said Act operates to prohibit an insurance company incorporated by a foreign state from carrying on its business within Canada if it does not hold a license from the Minister under the said Act and if such a carrying on of the business is confined to a single province.—*Per* *Idington, J.*—Section 4 does not prohibit if, and so far as it may be possible to give any operative effect to a clause bearing upon the alien foreign companies as well as others within the terms of which is embraced so much that is clearly *ultra vires*.—*Per* *Duff, Anglin and Brodeur, JJ.*—The section would effect such prohibition if it were *intra vires*. *Insurance Reference*, xlviii., 260.*

18. *Incorporation of companies—“Provincial objects”—Limitation—Doing business beyond the province—Insurance company—“Insurance Act, 1910”; 9 & 10 Edw. VII., c. 32, s. 3, s.-s. 3—Enlargement of company’s powers—Federal company—Provincial license—Trading companies.]—By s.-s. 11, s. 92, of “The British North America Act, 1867,” the legislature of any province in Canada has exclusive jurisdiction for “The Incorporation of Companies with Provincial Objects.”—*Held, per Fitzpatrick, C.J., and Davies, J.*, that the limitation defined in the expression “Provincial Objects” is territorial and also has regard to the character of the powers which may be conferred on companies locally incorporated.—*Held, per* *Idington, Anglin and Brodeur, JJ.*, that such limitation is not territorial but has regard to the character of the powers only.—*Per* *Duff, J.*—Provincial objects means “objects” which are “provincial” in reference to the incorporating province. Whether the “objects” of a particular company as defined by its constitution are or are not “provincial” in this sense is a question to be determined on the facts of each particular case substantially as a question of fact.—*Held, per* *Fitzpatrick, C.J., and Davies, J.*, that a company incorporated by a provincial legislature has no power or capacity to do business outside of the limits of the incorporating province but it may contract with parties residing outside those limits as to matters ancillary to the exercise of its powers.—*Per* *Idington and Brodeur, JJ.*—Such company has, inherently, unless prohibited by its charter, the capacity to carry on the business for which it was created, in any foreign state or province whose laws permit it to do so.—*Per* *Duff, J.*—A provincial company may conduct its operations outside the limits of the province creating it so long as its business as a whole remains provincial with reference to its province of origin.—*Per* *Anglin, J.*—Such a company has, inherently, unless prohibited by its charter, the capacity to accept the authorization of any foreign state or province to carry on within its territory the*

business for which it was created.—*Held, per Fitzpatrick, C.J., and Davies, J.,* that a corporation constituted by a provincial legislature with power to carry on a fire insurance business with no express limitation as to locality has no power or capacity to make and execute contracts for insurance outside of the incorporating province or for insuring property situate outside thereof.—*Per Idington, Anglin and Brodeur, J.J.*—Such a company has power to insure property situate within or without the incorporating province and to make contracts within or without the same to effect any such insurance. In respect to all such contracts it is not material whether the owner of the property insured is, or is not, a citizen or resident of the incorporating province.—*Per Duff, J.*—It is not necessarily incompatible with the provincial character of the “objects” of a provincial insurance company that it should have power to enter into outside the province contracts insuring property outside the province.—*Held, per Fitzpatrick, C.J.*—A provincial fire insurance company may make contracts and insure property throughout Canada by availing itself of the provisions of s. 3, s.-s. 3, of 9 & 10 Edw. VII., c. 32 (“The Insurance Act, 1910”), which is *intra vires* of the Parliament of Canada. *Davies, J., contra.*—*Per Davies, J.*—That such enactment is *ultra vires* so far as the provinces of the Dominion are affected.—*Per Brodeur, J.*—Such enactment is *ultra vires* of Parliament.—*Per Idington, J.*—Part of said sub-section may be *intra vires* but the last part providing for a Dominion license to local companies is not.—*Per Anglin, J.*—The said enactment is *ultra vires* except in so far as it deals with companies incorporated by or under Acts of the legislature of the late Province of Canada.—*Held,* that the powers of a company incorporated by a provincial legislature cannot be enlarged either as to locality or objects, by the Dominion Parliament nor by the legislature of another province.—*Held, per Fitzpatrick, C.J., and Davies, J.*—The legislature of a province has no power to prohibit companies incorporated by the Parliament of Canada from carrying on business within the province without obtaining a license so to do from the provincial authorities and paying fees therefor unless such license is imposed in exercise of the taxing power of the province. And only in the same way can the legislature restrict a company incorporated for the purpose of trading throughout the Dominion in the exercise of its special trading powers or limit the exercise of such powers within the province. *Brodeur, J., contra.*—*Per Idington, J.*—A company incorporated by the Dominion Parliament in carrying out any of the enumerated powers contained in s. 91 cannot be prohibited by a provincial legislature from carrying on business, or restricted in the exercise of its powers, within the province, though subject to exercise of the exclusive jurisdiction to make laws in relation to “direct taxation within the province.” But a company incorporated under the general powers of parliament must conform to all the duly enacted laws of a province in which it seeks to do business.—*Per Duff, J.*—A company incorporated under the residuary legislative power of the Dominion is not in any province where it carries on business subject to the legislative authority of

the province in relation to matters falling within the subject “incorporation of companies;” but as regards all other matters falling within the enumerated subjects of s. 92 it is subject to such legislative jurisdiction just as a natural person or an incorporated association would be in like circumstances. The enactments of ss. 139, 152, 167 and 168 of the British Columbia “Companies Act” are valid.—*Per Anglin, J.*—The provincial legislature may impose a license and exact fees from any Dominion company if the object be the raising of revenue, or obtaining of information, “for provincial, local or municipal purposes,” but not if it is to require the company to obtain provincial sanction or authority for the exercise of its corporate powers. And the legislature cannot restrict a company incorporated for the purpose of trading throughout the Dominion in the exercise of its special powers nor limit the exercise of such powers within the province, nor subject such company to legislation limiting the nature or kind of business which corporations not incorporated by it may carry on or the powers which they may exercise within the province. *Re Incorporation of Companies, xlviiii., 331.*

## 2. ONTARIO ACTS.

19. *Provincial mining company—Power to do mining outside of province—Incorporation “with provincial objects”—Territorial limitation—Comity.*—A mining company incorporated under the law of the Province of Ontario has no power or capacity to carry on its business in the Yukon Territory and an assignment to it of mining leases and agreements for leases is void. *Idington and Anglin, J.J., contra.*—*Held, per Fitzpatrick, C.J., and Davies, J.,* that “the incorporation of companies with provincial objects” as to which the provinces are given exclusive jurisdiction (“B. N. A. Act,” 1867, s. 92, s.-s. 11), authorizes the incorporation of companies whose operations are confined, territorially, to the limits of the incorporating province.—*Per Idington and Anglin, J.J.*—Such company has capacity to avail itself of the sanction of any competent authority outside Ontario to operate within its jurisdiction.—*Per Duff, J.*—The term “provincial objects” in said sub-section means provincial with respect to the incorporating province, and the business of mining in the Yukon is not an object “provincial” with respect to Ontario. The question whether capacity to enter into a given transaction is compatible with the limitation that the objects shall be “provincial objects” is one to be determined on the particular facts.—*Also, per Duff, J.*—On the true construction of the Ontario “Companies Act,” the appellant company only acquired capacity to carry on its business as an Ontario business; and there was no legislation by the Dominion or the Yukon professing to enlarge that capacity.—*Held, per Fitzpatrick, C.J. (Duff and Anglin, J.J., contra),* that to enable a joint stock company to obtain a free miner’s certificate under the regulations in force in the Yukon Territory it must be authorized by an Act of the Parliament of Canada, and at present only a British or foreign company could be so authorized (61 Vict. c. 49, s. 1 (D.)).

*Bonanza Creek Gold Mining Co. v. The King*, l., 534.

20. *Canadian waters—Sea coasts—Property in foreshores—Harbours—Havens—Roadsteads—Ownership of beds—Construction of statute*—"B. N. A. Act, 1867," ss. 108, 109.]—The terms "public harbours" in item 2 of the third schedule of the "British North America Act, 1867," is not intended to describe or include portions of the sea coast of Canada having merely a neutral conformation which may render them susceptible of use as harbours for shipping; such potential harbours or havens of refuge are not property of the class transferred to the Dominion of Canada by s. 108 of the "British North America Act, 1867." The term used refers only to public harbours existing as such at the time when the provinces became part of the Dominion of Canada.—*Per Davies, Idington, Anglin and Brodeur, JJ.*—As that part of Burrard Inlet, on the coast of British Columbia, known as "English Bay," was not in use as a harbour at the time of the admission of British Columbia into the Dominion of Canada, in 1871, it did not become the property of the Dominion as a "public harbour" within the meaning of s. 108 and the third schedule of the "British North America Act, 1867;" consequently, the Province of British Columbia retained the property in the bed and foreshore thereof and could validly grant the right of removing sand therefrom.—*Per Davies, Idington and Anglin, JJ.*—Inasmuch as the proclamation, by the Dominion Government, on the 3rd December, 1912, and the Dominion statute, c. 54 of 3 & 4 Geo. V., deal merely with the establishment of the port and the incorporation of the Vancouver Harbour Commissioners, they had not the effect of transferring English Bay from the control of the Provincial Government to that of the Dominion Government nor of giving to the Dominion Government any right of property in the bed or foreshore of that bay.—*Per Duff, J.*—The transfer effected by s. 108 of the "British North America Act, 1867," of the subjects described in the third schedule of that Act was a transfer of property operative upon the passing of the Act and such subjects were necessarily ascertainable at the passing of the Act by the application of the descriptions to the facts then existing, and, consequently, the question of "public harbour" or no "public harbour" must be determined according to the circumstances as they were at the date of the Union.—*Per Duff, J.*—The term "public harbour" implies public user as a harbour for commercial purposes as distinguished from purposes of navigation simply, or some recognition, formal or otherwise, of the locality in dispute by the proper public authority as a harbour for such purposes, but the question of "public harbour" or no "public harbour" is a question of fact depending largely upon the particular circumstances.—*Per Duff, J.*—If the question of "public harbour" or no "public harbour" were to be decided according to the circumstances existing when the dispute arose, English Bay must be held to be now a "public harbour" within the meaning of item 2 of the third schedule of the "British North America Act, 1867."—Judgment affirmed from (20 B. C. Rep. 333), affirmed.

*Attorney-General for Canada v. Ritchie Contracting & Supply Co.*, lii., 78.

21. *Copyright—Foreign reprints—Notice to English Commissioner of Customs—Entry at Stationers' Hall—Imperial Acts in force in Canada.*]—The judgment appealed from (8 Ont. L. R. 9) was affirmed, the court, however, declining to decide whether or not the doctrine laid down in *Smiles v. Bedford* (1 Ont. App. R. 436), was rightly decided. (Leave to appeal to Privy Council refused; May, 1905). *Imperial Book Co. v. Black*, xxxv., 488.

22. *Sunday observance—Reference to Supreme Court—R. S. C. c. 135, s. 37—54 & 55 Vict. c. 25, s. 4—Legislative jurisdiction.*]—The statute 54 and 55 Vict. c. 25, s. 4, does not empower the Governor-General in Council to refer to the Supreme Court for hearing and consideration supposed or hypothetical legislation which the legislature of a province might enact in the future. Sedgewick, J., dissenting.—The said section provides that the Governor in Council may refer important questions of law or fact touching specified subjects "or touching any other matter with reference to which he sees fit to exercise this power."—*Held*, Sedgewick, J., *contra*, that such "other matter" must be *ejusdem generis* with the subjects specified.—*Legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada. Attorney-General for Ontario v. Hamilton Street Railway Co.* ([1903] A. C. 524), followed.—(Leave to appeal to Privy Council refused, 26th July, 1905.) *In re Legislation respecting Abstinence from Labour on Sunday*, xxxv., 581.

23. *Provincial companies' powers—Operations beyond province—Insurance against fire—Property insured—Standing timber—Return of premiums—B. N. A. Act, 1867, s. 92 (11).*]—*Held*, *per Idington, Maclean and Duff, JJ., Fitzpatrick, C.J., and Davies, J., contra*:—That a company incorporated under the authority of a provincial legislature to carry on the business of fire insurance is not inherently incapable of entering outside the boundaries of its province of origin into a valid contract of insurance relating to property also outside of those limits.—*Per Fitzpatrick, C.J., and Davies, J.*—Sub-section 11 of s. 91, B. N. A. Act, 1867, empowering a legislature to incorporate "companies for provincial objects," not only creates a limitation as to the objects of a company so incorporated but confines its operations within the geographical area of the province creating it. And the possession by the company of a license from the Dominion Government under 51 Vict. c. 28 (R. S. C. 1906, c. 34, s. 4), authorizing it to do business throughout Canada is of no avail for the purpose.—*Girouard, J.*, expressed no opinion on this question. *Canadian Pacific Ry. Co. v. Ottawa Fire Ins. Co.*, xxxix., 405.

### 3. QUEBEC ACTS.

24. *Legislative jurisdiction—"Early closing by-law"—Municipal corporation—Pro-*

*erty and civil rights—Local or private matters—Regulation of trade and commerce—B. N. A. Act, 1867, s. 91, s.-s. 2; s. 92, s.-s. 8, 13, 16—57 V. c. 50 (Que.)*—Provincial legislation authorizing a municipality to regulate the closing of shops of a particular character within its limits, is a subject which falls within the classes of matters enumerated as being within the exclusive jurisdiction of provincial legislatures under s.-s. 13 or s.-s. 16 of s. 92 of the "British North America Act, 1867," and is not an interference with the exclusive legislative jurisdiction of the Parliament of Canada, conferred by the second sub-section of s. 91 of that Act.—Unless a by-law, enacted in good faith under the authority of the Quebec statutes, 57 Vict. c. 50, and 4 Edw. VII., c. 39, appears to be so unreasonable, unfair or oppressive as to be a plain abuse of the powers conferred upon the municipal council it should not be set aside.—Judgment appealed from (Q. R. 17 K. B. 420), reversed. *City of Montreal v. Beauvais*, xlii., 211.

25. *Constitutional law — Construction of statute—B. N. A. Act, 1867, s. 92, s.-s. 2—R. S. Q. 1888, s. 1191 (b), 1191 (c); (Que.) 57 V. c. 16, s. 2; 6 Edw. VII. c. 11, s. 1—Legislative jurisdiction — "Direct taxation within the province"—Succession duty—Extra-territorial movables—Decedent domiciled in province.*—The legislative authority of a province in the matter of taxation conferred by s.-s. 2 of s. 92 of the "British North America Act, 1867," which authorizes the levying of "direct taxation within the province," extends to the imposition of duties upon the transmission of movables having a local situs outside the provincial boundaries which form part of the succession of a decedent domiciled within the province. *Woodruff v. The Attorney-General for Ontario* (1908), A. C. 508, distinguished. Judgment appealed from (Q. R. 20 K. B. 164), reversed, Davies and Anglin, J.J., dissenting.—At the time of the death of C. L. C., 11th April, 1902, the statutes in force in the Province of Quebec relating to succession duties provided that "all transmissions, owing to death, of the property in, usufruct or enjoyment of movable and immovable property in the province shall be liable to the following taxes calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of the death, etc." Subsequently, by 6 Edw. VII., c. 11, a clause was added (s. 1191 (c)), as follows: "The word 'property' within the meaning of this section shall include all property, whether movable or immovable, actually situate or owing within the province, whether the deceased at the time of his death had his domicile within or without the province, or whether the debt is payable within or without the province, or whether the transmission takes place within or without the province, and all movables wherever situate, of persons having their domicile (or residing), in the Province of Quebec at the time of their death," which was in force at the time of the death of H. H. C., 26th December, 1906. Succession duties were levied, in respect of both estates, upon the whole value of the property devolving including, in each case, movable property locally situated in the United States

of America. The action was to recover back those portions of the duties paid in respect of the value of the movables situated outside the limits of the Province of Quebec.—*Held*, reversing the judgment appealed from (Q. R. 20 K. B. 164), Davies and Anglin, J.J., dissenting, that the movable property situated outside the limits of Quebec forming part of the succession of H. H. C. was subject to the duty so imposed.—On an equal division of opinion among the judges of the Supreme Court of Canada the judgment appealed from stood affirmed in so far as it held that the movable property situated outside the limits of Quebec forming part of the estate of C. L. C. was not liable to such taxation. *The King v. Cotton*, xlv., 469.

26. *Construction of statute—Quebec "Sunday Act"—7 Edw. VII., c. 42, amended by 9 Edw. VII., c. 51—Prohibition of theatrical performances—Local, municipal and police regulations—Criminal law—Legislative jurisdiction—Validation by federal legislation—"Lord's Day Act," R. S. C., 1906, c. 153.*—In the "Act respecting the observance of Sunday," 7 Edw. VII., c. 42 (Que.), as amended by 9 Edw. VII. c. 51 (Que.), the provisions prohibiting theatrical performances on Sunday are not of the character of local, municipal or police regulations. On the proper construction of the legislation, treated as a whole, they purport to create offences against criminal law and, consequently, are not within the legislative competence of a provincial legislature under the "British North America Act, 1867." *The Attorney-General for Ontario v. The Hamilton Street Railway Co.* ([1903] A. C. 524), followed. The legislation in question derives no validity from the provisions of the "Lord's Day Act," R. S. C. 1906, c. 27. Judgment appealed from (Q. R. 20 K. B. 416), reversed, Idington and Brodeur, J.J., dissenting.—*Per* Idington, J., dissenting.—The provisions of s. 2 of the statute 7 Edw. VII., c. 42 (Que.), are severable from one another as well as from the other provisions of the statute, and, consequently, although other provisions may be *ultra vires*, the prohibition in respect of theatrical performances on Sunday is a police regulation which is within the competence of the provincial legislature.—*Per* Brodeur, J., dissenting.—The legislation in question deals merely with local matters affecting police regulations and civil rights within the province and, consequently, is *intra vires* of the legislature of Quebec. *Ouimet v. Bazin*, xlvii., 502.

#### 4. NOVA SCOTIA.

27. *Constitutional law — Legislative Assembly—Powers of Speaker — Precincts of House—Expulsion.*—The public have access to the Legislative Chamber and precincts of the House of Assembly, as a matter of privilege only, under license either tacit or express which can be revoked whenever necessary in the interest of order and decorum.—The power of the Speaker and officers of the House to preserve order may be exercised during the intervals of adjournment between sittings as well as when the House is in session.—A staircase leading from the street entrance up to the corridor of the House is

a part of the precincts of the House and a member of the public who conducts himself thereon so as to interfere with the discharge by members of their public duties may lawfully be removed.—Judgment of the Supreme Court of Nova Scotia (36 N. S. Rep. 211), reversed and a new trial ordered. *Payson v. Hubert*, xxxiv., 400.

## 5. NEW BRUNSWICK.

28. *Municipal taxation—Official of Dominion Government—Taxation on income—B. N. A. Act, 1867, ss. 91 and 92.*—Sub-section 2 of s. 92, B. N. A. Act, 1867, giving a provincial legislature exclusive powers of legislation in respect to "direct taxation within the province, etc.," is not in conflict with s.-s. 8 of s. 91, which provides that Parliament shall have exclusive legislative authority over "the fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada." Girouard, J., *contra*.—*Held*, therefore, Girouard, J., dissenting, that a civil or other officer of the Government of Canada may be lawfully taxed in respect to his income as such by the municipality in which he resides. *Abbott v. City of St. John*, xl., 597.

## 6. MANITOBA ACTS.

29. *Crown lands—Settlement of Manitoba claims—48 & 49 Vict. c. 50 (D.)—49 Vict. c. 38 (Man.)—Construction of statute—Title to lands—Operation of grant—Transfer in presenti—Condition precedent—Ascertainment and identification of swamp lands—Revenues and emblements.*—The first section of the "Act for the final settlement of the claims of the Province of Manitoba on the Dominion" 48 & 49 Vict. c. 50) enacts that "all Crown lands in Manitoba which may be shewn, to the satisfaction of the Dominion Government, to be swamp lands shall be transferred to the province and enure wholly to its benefit and uses":—*Held*, affirming the judgment appealed from (8 Ex. C. R. 337), Girouard and Killam, J.J., dissenting, that the operation of the statutory conveyance in favour of the Province of Manitoba was suspended until such time or times as the lands in question were ascertained and identified as swamp lands and transferred as such by order of the Governor-General-in-Council, and that, in the meantime, the Government of Canada remained entitled to their administration and the revenues derived therefrom enured wholly to the benefit and use of the Dominion.—(Affirmed by the Privy Council, August, 1904, 43 Can. Cas. 438.) *Attorney-General for Manitoba v. Attorney-General for Canada*, xxxiv., 287.

30. *Provincial legislation—Succession duties—Taxation—Property within province—Bona notabilia—Sale of lands—Covenant—Simple contract—Specialty—Construction of statute—Severable provisions—R. S. M. 1902, c. 161, s. 5 (Man.)—4 & 5 Edw. VII. c. 45, s. 4 (Man.)—Appeal—Jurisdiction—Surrogate Court—Persona designata.*—M.,

who died in June, 1908, had his domicile in Manitoba and, under a verbal agreement, had erected elevators for L., also domiciled in Manitoba, on lands belonging to the Canadian Pacific Railway Company in the Province of Saskatchewan. Until fully paid for the buildings were to remain the property of M., who was to retain possession and operate the elevators and all net revenues were to be applied in reduction of the price for which they had been constructed. M. also owned lands in Saskatchewan, known as the "Kirkella Lands," which he had agreed to sell to purchasers under agreements under seal, in his possession in Manitoba at the time of his death, by which he remained owner until they had been fully paid for and then the lands were to be conveyed to the purchasers. The agreements contained no specific covenant to pay the price of the lands. The executors denied the right of the Government of Manitoba to collect succession duties in respect of these debts under the Manitoba "Succession Duties Act." R. S. M. 1902, c. 161, s. 5, as re-enacted by the Manitoba statute 4 & 5 Edw. VII. c. 45, s. 4.—*Per curiam*.—The debt due under the contract with L. constituted property within the Province of Manitoba and, as such, was liable for succession duty as provided by the Manitoba statute. Also Davies, J., dissenting, that under the agreements for sale of the "Kirkella Lands," a covenant to pay should be implied and, consequently, they were specialty debts which, as such, constituted property within the Province of Manitoba and were liable for succession duty there.—*Per Davies, Idington, Anglin and Brodeur, J.J.*—The duties imposed by the Manitoba "Succession Duties Act" are direct taxation and, consequently, the legislation imposing them is *intra vires* of the provincial legislature.—*Per Idington and Brodeur, J.J.*—The provincial legislature is competent to impose taxation as a condition for obtaining the benefit of probate.—*Per Duff, J.*—In so far as the statute professes to impose duties in respect of property having a *situs* within Manitoba it is *intra vires* of the provincial legislature. *Re v. Lovitt* ([1912] A. C. 212) followed. In so far as the statute professes to impose duties on property not having a *situs* in Manitoba, and without respect to the domicile of the owner, the reasoning of Lord Moulton in *Cotton v. The King* ([1914] A. C. 176), applies, the result of which is that such taxation if effectual in cases in which the beneficiary is domiciled abroad cannot be "direct taxation" within the meaning of section 92 of the "British North America Act, 1867."—*Per Anglin, J.*—The succession duties imposed by the Manitoba statute are not fees payable for services rendered, but constitute taxation subject to the restrictions mentioned in item 2 of section 92 of the "British North America Act, 1867."—*Per Duff and Anglin, J.J.*—The provisions of the Manitoba "Succession Duties Act" in respect to taxation which may be *ultra vires* may be treated as severable and do not render the statute ineffective as a whole.—Idington and Anglin, J.J., questioned the jurisdiction of the Supreme Court of Canada under sub-section (d) of section 37 of the "Supreme Court Act," to entertain an appeal in a matter

or proceeding originating in the Surrogate Court of Manitoba.—Anglin, J., suggested that in the proceeding provided for by section 19 of the Manitoba "Succession Duties Act," the judge of the Surrogate Court would act as *persona designata* and that there may not be an appeal from his order to the Supreme Court of Canada.—The judgment appealed from (24 Man. R. 310) was affirmed. *Standard Trusts Co. v. Treasurer of Manitoba*, II., 428.

## 7. BRITISH COLUMBIA.

31. *Canadian waters—Three-mile-zone—Fishing by foreign vessels—Legislative jurisdiction—Seizure on high seas—Pursuit beyond territorial limit—International law—Constitutional law—B. N. A. Act, 1867, s. 91, s. s. 12—Sea-coast fisheries—R. S. C. c. 94, ss. 2, 3, 4.*—Under the provisions of the British North America Act, 1867, s. 91, s. s. 12, the Parliament of Canada has exclusive jurisdiction to legislate with respect to fisheries within the three-mile-zone off the sea-coasts of Canada. A foreign vessel found violating the fishery laws of Canada within three marine miles off the sea-coast of the Dominion may be immediately pursued beyond the three-mile-zone and lawfully seized on the high seas. Girouard, J., dissenting. The judgment appealed from (11 B. C. Rep. 473), was affirmed. *The Ship "North" v. The King*, xxxvii., 385.

32. *Construction of statute—"Crown Procedure Act," R. S. B. C. c. 57—Duty of responsible ministers of the Crown—Refusal to submit petition of right—Tort—Right of action—Damages.*—Under the provisions of the "Crown Procedure Act," R. S. B. C. c. 57, an imperative duty is imposed upon the Provincial Secretary to submit petitions of right for the consideration of the Lieutenant-Governor within a reasonable time after presentation and failure to do so gives a right of action to recover damages.—After a decisive refusal to submit the petition has been made, the right of action vests at once and the fact that a submission was duly made after the institution of the action is not an answer to the plaintiff's claim. (Appeal to Privy Council dismissed, 9th July, 1908.) *Norton v. Fulton*, xxxix., 202.

AND see ACTION.

33. *Legislative jurisdiction—Crown lands—Terms of union B.C. art. 11—Railway aid—Provincial grant to Dominion—Intrusion—Provincial legislation—Water-records within "Railway Belt"—Construction of statute—B. N. A. Act, 1867, ss. 91, 109, 117, 146—Imperial O. C., 16th May, 1871—"Water Clauses Consolidation Act, 1897," R.S.B.C. c. 190—British Columbia waters and water-courses.*—While lands within the "Railway Belt" of British Columbia remain vested in the Government of Canada in virtue of the grant made to it by the Government of British Columbia pursuant to the eleventh article of the "Terms of Union" of that province with the Dominion, the Water Commissioners of the Province of British Columbia are not competent to make grants

of water-records, under the provisions of the "Water Clauses Consolidation Act, 1897," R. S. B. C. c. 190, which would, in the operation of the powers thereby conferred, interfere with the proprietary rights of the Dominion of Canada therein. Cf. *The Queen v. Farwell* (14 Can. S. C. R. 392).—Judgment appealed from (12 Ex. C. R. 295) affirmed. *Burrard Power Co. v. The King*, xliii., 27.

34. *Sea-coast and inland fisheries—Canadian waters—Tidal waters—Navigable waters—Open sea—B. C. "Railway Belt"—Foreshores—Fera natura—Legislative jurisdiction—Construction of statute—47 V. c. 14, ss. 2-6 (B.C.).*—In respect of waters within the "Railway Belt" of British Columbia which are tidal it is not competent to the legislature of British Columbia to authorize the Government of the province to grant by way of lease, license or otherwise the exclusive right of taking fish which, as *fera natura*, are the property of nobody until caught. The public right to take such fish being subject to the exclusive control of the Dominion Parliament it is immaterial whether the beds of tidal waters passed or did not pass to the Dominion in virtue of the transfer of the "Railway Belt."—As to waters within the "Railway Belt" which although non-tidal are in fact navigable, the legislature of British Columbia is likewise incompetent to make such grants.—It is not competent to the legislature of British Columbia to authorize the government of the province to grant, in the open sea within a marine league of the coast of that province, by way of lease, license or otherwise the exclusive right of taking such fish (*fera natura*).—In so far as concerns the authority of the legislature of British Columbia to authorize the government of the province to grant by way of lease, license or otherwise the exclusive right to take such fish (*fera natura*), in tidal waters, there is no difference between the open sea within a marine league of the coast of the province and the gulfs, bays, channels, arms of the sea and estuaries of the rivers within the province or lying between the province and the United States of America—Per Fitzpatrick, C.J., and Davies, Idington, Duff and Brodeur, JJ. (Anglin, J., expressing no opinion on the point).—The beneficial ownership of the beds of navigable non-tidal waters within the "Railway Belt" in British Columbia, which were vested in the Crown, in the right of that province, at the time of the transfer of the "Railway Belt lands" to the Dominion of Canada, passed to the Dominion in virtue of the transfer. *In re British Columbia Fisheries*, xlvii., 493.

35. *Company law—Foreign corporation—Conflict of laws—Incorporation by Dominion authority—Powers—B. C. "Companies Act"—Unlicensed extra-provincial companies—"Carrying on business"—Contract—Transactions beyond limits of province—Promissory notes—Right of action—Juristic disability—Construction of statute—(B. C.) 10 Edw. VII. c. 7, ss. 139, 166, 168.]—The "Companies Act" (B. C.) 10 Edw. VII. c. 7, ss. 139, 166, 168, prohibits companies incorporated otherwise than under*



the laws of British Columbia carrying on without registration or license in the province any part of their business; penalties are provided for doing so without provincial registration or license; and they are denied the right of maintaining actions, suits or proceedings in the courts of the province in respect of any contract made in whole or in part within the province in the course of or in connection with any business carried on contrary to the provisions of the Act. The appellant company, incorporated under the Dominion "Companies Act," R. S. C. 1906, c. 79, has its head-office in Winnipeg, Man., and did not become licensed under the B. C. "Companies Act." In February, 1911, the company entered into an agreement with A., who is domiciled in British Columbia, giving him the exclusive right to sell their goods in British Columbia in pursuance of which he ordered goods from the company to be shipped from Winnipeg to him, *f.o.b.* Calgary, Alta., assuming all risk and charges himself from that point to Elko, B.C., where the goods were to be received and sold by him. He gave the company his promissory notes, dated at Winnipeg, for the price of these goods, some of the notes being actually signed by him at Elko. In an action by the company to recover the amount of these notes, the trial judge held that the action was barred by the statute and could not be maintained by the company in any court in the Province of British Columbia. On an appeal, *per saltum*, to the Supreme Court of Canada, the judgment appealed from (8 D. L. R. 65; 2 West. W. R. 1013; 22 W. L. R. 243) was reversed, and it was—*Held*, *per* Fitzpatrick, C.J., and Davies, Duff, Anglin and Brodeur, J.J., that the transactions which had taken place between the company and A. did not constitute the carrying on of business by the company in the Province of British Columbia within the meaning of the B. C. "Companies Act" and, therefore, the disabilities imposed by that statute could have no effect in respect of the right of the company to recover the amount claimed in the action in the provincial court.—*Per* Idington, J.—As the exclusive jurisdiction in respect of bills of exchange and promissory notes has been assigned to the Parliament of Canada, under item 18 of section 91 of the "British North America Act, 1867," the word "contract" as used in section 166 of the B. C. "Companies Act," 10 Edw. VII. c. 7, cannot be considered as having any application to promissory notes; the plaintiffs' right of action in the provincial court was, therefore, not barred by the provincial statute. *John Deere Plow Co. v. Agnew*, xlvi., 208.

#### 8. NORTH-WEST TERRITORIES, ALBERTA AND SASKATCHEWAN.

36. *Appeal — Jurisdiction — Land Titles Act — "Torrens System" — Involuntary transfers — Registry laws — Confirmation of tax sale — Persona designata — Court of original jurisdiction — Interlocutory proceeding — Constitutional law — Conflict of laws — Legislative jurisdiction — Construction of statute — Retroactive effect — Redemption of land sold for taxes — Vesting of title —*

*Interest in lands — Equitable estate — N. W. T. Ord. 1896, c. 2; 1900, c. 10; 1901, cc. 12, 29 and 30 — 57 & 58 Vict. c. 28 (D.) — Practice — Form of order.*—The confirmation of a tax sale transfer by a judge of the Supreme Court of the North-West Territories, under s. 97 of the "Land Titles Act, 1894," is a matter of proceeding originating in a court of superior jurisdiction, and an appeal will lie to the Supreme Court of Canada from a final judgment of the full court affirming the same. *City of Halifax v. Reeves* (23 Can. S. C. R. 340) followed. *Sedgewick and Killam, J.J. contra.*—The provisions of the N. W. T. ordinance, c. 2, of 1896, vesting titles of lands sold for taxes in the purchaser forthwith upon the execution of the transfer thereof free of all charges and incumbrances other than liens for existing taxes and Crown dues, are inconsistent with the provisions of the 54th, 59th and 97th sections of the "Land Titles Act, 1894," and, consequently, *pro tanto, ultra vires* of the Legislature of the North West Territories. *Sedgewick and Killam, J.J., contra.*—The second section of the N. W. T. ordinance, c. 12 of 1901, providing for an extension of the time for redemption of lands sold for taxes, deals with procedure only and is retrospective and saves the rights of mortgagees prior to the tax sale so as to permit them to come in as interested persons and redeem the lands. *Sedgewick and Killam, J.J., contra. The Ydan* (15 Times L. R. 361) referred to. *In re Kerr* (5 Terr. L. R. 297) overruled. *Per* *Sedgewick and Killam, J.J.*—The provisions of the said section 2 cannot operate retrospectively so as to affect cases in which the transfers had issued and the right of redemption was gone as in the present case. *North British Canadian Investment Co. v. Trustees of St. John School District No. 16, N. W. T., xxxv., 461.*

37. *Constitutional law — British North America Act, 1867 — Provincial legislative jurisdiction — "Alberta Act," 4 & 5 Edw. VII. c. 3 (D.) — Con. Ord. N. W. T. (1898), c. 52 — 6 Edw. VII. c. 28 (Alta.) — Medical profession — Practising without license — Criminal law — Practice — Special leave to appeal — R. S. C. (1906), c. 139, s. 37 (c.)*—The "Medical Profession Act," 6 Edw. VII. c. 28 (Alta.), is *intra vires* of the legislative jurisdiction of the Legislature of Alberta and a member of the College of Physicians and Surgeons of the North-West Territories may be validly convicted thereunder for the offence of practising medicine, surgery, etc., for gain and reward, in the Province of Alberta, without complying with its requirements as to registration and license, notwithstanding that the College of Physicians and Surgeons of the North-West Territories had not been previously dissolved and abolished by order of the Governor in Council, in conformity with the provisions of s. 16 (3) of "The Alberta Act." *Dobie v. The Temporalities Board* (7 App. Cas. 136), distinguished. *Lafferty v. Lincoln*, xxxviii., 620.

38. *Railways — Legislative jurisdiction — Application of statute — "The Prairie Fire Ordinance" — Con. Ord. N. W. T. (1898) c. 87, s. 2 — N. W. T. Ord. 1903, c. 25 (1st*



sess.) and c. 30 (2nd sess.)—Works controlled by Parliament—Operation of Dominion Railway.]—The provisions of s. 2, s.-s. (2), of s. 87, Con. Ord. N. W. T. (1898), as amended by the N. W. T. Ordinances, c. 25 (1st sess.) and c. 30 (2nd sess.) of 1903, in so far as they relate to fires caused by the escape of sparks, etc., from railway locomotives, constitute "railway legislation," strictly so-called, and, as such, are beyond the competence of the Legislature of the North-West Territories. *The Canadian Pacific Railway Co. v. The Parish of Notre Dame de Bonsecours* ((1899) A. C. 367), and *Madden v. The Nelson and Fort Sheppard Railway Co.* ((1899) A. C. 626), referred to.—The judgments appealed from were reversed. *Idington, J.*, dissenting, *Canadian Pacific Ry. Co. v. The King*, xxxix., 476.

AND SEE INSURANCE, FIRE.

39. Construction of statute — "Alberta Local Improvement Act," 7 Edw. VII. c. 11, and amendments—"B. N. A. Act, 1867," s. 125—53 Vict. c. 4 (D.)—Assessment and taxation.]—Provincial legislatures may authorize the taxation of beneficial or equitable interests acquired in lands wherein the Crown, in the right of the Dominion of Canada, holds some interest and the legal estate. The legislature of a province may provide for the levy and collection of taxes so imposed by the transfer of the interests affected by such taxes. *Calgary & Edmonton Land Co. v. Attorney-General of Alberta*, xlv., 170.

40. Railways—Powers of construction and operation — Conflict of laws — Provincial legislation — Interference with Dominion railways—Jurisdiction of legislature—Construction of statute—7 Edw. VII. c. 8, s. 82 (Alta.) — 2 Geo. V. c. 15, s. 7 (Alta.) — "B. N. A. Act, 1867," ss. 91 and 92.]—It is not competent to the Legislature of the Province of Alberta to enact legislation authorizing the construction and operation of railways in such a manner as to interfere with the physical structure or with the operation of railways subject to the jurisdiction of the Parliament of Canada. — *Brodeur, J.*, *contra*, was of the opinion that such legislation would be within the jurisdiction of the provincial legislature provided that in its effect there should be no unreasonable interference with federal railways. *Re Alberta Railway Act*, xlviii., 9.

41. Criminal law—Legislation respecting Orientals—Chinese places of business—Employment of white females—Statute—2 Geo. V. c. 17 (Sask.)—"B. N. A. Act, 1867," ss. 91, 92—Local and private matters—Property and civil rights—Naturalized British subject—Conviction under provincial statute.]—The provisions of the statute of the Province of Saskatchewan, 2 Geo. V. ch. 17, containing a prohibition against the employment of white female labour in places of business and amusement kept or managed by Chinamen, sanctioned by fine and imprisonment, is *intra vires* of the Provincial Legislature. *Union Colliery Co. v. Bryden* ([1899] A. C. 580), and *Cunningham v.*

*Tomey Homma* ([1903] A. C. 151), referred to.—*Per Duff, J.*—The imposition of penalties for the purpose of enforcing the provisions of a provincial statute does not, in itself, amount to legislation on the subject-matter of criminal law within the meaning of item 27 of the 91st section of the "British North America Act, 1867." *Hodge v. The Queen* (9 App. Cas. 117), *The Attorney-General of Ontario v. The Attorney-General for the Dominion* ([1896] A. C. 348), and *The Attorney-General of Manitoba v. The Manitoba License Holders' Association* ([1902] A. C. 73), referred to. — The judgment appealed from (4 West. W. R. 1135) was affirmed, *Idington, J.*, dissenting.—(Leave to appeal to the Privy Council refused, 19th May, 1914.) *Quong-Wing v. The King*, xlix., 440.

42. Assessment and taxes — Lease of Crown lands—Interest of occupier—Exemption from taxation—Construction of statute — "B. N. A. Act, 1867," s. 125—(Sask.) 6 Edw. VII. c. 36, "Local Improvements Act" —(Sask.) 7 Edw. VII. c. 3, "Supplementary Revenue Act" — Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts.]—The Saskatchewan statutes, 6 Edw. VII. c. 36 ("The Local Improvements Act") and 7 Edw. VII. c. 3 ("The Supplementary Revenue Act") and their amendments, authorizing the taxation of interests in Dominion lands held by persons occupying them under grazing leases, or licenses from the Minister of the Interior, are not in contravention of the provision of section 125 of the "British North America Act, 1867," exempting from taxation all lands or property belonging to the Dominion of Canada; consequently, these enactments are *intra vires* of the provincial legislature. *The Calgary and Edmonton Land Co. v. The Attorney-General of Alberta* (45 Can. S. C. R. 170), followed.—For the purposes of the collection of taxes so levied the provincial legislature may authorize their recovery by personal action, as for debt, against persons so occupying such lands, in the civil courts of the province, notwithstanding that the residences of such persons may be outside the limits of the province.—The judgment appealed from (24 West. L. R. 903; 4 West. W. R. 1219) was affirmed. *Smith v. Rural Municipality of Vermilion Hills*, xlix., 563.

43. Constitutional law—Imperial Acts in force in Yukon Territory—2 & 3 Vict. c. 11 (Imp.)—R. S. C. c. 50—Title to land—"Torrens System"—Transfer by registered owner — Notice of *lis pendens* — Irregular registration—Indorsements upon certificate of title — Construction of statute — "Land Titles Act, 1894"—Caveat—57 & 58 Vict. c. 28, s. 126 (D.)—61 Vict. c. 32, s. 14 (D.)] — The provisions of the Imperial Act, 2 & 3 Vict. c. 11, in respect to the registration of notices of *lis pendens* and for the protection of *bonâ fide* purchasers *pendente lite* are of a purely local character and do not extend their application to the Yukon Territory by the introduction of the English law generally as it existed on the fifteenth of July, 1870, under the eleventh

section of the "North-West Territories Act," R. S. C. c. 50. *Syndicat Lyonnais du Klondyke v. McGrade*, xxxvi., 251.

AND see YUKON TERRITORY.

44. *Appeal — Jurisdiction—Discretion of Governor in Council—Stated case—Railway subsidies—Construction of statute—3 Edw. VII. c. 57—Conditions of contract—Estimating cost of construction of line of railway—Rolling stock and equipment*, xxxviii., 137.

See RAILWAYS.

45. *Legislative jurisdiction — Constitutional law—Incorporation of companies — Private bill — Property and civil rights — Construction of statute*, *Cout. Cas.* 48.

See LEGISLATION.

46. *Habeas corpus — Criminal law—Jurisdiction of judge of Supreme Court of Canada — Issue of writ out of jurisdiction of provincial courts — Concurrent jurisdiction — R. S. C. (1886) c. 135, s. 32—Construction of statute — Powers of Parliament — "Inland Revenue Act" — Selling and delivering a still and worm" — Cumulative charge — Summary conviction — Adjournment — Conviction in absence of accused*, *Cout. Cas.* 110.

See HABEAS CORPUS.

47. *Tramway — Provincial railway — "Through traffic" — Legislative jurisdiction—Powers of Board of Railway Commissioners — Construction of statute.] — Per Fitzpatrick, C.J., and Girouard and Duff, JJ.—The provisions of sub-section (b) of section 8, c. 37, R. S. C. 1906 ("The Railway Act") are ultra vires of the Parliament of Canada. *Montreal St. Ry. Co. v. City of Montreal; Montreal St. Ry. Co. v. Montreal*, xliiii., 197.*

48. *Board of Railway Commissioners—Jurisdiction — Lands of provincial railway company—Undertaking for general advantage of Canada—Transfer of provincial railway—Construction of statute — "Railway Act," R. S. C. 1906, c. 37, s. 176. *Mont. Tram. v. Lachine*, i., 84.*

49. *Board of Railway Commissioners — Jurisdiction — Lands of provincial railway company—Undertaking for general advantage of Canada—Transfer to provincial railway—Construction of statute — "Railway Act," R. S. C. 1906, c. 37, s. 176, i., 84.*

See RAILWAYS.

50. *Company — Dominion corporation—Provincial registration — Juristic disability — Right of action—Contract—Carrying on business within province—Legislative jurisdiction—R. S. Sask. 1909, c. 73, ss. 3, 10—Non-compliance with S. C. Rules — *Costs. Linde Refrig. v. Sask. Creamery*, li., 400.*

51. *Company — Dominion corporation — Provincial registration — Juristic disability — Right of action—Contract—Carrying on business within province—Legislative jurisdiction—R. S. Sask. 1909, c. 73, ss. 3, 10—*

*Non-compliance with S. C. Rules—Factum*, li., 400.

See COMPANY.

52. *Railways — Negligence—Construction of statute—"Railway Act," R. S. C. 1906, c. 37, s. 306—"Civil rights"—Jurisdiction of Dominion Parliament—Provincial legislation — "Employers' Liability Act," R. S. M. 1913, c. 61 — Paramount authority — "Operation of railway" — Limitations of actions—Conflict of laws*, liv.

See RAILWAYS.

53. *Succession duties — Partnership property — Owners not domiciled in Province — Interest of deceased partner—R. S. B. C. 1911, c. 217, s. 5, s.s. 1a—Taxation—Legislative jurisdiction—"B. N. A. Act, 1867," s. 92, liv., 532.*

See SUCCESSION DUTIES.

54. *Constitutional law—Government railways—Governor in Council—Regulations—Statutory provisions. *Belanger v. The King**, liv., 265.

See RAILWAYS, 2.

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## CONTRACT.

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## 1. BREACH OF CONTRACT.

1. *Mandate—Principal and surety—Negligence — Laches — Release of surety — Mortgage — Pledge — Construction of contract — Principal and agent — Arts. 1570, 1959, 1966, 1973, C. C.*—Upon the execution of a deed of obligation and hypothec, the plaintiffs became sureties for the debtor and, for further security, the debtor assigned and delivered to the mortgagee, by way of pledge, a policy of assurance upon his life for the amount of the loan. One of the clauses of the deed provided "for further securing the repayment of the said loan, interest and accessories and premiums of insurance on the said life policy" that the debtor and sureties "by way of pledge *à titre d'antichrèse*, transferred and made over unto the said lender" certain constituted rents and seigniorial dues. The deed further provided that the actual agent of the seignior should remain agent until the loan should be repaid with interest and insurance premiums disbursed by the creditor, and that the creditor should have the right to dismiss said agent should he fail to make out of the revenues of the seignior and remit to the creditor the amount necessary for the payment of such interest and insurance premiums. It further provided that the lender should not be responsible to the debtor and sureties for the agent's acts, the debtor and sureties assuming responsibility therefor. The judgment appealed from found, as facts, that the sureties had made a provision in the hands of the creditor for the purpose of payment of the premiums out of the revenues assigned, that for such purposes, the creditor had become the mandatory of the sureties and responsible for the due fulfilment of such mandate, and that there were sufficient funds derived from such revenues to pay a renewal premium which fell due shortly before the death of the debtor, and of which payment had been omitted to be made through some neglect or fault of the creditor in obtaining the funds therefor from the agent. In consequence of this failure to pay the premium the benefit of the policy was lost:—*Held*, affirming the judgment appealed from (Q. R. 13 K. B. 329), Idington, J., dissenting, that the deed contemplated the payment of the premiums by the creditor out of the funds assigned; that the creditor had failed to use proper diligence in respect to the payment of the premiums, and that the sureties were, therefore, entitled to be discharged *pro tanto*, and the property pledged released accordingly. *Trust and Loan Company of Canada v. Wurtele*, xxxv., 663.

2. *Pleading — Cross-demand—Compensation—Arts. 3, 203, 215, 217, C. P. Q.—Practice—Damages—Construction—Penal clause, Arts. 1076, 1187, 1188 C. C.—Estoppel—Waiver.*—A debt which is not clearly liquidated and exigible cannot be set off in compensation of a claim upon a promissory note except by means of a cross-demand made under art. 217 of the Code of Civil Procedure of the Province of Quebec. Judgment appealed from affirmed, Nesbitt and Idington, J.J., dissenting. — By a clause in a contract for the construction of works, the completion thereof was undertaken

within a specified time, and in default of completion as stipulated, it was agreed that the contractor should pay "as liquidated damages, and not as a penalty, the sum of fifty dollars for every subsequent day until the completion." The works were not completed within the time limited, and, in consequence, both parties joined in a petition to a municipal corporation for extension of the time during which subsidies it had granted towards the cost of the works could be earned. The petition was granted and the works were completed within the extension of time allowed by the corporation:—*Held*, Nesbitt and Idington, J.J., dissenting, that damages, accruing under the clause in question did not, upon mere default, become sufficiently liquidated and ascertained so as to be set off in compensation against a claim upon a promissory note.—*Held*, per Girouard and Davies, J.J. (Nesbitt and Idington, J.J., *contra*), that by joining in the petition for extension of time the party in whose favour the penal clause might take effect had waived the right to claim damages thereunder during the period of the extension so obtained in the interests of both parties to the contract. *Ottawa, Northern & Western Railway Co. v. Dominion Bridge Co.*, xxxvi., 347.

3. *Breach of contract—Breach of trust—Assessment of damages — Sale of mining areas—Promotion of company—Failure to deliver securities—Principal and agent—Account—Evidence—Salvage — Indemnity for necessary expenses—Laches—Estoppel.*—The plaintiffs transferred certain mining areas to the defendant in order that they might be sold together with other areas to a company to be incorporated for the purpose of operating the consolidated mining properties, the defendants agreeing to give them a proportionate share of whatever bonds and certificates of stock he might receive for these consolidated properties upon the flotation of the scheme then being promoted by him and other associates. In order to hold some of the areas it became necessary to borrow money, and the lender exacted a bonus in stock and bonds which the defendant gave him out of those he received for conveyance of the properties to the company. After deducting a ratable contribution towards this bonus, the defendant delivered to the plaintiffs the remainder of their proportion of stock and bonds, but did not then inform them that such deductions had been made, and they, consequently, made no demand upon him for the balance of the shares and bonds until some time afterwards when they brought the action to recover the securities or their value.—*Held*, affirming the judgment appealed from, that whether the defendant was to be regarded as a trustee or as the agent of the plaintiffs, he was not entitled, without their consent, to make the deductions, either by way of salvage or to indemnify himself for expenses necessarily incurred in the preservation of the properties; and that, under the circumstances, their failure to demand delivery of the remainder of the securities before action did not deprive the plaintiffs of their right to recover.—If the defendant is to be considered a trustee, wrongfully withholding securities which he was bound

to deliver, he is liable for damages calculated upon the assumption that they would have been disposed of at the best price obtainable. If, however, he is to be regarded as a contractor who has failed to deliver the securities according to the terms of his agreement, he is liable for damages based on the selling price of the securities at the time when his obligation to deliver them arose. *Nant-Y-Glo and Blaina Ironworks Co. v. Grave* (12 Ch. D. 738); *The Steamship Carrisbrooke Co. v. The London and Provincial Marine and General Ins. Co.* ([1901] 2 K. B. 861) and *Michael v. Hart & Co.* ([1902] 1 K. B. 482) followed. *McNeil v. Fultz*, xxxviii., 198.

4. *Account — Statute of limitations — Agents or partners — Reference.*] — By agreement between them, the Hamilton Brass Mfg. Co. was appointed agent of the Barr Cash Co. for sale and lease of its carriers in Canada at a price named for manufacture; net profits to be equally divided and quarterly returns to be furnished, either party having liberty to annul the contract for non-fulfilment of conditions. The agreement was in force for three years when the Barr Co. sued for an account, alleging failure to make proper returns and payments: — *Held*, reversing the judgment of the Court of Appeal, Girouard and Davies, JJ., dissenting, that the accounts should be taken for the six years preceding the action only. *Hamilton Brass Manufacturing Co. v. Barr Cash and Package Carrier Co.*, xxxviii., 216.

AND SEE PRACTICE.

5. *Breach of contract — Conspiracy — Fraud — Assessment of damages.*] — In an action for the price of pills manufactured according to a special formula, supplied by defendants, under a contract with a condition that the formula should not be used or sold to persons other than defendants, the defendants denied liability and counter-claimed for damages for breach of this condition and conspiracy by the plaintiffs with persons who had infringed their trade-mark and injured their business. The action was maintained in part, without costs, and the incidental demand sustained in respect to damages for loss of profits through sales of the pills to others, and expenses of obtaining evidence as to the breach of contract, with costs, but the counterclaim was disallowed in respect to other expenses in the prosecution of the conspirators; it was also found that the plaintiffs had not participated in the conspiracy. On an appeal from the judgment of the Court of King's Bench, affirming this decision, the majority of the judges of the Supreme Court upheld the decision, Davies and Macleuan, JJ., dissenting, in respect to the damages allowed for the loss of profits in consequence of the sale of pills in breach of the contract. *Wampole v. Simard*, xxxix., 160.

6. *Breach of contract — Measure of damages — Notice of special circumstances — Collateral enterprises — Loss of primary and secondary profits — Costs.*] — The plaintiffs sold defendant a boiler to be used in a mill to be set up in connection with his lumber-

ing operations and guaranteed its efficiency for that purpose. When delivered, it proved inefficient, and, while necessary alterations and repairs were being made, two months elapsed during which the defendant was deprived of the use of his mill, was obliged to keep a gang of men idle and under expense for wages and board, and, in unsuccessfully attempting to carry on his operations, temporarily hired another boiler. On being sued for the price of the boiler, the defendant counterclaimed for damages and, at the trial, was awarded \$427.11, being \$277.11 for wages, board and expenses incurred in consequence of the failure of the boiler to satisfy the guarantee, and also \$150 for damages for the "loss of the use of the mill." By the judgment appealed from the first item for wages, etc., was rejected, and the item for "loss of the use of the mill" only allowed: — *Held*, per Fitzpatrick, C.J., and Davies and Macleuan, JJ. (Idington, J., *contra*), that, as the loss of primary profits directly resulting from the breach of the contract only should have been allowed, the item of \$150 for loss of anticipated profits should be rejected as being merely secondary, speculative and uncertain; but that the item assessed by the trial judge in respect of the wages, board and other expenses should be allowed, as they were direct and immediate results of such breach. — Duff, J., was of opinion that the appeal should be allowed and the judgment by the trial judge restored. — The judgment appealed from was reversed with costs, and the judgment at the trial restored to the extent of \$277.11, but, in the special circumstances of the case, no costs were allowed in respect of the appeal to the court below. *Corbin v. Thompson*, xxxix., 575.

7. *Share of profits — Absolute or conditional undertaking — Constructing of contract — Damages.*] — A contract between W. and B. recited that W. owned land to be worked as a gravel-pit; that he was about to enter into contracts for supplying sand therefrom; and that he had requested B. to assist him financially to which B. had consented on certain conditions; it then provided that "the said W. is to enter into contracts as follows," naming five corporations and persons to whom he would supply sand to a large amount at a minimum price per yard; that B. would indorse W.'s note to the extent of \$5,000 and have 60 days to declare his option to take a one-fourth interest in the profits from said contracts, or purchase a one-third interest in the property and business; that each party would account to the other for moneys received and expended in connection with the property; that if either party wished to sell his interest he would give the other the first choice of purchase; and that "each of the parties hereto agrees to carry out this agreement to the best of his ability according to the true intent and meaning of the same, and to do what he can of mutual benefit to the parties hereto." B. indorsed notes as agreed. W. entered into two of the five contracts, sold a quantity of sand and then sold the property, without notice to B., who brought an action claiming his share of the profits that would have been earned if the five contracts had been entered into and

fully carried out.—*Held*, Fitzpatrick, C.J., and MacLennan, J., dissenting, that the undertaking by W. to enter into the five contracts was absolute and having by the sale put it out of his power to perform it he was liable to B., who was entitled to damages on the basis of the contracts having been carried out.—*Held*, also, Duff, J., *hesitante*, that the clause quoted did not modify the rigour of the absolute covenant by W. to procure these contracts in any event.—Judgment of the Court of Appeal (10 Ont. W. R. 732) reversed, and the judgment of the Divisional Court (9 Ont. W. R. 48) reversing that of Anglin, J. (8 Ont. W. R. 4) restored. *Battle v. Wil- low*, xl., 198.

8. *Waterworks—Statutory contract—Exclusive franchise—Condition of defeasance—Forfeiture of monopoly—Demurrer—Right of action by municipality—Rescission—Art 1065 C. C.—40 Vict. c. 68 (Que.)*.—By the Quebec statute, 40 Vict. c. 68, Louis Molléur and others, now represented by the defendants, were substituted as sole owners of the waterworks of St. John's in the place of "The Waterworks Co. of St. John's," incorporated under R. S. C. (1859) c. 65, charged with all the obligations and responsibilities of said company, and, by the said Act, 40 Vict. c. 68, the new proprietors were granted the exclusive right and privilege of placing pipes or water conduits under the streets and squares of the Town of Saint John's (now the City of St. John's, the appellant), under certain other conditions and obligations in the last mentioned statute recited, and the monopoly created was, by s. 3, liable to be forfeited in case of neglect or refusal in discharging the obligations thereby imposed.—*Held*, that the contract existing between the parties, in virtue of the above recited statutes, was liable to rescission under the provisions of the 1065th article of the Civil Code of Lower Canada, upon default in the specific performance by the defendants of the obligations thereby imposed, and that, upon proof of default in the specific performance of any of the said obligations, the municipal corporation was entitled to maintain an action in its corporate capacity to have the exclusive right and privilege granted by the statute declared forfeited, surrendered and annulled, without the necessity of joining in such action a demand for the rescission of the contract or for damages.—The judgment appealed from (Q. R. 16 K. B. 559) deciding that the action would lie only for breach of obligations expressly declared to involve forfeiture, was reversed, *Davies, J.*, dissenting. *Ville de St. Jean v. Molléur*, xl., 629.

9. *Contract of sale—Particular chattel—Representation*.—The plaintiffs were manufacturers of billiard tables at Toronto, and the defendants resided at Antigonish, Nova Scotia. The cause of action arose with respect to a contract entered into between them for the exchange of billiard tables. The defendants having previously purchased through an agent at a sale at auction held at Halifax, a billiard table of a size too large for them, which the defendants never had personally seen, opened negotiations with

the plaintiffs by letter for an exchange. To this the plaintiffs replied giving their terms, which the defendants by post-card refused to accept. Subsequently the plaintiffs reopened negotiations and asked defendants to give as near a description of their table as they could, to which M., acting for both defendants, replied: "I may just say I never saw our table yet, but am informed it is a very nice one, etc." The gentleman who purchased the table for us writes thus: "I am told that the table is a great bargain, cost £200 in England, etc." The table is 6 x 12, and for particulars we would refer you to Jerry F. Kenny, Esquire, of F. D. Clarke, auctioneer, Halifax." To this plaintiffs replied accepting the offer, adding: "We trust that the English table is fully as represented." The tables were sent to their respective destinations. On receipt of the defendants' table, the plaintiffs wrote refusing to accept it on the ground that the table received was an old, out-of-date, American table, and claiming that they had been defrauded in the matter by the defendants. The latter replied, saying, "I complied with the conditions of our bargain. I referred you at the time to Mr. Kenny and the auctioneer, and gave you the information I had about the table which you took in exchange for the one sent me. I acted in good faith." The trial judge found in favour of the plaintiffs, but his judgment was reversed by the full court, and the action dismissed, *McDonald, C.J.*, dissenting. On appeal to the Supreme Court of Canada.—*Held*, reversing the judgment of the court below and restoring the judgment at the trial, that McD. agreed to deliver to M. & Co. an English built table made by Thurston as described in his letter and having failed to deliver such a table he was liable to pay the full price of the one obtained from M. & Co. *May & Co. v. McDougall* (xviii., 700), *Cam. Cas.* 449.

10. *Agreement for sale of land—Deferred conveyance—Default in payment—Remedy of vendor—Reading "or" as "and."*—Where, in accepting an offer by V. for the sale of land, C. undertook to pay certain instalments of the purchase money before receiving the deed V. could sue for recovery of unpaid instalments, his remedy not being confined to an action in damages for breach of contract. *Laird v. Pim* (7 M. & W. 474), distinguished. — The offer having been accepted by C. for "myself or assigns," to avoid holding the contract void for uncertainty as to the purchaser's identity, the word "or" was read as "and." *Idington, J.*, dissenting, on this point. Judgment of the Court of Appeal (16 Ont. L. R. 372), maintaining that of a Divisional Court (15 Ont. L. R. 280), affirmed. *Clergue v. Vivian & Co.*, xli., 607.

11. *Contract—Right to assign—Contracting firm becoming incorporated company—Novation—Breach of contract—Damages*.—On appeal from the judgment of the Court of Appeal for British Columbia, 15 B. C. Rep. 225, dismissing an appeal, *Irving, J.*, dissenting, from the judgment of *Clement, J.*, at the trial, by which the plaintiffs' (respondents') action for damages for breach of contract was maintained with costs and the counterclaim of the defendants (appel-

lants) was dismissed with costs, the appeal was dismissed with costs. *Canadian Pacific Lumber Co. v. Paterson Timber Co. et al.*, xlvii., 398.

12. *Construction of building — Work and materials—Faulty work—Extras — Dismissal. Metallic Roofing Co. v. City of Toronto*, xxxvii., 692.

13. *Shipping — Time limit for loading—Custom—Charter*, xxxiv., 578.

See SHIPS AND SHIPPING.

14. *Subaqueous mining — Crown grants—Dredging lease — Breach of contract—Subsequent issue of placer mining licenses — Damages — Pleading and practice — Statement of claim — Demurrer — Cause of action*, xxxviii., 542.

See MINES AND MINING.

15. *Landlord and tenant — Negligence—Master and servant—Acts in course of employment—Alterations in plumbing—Damage by steam, etc.—Responsibility of contractors—Control of premises—Cross-appeal between respondents—Practice*, xxxix., 265.

See LANDLORD AND TENANT.

16. *Negligence — Electric lighting—Dangerous currents — Trespass—Breach of contract—Surreptitious installations — Liability for damages*, xxxix., 326.

See NEGLIGENCE.

17. *Admiralty law — Jurisdiction of the Echequer Court of Canada — Claim under mortgage on ship—Action in rem—Pleading—Abatement of contract price — Defects in construction—Damages*, xl., 418.

See SHIPS AND SHIPPING.

18. *Construction of contract — Traffic agreement — Furnishing cargoes — Freight rates—Failure to find full cargoes—Vis major—Damages. Great Northern Railway Co. v. Furness, Withy & Co.*, xlii., 234.

19. *Breach of contract—Place of performance—Foreign judgment — Action. Canada Wood Specialty Co. v. Moritz*, xliii., 237.

20. *Insolvent company—Sale of assets by liquidator—Sale "free from incumbrances" —Conversion—Breach of contract—Dominion Linen Co. v. Langley*, xlvi., 633.

21. *Watercourses — Driving timber — "Damages resulting" — Reparation—Riparian rights—Construction of statute—Arts. 7298, 7349 R. S. Q. 1909—Servitude—Injury caused by independent contractor—Liability of owner of timber. Dumont v. Fraser*, xlviii., 137.

See RIVERS AND STREAMS.

## 2. CARRIERS.

22. *Shipping — Time limit for loading—Loading at port — Custom—Obligation of charterer.*—A ship, by the terms of the charter, was to load grain at Fort William before noon of December 5th:—*Held*, per Taschereau, C.J., and Davies, J. (Girouard and Nesbitt, J.J., dissenting), that to load at

Fort William meant to load at the elevator there; that the obligation of the ship-owner was to have the vessel placed under the elevator in time to be loaded before the expiration of the time limit; and where, finding several vessels ahead of him, the captain saw that he could not be loaded by the time fixed, and left to save insurance, the obligation was not fulfilled and the owner could not recover damages.—*Per Killam, J.*—The contract would have been fulfilled if the vessel had arrived at Fort William in time to load under the conditions which might be supposed to exist on arrival.—Judgment appealed from (6 Ont. L. R. 432), affirmed. (Leave to appeal refused by Privy Council, July, 1904.) *Midland Navigation Co. v. Dominion Elevator Co.*, xxxiv., 578.

23. *Street railway — Carriage of passengers—Contract—Continuous passage.*—The plaintiff wished to proceed to a certain part of Halifax and, when a car came along labelled as going in the required direction, boarded a trailer attached to it which, however, was not so labelled. There was an unusual amount of travel on the street cars that day and when the car containing plaintiff had proceeded a certain distance it was stopped and the passengers informed that it would not go farther in that direction. The plaintiff insisted on his right to be carried to his destination in that car, refused a transfer and hired a cab. In an action for damages, the courts below held (38 N. S. Rep. 212), that there was no obligation on the company's part to carry plaintiff to his destination on that particular car, that it was his duty to inquire of the conductor and ascertain where such car was going, and he could not recover. This judgment was affirmed. Idington, J., dissenting. *O'Connor v. Halifax Tramway Co.*, xxxvii., 523.

24. *Railways — Carriage of passenger—Special contract—Notice to passenger of conditions — Negligence — Exemption from liability.*—P., at Milverton, Ont., purchased a horse for a man in another town who sent R. to take charge of it. P. signed the way-bill in the form approved by the Board of Railway Commissioners, which contained a clause providing that if the consignee or his nominee should be allowed to travel at less than the regular fare to take care of the property the company should not be liable for any injury to him whether caused by negligence or otherwise. R. was not asked to sign the way-bill though a form indorsed provided for his signature and required the agent to obtain it. The way-bill was given to R., who placed it in his pocket without examining it. On the passage he was injured by negligence of the company's servants:—*Held*, that R. was not aware that the way-bill contained conditions.—*Held*, also, Fitzpatrick, C.J., dissenting, that the company had not done all that was incumbent on them to bring notice of the special condition to his attention.—Judgment of the Court of Appeal (27 Ont. L. R. 290), reversed and that of the trial judge (26 Ont. L. R. 437), restored. *Robinson v. Grand Trunk Railway Company*, xlvii., 622.

25. *Railways — Shipping—Carrying person in charge of live stock—Free pass—Release from liability—Approved form—Negli-*

gence — Action by dependents—Conflict of laws—“*Railway Act*,” R. S. C., 1906, c. 37, s. 340.]—The shipping bill for live stock, to be carried from Manitoba to its destination in the province of Quebec, was in a form approved by the Board of Railway Commissioners and provided that, if the person in charge of the stock should be carried at a rate less than full passenger fare on the train by which the stock was transported, the company should be free from liability for death or injury whether caused by the negligence of the company or of its servants. C. travelled by the train in charge of the stock upon a “Live-Stock Transportation Pass” and signed conditions indorsed in English thereon by which he assumed all risks of injury and released the company from liability for damages to person or property while travelling on the pass, whether caused by negligence or otherwise. While the train was passing through the Province of Ontario, an accident happened through the negligence of the company’s employees and C. was killed. In an action by his dependents, instituted in the Province of Quebec, it was shewn that C. could neither read nor write, except to sign his name, and that he only understood enough English to comprehend orders in respect of his occupation as a stock-man: there was no evidence that the nature of the conditions was explained to him:—*Held* (Fitzpatrick, C.J., dissenting), that the railway company was liable for damages in the action by the dependents.—*Per* Davies, Idington, Duff and Brodeur, J.J. (Fitzpatrick, C.J. and Anglin, J. *contra*), that, as C. could not have known the nature of the conditions or that they released the company from liability, and the company had not done what was reasonably sufficient to give him notice of the conditions on which he was being carried, the company was liable in damages either under the law of Ontario or that of Quebec.—*Per* Anglin, J.—Although no action would lie in Ontario unless the deceased would have had a right of action, had he survived, and such an action would have been barred there by the contract signed by him, nevertheless, in Quebec, where there is no such rule of law, the action would lie, though the wrongful act had been committed in Ontario, as it was of a class actionable in Ontario. *Machado v. Fontes* ((1897) 2 Q. B. 231) applied.—Section 340 of the “*Railway Act*,” R. S. C. 1906, c. 37, provides that “no contract, condition, . . . or notice made or given by the company impairing, restricting or limiting its liability in respect of the carriage of any traffic shall . . . relieve the company from such liability unless such class of contract . . . shall have been first authorized or approved by order or regulation of the Board. (2) The Board may, in any case or by regulation, determine the extent to which the liability of the company may be so impaired, restricted or limited.” The Board of Railway Commissioners made an interim order permitting the use by the company, until otherwise determined, of the shipping form used, but did not expressly authorize the form containing the conditions signed by deceased.—*Held*, *per* Fitzpatrick, C.J., and Davies and Anglin, J.J. (Idington, Duff and Brodeur, J.J., *contra*), that the contract signed by deceased was one of a class

of contracts authorized by the Board.—*Per* Duff, J.—The contract signed by deceased could not have the effect of limiting the liability of the company in respect of death because it was not in a form authorized or approved by the Board of Railway Commissioners and there had been no order or regulation made by the Board expressly determining the extent to which the company’s liability should be impaired, restricted or limited as provided by sub-section 2 of section 340 of the “*Railway Act*.”—Judgment appealed from, affirming the judgment of the Superior Court (Q. R. 46 F. J. 319) affirmed. *Canadian Pacific Railway Co. v. Parent*, li., 234.

26. *Carriers by water—Special contract—Exemption from liability—Construction of terms—“At the owner’s risk.”—“Baggage” —Willful misconduct—Damages*, Cam. Cas. 66.

See CARRIERS.

27. *Railways — Negligence — Condition limiting liability—Contract to carry passenger*, Cam. Cas. 10.

See RAILWAYS.

28. *Negligence—Carriers — Operation of railway—Defective system—Gratuitous passenger—Free pass—Limitation of liability —Employer and employee—Fellow servant —Evidence—Onus of proof*, xlv., 263.

See NEGLIGENCE.

### 3. CONDITIONS.

29. *Conditions of contract—Execution of works—Specifications—Dismissal of contractor—Value of work performed—Extras —Damages—Taking accounts — Costs.] — Where the condition of a contract in regard to claims for extras was not complied with, the court held that no such claim could be allowed, but, as the contractor had been improperly dismissed, an alternative claim for damages was allowed. *City of Toronto v. Metallic Roofing Co. of Canada*, Cout. Cas. 388.*

30. *Contract — Agreement in writing — Construction of terms—Sale of timber—Terms of payment.] — The appellant held rights in unpatented lands and agreed to sell the timber thereto to respondent, one of the conditions as to payment therefor being that, as soon as the Crown grant issued, the respondent should settle a judgment against the appellant which, they both understood, could at that time be purchased for \$500. On the issue of the grant, about six months afterwards, the judgment creditor refused to accept \$500 as full settlement at the latter date, and he took proceedings to enforce execution for the full amount. The execution was opposed on behalf of the appellant, the respondent becoming surety for the costs and being also made a party to the proceedings. — *Held*, affirming the judgment appealed from (10 B. C. Rep. 84), that the agreement to settle the outstanding judgment was not made unconditionally by the respondent, but was limited to settling it*



for \$500, after the issue of the Crown grant for the land.—*Held*, also, *Davies, J.*, dissenting, that the costs incurred in unsuccessfully opposing the execution of the judgment, upon being paid by the respondent, were properly chargeable against the appellant. *O'Brien v. MacKintosh*, xxxiv., 169.

31. *River improvements — Continuing damages—Protective works—Discretion of court below.*—Owing to the condition of the locality and the character of certain improvements made for the purpose of increasing the water power at Chambly Rapids, in the Richelieu River, the parties entered into an agreement respecting the construction of dams and other works at the *locus in quo*, and it was provided that the company should assume the responsibility and pay for all damages caused by "flooding of land, bridges or roads, if any, as well as all other damages caused" to the plaintiff "during or by reason of" the construction:—*Held*, reversing the judgment appealed from, that, under the agreement, the plaintiff could recover only such damages as he might suffer from time to time in consequence of the floods at certain seasons being aggravated by the constructions in the stream and that in the special circumstances of the case, the courts below erred in decreeing the construction of protective works, inasmuch as the company was entitled to take the risks on payment of indemnity as provided by the contract. *Chambly Manufacturing Company v. Willett*, xxxiv., 502.

AND see PRACTICE.

32. *Building contract — Condition precedent—Right of action.*—In a contract for the construction of works, it was provided that the works should be fully completed at a certain time, and that no money should be payable to the contractors until the whole of the works were completed. In an action by the contractors for the full amount of the contract price, the trial judge refused leave to amend the claim by adding a count for *quantum meruit*; he found that the works were still incomplete at the time of action, but entered judgment in favor of the plaintiffs for a portion of the contract price with nine-tenths of the costs. The defendant alone appealed from this decision, and the trial court judgment was affirmed by the Court of Review.—*Held*, reversing the judgment appealed from, that, as the whole of the works had not been completed at the time of the institution of the action, the condition precedent to payment had not been accomplished, and the plaintiff had no right of action under the contract. *Whiting v. Blondin*, xxxiv., 453.

33. *Life insurance—War risk—Service in South Africa—Extra premium—Special condition—Consideration for premium.*—Policies on the lives of members of the fourth contingent for the war in South Africa were issued and accepted on condition of payment in each case of an extra annual premium "whenever and as long as the occupation of the assured shall be that of soldier in army of Great Britain in time of war." Each policy also provided that the assured "has hereby consented to engage in

military service in South Africa in the army of Great Britain, any restriction in the policy contract to the contrary notwithstanding." The restrictions were against engaging in naval or military service without a permit and travelling or residing in any part of the torrid zone. The contingent arrived in South Africa after hostilities ceased and an action was brought against the company for return of the extra premium on the ground that the insured had never been soldiers of the army of Great Britain in time of war.—*Held*, *Girouard and Davies, J.J.*, dissenting, that the risk taken by the company of the war continuing for a long time, and the insurance remaining in force so long as the annual premiums were paid, was a sufficient consideration for the extra premium, and it could not be recovered back.—*Held*, also, that the permission to engage in war in South Africa was a waiver of the restriction against travelling in the torrid zone. (Leave to appeal to Privy Council refused, July, 1904.) *Provident Savings Life Assurance Society of New York v. Bellow*, xxxv., 35.

34. *Construction of contract—Implied covenant—Damages—New trial.*—The plaintiff entered into a contract with the City of St. John for 330 hours dredging, and for so much longer as the city might require by notice at the end of that period, to be paid for at a stated rate subject to deductions for time that the dredge was unable to work by reason of injury to the plant or machinery and interruptions caused by the state of the weather. Delays were caused on account of the water being too deep at high tides for the dredge to work, but, although both parties were aware that this interference would occur at high tides at the time the contract was made, there was no provision made for any allowance or deduction on that account. The Supreme Court affirmed the judgment appealed from (36 N. B. Rep. 411), held that a verdict for the plaintiff, returned on the construction that there was an implied covenant that the city should pay for the time lost by reason of the high tides was erroneous and, consequently, set it aside and ordered a new trial. *Connolly v. The City of Saint John*, xxxv., 186.

35. *Construction of agreement—Sole of goods—Refusal to deliver—Specific performance—Damages.*—By contract in writing M. agreed to sell to P. cedar poles of specified dimensions, the contract containing the following provisions: "All poles as they are landed in Arnprior are to be shipped from time to time as soon as they are in shipping condition. Any poles remaining in Arnprior over one month after they are in shipping condition to be paid for on estimate in thirty days therefrom less 2 per cent. discount. . . . For shipments cash 30 days from dates of invoices less 2 per cent. discount.—*Held*, that for poles not shipped P. was not obliged to pay on the expiration of one month after they were in shipping condition, but only after 30 days from receipt of the estimate of such poles.—N. refused to deliver logs that had been on the ground one month without previous



payment, and P. brought an action for specific performance and damages, claiming that he could not be called upon to pay until the poles were inspected and passed by him, and also that M. should supply the cars. M. counterclaimed for the price of the poles.—*Held*, Sedgewick and Killam, J.J., dissenting, that each party had misconceived his rights under the contract, and no judgment could be rendered for either. *Phelps v. McLachlin*, xxxv., 482.

36. *Railways — Branch lines—Canadian Pacific Railway Co.'s charter—44 Vict. c. 1 (D) and schedules — Construction of contract—Limitation of time — Interpretation of terms — “Lay out,” “Construct,” “Acquire” — “Territory of Dominion”—Hansard debates — Construction of statute — “The Railway Act, 1903.”*—The charter of the Canadian Pacific Railway Company (44 Vict. c. 1 (D.) and schedules thereto appended), imposes limitations neither as to time nor point of departure in respect of the construction of branch lines; they may be constructed from any point of the main line of the Canadian Pacific Railway between Callender Station and the Pacific seaboard, subject merely to the existing regulations as to approval of location, plans, etc., and without the necessity of any further legislation.—On a reference concerning an application to the Board of Railway Commissioners for Canada for the approval of deviations from plans of a proposed branch line under s. 43 of “The Railway Act, 1903,” it is competent for objections as to the expiration of limitation of time to be taken by the said Board, of its own motion, or by any interested party. *In re Branch Lines; Canadian Pacific Railway*, xxxvi., 42.

37. *Patent of invention — Infringement of patent—Sale for a reasonable price—Use of patented device—“Patent Act,” R. S. C. c. 61, s. 37—Evidence.*—The patentee of a device for binding loose sheets sold the defendant H. binders subject to the condition that they should be used only in connecting sheets supplied by or under the authority of the patentee. H. used the binders with sheets obtained from the other defendants, contrary to the condition. In an action for infringement of the patent:—*Held*, that the condition in the contract with H. imposing the restriction upon the manner in which he should use the binders was not a contravention of the provisions of s. 37 of the “Patent Act,” R. S. C. c. 61, in respect to supplying the patented invention at a reasonable price to persons desiring to use it, and that the use so made of the binders by H. was in breach of the condition of the contract licensing him to make use of the patented device and an infringement of the patent. Judgment appealed from (10 Ex. C. R. 224) affirmed. *Hatton v. Copeland-Chatterton Co.*, xxxvii., 651.

38. *Construction of contract—Sale of machinery—Agreement for lien—Delivery.*—The company sold R. an entire outfit of second-hand threshing machinery, for \$1,000, taking from him three so-called promissory notes for the entire price. Two days before giving the notes, R. had signed

an agreement setting out the bargain, in which the following provisions appeared—“And for the purpose of further securing payment of the price of the said machinery and interest . . . the purchaser agrees to deliver to the vendor, at the time of the delivery of the said machinery as herein provided or upon demand, a mortgage on the said lands (i.e., lands described at the foot of the agreement), in the statutory form containing also the special covenants and provisions in the mortgages usually taken by the vendors. And the purchaser hereby further agrees with the said vendors that the vendors shall have a charge and a specific lien for the amount of the purchase money and interest, or the said amount of the purchase price, less the amount realized, etc., should the vendors take and resell the said machinery . . . and any other land the purchaser now owns or shall hereafter own or be interested in, until the said purchase money and all costs, charges, damages and expenses, and any and all notes or renewals thereof, shall have been fully paid, and the said lands are hereby charged with the payment of the said purchase money, obligations, notes and all renewals thereof, and interest and all costs, charges, damages and expense as herein provided, and, for the purpose of securing the same, the purchaser hereby grants to the vendors the said lands . . . And, on default, all moneys hereby secured shall at once become due, and all powers and other remedies hereby given shall be enforceable.” In an action to recover the amount of the notes past due and to have a decree for a lien and charge upon the lands therefor under the agreement.—*Held*, reversing the judgment appealed from, that the right of the company to enforce the lien depended upon the interpretation of the whole contract; that the provision as to lien only became operative in the case of a complete delivery pursuant to the contract, and that the alternative words “or upon demand” must be taken as meaning upon a demand made after such complete delivery. *Rustin v. Fairchild*, xxxix., 274.

39. *Insurance — Sprinkler system—Damage from leakage or discharge—Injury from frost—Application — Interim receipt.*—A policy of insurance covered loss by leakage or discharge from a sprinkler system for protection against fire, but provided that it would not cover injury resulting, *inter alia*, from freezing. The water in a pipe connected with the system froze and the pipe having burst, damage was caused by the consequent escape of water:—*Held*, affirming the judgment of the Court of Appeal (14 Ont. L. R. 166), Davies, J., dissenting, that the damage did not result from freezing and the insured could recover on the policy.—In the Hawthorne case, the majority of the court dismissed the appeal on the same grounds. The policy in that case was sent to the brokers, who had applied for it on behalf of the assured shortly before, and the latter did not see it until the loss occurred.—*Held*, per Davies, J., that the contract of insurance was not contained in the policy, which the assured had no opportunity to accept, but in what took place between the brokers and the agent of the insurers on applying for it and, as the latter

informed the brokers that damage by frost was insured against, the insured could recover. *Canadian Casualty and Boiler Ins. Co. v. Boulter, Davies & Co., and Hawthorne & Co.*, xxxix., 558.

40. *Supply of electric light—Cancellation of contract—Condition for terminating service—Interest in premises ceasing—"Heirs"—"Assigns."*—The electric company and S. entered into an agreement for the supply of electric lighting in a hotel for ten years from 1st May, 1902, and it was provided that either party might cancel the agreement by notice in writing, if, after the expiration of five years, neither S. nor his heirs, executors, administrators or assigns should be owner, tenant or occupier of the hotel, alone or with other persons. The lease to S. extended only until 1st May, 1907; it gave him no right to a renewal, and he had no other interest in the building. He sold a half interest in the lease to two persons with whom he formed a partnership in the hotel business, which was carried on till 1904, when the partnership terminated by his death, and the defendants were appointed administrators of his intestate estate. The affairs of the partnership were settled between the defendants and the surviving partners who became transferees of the business, exclusive owners of the lease and sole occupants of the hotel for the unexpired term. The defendants gave notice to the plaintiffs to cancel the agreement on 1st May, 1907, and, on that date, the surviving partners obtained a new lease of the premises under which they continued in occupation and possession.—*Held*, that, after 1st May, 1907, the new tenants of the hotel were not assigns of S. and, consequently, the defendants were entitled to cancel the agreement for electric lighting by notice according to the proviso. *Deschênes Electric Co. v. Royal Trust Co.*, xxxix., 567.

41. *Sale of shares—Resolutive condition—Hypothecary security—Construction of contract—Rescission.*—By the judgment appealed from (Q. R. 18 K. B. 63), affirming the judgment of the Superior Court (Q. R. 30 S. C. 56), it was held that the acceptance of a proposal to purchase shares in a joint stock company for a price payable half in bonds and half in the stock of a new company to be formed to take over the business of the first mentioned company, on condition that the shares so sold should be deposited in trust as security for the payment of the bonds and that, so soon as all the shares of that company were so deposited and its real estate transferred to the new company, a mortgage on the real estate should be executed to secure payment of the bonds, was a sale subject to a resolutive condition to become complete and effective only in the event of the new company acquiring the property of the first company and executing the mortgage, and that, on breach of the condition respecting the security to be given for payment of the bonds, the sale became ineffective and should be rescinded.—On an appeal to the Supreme Court of Canada, the judgment appealed from was affirmed. *Dominion Textile Co. v. Augers*, xli., 185.

42. *Supplying electrical energy—Delivery—Condition—Payment at flat rate—Obligation to pay for pressure not utilized—Sale of commodity—Agreement for service.*—A contract for the supply of electrical energy provided that the company should furnish to the city at the switch-board in its pumping station, through a connection to be there made by the city with the company's wires, an electrical pressure equivalent to a certain number of horse-power units during specified hours daily, and the city agreed to pay for the same at a flat rate of "\$20 per horse-power per annum for the quantity of said electrical current or power actually delivered" under the contract.—*Held*, that by supplying the pressure on their wires up to the point of delivery the company had fulfilled their obligation under the contract and was entitled to payment at the flat rate per horse-power per annum for the energy so furnished notwithstanding that the city had not utilized it.—*Per Girouard and Anglin, J.J.*—The agreement was a contract for the sale of a commodity. *City of Montreal v. Montreal Light, Heat and Power Co.*, xlii., 431.

43. *Delivery of goods—Conditions as to quality, weight, etc.—Inspection—Rejection—Conversion—Sale by Crown officials—Liability of Crown—Deductions for short weight—Costs.*—The Minister of Agriculture of Canada entered into a contract with the suppliers for the supply of a quantity of pressed hay for the use of the British army engaged in the operations during the late South African war, the quality of the hay and the size, weight and shape of the bales being specified. Shipments were to be made f.o.b. cars at various points in the Province of Quebec to the port of Saint John, N.B., and were to be subject to inspection and rejection at the ship's side there by government officials. Some of the hay was refused by the inspector, as deficient in quality, and some for short weight in the bales. In weighing, at Saint John, fractions of pounds were disregarded, both in respect to the hay refused and what was accepted; there was also a shrinkage in weight and in number of bales as compared with the way-bills. The hay so refused was sold by the Crown officials without notice to the suppliers, for less than the prices payable under the contract, and the amount received upon such sales was paid by the government to the suppliers. In making payment for hay accepted, deductions were made for shortage in weights shown on the way-bills and invoices, and credit was not given for the discarded fractions.—*Held*, the Chief Justice and Davies, J., dissenting, that the appellants were entitled to recover for so much of the amount claimed on the appeal as was deducted for shrinkage or shortage in the weight of the hay delivered on account of the government weighers disregarding fractions of pounds in the weight of that accepted and discharged from the cars at Saint John.—*Per Girouard, Idington and Duff, J.J.*—The manner in which the government officials disposed of the hay so refused amounted to an acceptance which would render the Crown responsible for payment therefor at the contract price.—

Judgment appealed from (12 Ex. C. R. 198) allowed in part with costs, the Chief Justice and Davies, J., dissenting. *Boulay v. The King*, xliii., 61.

44. *Assignment of patent rights—Implied warranty—Privity — Validity of patent — Caveat emptor — Novelty—Combination — New and useful results.*—In the absence of an express agreement or of special circumstances from which warranty might be implied, an assignment of "all the right, title and interest" in a patent of invention does not import any warranty on the part of the assignor as to the validity of the patent. Judgment appealed from (Q. R. 34 S. C. 388) affirmed.—*Per* Idington, J. — In the present case the patents were valid. *Electric Fireproofing Co. of Canada v. Electric Fireproofing Co.*, xliii., 182.

45. *Implied warranty—Fitness of machinery—New agreement—Breaches prior to new contract—Relinquishment of rights under former agreement.*—R. & N. purchased threshing machinery from the company, in Nov., 1906, under an agreement similar to that in part quoted below, and gave notes for the price. They dissolved their business connection, after using the machine for some time, and; in March, 1907, after the threshing season was over, N. was released from his obligations under the agreement, the notes signed by R. & N. were cancelled, and R. gave the company his own notes in their place and entered into a new agreement containing the following provisions: "The said machinery is sold upon and subject to the following mutual and interdependent conditions, namely: It is warranted to be made of good material and durable with good care and with proper usage and skilful management to do as good work as any of the same size sold in Canada. If the purchasers after trial cannot make it satisfy the above warranty written notice shall within ten days after starting be given both to the company at Winnipeg and to the agent through whom purchased, stating wherein it fails to satisfy the warranty and reasonable time shall be given the company to remedy the difficulty, the purchasers rendering necessary and friendly assistance together with requisite men and horses; the company reserving the right to replace any defective part or parts; and if the machinery or any part of them cannot be made to satisfy the warranty it is to be returned by the purchaser free of charge to the place where received and another substituted therefor that shall satisfy the warranty or the money and notes immediately returned and this contract cancelled, neither party in such case to have or make any claim against the other. And if both such notices are not given within such time that shall be conclusive evidence that said machinery is as warranted under this agreement and that the machinery is satisfactory to the purchasers. If the company shall at purchaser's request render assistance of any kind in operating said machinery or any part thereof or in remedying any defects, such assistance shall in no case be deemed a waiver of any term or provision of this agreement or excuse for any failure of the purchasers to fully keep and perform the

conditions of this warranty. When at the request of the purchasers a man is sent to operate the above machinery which is found to have been carelessly or improperly handled, said company putting same in working order again, the expenses incurred by the company shall be paid by said purchasers. This warranty does not apply to second-hand machinery. It is also agreed that the purchasers will employ competent men to operate said machinery. There are no other warranties or guarantees, promises or agreements than those contained herein. All warranties are to be inoperative and void in case the machinery is not settled for when delivered, or if the printed language of the above warranty is changed whether by addition, erasure or waiver or if the purchasers shall in any respect have failed to comply herewith."—Some defects in the machinery had given rise to complaints, during the previous threshing season, and had been rectified by the company before the execution of the second agreement; they also made further repairs during the autumn of 1907, and then notified R. that future repairs must be at his own expense. R. paid the first instalment of the price of the machinery, but, when subsequently sued on his other notes, contested the claim, pleaded breach of an implied warranty of fitness and counterclaimed for damages for this breach. — *Held*, that all claims for damages for breaches of any kind prior to the second agreement had been waived by that agreement and that the provision that there were no other warranties, guarantees, promises or agreements than those contained in the agreement excluded all implied warranties.—*Held*, further, that the condition requiring written notice of breach of warranty applied only to the warranty that "with proper usage and skilful management" the machinery would "do as good work as any of the same size sold in Canada," and that it had no application to the warranties that the machinery was "made of good materials" and would be "durable with good care."—The consideration for the release of N., and the acceptance of the sole liability of R. for the price of the machinery was the execution of the new notes and agreement which involved the relinquishment by both parties of all their rights under the first agreement. *Sawyer and Massey Co. v. Ritchie*, xliii., 614.

46. *Construction of contract—Condition precedent—Arbitration and award—Right of action.*—A contract for the sale of timber limits contained a guarantee by the vendor that the quantity of timber thereon at the time of the sale would prove equal to that shown in a statement annexed and a covenant that he would re-pay to the purchasers the amount of any shortage found in proportion to the price at which the sale was made. In another clause, provision for arbitration was made in case of dispute as to the amount of any such shortage but it did not in express terms deprive the purchaser of the right to recover any claim for shortage until after an award had been obtained.—*Held*, affirming the judgment appealed from (15 B. C. Rep. 70), Idington, J., dissenting, that an award by arbitrators

had not been made a condition precedent to recovery for the amount of any deficiency in the quantity of timber guaranteed to be upon the limits. *David v. Swift*, xlv., 179.

47. *Public work—Work dehors contract—Acceptance by Crown — Payment — Fair value.*—W. was contractor with the Crown for constructing a car and locomotive repair plant at Moncton, N.B., and was subject to the orders of the government engineer. By order of the engineer and with no contract in writing therefor he constructed sewers and a water system in connection with said works, and on completion of his contract the Crown accepted the additional work and agreed to pay its fair value, but not the amount claimed, which was deemed excessive. The Department of Railways referred the claim to the Exchequer Court and, by consent, it was referred to the Registrar of the Court to have the damages assessed, the order of reference providing that "the amount to be ascertained shall be the fair value or price thereof allowed on a *quantum meruit*." The Registrar fixed the amount at \$53,205, as the fair value of the work reasonably executed on a somewhat different plan. The judge of the Exchequer Court added \$39,000 to this amount, holding that the Crown had admitted the authority of the engineer to order the work to be done, and that W. was entitled to the actual cost plus a percentage for profit. On appeal by the Crown.—*Held*, Anglin, J., dissenting, that the judgment appealed against (13 Ex. C. R. 246) was not warranted; that the Crown had not admitted the authority of the engineer, but expressly denied it by pleadings and otherwise; that all W. was entitled to be paid was the fair value of the work to the Crown and the amount allowed by the referee substantially represented such value.—(Leave to appeal to Privy Council refused, July 11th, 1911.) *The King v. Wallberg*, xlv., 208.

48. *Accident insurance — Condition of policy — Notice—Tender before action—Waiver.*—The condition of a policy insuring H. against death by accident required that notice of death should be given to the company within ten days thereafter, and it was provided that if the insured met his death while under the influence of intoxicating liquor the company should be liable only for one-tenth of the amount of the insurance. The insured disappeared on the 21st of November, 1908. When last seen on the evening of that day he was apparently under the influence of intoxicants, and, on 3rd April, 1909, his dead body was found in the river in an advanced state of decomposition, death having been, in all probability, caused by drowning. After the finding of the body the plaintiff gave notice of death to the company and furnished proofs as required. The company refused payment and, before action, tendered to the plaintiff one-tenth of the amount of the insurance payable under the policy as full settlement therefor. The company pleaded this tender in their defence to the action and made proof thereof at the trial.—*Held*, that the tender made by the company was a waiver of the condition requiring notice within ten days of death

and also an admission of liability by the company; and, Anglin, J., dissenting, that, as the company had failed to show that the deceased came to his death while under the influence of intoxicating liquor, the plaintiff was entitled to recover the full amount of the insurance. Judgment appealed from (20 Man. R. 69) affirmed. *Canadian Railway Accident Ins. Co. v. Harris*, xlv., 386.

49. *Fire insurance—Policy—Conditions—Notice of loss—Imperfect proofs—Non-payment of premium—Waiver—Application of statute—Remedial clause—N. W. Ter. Ord. 1903 (1st sess.), c. 16, s. 2.*—The premium on a policy of fire insurance was not paid at the time the policy was delivered but, on request, credit was given for the amount and a draft for the same by the insurance company, accepted by the insured, remained due and unpaid at the time the property insured was destroyed by fire.—*Held*, that, in an action to recover the amount of the insurance, the non-payment of the premium was not available as a defence.—The policy was subject to the statutory condition requiring prompt notice of loss by the insured to the company; by another condition the insured was required, in making proofs of loss, to declare how the fire originated so far as he knew or believed. Upon the occurrence of the loss, the company's local agent gave notice thereof to the company, and informed the insured that he had done so and that the company had acknowledged receipt of his notice. The insured gave no further notice to the company. Forms were then supplied by the company for making proofs of loss and they were completed by an agent of the company and signed and sworn to by the insured, the origin of the fire being therein stated to be unknown. On examination for discovery the insured stated that, at the time he signed the declaration, he entertained an opinion as to the origin of the fire, and the company's adjuster reported a similar opinion as to its origin. An adjustment of the amount of the loss was then proceeded with by the several companies carrying insurances on the property in which the defendant company took part, but, after payment by the other companies of their proportionate shares according to the adjustment, the defendants repudiated liability on the grounds of want of notice as required by the statutory condition and non-disclosure of the opinion entertained by the insured as to the origin of the fire.—*Held*, reversing the judgment appealed from (3 Sask. L. R. 219), that, in respect of both conditions, the default was the result of mistake on the part of the insured and, in the circumstances of the case, the provisions of section 2 of "The Fire Insurance Policy Ordinance." N. W. Ter. Ord. 1903 (1st sess.), chapter 16, should be applied and the insurance held not to be forfeited by reason of default of notice or imperfect compliance with the condition as to proofs of loss. *Prairie City Oil Co. v. Standard Mutual Fire Ins. Co.* (44 Can. S. C. R. 40) followed. *Bell Bros. v. Hudson Bay Ins. Co.*, xlv., 419.

50. "Torrens System"—Priority of right—Registration—Caveat—Notice—Construction of statute—Saskatchewan "Land

*Titles Act," 6 Edw. VII. c. 24—Equities between purchasers—Assignment of contract—Conditions—Right enforceable against registered owner.]—Under the provisions of the Saskatchewan "Land Titles Act" (6 Edw. VII. c. 24), the lodging of a caveat in the land titles office in which the title to the lands in question is registered, prevents the acquisition of any legal or equitable interest in the lands adverse to or in derogation of the claim of the caveator. — A company, being registered owner of lands under the Act, entered into a written agreement to sell them to P., who assigned his interest in the contract to G., who then agreed to transfer his equitable interest, thus acquired, to A. Subsequently, without knowledge of A.'s interest, McK. & B. acquired a like interest from G. A caveat claiming interest in the lands was then lodged by A., in the proper land titles office, and, without inquiry or actual notice of the registration of the caveat, McK. & B. afterwards obtained the approval of the company to the assignment which had been made to them. In an action for specific performance,—*Held, per Davies, Idington, Anglin and Brodeur, JJ.*, that as the purchasers from G. were on equal terms as to equities, A. had priority in point of time at the date when his caveat was lodged; that such priority had been preserved by the registration of the caveat, and that the subsequent advantage which would, otherwise, have been secured by the company's approval of the assignment to McK. & B. was postponed to any equitable right which A. might have to a conveyance. And, further, *per Idington, J.*, that, irrespective of the lodging of the caveat, A. had prior equity to the subsequent assignees.—The agreement by the company provided that no assignment of the contract should be valid unless it was for the whole of the purchaser's interest, and was approved by the company, and also that the assignee should become bound to discharge all the obligations of the purchaser towards the company. Until the time of the approval of the assignment to McK. & B., none of these conditions had been complied with.—*Held, per Davies, Idington, Anglin and Brodeur, JJ.*, that the conditions in restriction of such assignments of the original contract could be invoked only by the company.—*Held, per Duff, J.* dissenting that, as the rights of G. against the company had never become vested in A., according to the provisions of the contract, he had acquired no enforceable right against the company, the registered owner of the lands, and, consequently, he had no legal or equitable interest in them which could be protected by caveat.—*Judgment appealed from (4 Sask. L. R. 111) affirmed, Duff, J. dissenting. McKillop and Benjafield v. Alexander, xlv., 551.**

51. *Accident insurance—Construction of policy—Special conditions—Increased and diminished indemnity—Injuries from fits causing death.]—In an accident policy an insurance company agreed to pay the insured the principal sum in case of death or specified injuries, double that sum if such death or injuries occurred under certain conditions and one-tenth for "injuries happening from . . . fits causing death."*

. . . W., holder of the policy, went at night with a lantern to an outbuilding of the fishing club which he was visiting. Shortly after the outbuilding was seen to be on fire. The fire was extinguished and W. brought out badly burned, from the effects of which he died the next day. In an action on the policy the trial judge found as a fact that W. had been seized with a fit and in that condition caused the fire. This finding was concurred in by the two provincial appellate courts. The trial judge held that the company was liable for one-tenth only of the insurance. The Divisional Court reversed this ruling (26 Ont. L. R. 55, 3 D. L. R. 668), but it was restored by the Appellate Division (28 Ont. L. R. 537, 13 D. L. R. 113).—*Held*, affirming the judgment of the Appellate Division, Duff and Anglin, JJ., dissenting, that the injuries causing the death of W. happened from a fit within the meaning of the clause in the policy diminishing the indemnity to be paid. *Winspear v. Accident Ins. Co.* (6 Q. B. D. 42), and *Lawrence v. Accidental Ins. Co.* (7 Q. B. D. 216), distinguished.—*Held, per Fitzpatrick, C.J.*—The clause diminishing the indemnity payable is not an exempting clause but one of the three separate contracts between the insurers and insured as to amount of liability.—*Per Anglin, J.*—It does not create a new liability, but is a clause of limitation in favour of the company and to be strictly construed. (Leave to appeal to the Privy Council was refused, 15th July, 1914.) *Wodsworth v. Canadian Railway Accident Ins. Co., xlix., 115.*

52. *Benevolent society—Life insurance—Payment of assessments—Extension of time—Rules and regulations—Place of payment—Demand—Default—Suspension—Authority to waive conditions—Conduct of officials—Estoppel—Company law—Arts. 1152, 1161, C. C.]—By the constitution and by-laws of a mutual benevolent society death indemnities were assured to members who, in order to maintain good standing and entitle their beneficiaries to the indemnity, were, thereby, required to make prompt payments of monthly assessments within thirty days from the dates when they became payable. In the subordinate lodge of which C. was a member it had for some time been the practice of its financier to receive such payments fifteen days later than the thirty days so limited and, if then paid, members were not reported as having been in default and, *ipso facto*, under suspension according to the regulations provided by the constitution and by-laws incorporated in the certificate whereby the indemnity was secured. For several years the financier of the subordinate lodge had habitually received these payments from C. at his residence, on or about the last day of this extended term. Seven days after the expiration of the thirty days for payment of the last assessment, and while it was still unpaid, C. died and, on the following day, the overdue assessment was paid to the local financier and a receipt therefor granted by him. The Grand Treasurer of the Society refused to accept this payment on the ground that C. was then under suspension and was not a member in good standing at the time of his death.—*Held*, affirming the judgment*

appealed from (Q. R. 21 K. B. 541), Duff, J., dissenting, that by the course of conduct in the subordinate lodge, of which the Grand Lodge was aware, the condition as to prompt payment had been waived, that C. remained in good standing until the time of his death and that the death indemnity was exigible by the beneficiaries. *Wing v. Harvey* (5 DeG. M. & G. 265; 43 Eng. R. 872); *Tattersall v. People's Life Ins. Co.* (9 Ont. L. R. 611); *Buckbee v. United States Annuity and Trust Co.* (18 Barb. 541); *Insurance Co. v. Wolff* (95 U. S. R. 326); and *Redmond v. Canadian Mutual Aid Association* (18 Ont. App. R. 335), referred to.—*Per Fitzpatrick, C.J.*, and Brodeur, J.—As no place of payment had been indicated, according to the law of the Province of Quebec (art. 1152 C. C.), assessments were payable at the domicile of the assured; consequently, owing to the practice which had prevailed as to the receipt of payment at C.'s domicile and because no demand for payment had been made at such domicile, there had been no default on the part of C. and he had not become suspended at the time of his death.—*Per Duff, J.*, dissenting.—Neither the Grand Lodge nor the subordinate lodge or their officials had power to waive the conditions as to payment prescribed by the constitution and by-laws and the certificate of membership of C.; these instruments constituted the contract of insurance and sufficiently designated the office of the financier of the subordinate lodge as the place where payment of the assessments was to be made; even if article 1152 C. C. applies, no notification was given or proof made conformably to article 1164 C. C., and consequently, failure to make payment of the assessment due within the thirty grace days, at the office of the subordinate lodge, worked a default and, *ipso facto*, the suspension of membership, and, therefore, C. was not in good standing at the time of his death so as to entitle the beneficiaries to the indemnity according to the regulations of the society.—*Held*, further, *per Duff, J.*—As the member must be presumed to know the limitations of the authority of the Grand Lodge, the subordinate lodges, and the officials of each of them, as determined by the constitution and by-laws, the ostensible authority of officials cannot, for any relevant purpose, be of wider scope than the actual authority which is defined specifically and exhaustively by the constitution. *Royal Guardians v. Clarke*, xlix., 229.

53. *Cancellation—Expelling contractor—Condition precedent—Possession of plant—Waiver—Seizure in execution—Interpleader—Insolvency—Abandonment of works—Suretyship.*—A contract for the construction of works provided that upon the insolvency of the contractor, or the company's manager certifying that, in his opinion, the contractor had abandoned the contract, then the company might enter upon the works, expel the contractor and itself use the materials and plant upon the premises for the use of itself or another contractor in the completion of the works, and that, upon such entry the contract should be determined. In consequence of a letter from the contractor notifying the company of the

stoppage of the works, on account of alleged unjustifiable interference therewith, the company took possession of the materials and plant of the contractor, without obtaining the certificate specified, did some work therewith, and then entered into correspondence with the contractor's bondsmen to induce them to proceed with the contract. Upon seizure of the goods under execution by a judgment creditor of the contractor.—*Held*, Duff, J., dissenting, that as the insolvency of the contractor had not been proved nor a certificate of their manager procured, as provided by the contract, the goods in question did not become the property of the company and the contractor's letter could not be considered as a waiver of the conditions precedent stipulated in the contract; consequently, the possession so taken of the plant and materials did not entitle the company to the right of possession thereof as against the execution creditor.—*Per Duff, J.*, dissenting.—In the contract in question the term "insolvency" should be construed as meaning the condition of a person unable to pay his just debts in the ordinary course of business; the contractor was visibly insolvent in this sense; the contract had also been abandoned, the company had taken possession under the provision in the contract, and, there being no evidence to establish a contract of suretyship by the bonding company which was requested to proceed with the works, the possession of the company was effective as against the execution creditor. *The Queen v. The Saddlers' Co.* (10 H. L. Cas. 404), and *Parker v. Gossage* (2 C. M. & R. 617), referred to. *Uplands Ltd. v. Goodacre*, l., 75.

54. *Municipal corporation—Contract with company—Franchise for water supply—Protection against fire—Negligence—Liability of company to ratepayer—Délit—Damages.*—A municipal corporation, with assent of the ratepayers, entered into a contract by which it gave the defendant company the exclusive privilege for twenty-five years of maintaining a system of water supply to the municipality. The company was authorized to fix rates for water supplied for domestic purposes and was obliged, for protection against fire, to have hydrants at certain places and at all times, in case of fire, except when the plant was undergoing necessary repairs, to maintain a specified capacity and pressure of water. The property of B., a ratepayer, was destroyed by a fire which attained serious dimensions owing to the pressure being at the outset much less than that required by the contract.—*Held*, affirming the judgment of the King's Bench (Q. R. 22 K. B. 487) which affirmed the Court of Review (Q. R. 41 S. C. 348), Brodeur, J., dissenting, that there was no contractual relation between B. and the company; that the contract did not evidence any intention by the parties to it to give a right of action against the company to each ratepayer in case of violation of the provisions for fire protection; and that B., therefore, could not maintain an action for the value of his property so destroyed.—*Held*, also, Brodeur, J., dissenting, that B. could not maintain an action for damages on the ground that the failure to maintain the pressure stipulated for in the contract

constituted a *délit* or *quasi-délit* under the law of Quebec. *Belanger v. Montreal Water & Power Co.*, l., 356.

55. *Delivery—Specified time—Default—Liquidated damages—Pre-estimate—Penalty—Ineaction—Compensation—Cross-demand—Practice—Arts. 1013, 1076, 1131 et seq., C. C.—Art. 217, C. P. Q.*—A contract (in the form usual in the Province of Ontario) for the manufacture, in Ontario, of electrical machinery to be delivered within a specified time at Montreal, provided that in case of failure to deliver various parts of the machinery as provided therein the sum of \$25 should "be deducted from the contract price as liquidated damages and not as a forfeit for every day's delay in the delivery of the apparatus as specified, etc." The contractor brought action in the Province of Quebec to recover an unpaid balance of the price and the defendants contended that they were entitled to have the claim reduced by a sum equal to the amount so stipulated for default in prompt delivery.—*Held*, that, on the proper construction of the contract, the intention of the parties was to pre-estimate a reasonable indemnity as liquidated damages for delay in the execution of the contract; that effect should be given to their intention by allowing the deduction of the amount so estimated from the contract price, and that there was no necessity for a cross-demand therefor by the defendants nor that they should allege or prove that they had sustained actual damages in consequence of the delay in delivery. *Dunlop Pneumatic Tyre Co. v. New Garage and Motor Co.* ([1915] A. C. 79); *Wallis v. Smith* (21 Ch. D. 243); *Webster v. Bosanquet* ([1912] A. C. 394); *Clydebank Engineering and Shipbuilding Co. v. Yquieda y Castaneda*, ([1915] A. C. 6); *Hamlyn v. Talisker Distillery Co.*, ([1894] A. C. 202); *The "Industrie,"* (1894) P. 58; and *Ottawa Northern and Western Railway Co.* (36 Can. S. C. R. 347), referred to.—Judgment appealed from (Q. R. 47 S. C. 24) affirmed. *Canadian General Electric Co. v. Canadian Rubber Co.*, lii., 349.

56. "Consistent conditions" — *Impossibility of performance—Release from liability.*—The defendants having filed a tender with the City of Quebec for the reconstruction of Dufferin Terrace agreed with the plaintiffs that, if their tender was accepted, they would enter into a written contract, "consistent with the conditions" of such contract as might be made with the city, for the purchase from the plaintiffs of all the structural steel work that would be needed. The city corporation accepted the tender, but only on the condition that the steel and iron work should be purchased by the defendants from another firm.—*Held*, reversing the judgment appealed from (Q. R. 24 K. B. 389), *Davies and Idington, JJ.*, dissenting, that, on a proper construction, the agreement contemplated a contract to be entered into on terms consistent with whatever contract might have to be made with the city; that the nature of the condition imposed by the city corporation made it impossible for the defendants to purchase the necessary steel and iron work from the

plaintiffs, and that, without fault on the part of the defendants, the agreement never became operative and both parties were liberated from obligation thereunder. *Browning v. Masson*, lii., 379.

57. *Purchase of bonds—Statute of Frauds—Memorandum in writing—Correspondence—Relation of documents—Parol evidence.*—In an action against D., claiming damages for breach of a contract to purchase bonds, a telegram from D. to his partner was produced saying, "I absolutely bought them yesterday after our 'phone conversation, they agreeing to our terms."—*Held*, that parol evidence was properly received to show that terms had been stated by D., over his signature, that they were the only terms and were those referred to in the telegram and the two constituted a sufficient memorandum within the Statute of Frauds. *Ridgeway v. Wharton* (6 H. L. Cas. 238) and *Baumann v. James* (3 Ch. App. 508) followed. *Duff, J.*, dissented.—Judgment of the Appellate Division (35 Ont. L. R. 349) affirming that at the trial (34 Ont. L. R. 403), affirmed. *Doran v. McKinnon*, liii., 609.

58. *Supply of material—Payment—Certificate of engineer—Condition precedent—Improper interference—Fraud—Hindering performance of condition—Monthly estimate—Final decision.* *Timiskaming and Northern Ontario Ry. Co. v. Wallace*, xxxvii., 696.

59. *Electric lighting—Terms of franchise—Use of highway—Poles and wires.* *Consumers' Electric Co. v. Ottawa Electric Co.*, Cout. Cas. 311.

60. *Inapplicable conditions—Action for quantum meruit.* *Toronto Hotel Co. v. Sloane*, Cout. Cas. 356.

61. *Loading ship—Time limit—Custom—Charter*, xxxiv., 578.

See CONTRACT.

62. *Fire insurance—Contract of re-insurance—Trade custom—Conditions of contract—"Rider" to policy—Limitations of actions—Commencement of prescription—Art. 2236 C. C.*, xxxv., 208.

See INSURANCE, FIRE.

63. *Construction of contract—Evidence—Verdict—New trial—Life insurance—Accident policy—Contract—Conditions—Misrepresentations—Non-disclosure—Warranty—Words and terms—Rule of interpretation*, xxxv., 266.

See EVIDENCE.

64. *Public works—Change in plans and specifications—Waiver—Powers of executive—Construction of statute—Directory or imperative clauses—"Stipulations"—Extra works—Engineer's certificate—Instructions in writing—Schedule of prices—Compensation at increased rates—Damages—Right of action—Quantum meruit*, xxxviii., 501.

See CONTRACT.



65. *Fire insurance—Property insured—Standing timber—Return of premiums*, xxxix., 405.

See CONTRACT.

66. *Share of profits—Absolute or conditional undertaking—Construction of contract—Damages*, xl., 198.

See CONTRACT.

67. *Marine insurance—Loss of freight—Detention by ice—Peril insured against*, Csm. Cas. 86.

See INSURANCE, MARINE.

68. *Title to land—Easement appurtenant—User of lane—Prescription—Agreement for right of way—Construction of contract—Practice*, Cam. Cas. 352.

See EASEMENT.

#### 4. CONSIDERATION.

69. *Champerty—Maintenance—Affinity and consanguinity—Parties interested in litigation—Litigious rights—Pacte de quota litis—Illegal consideration*, xxxiv., 24.

See CHAMPERTY.

70. *Life insurance—War risk—Service in South Africa—Extra premium—Special condition—Consideration for premium*, xxxv., 35.

See CONTRACT.

71. *Mechanics' lien—Overpayment—Liability of owner of land—Attaching of lien—Negotiation of note—Claim of lienholder—Waiver—Estoppel*, *Travis v. Breckenridge-Lund Lumber & Coal Co.*, xliii., 59.

72. *Fire insurance—Policy—Statutory conditions—Gasoline on premises—Illuminating oils insured—Notice of loss—Remedial clause in Act—Discretion of court—Construction of statute*, xlv., 40.

See INSURANCE, FIRE.

73. *Benefit association—Life insurance—By-laws and regulations—Transfers between lodges—Member in good standing—Regularity of affiliation—Payment of dues and assessments—Evidence—Presumption—Waiver*, xlv., 145.

See INSURANCE, LIFE.

74. *Lease—Covenant to pay for improvements—Foundations*, xlvi., 107.

See LEASE.

75. *Vendor and purchaser—Sale of land—Condition dependent—Deferred payment—Disclosure of title—Abstract—Refusal to complete—Lapse of time—Defeasance—Specific performance*, xlvii., 114.

See VENDOR AND PURCHASER.

76. *Fire insurance—Insurance on lumber—Conditions—Warranty—Railway on lot—*

*Security to bank—Chattel mortgage*, xlviii., 216.

See INSURANCE, FIRE.

77. *Marine insurance—Mutual company—Foreign corporation—Cancellation of policy—Return of unearned premium—Cancellation by operation of law*, xlvii., 429.

See INSURANCE, MARINE.

78. *Municipal corporation—Exclusive franchise—Renewal at expiration of term—Right of preference—By-law—Approval by ratepapers*, l., 122.

See MUNICIPAL CORPORATION.

79. *Insurance—Fidelity bond—Untrue representation—Materiality—R. S. O. 1897, c. 203, s. 141, s.-s. 2. *Arnprior v. U. S. Fidelity*, li., 94.*

See INSURANCE, GUARANTEE.

80. *Purchase of railway bonds—Consideration—Extension of line—Breach of contract—Damages—Personal liability of president of company—Appeal—Jurisdiction.*—An agreement in writing provided that in consideration of the purchase of bonds of the Grand Valley Railway Co. by certain manufacturing companies and other citizens of St. George, Ont., P., president of the company, undertook and agreed on his own behalf and on behalf of his company to procure a through traffic arrangement with the Canadian Pacific Co. so as to give St. George the benefit of competitive freight rates; that he would do all things lawful to secure such arrangement; and that the extension of the Grand Valley road to St. George and the securing of said arrangement would be proceeded with at once and with the greatest possible despatch. The agreement was signed "The Grand Valley Ry. Co., A. J. Pattison, Pres't." Some work was done on the extension of the line to St. George, but it was never completed. The purchasers paid for \$10,000 worth of bonds on which dividends were paid for five years when payments ceased. The purchasers brought action against the company and P. claiming the return of the money paid or damages for breach of contract. The trial judge held (26 Ont. L. R. 441), that each of the purchasers was entitled to substantial damages and gave them judgment for \$10,000 and directed return of the bonds on payment. The Divisional Court (27 Ont. L. R. 556) held that the individual purchasers were only entitled to nominal damages, and gave judgment for the corporate purchasers for the amount they paid for the bonds. The Appellate Division (30 Ont. L. R. 44) held that all were entitled to substantial damages, but ordered a reference as the evidence was not sufficient to determine the amount. All held P. personally liable as well as the company. The purchasers appealed to the Supreme Court of Canada, asking that the judgment at the trial be restored. The defendants by cross-appeal claimed dismissal of the action.—*Held*, Idington, J., dissenting, that the judgment of the Appellate Division be affirmed.—*Per* Davies, J., while not formally dissenting from the conclusion to affirm, that the damages might be assessed at \$10,000



as at the trial.—*Per* Idington, J.—That the individual purchasers are only entitled to nominal damages; that the maximum to be allowed the corporate purchasers is the amount they subscribed for the bonds; and that the order of reference should be modified accordingly.—*Held, per* Anglin, J.—The substantive right in controversy on the appeal is the quantum of damages; that was not determined adversely to the appellants by the judgment appealed against; they were, therefore, not deprived of a “substantive right in controversy in the action” within the meaning of that phrase in clause (e) of 4 & 5 Geo. V. c. 51, s. 1, and the appeal should be quashed for want of jurisdiction which would dispose of the cross-appeal as well. *Wood v. Grand Valley Railway Co.*, li., 283.

81. *Consideration — Settlement of action — Statute of Frauds — Trade agreement — Restraint of trade — Crim. Code s. 498 — Criminal law.*—In 1905, M. and his two brothers entered into a contract with R. by which they gave him exclusive control of their salt works with some reservations as to local trade. R. assigned the contract to the Dominion Salt Agency, a partnership consisting of his firm and two salt manufacturing companies, which agency thereafter controlled about ninety per cent. of the output of manufacturers in Canada. — *Held*, that the contract was not *ex facie* illegal and as the Canadian output was exceeded by the quantity imported which may have competed with it, and the price was not enhanced by reason of this control by the agency, the court should not hold that it had the effect of unduly restraining the trade in salt or that it contravened the provisions of section 498 of the Criminal Code. — In 1914, M., as administrator of his father's estate, brought action against the estate of C. who, in his lifetime, had been president of the Dominion Salt Agency and president of and largest shareholder in one of the companies composing it. This action was based on an alleged agreement by C., in connection with the settlement of a prior action against the three partners in the agency, by which he promised to pay five-sixteenths of the difference between the amount claimed and that paid on settlement. Evidence of the agreement was given by the plaintiff's solicitor in the former action and by defendants' solicitor also.—*Held*, reversing the judgment of the Appellate Division (36 Ont. L. R. 244), Fitzpatrick, C.J., and Duff, J., dissenting, that the settlement of the action was good consideration for C.'s contract; that his agreement was not a promise to answer for the debt of another and did not need to be in writing; that it was sufficiently proved; and that the evidence of the plaintiffs' solicitor in the former action was corroborated (R. S. O. [1914] c. 76, s. 12) by that of the solicitor for the defendants.—*Per* Anglin and Brodeur, JJ.—The solicitor was not an interested party and corroboration was not required for that reason; if required for any other it was furnished.—The original agreement transferring the salt business to R. was executed by the three brothers “as re-

presenting the estate of M. deceased.” The action which was settled was brought by the same three persons. After the settlement letters of administration to M.'s estate were taken out.—*Held*, that the present action was properly brought in the name of the administrator but, if necessary for defendants' protection, his two brothers might be added as plaintiffs. *MacEwan v. Toronto General Trusts Corporation*, li., 381.

82. *Banking — Purchase of company's assets — Bill of sale—Description of chattels—B. C. “Bills of Sale Act” R. S. B. C. 1911, c. 20—Registration — Recital in bill of sale—Consideration—Defeasance—Reference to unregistered note—Collateral security—Loan by bank—“Bank Act,” (D.) 3 & 4 Geo. V. c. 9, s. 76. Ball v. Royal Bank*, li., 254.

See BILL OF SALE.

## 5. CONSTRUCTION.

83. *Municipal corporation—Water service — Statutory authority — Construction of statute—Water for domestic, fire and other purposes — Motive power — Discretion of council.*—The charter of a town (50 Vict. c. 58, s. 6 [N.B.]), provides that “the town council of Town of Campbellton are hereby authorized and empowered to provide for the said town a good and sufficient supply of water for domestic, fire and other purposes.”—*Held, per* Fitzpatrick, C.J., and Duff, J. (Idington, J., *contra*, Davies and Anglin, JJ., *dubitante*), that the statute empowers the municipality to furnish water for the use of the customer in working a printing-press.—The town council, by by-law, fixed the rates to be paid for water including “printing presses, one service, 1½ pipe or less, per year, \$30.” C., proprietor of a newspaper and printing establishment, connected his premises with the water mains by a two-inch pipe and received water for a year for his motor, paying said rate therefor. He then continued the use of the water for some months when the council passed a resolution that newspaper proprietors should be notified that the supply would be cut off at a certain date, which was done. C. brought an action for damages to his business. — *Held, per* Idington, J. — The council had no authority to make the contract with C.; there was no authority in the absence of a special contract with the town, to place a two-inch service pipe for receipt of water; and if the municipality had power to enter into this agreement it was under no duty to exercise it. — *Per* Fitzpatrick, C.J., and Duff, J., that the municipality having entered upon the service of the appellant's motor was bound to continue it unless and until the council in its *bonâ fide* and reasonable exercise of its discretion thought it desirable to discontinue it in the interest of the inhabitants as a whole.—*Per* Davies and Anglin, JJ.—If any contract existed it was one under which C. was entitled to a supply of water for his motor so long as the town council should, in its discretion, deem it advisable to continue it.

There was no evidence to warrant the jury's finding that the council was guilty of negligence and exercised its discretion *malâ fide*.—*Per Fitzpatrick, C.J., and Duff, J.*—The circumstances disclosed were such as to warrant a finding of unfair discrimination against C., but the damages awarded were excessive.—Judgment ordering a new trial (39 N. B. Rep. 573) affirmed. *Crackett v. Town of Campbellton*, xlv., 606.

84. *Literary work—Publisher and author—Obligation to publish.*—In 1901, M. & Co., publishers of Toronto, and L., an author in Ottawa, signed an agreement, by which L. undertook to write the life of the Count de Frontenac for a work entitled "Makers of Canada," in course of publication by M. & Co.; the latter agreed to publish the work and pay L. \$500 on publication and a like sum when the second edition was issued. This contract was carried out and the publishers then proposed that L. should write on the same terms, the life of Sir John A. Macdonald, for which that of William Lyon Mackenzie was afterwards substituted. L. prepared the latter work and forwarded the manuscript to the publishers, who, although they had paid him in full for it in advance, refused to publish it, as being unsuitable to be included in "The Makers of Canada." L. then tendered to M. & Co. the amount paid him and demanded a return of the manuscript, which was refused, M. & Co. claiming it as their property. In an action by L. for possession of his manuscript.—*Held*, affirming the judgment of the Court of Appeal (20 Ont. L. R. 594), Idington and Anglin, JJ., dissenting, that he was entitled to its return.—*Held, per Fitzpatrick, C.J.*, that the property in the manuscript (or what is termed literary property) has a special character, distinct from that of other articles of commerce; that the contract between the parties must be interpreted with regard to such special character of the subject-matter; that it implies an agreement to publish if accepted; and when rejected the author was entitled to treat the contract as rescinded and to a return of his property.—*Held, per Davies and Duff, JJ.*, that there was an express contract for publication and an implied agreement that the manuscript was to be returned if publication should become impracticable for such reasons as those given by the publishers.—*Held, per Duff, J.*, that the publishers, until publication, could be treated as having possession of the manuscript for that purpose and, that purpose failing, there was a resulting trust in favour of the author. *Morang & Co. v. Lesueur*, xlv., 95.

85. *Dedication of lands for highway—Opening of street—Construction of agreement.*—A land company made a donation of certain lots of land to the municipal corporation for the purpose of a highway and the corporation agreed to open and construct a portion of the street when necessary.—*Held*, that, on the proper construction of the agreement, in view of the powers conferred upon the corporation by section 85 of its charter (Que.), 56 Vict. c. 54, the word "necessary" in the agreement should be construed as meaning "necessary in the

public or general interest," and not merely in the interest of the other party to the agreement. *In re Morton and the City of St. Thomas* (6 Ont. App. R. 323), and *Pells v. Boswell* (8 O. R. 680), referred to. *Hutchison v. City of Westmount*, xlix., 621.

86. *Builders and contractors—Materials supplied—Order for money payable under contract—Evidence—Estoppel—Lien—Enforcing equitable assignment—Practice.*—A building contractor gave a written order upon the owner directing him to pay the sum of \$800 to the plaintiff on account of the price of materials supplied for use in the building which was being erected. The order was presented to the owner and, although not accepted in writing, was held over to await the time for making payments under the contract. The contractor failed to complete the work, and it was finished by the owner at an outlay which left the balance of the contract price insufficient to meet the full amount of the order.—*Held*, the Chief Justice and Idington, J., dissenting, that the order was effective as an assignment of money payable under the contract, but, as there was no evidence of a promise to pay the amount thereof out of the fund, or of facts precluding the owner from denying the sufficiency of what ultimately was payable to the contractor, it could not be enforced against the owner as an equitable assignment.—*Per Duff, J.*—As the equitable relief sought could be granted only upon a consideration of all the circumstances and no claim therefor was made in the courts below nor was the evidence directed to any such claim, the claim came too late on an appeal to the Supreme Court of Canada.—*Per Fitzpatrick, C.J., and Idington, J., dissenting.*—As the conduct of the owner respecting the order was equivocal and misleading, and induced the materialman to abstain from filing a lien to protect himself, the owner ought to be held liable for the full amount of the order as an equitable assignment.—The appeal from the judgment of the Appellate Division (8 West. W. R. 729) was dismissed with costs. *Ritchie v. Jeffrey*, lii., 243.

87. *Construction—Conditions—Mutual performance—Damages.*—In a contract for the sale and delivery of gas if the vendor, not being in default, is prevented, by the wrongful act of the purchaser, from fulfilling his obligation to deliver he is entitled to the compensation he would have received but for such wrongful act. *Mackay v. Dick* (6 App. Cas. 251) and *Wilson v. Northampton and Banbury Junction Railway Co.* (9 Ch. App. 279) applied.—Anglin, J., dissented on the quantum of damages. *Kohler v. Thorold Natural Gas Co.*, lii., 514.

88. *Construction of statute—N.W. Ter. Ord. 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—"Bank Act," R. S. C. (1906) c. 29, s. 91—Interest—Excessive charges—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages*, xlv., 473.

See CHATEL MORTGAGE.

89. *Petition of right—Powers of Commissioners of the Transcontinental Railway—Liability of Crown—Construction of statute—3 Edw. VII. c. 71 (D.)*, xlv., 418.

See CROWN.

90. *Mortgage—Manitoba “Real Property Act” — Power of sale—Special covenant—Notice—Statutory supervision—Registered title—Equitable rights—Possession—Mortgagee—Limitation of action—Construction of statute—R. S. M. 1902, c. 148, s. 75—“Real Property Limitation Act,” R. S. M. 1902, c. 100, s. 20. xlv., 618.*

See MORTGAGEE.

91. *Constitutional law — Provincial legislation — Succession duties — Taxation — Property within province—Bona notabilia—Sale of lands—Covenant—Simple contract—Specialty—Construction of statute—Severable provisions—R. S. M. 1902, c. 161, s. 5—4 & 5 Edw. VII. c. 45, s. 4 (Man.)—Appeal—Jurisdiction. Re Muir, li., 428.*

See CONSTITUTIONAL LAW, 1.

92. *Construction of statute—Sales of subdivided lands—Registration of plans—Prohibitive sanction—“Land Titles Act,” 6 Edw. VII. c. 24, s.-s. 7 (Alta.)—4 Geo. V. c. 2, s. 9; 5 Geo. V. c. 2, s. 25 (Alta.)—Retrospective legislation—Illegality of contract—Rescission—Recovery of money paid—Right of action—Practice—Pleading—Appeal, lii., 185.*

See STATUTE.

93. *Assessment and taxation—Interest in land—Recitals in agreement—Validation by statute—Legislative declarations—Construction of contract—R. S. B. C. 1911, c. 222, s. 47—2 Geo. V. c. 37 (B.C.)—3 Geo. V. c. 71, s. 5 (B.C.), lii., 15.*

See ASSESSMENT AND TAXATION.

## 6. CROWN CONTRACTS.

94. *Public works — Contract—Change in plans and specifications—Waiver by order in council—Powers of executive—Construction of statute—Directory and imperative clauses—Words and phrases — “Stipulations” — Exchequer Court Act, s. 33—Extra works—Engineer’s certificate—Instructions in writing—Schedule of prices—Compensation at increased rates—Damages—Right of action—Quantum meruit.] — The suppliants, appellants, were contractors with the Crown for the widening and deepening of a canal and, by their petition of right, contended that there were such changes from the plans and specifications and in the manner in which the works were obliged to be executed as made the provisions of their contract inapplicable and that they were, consequently, entitled to recover upon a *quantum meruit*. In order to afford relief, an order in council was passed waiving certain conditions, provisoes and stipulations contained in the contract. By the judgment appealed from, the judge of the Exchequer Court held (10 Ex. C. R. 248), that there had been no such changes as would entitle the contractors to recover on the *quantum meruit*, as in the*

case of *Bush v. The Trustees of the Town and Harbour of Whitehaven* (52 J. P. 392; 2 Hudson on Building Contracts (2nd ed.) 121); that the words “shall decide in accordance with the stipulations in such contract” in the thirty-third section of “The Exchequer Court Act” might be treated as directory only and effect given to the waiver in respect to the absence of written directions or certificates by the engineer in regard to works done, but that the remaining clauses of the section were imperative and there could be no valid waiver whereby a larger sum than the amount stipulated in the contract could be recovered, e.g., on prices for the classes of work, so as to give the contractors a legal claim for higher rates of compensation without a new agreement under proper authority and for good consideration. On appeal to the Supreme Court of Canada:—*Held, per* Girouard, Davies and MacLennan, J.J., that the decision of the judge of the Exchequer Court was correct.—*Per* Idington and Duff, J.J.—That the word “stipulations” in the first part of the section referred to, should be construed as having relation entirely to the second part of the section and as applying to the rates of compensation fixed by the contract; that, on either construction, the result would be the same in so far as the circumstances of the case were concerned; that it did not warrant an implication that the executive could, without proper authority, exceed its powers in relation to a fully executed contract or confer the power to dispense with the requirements of the statute, and that, consequently, there could not be a recovery upon *quantum meruit*. *Pigott & Inglis v. The King*, xxxviii., 501.

95. *Title to land—Railway aid—Land agent—Crown patents—Dominion lands—Regulations—Reservation of minerals—53 Vict. c. 4—R. S. C. c. 54—Construction of statute—Free grants—Parliamentary contract.]—The Act, 53 Vict. c. 4 (D.), in 1890, granted, as a subsidy in aid of the construction of the railway, certain wild lands of the Crown in the North-West Territories of Canada. When the lands had been earned, by the construction of the railway, the Government of Canada refused to issue patents granting the lands to the railway company, or to the land company to which their rights had been assigned, except with the reservation of all mines and minerals and the right to work the same.—*Held, per* Taschereau, C.J., and Girouard, J.—That the Dominion Lands Regulations of 1889, paragraph 8, providing for reservations in land grants, did not apply to the lands given as subsidy, but exclusively to grants of land made, in ordinary course, under the general laws governing the sale, use, occupation, and settlement of Crown lands, which, in regard to this subsidy, had been overridden by the Parliamentary grant made in virtue of a contract between the Crown and the railway company; that the railway company’s title was perfect without the issue of a patent, which could avail only as evidence of the allotment of particular lands, and there could be no express or implied derogation from the free grant under the statute. (This decision was affirmed on appeal, by the Privy Council (1904), A. C.*

765.)—*Held, per Davies and Armour, JJ.*—That it must be assumed that the lands to be given as subsidy were to be subject to the Dominion Lands Regulations of 1889, notwithstanding that the Act granting the subsidy declared that the lands to be earned by the railway company should be "free grants."—(Reversed by the Privy Council, *ubi sup.*)—The judges being thus equally divided in opinion, the appeal stood dismissed with costs, and the Exchequer Court judgment stood affirmed. *Calgary and Edmonton Ry. Co. and Calgary and Edmonton Land Co. v. The King*, *Cout. Cas.* 271.

96. *Mines and mining—Hydraulic regulations—Application for mining location—Duties imposed on Minister of Interior—Status of applicant—Vested rights—Contract binding on the Crown*, xl., 258.

See MINES AND MINING.

97. *Timber license—Crown lands in British Columbia—Real estate—Personalty—Sale—Exchange—Consideration—Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof—Pleading and practice*, xlv., 458.

See LIEN.

#### 7. CUSTOM OF TRADE.

98. *Construction of contract—Custom of trade—Arts. 8, 1016 C. C.—Sale of goods—Delivery.*—The construction of a contract for the sale of goods cannot be affected by the introduction of evidence of local mercantile usage unless the terms of the contract are doubtful and ambiguous. *Dufresne v. Fee*, xxxv., 274.

#### 8. DETERMINATION.

99. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with water-course—Agreement for user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages*, xxxix., 81.

See PRACTICE.

#### 9. EXECUTED CONTRACTS.

100. *Public works—Change in plans and specifications—Water by order in council—Powers of executive—Construction of statute—"Stipulations"—Extra works—Engineer's certificate—Compensation at increased prices—Damages—Right of action—Quantum meruit*, xxxviii., 501.

See CONTRACT.

101. *Mechanics' lien—Completion of contract—Time for filing claim—Construction of statute—R. S. M. (1902) c. 110, ss. 20, 36—Right of appeal*, xxxix., 258.

See LIEN.

#### 10. FORMATION OF CONTRACTS.

102. *Contract—Resolution by municipal corporation—Acceptance of offer to purchase—Evidence—Written instruments—Statute of Frauds—Estoppel.*—T. offered to purchase lands which the municipality had bid in at a tax sale, and to pay therefor the amount of the arrears of taxes and costs. The council resolved to accept "the amount of taxes, costs and interest" against the lands and authorized the reeve and clerk to issue a deed at that price.—*Held*, reversing the judgment appealed from, that, even if communicated to T. as an acceptance of his offer, this resolution would have raised no contract on account of the variation made by the addition of interest.—An instrument, which was never delivered to T., was executed by the reeve and clerk of the municipality, in the statutory form of conveyance upon a sale for taxes, reciting the above resolution but without a reference to any contract in pursuance of the resolution, and about two months after the passing of the resolution, upon receipt of another offer for the same lands, the council resolved to intimate to the person making the second offer "that the lot had been sold to T."—*Held*, that these circumstances could not be relied upon as an admission of a prior contract of sale.—*Held*, also, that, even if it could be inferred that contractual relations had been established between T. and the municipality, it did not appear that there had been any written communications in respect thereto made on behalf of the municipality and, consequently, the alleged admissions of a contract did not satisfy the Statute of Frauds and could have no effect. *District of North Vancouver v. Tracy*, xxxiv., 132.

103. *Sale of goods—Contract by correspondence—Statute of Frauds—Delivery—Principal and agent—Statutory prohibition—Illicit sale of intoxicating liquors—Knowledge of seller—Validity of contract.*—B., a trader, in Truro, N.S., ordered goods from a company in Glasgow, Scotland, through its agents, in Halifax, N.S., whose authority was limited to receiving and transmitting such orders to Glasgow for acceptance. B.'s order was sent to and accepted by the company and the goods delivered to a carrier in Glasgow to be forwarded to B. in Nova Scotia.—*Held*, affirming the judgment appealed from (37 N. S. Rep. 482), Idington, J., dissenting, that the contract was made and completed in Glasgow.—Where a contract was made and completed in Glasgow, Scotland, for the sale of liquor by parties there to a trader in a county in Nova Scotia where liquor was forbidden by law to be sold on pain of fine or imprisonment, and the vendors had no actual knowledge that the purchaser intended to resell the liquors illegally, the contract was not void and the vendors could recover the price of the goods. *Bigelow v. Craigellachie Glenlivet Distillery Co.*, xxxvii., 55.

104. *Construction of contract—Findings of trial judge—Appreciation of evidence—Reversal on appeal.*—In a dispute as to the nature and effect of a contract, the trial judge, on his view as to the weight of evidence, found the facts in favour of the

plaintiff and gave judgment accordingly. His decision was reversed by a majority of the court *in banco*, and the action was dismissed with costs. — *Held, per Idington, Macleannan and Duff, J.J.*, reversing the decision of the full court, that the findings of the trial judge, who had seen and heard the witnesses, should not have been reversed. — The Chief Justice and Davies, J., considered that the trial judge had not made his findings as the result of conclusions arrived at by him having regard to the conduct and appearance of the witnesses in giving their evidence, and, on their view of the conflicting testimony, were of the opinion that the full court was right in reversing the judgment at the trial and that the appeal from their judgment ought to be dismissed. *Hayes v. Day*, xli., 134.

105. *Rescission of contract—Fraud—Error—Agreement in writing—Formal deed*, xxxiv., 102.

See CONTRACT.

106. *Written agreement—Collateral agreement by parol*, xxxiv., 228.

See JURY.

107. *Principal and agent—Authority to make contract—New term*, xxxvii., 422.

See CONTRACT.

108. *Sale of land—Principal and agent—Conditions—Acceptance of title—New term—Secret commission—Avoidance of contract—Fraud—Specific performance—Statute of Frauds*, xxxviii., 588.

See CONTRACT.

109. *Location of mineral claims—Construction of contract—Fictitious signature—Unauthorized use of firm name—Transfer by bare trustee—Statute of Frauds*, xxxix., 378.

See CONTRACT.

110. *Municipal by-law—Action to annul—Injunction—Matter in controversy—Jurisdiction. Shawinigan Hydro-Electric Co. v. Shawinigan Water & Power Co.*, xliii., 650.

See APPEAL, 7.

111. *Counsel—Solicitor and client—Retainer—Subsequent proceedings—Habeas corpus—Evidence. Duff v. Lane*, xlvi., 508.

See SOLICITOR, 1.

112. *Powers of directors—Agreement with shipper—Freight rates. Québec & Lake St. John R. R. Co. v. Kennedy*, xlviii., 520.

See RAILWAYS, 7.

## 11. GUARANTEE.

113. *Contract—Guarantee—Conditional sale—Rescission—Mortgagor and mortgagee—Power of sale—Creditor retaking possession—Continuing liability—Appropriation of money realized by creditor—Release of debtor—Discharge of surety.*—S. leased a hotel for three years and agreed to purchase

the furniture therein from plaintiffs (respondents) at \$11,000, payable by instalments, \$3,000 during the first year, \$3,000 during the second year, and \$5,000 during the third year of the term, power to retake and sell the goods, on default, being reserved. The whole debt was secured by chattel mortgage upon the furniture, and, as further security, by an agreement entered into with several other persons, the defendant (appellant) guaranteed the payment of one-sixth of the instalment payable during the second year of the term. It was a condition of the guarantee that it should remain in force notwithstanding that S. might forfeit her right to the furniture under the conditions of any agreement or mortgage. The chattel mortgage, on breach of covenants, provided for forfeiture of all claim of S. to the furniture, and that the plaintiffs might, thereupon, retake possession thereof, and, also, that all payments she should have made would then be forfeited. During the second period of the term, on default by S. to pay part of the first year's instalment, the plaintiffs resumed possession of the hotel and furniture, leased the hotel to another person and sold the furniture for \$6,500; they also notified the guarantors of the default of S. to perform "the conditions of the purchase," that they had, in consequence, re-possessed themselves of the furniture and that they intended holding the guarantors liable for the payment guaranteed. The money received on the re-sale was appropriated by the plaintiffs, first, in payment of a balance of the first year's instalment; 2ndly, in payment of the third instalment; and lastly, towards part payment of the second instalment, thus reducing this last amount by \$105.14. After the expiration of the three years' term of the lease to S., the plaintiffs sued upon the guarantee, and recovered judgment against the defendant.—*Held, per Taschereau, Girouard and Davies, J.J. (Sedgewick and Mills, J.J., contra)*, that the contract represented by the agreement, guarantee and chattel mortgage constituted a relationship of mortgagor and mortgagee between S. and the plaintiffs, and, consequently, that the guarantors continued to be liable under the guarantee, notwithstanding the forfeiture of the rights of S., and the exercise of the powers of re-taking possession and re-seale of the furniture. — *Held, per Sedgewick and Mills, J.J.*, dissenting, that the transaction amounted to a conditional sale of the furniture, that the liability of S. upon her personal covenant ceased upon the exercise of the powers by the plaintiffs, and, consequently, that the sureties were discharged, notwithstanding the special provision that the guarantee should remain in force.—*Held, also, per Sedgewick and Mills, J.J. (Davies, J., contra)*, that, in either view of the nature of the contract, the receipt of the money on re-sale of the furniture cancelled the debt *pro tanto*, and upon the second instalment falling due, the plaintiffs were bound forthwith to appropriate the amount of that instalment out of the \$6,500 then in their hands, in satisfaction and discharge of the guaranteed payment, thereby releasing both S. and her sureties from further liability. *Stephen v. Black et al.*, *Cout. Cas.* 217.

114. *Statutory contract — Construction — Bonds of railway company — Government guarantee.*—The Government of Canada, in a contract with the Grand Trunk Pacific Railway Co., published as a schedule to and confirmed by 3 Edw. VII. c. 71, agreed to guarantee the bonds of the company to be issued for a sum equal to 75 per cent. of the cost of construction of the western division of its railway. By a later contract (sch. to 4 Edw. VII. c. 24) the Government agreed to implement its guarantee, in such manner as might be agreed upon, so as to make the proceeds of said bonds a sum equal to 75 per cent. of such cost of construction. —*Held*, that this second contract only imposed upon the Government the liability of guaranteeing bonds, the proceeds of which would produce a defined amount and not that of supplying, in cash or its equivalent, any deficiency there might be between the proceeds of the bonds and the said 75 per cent. *Grand Trunk Pacific Railway Co.*, xlii., 505.

115. *Breach of contract—Measure of damages—Notice of special circumstances—Collateral enterprises — Loss of primary and secondary profits—Costs*, xxxix., 575.

See CONTRACT.

## 12. HIRING.

116. *Contract of hiring — Manager or expert—Dismissal.*—The manager of a veneer company having heard of plaintiff as a man who could usefully be employed in the business, wrote him a letter in which he stated that "what we want is a man who is a good veneer maker and who knows how to make all kinds of built up woods that are saleable, such as panels. . . . We want you to take full charge of the mill, that is, the manufacturing." In reply plaintiff said: "Would say I understand fully the making of the articles you speak of as well as numerous others with proper machines and proper men to run them." And in a subsequent letter he said: "I feel from all the experience I have had I have mastered the entire principle of it (the veneer business), knowing machines required for various work, what veneer has got to be when completed." Having been hired by the manager he was discharged six weeks later and brought an action for wrongful dismissal. — *Held*, reversing the judgment of the Supreme Court of New Brunswick (37 N. B. Rep. 332), that he was not hired as a business manager but as an expert in the veneer business, and as the evidence established that he was not competent he was properly discharged and could not recover. *Allcroft v. Adams*, xxxviii., 365.

117. *Master and servant—Contract of service—Termination by notice—Incapacity of servant—Permanent disability—Findings of jury—Weight of evidence*, xxxiv., 366.

See MASTER AND SERVANT.

## 13. INVALIDITY.

118. *Construction of railway—Injunction—Interested party—Public corporations—*

*Franchises in public interest — Lapse of chartered powers — "Railway" or "tramway" — Agreement as to local territory—Invalid contract—Public policy—Dominion Railway Act—Work for general advantage of Canada—Quebec Railway Act—Quebec Municipal Code—Limitation of powers.*—An agreement by a corporation to abstain from exercising franchises granted for the promotion of the convenience of the public is invalid as being contrary to public policy and cannot be enforced by the courts. *Montreal Park and Island Railway Co. v. Chateauguay and Northern Railway Co.*, xxxv., 48.

AND see RAILWAYS.

119. *Promissory note—Security for debt—Husband and wife—Parent and child.*—C., a man without means, and W., a rich money lender, were engaged together in stock speculations, W. advancing money to C. at a high rate of interest in the course of such business. C. being eventually heavily in the other's debt, it was agreed between them that, if he could procure the signatures of his wife and daughter, each of whom had property of her own, as security, W. would give him a further advance of \$1,000. Though unwilling at first the wife and daughter finally agreed to sign notes in favour of C. for sums aggregating over \$7,000, which were delivered to W. Neither of the makers had independent advice.—*Held*, reversing the judgment appealed from, Taschereau, C.J., dissenting, that though the daughter was twenty-three years old she was still subject to the dominion and influence of her father and the contract made by her without independent advice was not binding.—*Held*, also, Taschereau, C.J., and Killam, J., dissenting, that his wife was also subjected to influence by C. and entitled to independent advice, and she was, therefore, not liable on the note she signed.—*Held*, per Sedgewick, J., that the evidence produced disclosed that the transaction was a conspiracy between C. and W. to procure the signatures of the notes and that the wife of C. was deceived as to his financial position and the purpose for which the notes were required, therefore the plaintiff could not recover. *Cox v. Adams*, xxxv., 393.

120. *Construction of deed—Ambiguity—Discharge of debtor—Illegal consideration—Right of action.*—Where the language of an instrument is ambiguous or obscure, the intention of the parties should be ascertained by consideration of the circumstances attending the execution of the agreement.—A deed of settlement between B. and a bank declared that he owed the bank \$4,731.61 for interest on an advance in respect to a lottery scheme and a further sum of \$18,762.02 for advances on an account for the purchase of stock, two notes being given for these amounts respectively, and the shares of stock being pledged as security for the large note only. Subsequently, the directors of the bank passed a resolution authorizing the discharge of B., on payment of \$15,000 by one V., "jusqu'à concurrence de la dite somme de \$15,000," and the transfer of the shares to V. This resolution was followed by a deed of compromise, V. paying the \$15,000 and obtaining a transfer of the shares, and it was thereby declared

that, by the transaction. B. was discharged in so far as concerned the bank's advances on the stock account "*vis-à-vis la banque des avances qu'elle lui a faites du chef susdit mentionnées en un acte de règlement,*" etc., the resolution being annexed and the deed of settlement referred to for imputation of the payment, and V. was to become creditor of B. under conditions mentioned, "*jusqu'à concurrence de \$15,000,*" the note which had not become due and the securities being allowed to remain in possession of the bank. In an action by D., to whom the notes held by the bank were assigned:—*Held*, reversing the judgment appealed from, that the effect of the deed of compromise was to discharge B. merely to the extent of the \$15,000 on account of the larger note; and further, affirming the judgment appealed from, that no action could lie upon the smaller note as it represented interest on a claim in relation to a contract of an illegal nature. *L'Association St. Jean Baptiste v. Brault* (30 Can. S. C. R. 598) followed. *Deserres v. Brault*, xxxvii., 613.

121. *Conveyance of land—Description of property—Partition—Petitory action—"Quebec Act, 1774"—Introduction of English criminal law—Champerty—Maintenance—Affinity and consanguinity—Parties interested in litigation—Litigious rights—Pacte de quotâ litis—Illegal consideration—Specific performance—Retrait successoral—Pleading*, xxxiv., 24.

See CHAMPERTY.

122. *Sale of goods—Contract by correspondence—Statute of Frauds—Delivery—Principal and agent—Statutory prohibition—Illicit sale of intoxicating liquors—Knowledge of seller—Validity of contract*, xxxiv., 132.

See CONTRACT.

123. *Solicitor and client—Confession of judgment—Agreement with counsel—Overcharge*, xxxvi., 168.

See SOLICITOR.

124. *Will—Testamentary capacity—Evidence—Art. 831 C. C.—Marriage contract—Duress*, xxxv., 477.

See MARRIAGE CONTRACT.

125. *Incorporation of company—Secret agreement—Illegal consideration for shares—Fraud—Breach of trust*, xxxvii., 324.

See COMPANY.

126. *Mortgage—Money advanced to construct buildings—Lien for materials supplied—Payment to contractor—Transactions in fraud of mortgagee's rights—Redemption—Costs*, xxxviii., 557.

See MORTGAGE.

127. *Contract for limited tickets—Right of action by municipality—Specific performance—Injunction—Parties*, xxxix., 673.

See CONTRACT.

128. *Appeal—Actio Pauliana—Controversy involved—Title to land—Supreme Court Act, s. 46*, xli., 80.

See APPEAL.

129. *Municipal corporation—Public library—Offer of funds—Special legislation—Municipal powers*, xliii., 478.

See MUNICIPAL CORPORATION.

130. *Payment by insolvent—Preference—Recovery back by curator—Gambling transaction—Illegal contract—Right of action—Arts. 1031, 1032, 1036, 1927 C. C.—Arts. 853 et seq., C. P. Q.*, xlix., 91.

See INSOLVENCY.

131. *Municipal councillor—Interest in municipal contract—Money received under prohibited contract—Recovery of funds—Right of action*, xlix., 271.

See MUNICIPAL CORPORATION.

132. *Company—Dominion corporation—Provincial registration—Juristic disability—Right of action—Carrying on business within province—Legislative jurisdiction—R. S. Sask. 1909, c. 73, ss. 3, 10—Non-compliance with S. C. Rules—Costs, Lund Refrig. v. Sask. Creamery*, li., 400.

See COMPANY, 2.

133. *Municipal corporation—Powers of council—Highways—Exclusive privilege—Necessity of by-law—Validity of contract—Right of action—Status of plaintiff—Shareholder in joint-stock company—Ratepayer—Special injury—Public interest—Prosecution by Attorney-General—Practice—Art. 978, C. P. Q. Robertson v. Montreal*, lii., 30.

See MUNICIPAL CORPORATION.

#### 14. MARRIED WOMAN.

134. *Husband and wife—Contract—Separate estate—Security for husband's debt—Independent advice—Stare decisis.*—The confidential relations between husband and wife are such that where the latter conveys or encumbers her separate property for her husband's benefit she is entitled to the protection of independent advice; without that her action does not bind her. *Cox v. Adams* (35 Can. S. C. R. 393) followed, *Idington, J.*, dissenting. — Only in very exceptional circumstances should the Supreme Court refuse to follow its own decisions.—*Judgment of the Court of Appeal* (17 Ont. L. R. 436) reversed. *Stuart v. Bank of Montreal*, xli., 516.

135. *Donatio inter vivos—Ante-nuptial contract—Gift to wife—Payment at death of husband—Institution contractuelle—Onerous gift.*—An ante-nuptial contract provided that "in the future view of the said intended marriage he, the said Edward O'Reilly, for and in consideration of the love and affection and esteem which he hath for and beareth to the said Miss Eliza Petrie, hath given, granted and confirmed and by these presents doth give, grant and confirm unto the said Miss Eliza Petrie, accepting hereof. . . the sum of twenty-five thousand dollars, currency of Canada, payable unto the said Miss Eliza Petrie by the heirs, executors, administrators or assigns of him the said Edward O'Reilly, the pay-

ment whereof shall become due and demandable after the death of him the said Edward O'Reilly." The parties were married and on the death of the said O'Reilly his wife claimed the right to rank on his estate as a creditor for the said sum of \$25,000, which claim was contested by the general body of creditors who had all become such after said contract was made.—*Held*, affirming the judgment of the Court of Appeal (21 Ont. L. R. 201), that this clause in the contract must be construed as a *donatio inter vivos* creating a present debt in favour of the future wife, payment of which was deferred; that, in the absence of proof of fraud, such a contract could not be attacked by subsequent creditors; and that the wife was entitled to rank on the estate for the amount of said gift.—*Held*, per Girouard, J., that the donation was one "*a titre onéreuse*." *Garland, Son & Co. v. O'Reilly*, xlv., 197.

#### 15. MISTAKE.

136. *Mistake — Misrepresentation—Lay agreement—Mortgage—Execution of documents by illiterate persons — Evidence.*—The plaintiffs leased mining rights under lay agreement to the defendants providing for division of profits and payment of an existing debt, and for advances to be made out of the clean-ups on dates therein mentioned, a mortgage to be given on the dumps to secure the advances. Owing to some inaccuracy in the lay agreement, a new lay agreement was executed at the same time as the mortgage. The mortgage provided for payments at earlier dates than the lay agreement, and was not read over to the defendants, who were unable to read, and had requested that it should be read over to them. In an action on the mortgage, evidence was given that a document signed on that date was represented to be in terms similar to the lay agreement as first drawn, but it might, possibly, have been the new lay agreement that was thus spoken of, and it appeared that, although the defendants became aware of the difference in the terms of payment mentioned in the mortgage, and complained of this to the plaintiffs' agent, they continued to work on the lay, assuming that the altered terms of payment would not be insisted upon.—*Held*, reversing the judgment appealed from, *Sedgewick and Killam, J.J.*, dissenting, that there was not sufficient evidence of acquiescence in the altered terms of payment, and that, as the evidence showed that defendants were illiterate and the mortgage had not been read over to them on request, and they had been misled as to its contents, they could not be bound by its altered provisions as to the payments. *Letourneau v. Carbonneau*, xxxv., 110.

137. *Misrepresentation — Latent defect—Fraud—Rescission*, xxxiv., 102.

See CONTRACT.

#### 16. NOVATION.

138. *Contract—Novation—Sub-contractor—Order from contractor on owner—Evi-*

*dence.*—T. was contractor for building a house and F. sub-contractor for the plumbing work. When F.'s work was done he obtained an order from T. on the owner in the following terms: "Please pay F. the sum of \$705, and charge to my account on building, Lucknow Street." F. took the order to the owner who agreed to pay if the architect certified that the work had been performed. F. and T. saw the owner and architect together shortly after and on being informed by the latter that the account was proper and there were funds to pay it the owner told F. that it would be all right and retained the order when F. went away. F. filed no mechanic's lien, but other sub-contractors did the next day, and T. assigned in insolvency. In an action by F. against the owner:—*Held*, *Davies, J.*, dissenting, that there was a novation of the debt due from the owner to T.; that it was not merely an agreement by the owner to answer to F. for T.'s debt, nor was the order to be treated as a bill of exchange and accepted as such. *Farquhar v. Zwicker*, xli., 30.

#### 17. PENAL CLAUSE.

139. *Pleading — Cross-demand — Construction of contract—Liquidated damages—Clause in agreement—Estoppel*, xxxvi., 347.

See CONTRACT.

#### 18. PRINCIPAL AND AGENT.

140. *Broker — Sale of land—Commission—General employment—Principal and agent—Introduction of purchaser—Interference by principal — Quantum meruit—Variation of written contract—Evidence—(Atta.) 6 Edw. VII. c. 27.*—The Alberta statute of 1906, 6 Edw. VII. c. 27, provides that no action shall lie to recover any commission for services in connection with the sale of land except upon a contract therefor in writing signed by the person sought to be charged or by his agent thereunto authorized in writing. C. by duly signed memorandum authorized H. to sell a section and a half of land, containing 960 acres, at the named price of \$35 per acre, and to pay him a commission on the sale at the rate of 5 per cent. In attempting to make a sale H. introduced T. to C. and, after they three had inspected the land together, T. made an offer to C. to purchase the section alone at \$40 per acre provided certain other property should be taken in exchange as part payment. This proposition was accepted by C. and he sold the section alone to T. on those terms.—*Held*, that the sale effected was an entirely new contract which was in no manner referable to the written agreement respecting commission on a sale for a price in money and, as there had been no written contract respecting remuneration to the broker in respect of the transaction which took place he could not recover compensation for the services rendered by him either by way of commission or as *quantum meruit*.—The judgment appealed from (9 D. L. R. 381; 3 West. W. R. 923) was reversed,



Duff and Brodeur, J.J., dissenting.—*Per* Duff, J.—The broker should be held strictly to the terms of the written agreement which was drafted by himself; it did not constitute a general authority to sell the lands therein described; he could not, therefore, recover remuneration for his services by way of commission as therein provided. Nevertheless, as such use was made of the introduction of the purchaser that the broker was prevented effecting a sale according to the terms of his agreement, the conduct of the principal in that respect entitled the agent to recover compensation by way of *quantum meruit*. — *Per* Brodeur, J. — The broker had, under the agreement, a general authority for the sale of the lands for which he found and introduced the purchaser; therefore, he should not be denied compensation for his services on account of the conduct of the owner in carrying out the sale on terms different from those to which he had been restricted by the agreement. (Leave to appeal to Privy Council was refused, 20th March, 1914.) *Como v. Heron*, xlix., 1.

141. *Contract by correspondence—Delivery—Statutory prohibition—Illicit sale of intoxicating liquors—Knowledge of seller—Validity of contract—Evidence*, xxxvii., 55.

See CONTRACT.

142. *Joint stock company — Subscription for shares—Principal and agent—Authority of agent — Conditional agreement*, xxxiv., 508.

See COMPANY.

143. *Principal and agent—Broker's commission—Sale of land—Procuring purchaser—Company law—Commercial corporation—Power of general manager*, xxxv., 301.

See PRINCIPAL AND AGENT.

144. *Sale of land—Authority to make contract—Specific performance*, xxxvii., 422.

See CONTRACT.

145. *Ships and shipping—Material used in construction — Sale of goods—Principal and agent — Misrepresentations — Mistake — Conversion—Trove — Evidence — Misdirection—New trial — Ship's husband — Pledging credit of owners — Necessary outfitting at home port*, Cout. Cas. 131.

See SHIPS AND SHIPPING.

146. *Principal and agent—Broker selling on grain exchange — Contract in broker's name—Liability of principal—“Futures”—“Margins”—“Options”—Board rules—Indemnity*, xli., 618.

See BROKER.

147. *Principal and agent—Commission on sale of land—Introduction of purchaser—Efficient cause of sale—Completion of contract on altered terms*, xliiv., 395.

See BROKER.

148. *Crown lands — Location — Public policy — Evasion of statute—B. C. “Land Act,” 8 Edw. VII. c. 30, ss. 34, 36—Sale of Crown lands—Principal and agent — Com-*

*mission on sales—Quantum meruit—Tainted contract*, xlvi., 588.

See CROWN LANDS.

149. *Fire insurance—Blank application—General agent — Misrepresentation—Knowledge of company—Over-valuation—“Dwelling house” — “Lodging house.” Mahomed v. Anchor Fire, etc.*, xlvi., 546.

See INSURANCE, FIRE, 1.

150. *Broker — Dealings “on change”—Speculative options — Principal and agent —Liability for contracts by agent in his own name—Privity of contract—Purchase and sales on “margin” — Settlements through clearing house—Wagering contract —Malum prohibitum — Criminal Code, s. 231, xlix., 595.*

See BROKER.

151. *Broker — “Real estate agent” — Sale of land—“Listing” on broker's books —Principal and agent—Authority to make contract*, li., 319.

See PRINCIPAL AND AGENT.

152. *Broker — “Real estate agent” — Sale of land—“Listing” on broker's books —Principal and agent—Authority to make contract. Peacock v. Wilkinson*, li., 319.

See BROKER.

## 19. PUBLIC POLICY.

153. *Public policy — Restraint of trade—Combination — Conspiracy — Construction of statute — “Criminal Code,” s. 498 — Words and phrases—“Unduly” preventing competition, etc. — Monopoly.]—A contract between dealers fixing prices to be paid by them for specified articles or commodities which may be the subject of trade and commerce with the object of restricting competition and establishing a monopoly therein, constitutes an agreement unduly to prevent or lessen competition within the meaning of section 498 of the Criminal Code, R. S. C. 1906. c. 146, and is not enforceable between the parties. Judgment appealed from (20 Man. R. 178) reversed, Davies, J., dissenting.—*Per* Davies, J., dissenting.—As the agreement was not, in the circumstances, void at common law as being unreasonably in restraint of trade it did not violate the statute. *Weidman v. Shragge*, xli., 1.*

154. *Franchise in public interest—“Railway” or “tramway”—Public corporations —Lapse of chartered powers—Agreement as to local territory — Invalid contract—Dominion Railway Act—Work for general advantage of Canada—Quebec Railways Act—Municipal Code — Limitation of powers*, xxxv., 48.

See CONTRACT.

## 20. RAILWAYS AND TRAMWAYS.

155. *Municipal franchise — Operation of tramways — Suburban lines — Earnings outside municipal limits — Construction of*

*contract—Payment of percentages—Blended accounts — Estimation of separate earnings.*]—The City of Montreal called for tenders for the establishment and operation of an electric passenger railway, within its limits, in accordance with specifications and, subsequently, on the 8th of March, 1893, entered into a contract with a company then operating a system of horse tramways in the city which extended into adjoining municipalities. The contract granted the franchise for the period of thirty years from the 1st of August, 1892, and one of its clauses provided that the company should pay to the city, annually, during the term of the franchise, "from the 1st of September 1892, upon the total amount of its gross earnings arising from the whole operation of its said railway either with cars propelled by electricity or with cars drawn by horses," certain percentages specified, according to the gross earnings from year to year. Upon the first settlement, on the 1st of September, 1893, the company paid the percentages without any distinction between earnings arising beyond the city limits and those arising within the city, but, subsequently, they refused to pay the percentages except upon the estimated amount of the gross earnings arising within the city. In an action by the city to recover the percentages upon the gross earnings of the tramway lines both inside and outside of the city limits; —*Held*, reversing the judgment appealed from, the Chief Justice and Killam, J., dissenting, that the city was entitled to the specified percentages upon the gross earnings of the company arising from the operation of the tramway both within and outside of the city limits. (Reversed on appeal to Privy Council (1906), A. C. 100.) (*City of Montreal v. Montreal Street Railway Company*, xxxiv., 459.

156. *Joint operation of railway—Master and servant — Negligence — Responsibility for act of joint employee — Traffic agreement—62 & 63 Vict. c. 5 (D.).*]—Where by the negligence of the train despatcher engaged by the Grand Trunk Ry. Co., and under its control and direction, injuries were caused by a collision of two Intercolonial Railway trains on the single track of a portion of the Grand Trunk Railway operated under the joint traffic agreement, ratified by the Act, 62 & 63 Vict. c. 5 (D.), the company is liable, notwithstanding that the train despatcher was declared by the agreement to be in the joint employment of the Crown and the railway company, and the Crown was thereby obliged to pay a portion of his salary. Judgment appealed from affirmed, Taschereau, C. J., *dubitante*. (*Grand Trunk Railway Co. v. Huard et al.*, xxxvi., 655.

157. *Municipal corporation — Railway aid—Construction of agreement—Expropriation — Description of lands—Reference to plans—R. S. N. S. 1900, c. 99—3 Edr. VII. c. 97 (N.S.).*]—A municipality passed a resolution by which it agreed to pay for lands required for the right of way, station grounds, sidings and other purposes of a railway as shown upon a plan filed under the provisions of the general railway Act.

At the time of the resolution there were four such plans filed, each showing a portion of the land proposed to be taken for these purposes and including, in the aggregate, a greater area than could be expropriated for right of way and station grounds under the provisions of the Acts applicable to the undertaking of the railway company. The legislature passed an Act confirming such resolution. To an action by the owner of the land taken, on an award fixing the value of that in excess of what could be so expropriated, the corporation pleaded no liability on account of such excess and also, that there was no specific plan on file describing the land.—*Held*, affirming the judgment appealed from (39 N. S. Rep. 76), that the first defence failed because of the Act confirming the resolution, and as to the second, that the four plans should be read together, and considered to be the plan referred to in such resolution. (*County of Inverness v. McIssac*, xxxvii., 75.

158. *Breach of conditions — Liquidated damages — Penalty — Cumulative remedy — Operation of tramway—Construction and location of lines — Use of highways—Car service—Time-tables—Municipal control — Territory annexed after contract — Abandonment of monopoly — 55 Vict. c. 99 (Ont.).*]—Except where otherwise specially provided in the agreement between the Toronto Railway Company and the City of Toronto set forth in the schedules to chapter 99 of the statutes of Ontario, 55 Vict., in 1892, the right of the city to determine, decide upon and direct the establishment of new lines of tracks and tramway service, in the manner therein prescribed, applies only within the territorial limits of the city as constituted at the date of the contract. Judgment appealed from (10 Ont. L. R. 657) reversed, Girouard, J., dissenting.—The city, and not the company, is the proper authority to determine, decide upon and direct the establishment of new lines, and the service, time-tables and routes thereon. Judgment appealed from affirmed. Sedgewick, J., dissenting.—As between the contracting parties, the company, and not the city, is the proper authority to determine, decide upon and direct the time at which the use of open cars shall be discontinued in the autumn and resumed in the spring, and when the cars should be provided with heating apparatus and heated. Judgment appealed from reversed, Girouard, J., dissenting.—Upon the failure of the company to comply with requisitions for extensions as provided in the agreement, it has no right of action against the city for grants of the privilege to others; the right of making such grants accrues, *ipso facto*, to the city, but it is not the only remedy which the city is entitled to invoke. Judgment appealed from affirmed. Sedgewick, J., dissenting.—Cars starting out before midnight as day cars may be required by the city to complete their routes, although it may be necessary for them to run after midnight, or transfer their passengers to a car which would carry them to their destinations without payment of extra fares, but at midnight their character would be changed to night cars and all passengers entering them

after that hour could be obliged to pay night fares. Sedgewick, J., dissenting. *Toronto Ry. Co. v. City of Toronto*, xxxvii., 430.

159. *Insurance against fire—Property insured—Standing timber—Return of premiums.*—An insurance company incorporated under the laws of Ontario insured a railway company a part of whose line ran through the State of Maine, "against loss or damage caused by locomotives to property located in the State of Maine, not including that of the assured." By a statute in that state the railway company is made liable for injury so caused and is given an insurable interest in property along its line for which it is so responsible.—*Held* affirming the judgment of the court of appeal (11 Ont. L. R. 465) which maintained the verdict at the trial (9 Ont. L. R. 493), that the policy did not cover standing timber along the line of railway which the charter of the insurance company did not permit it to insure.—*Held*, also, Fitzpatrick, C.J., and Davies, J., dissenting, that the policy was not on that account of no effect as there was other property covered by it in which the railway company had an insurable interest; therefore the latter was not entitled to recover back premiums it had paid. *Canadian Pacific Ry. Co. v. Ottawa Fire Insurance Co.*, xxxix., 405.

AND see INSURANCE, FIRE.

160. *Tramway—Contract with municipality—Limited tickets—Specific performance—Injunction—Right of action—Parties.*—An injunction granted by the judgment of Street, J. (8 Ont. L. R. 642), affirmed by the Court of Appeal for Ontario (10 Ont. L. R. 594) was affirmed by the Supreme Court of Canada for the reasons given in the courts below. The order of Street, J., restrained the company from operating tram-cars in which they did not provide "workmen's tickets" good for passenger fares during certain fixed hours of each day, in virtue of an agreement with the city. The Court of Appeal held that the agreement was *intra vires*, that the company were obliged to provide such tickets, that it was not necessary to make the Attorney-General a party to the action and that specific performance could be enforced by injunction. *Hamilton Street Ry. Co. v. City of Hamilton*, xxxix., 673.

161. *Railways—Crossing lines—Overhead bridges—Maintenance—Future traffic.*—A railway company wishing to cross the line of another contracted with the latter for four crossings, three by an overhead bridge and one by a subway under a bridge of the other company. The contract contained this provision: "The said several crossings . . . shall all be maintained at the cost of the Ontario Company (junior road), and shall each always be maintained in a good and safe state, and so as in no way to endanger the property, fixed or movable, of the Midland Company (senior road)." The said bridges were to be constructed according to plans and specifications settled and approved by the chief engineer of the senior road, and if the junior failed to maintain them to the satisfaction

of said chief engineer the senior could cause the necessary work to be done at the cost of the other company.—*Held*, that the obligation of the junior road was not merely to keep the crossings in good and sufficient repair in the condition they were in when the contract was made, but they could, at any time, be ordered by the Railway Board to make them fit for the heavier traffic caused by the increased business of the senior road. *Canadian Pacific Ry. Co. v. Grand Trunk Ry. Co.*, xlix., 525.

162. *Construction of contract—Railways—Free passes. Grand Trunk Ry. Co. v. Niagara Falls International Bridge Co.*, *Cont. Cas.* 263.

163. *Railways—Negligence—Braking apparatus—Sand valves—Defects in machinery—Employer's liability—Provident society—Condition of indemnity—Lord Campbell's Act—Right of action*, xxxiv., 45.

See NEGLIGENCE.

164. *Construction of railway—Injunction—Interested party—Public policy—Public corporations—Franchise in public interest—"Railway" or "tramway"—Agreement as to local territory—Lapse of chartered powers—Dominion Railway Act—Quebec Railway Act—Municipal Code—Limitation of powers*, xxxv., 48.

See CONTRACT.

165. *Railways—Farm crossings—Jurisdiction of the Board of Railway Commissioners for Canada—Statutory contract—Railway Clauses Act, 1851—Grand Trunk Railway Act, 1852—"Railway Act, 1888"—"Railway Act, 1903"—Appeal to Supreme Court of Canada—Jurisdiction—Controversy involved*, xxxvi., 671.

See ACTION.

166. *Jurisdiction of Board of Railway Commissioners—Construction of subway—Apportionment of cost—Person interested or affected—Street railway—Agreement with municipality*, xxxvii., 354.

See RAILWAYS.

167. *Municipal corporation—Agreement with electric street railway company—Use of streets—Payment for privilege—Percentage of receipts—Traffic beyond city—Validity of agreement*, xxxviii., 106.

See TRAMWAYS.

168. *Railway subsidies—Construction of statute—3 Edw. VII. c. 57—Conditions of contract—Estimating costs of constructing line of railway—Rolling stock and equipment*, xxxviii., 137.

See RAILWAYS.

169. *Navigation—Trent canal crossing—Swing bridge—Cost of construction—Maintenance—Order in council*, xxxviii., 211.

See RAILWAYS.

170. *Railway aid—Provincial subsidy—Construction of statute—60 Vict. c. 4, s. 12 (Que.)—54 Vict. c. 88, s. 1 (j), (Que.)—Breach of condition—Compromise by Crown*

officers—Obligation binding on the Crown—  
Right of action—Application of subsidy to  
extension of line of railway, xxxix., 682.

See ACTION.

171. Negligence — Carrying railway pas-  
senger — Condition limiting liability, Cam.  
Cas. 10.

See RAILWAYS.

172. Privileges and hypothecs—Tramway  
—Operation on highway—Title to land—  
Immobilization by destination — Sale of  
tramway by sheriff as a "going concern"—  
Unpaid vendor — Lien on price of cars —  
Pledge — Construction of statute, 3 Edw.  
VII. c. 91 (Que.)—Priority of claim—Col-  
location and distribution—Arts. 397, 2000  
C. C.—Art. 752 Mun. Code. Ahearn &  
Soper v. N. Y. Trust., xlii., 267.

See PRIVILEGES AND HYPOTHECS.

173. Street railway — Assumption by  
municipality — Principle of valuation —  
Operation in two municipalities — Compul-  
sory taking. Berlin v. Berlin & Waterloo  
R. R., xlii., 581.

See TRAMWAY, 4.

174. Board of Railway Commissioners—  
Jurisdiction — Private siding — Construc-  
tion of statute—"Railway Act," R. S. C.  
1906, c. 35, ss. 26a, 226; 8 & 9 Edw. VII. c.  
32, 1, xlv., 346.

See RAILWAYS.

175. Railway subsidies—Aid to construc-  
tion — Purchase of constructed line—Con-  
struction of statute—Supplementary agree-  
ment — Rights of transferee — Obligation  
binding on the Crown. Quebec Montreal So.  
Ry. v. The King, liii., 275.

See RAILWAYS.

## 21. RESCISSION.

176. Vendor and purchaser — Misrepresen-  
tation — Fraud—Error—Rescission of  
contract—Sale or exchange—Dation en paie-  
ment—Option of party aggrieved—Action  
to rescind—Actio quantum minoris—Latent  
defects — Damages — Warranty — Agree-  
ment in writing—Formal deed.] — In the  
present case, the sale was made in part in  
consideration of vacant city lots given in  
payment *pro tanto*, and during the time the  
defendant was in possession of the lots he  
erected buildings upon them with his own  
materials:—*Held*, that, even if the contract  
amounted to a contract of exchange, it was  
subject to be rescinded in the same manner  
and for reasons similar to those which  
would avoid a sale, and, if the contract be  
set aside for bad faith on the part of the  
defendant, the plaintiff has options similar  
to those mentioned in articles 417, 418, 1526  
and 1527 of the Civil Code, that is to say,  
he may, either retain the property built  
upon, on payment of the value of the im-  
provements, or cause the defendant to re-  
move them without injuring the property,  
or compel the defendant to retain the prop-  
erty built upon and to pay its value, be-

sides having the right to recover damages  
according to the circumstances.—The judg-  
ment appealed from was reversed.—*Held*,  
also that the nature of the contract de-  
pended upon the intentions of the parties as  
disclosed by the last instrument signed by  
them in relation thereto. *Pagnuelo v. Cho-  
quette*, xxxiv., 102.

AND see VENDOR AND PURCHASER.

177. Deceit and fraud—Rescission of con-  
tract—Evidence—Concurrent findings of  
lower courts—Duty of second court of ap-  
peal.]—A sale of timber limits to the plain-  
tiff was effected through a broker for a price  
stated in the deed to be \$112,500, but the  
vendor signed an acknowledgment that the  
true price, so far as he was concerned, was  
\$75,000. At the time of the execution of  
the deed a statement was made showing how  
the purchase money was to be paid and the  
vendor signed an agreement that out of the  
balance of the \$112,500, viz., \$46,502.02, the  
plaintiff was to get \$37,500, i.e. the amount  
of the difference between the true price and  
that mentioned in the deed. The vendor  
refused to pay over this \$37,500 on the  
ground that the plaintiff and the broker  
had conspired together to deceive him as to  
the actual price to be obtained for the lim-  
its, and that the sale was not in fact to the  
plaintiff for \$75,000 but to the plaintiff's  
principals, the grantees in the deed, for the  
full consideration of \$112,500, and that the  
plaintiff and the broker were acting fraudu-  
lently and seeking by deceit and artifice to  
deprive him of the full price at which the  
sale had been effected. In an action to  
recover the \$37,500 from the vendor:—  
*Held*, affirming the judgments appealed  
from, that the acknowledgments signed by  
the vendor settled the rights of the parties  
unless there was very strong evidence to the  
contrary and, as there was no such evidence  
and as the circumstances as found by the  
courts below tended to show that plaintiff  
was entitled to the money in dispute as the  
natural result of the transactions between  
the parties, the case was one in which a  
second court of appeal would not be justified  
in disturbing the concurrent findings at the  
trial and of the court appealed from. *Price  
v. Ordway, Veilleux v. Ordway*, xxiv., 145.

178. Mutual life insurance—Natural life  
premium system—Level premium—Mortuary  
calls—Rate of assessment—Rating at at-  
tained age—Fraud—Puffing statements—  
Warranty—Misrepresentation—Acquies-  
cence—Mistake—Rescission of contract  
—*Estoppel*.]—A. took out a policy on his  
life in a mutual association relying on state-  
ments contained in circulars issued by the  
association stating that interest on the re-  
serve fund would be sufficient to cover in-  
creases in the death rates and make the  
policy, after a certain period, self-sustain-  
ing. The rates having been increased, A.  
paid the assessments for some years under  
protest and then allowed his policy to lapse  
and sued for a return of the payments he  
had made with interest and for a declara-  
tion that the contracts were void *ab initio*.  
—*Held*, Sedgewick and Nesbitt, JJ., dis-  
senting, that the statements in the circulars  
only expressed the expectation of the man-  
agers of the association as to the future,

and did not prevent the rates being increased in the discretion of the directors. *The Mutual Reserve Fund Life Association v. Foster* (20 Times L. R. 715) distinguished. *The Provident Savings Life Assurance Society v. Mowat* (32 Can. S. C. R. 147) referred to.—*Per Taschereau, C.J.* As the contracts of A, with the association were only voidable he was not entitled to be repaid the premiums for which he had received value by being insured as long as the contracts were in force. *Bernardin v. La Reserve Mutuelle des Etats-Unis.* (Cour d'Appel, Paris, 10 fév. 1904; Gaz. des Trib. 26 fév. 1904) referred to. *Angers v. Mutual Reserve Fund Life Association*, xxxv., 330.

179. *Rescission—Sale of land—Misrepresentations—Affirmance.*—B. advertised for sale his farm in Ontario, stating the contents and describing it as in first-class condition. He also stated the number of trees, old and new, in the orchard then on it. S., then in British Columbia, was shown the advertisement and, after some correspondence in which B. reiterated the statements therein, came to Ontario and spent some time in inspecting the farm, which he finally purchased on B.'s terms and entered into possession. Shortly after he leased the orchard for ten years, and within a day or two discovered that the farm contained over forty acres less than, and the contents of the orchard were only half of, what had been represented; also that the farm was not in the condition stated, but badly overrun with noxious weeds.—He, therefore, procured the cancellation of the lease of the orchard and brought action to have the sale rescinded.—*Held*, that the lease of the orchard was not, under the circumstances, an affirmation of the contract for sale which would disentitle S. to rescission; that if it were an affirmation as to the orchard the subsequent discovery of the other misrepresentations would entitle him to a decree. *Campbell v. Fleming* (1 A. & E. 40) distinguished. *Boulter v. Stocks*, xlvi., 440.

180. *Conditional sale — Mortgagor and mortgagee—Power of sale—Creditor retaining possession of goods sold—Continuing liability—Appropriation — Funds realized by creditor—Discharge of surety*, Cout. Cas. 217.

See CONTRACT.

181. *Delegation of payment — Revocation of authority.* *Bank of Ottawa v. Hood*, xlii., 231.

182. *Life insurance—Endowment policy—Surrender — Cash value—Action for rescission—Representation by agent—Inducement to insure*, xlvi., 606.

See INSURANCE.

183. *Builders and contractors — Breach of contract — Action for quantum meruit—Rescission — Cross-action for damages—Appropriate relief—Waiver.* *Favreau et al. v. Rochon*, xlvi., 647.

184. *Construction of statute—Prohibitive sanction—Retrospective legislation—Illegality of contract — Rescission — Recovery of*

*money paid—Right of action.* *Boulevard Heights v. Veilleux*, lii., 185.

See STATUTE.

## 22. RETAINER.

185. "Lawful costs" — *Taxation of fees to counsel and solicitor — Construction of statute—1 & 2 Educ. VII. c. 77 (Man.)—Contract with solicitor engaged on salary—Conflict of laws*, xli., 366.

See COSTS.

## 23. SALE.

186. *Assessment and taxation—Constitutional law — Exemptions from taxation — Land subsidies of the Canadian Pacific Railway—Extension of boundaries of Manitoba —Construction of statutes—B. N. A. Acts 1867 and 1871—33 Vict. c. 3 (D.)—43 Vict. c. 25 (D.)—44 Vict. c. 14 (D.)—44 Vict. cc. 1 & 6 (3rd sess.). (Man.)—Construction of contract—Grant in presenti—Cause of action — Jurisdiction—Waiver.*—The land subsidy of the Canadian Pacific Railway Company authorized by the Act 44 Vict. c. 1 (D.), is not a grant in presenti, and, consequently the period of twenty years of exemption from taxation of such lands provided by the sixteenth section of the contract for the construction of the Canadian Pacific Railway begins from the date of the actual issue of letters patent of grant from the Crown, from time to time, after they have been earned, selected, surveyed, allotted and accepted by the Canadian Pacific Railway Company.—The exemption was from taxation "by the Dominion, or any province hereafter to be established or any municipal corporation therein." — *Held*, that when in 1881, a portion of the North-West Territories in which this exemption attached was added to Manitoba the latter was a province "thereafter established," and such added territory continued to be subject to the said exemption from taxation.—The limitations in respect of legislation affecting the territory so added in Manitoba, by virtue of the Dominion Act, 44 Vict. c. 14, upon the terms and conditions assented to by the Manitoba Acts, 44 Vict. (3rd sess.), cc. 1 and 6, are constitutional limitations of the powers of the Legislature of Manitoba in respect of such added territory and embrace the previous legislation of the Parliament of Canada relating to the Canadian Pacific Railway and the land subsidy in aid of its construction.—Taxation of any kind attempted to be laid upon any part of such land subsidy by the North-West Council, the North-West Legislative Assembly or any municipal or school corporation in the North-West Territories is Dominion taxation within the meaning of the sixteenth clause of the Canadian Pacific Railway contract providing for exemption from taxation. (Leave to appeal to Privy Council refused, 27th February, 1907). *North Cypress and Argyll v. Can. Pac. Ry. Co.*; *Can. Pac. Ry. Co. v. Springdale*, xxxv., 550.

187. *Sale of goods — Lowest wholesale prices — Special discount.*—By contract in writing whereby the C. & M. Co. agreed, for three years from the date thereof, to purchase for their business surgical instruments manufactured by the K.-S. Co. only, the latter contracted to supply their products at "lowest wholesale prices" and for all goods furnished from New York to allow a special discount of 5 per cent. from the prices marked in a catalogue handed over with the contract.—*Held*, that under this agreement the K.-S. Co. could allow to purchasers a greater discount from the wholesale prices than 5 per cent. without being obliged to give the same reduction to the C. & M. Co. *Chandler and Massey v. Kny-Scheerer Co.*, xxxvii., 130.

188. *Vendor and vendee—Sale of securities — Interpretation of contract — Arts. 1018, 1019 C. C.—Railways—Debtor and creditor—Right of way claims—Legal expenses incurred in settlement.*—The plaintiffs sold the defendants stock and bonds of the P. & I. Ry. Co. with an agreement in writing which contained a clause stipulating as a condition that the vendees might declare the option of paying a further sum of \$30,000, in addition to the price of sale, in consideration of which the vendors agreed to pay all the debts of the P. & I. Ry. Co., except certain specially mentioned claims, some of which were in respect of settlement for the right of way. The final clause of the agreement was as follows:—"After two years from the date hereof the Montreal Street Railway Company will assume the obligation of settling any right of way claims which the vendors may not previously have been called upon to settle and will contribute \$5,000 towards the settlement of any such claims which the vendors may be called upon to settle within the said two years. Any part of the said sum not so expended in said two years or required by the purchasers so to be, shall be paid over to the vendors at the end of the said period, it being understood that the purchasers will not stir up or suggest claims being made." The vendees exercised the option and paid the \$30,000 to the vendors who reserved their right to any portion of the \$5,000 to be contributed towards settlement of the right of way claims which might not be expended during the two years. An unsettled claim for right of way, in dispute at the time of the agreement, was, subsequently, settled by the vendors within the two years. The question arose as to whether or not this claim, then known to exist, and legal expenses connected therewith, was a debt which the vendors were obliged to discharge in consideration of the extra \$30,000 so paid to them, and whether or not the \$5,000 was to be contributed only in respect of right of way claims arising after the date of the agreement.—*Held*, affirming the judgment appealed from, that the agreement must be construed as being controlled by the provisions of the last clause thereof, that said last clause was not inconsistent with the previous clauses of the agreement and that the vendees were bound to contribute to the payment of such claims and legal expenses in respect of the right of way to the extent of the \$5,000 mentioned in the last clause.

*Montreal Street Ry. Co. v. Montreal Construction Co.*, xxxviii., 422.

189. *Vendor and purchaser — Sale of land — Formation of contract — Conditions—Acceptance of title—New term—Statute of Frauds—Principal and agent—Secret commission—Avoidance of contract—Fraud—Specific performance.*—While A. was absent abroad, B. assumed, without authority, to sell certain of his lands to C., and received, from C., a deposit on account of the price. On receipt of a cablegram from B., notifying him of what had been done, but without disclosing the name of the proposed purchaser, A. replied, by letter, stating that he was willing to sell at the price named, that he would not complete the deal until he returned home, that the sale would be subject to an existing lease of the premises and that he would not furnish evidence of title other than the deeds that were in his possession, and requesting B. to communicate these terms to the proposed purchaser. On learning the conditions, C., in a letter by his solicitors, accepted the terms and offered to pay the balance of the price as soon as the title was evidenced to their satisfaction. In a suit for specific performance.—*Held*, that the correspondence which had taken place constituted a contract sufficient to satisfy the requirements of the Statute of Frauds, that the words, "so soon as title is evidenced to our satisfaction," in the solicitors' letter accepting the conditions, did not import the proposal of a new term and that A. was bound to specific performance. — *Held*, also that an arrangement, unknown to A., and made prior to the receipt of his letter, whereby B. was to have a commission on the transaction from C., could not have the effect of avoiding the contract, as B. was not, at that time, the agent of A. for the sale of the property.—*Judgment* appealed from (12 B. C. Rep. 236), affirmed. *Andrews v. Calori*, xxxviii., 588.

190. *Construction of contract — Sale of timber — Fee-simple — Right of removal — Reasonable time.*—In 1872 M., owner of timber land, sold to B. the pine timber thereon with the right to remove it within ten years. In 1881 another agreement replaced this and conveyed all the timber standing, growing or being on the land, to have and to hold the same unto the said party of the second part, his heirs and assigns "forever," with a right at all reasonable times during years to enter and cut and remove the same. B. exercised his rights over the timber at times up to his death in 1893 and his executors did so after his death, M. not objecting. In 1903 persons authorized by said executors entered and cut timber and continued until 1905. The following year B. brought an action for an injunction against further cutting, a declaration that the right to take the timber had lapsed and for damages. — *Held*, affirming the judgment of the Court of Appeal (15 Ont. L. R. 557), *Davies and Duff, J.J.*, dissenting, that the instrument executed in 1881 did not convey to B. the fee simple in the standing timber, but only gave him the right to cut and remove it within a reasonable time and that such time had

elapsed before the entry to cut in 1903 and M. was entitled to damages. *Beatty v. Mathewson*, xl., 557.

191. *Vendor and purchaser—Agreement to convey lands—Consideration—Price in money—Breach of contract—Recovery for "money had and received"—Sale or exchange—Damages.*—S. sold his interest in certain lands to W. for a consideration, fixed at \$19,000, of which \$16,000 was to be satisfied by the conveyance of other lands, alleged to be owned by W. W. then executed a written agreement purporting to sell these others to S., for the sum of sixteen thousand dollars, acknowledged then and there to have been received by the vendor; bound himself to convey them to the purchaser, with a clear title, within one year from the date of the agreement, and time was stated to be of the essence of the contract. Upon default by the vendor to convey the lands, according to the agreement, the plaintiff sued to recover the \$16,000, as money had and received for which no consideration had been given. In his defence, W. contended that the consideration mentioned in the agreement was not actually in cash but consisted merely of lands to be conveyed in exchange at a valuation fixed at that amount and, consequently, that the plaintiff could recover only damages to be assessed according to the value of the lands which he had failed to convey.—*Held*, that, in the absence of evidence of any special purpose as the basis of the agreement, the terms of the contract in writing governed the rights of the parties that the consideration mentioned in the agreement should be regarded as a price paid in money and consequently, the plaintiff was entitled to the relief sought. Judgment appealed from (20 Man. R. 562) affirmed. *Webster v. Snider*, xlv., 296.

192. *Sale of land—Defalcance—"Time to be of the essence of the agreement"—Deferred payments—Notice after default—Laches—Abandonment—Specific performance.*—In an agreement for the sale of lands, for a price of which half was paid and the balance to be paid by deferred instalments at specified dates, there was a clause for forfeiture, both of the agreement and the payments made, upon default in punctual payments; time was of the essence of the contract and, on default, the vendor had the right to give the purchasers thirty days' notice in writing demanding payment; in case of continuing default, at the expiration of that time, forfeiture would become effective and the vendor might retake possession and re-sell the lands. On default in payment as provided, a notice was given in the terms mentioned, but only to one of the purchasers, an extension of time was applied for and refused and, after thirty days from the time of the notice the vendor re-entered. Five days later the purchasers tendered the balance unpaid, which was refused by the vendor on the grounds that no conveyance was tendered for execution, and that the purchasers had abandoned the agreement. Two weeks later the purchasers sued for specific performance.—*Held*, reversing the judgment appealed from (18 B. C. Rep. 271), that the clause making time of the essence of the contract had refer-

ence not to the gale dates, but to the time mentioned in the notice; that the notice as given did not comply with the condition of the agreement requiring notice to all of the purchasers, and that, in the circumstances of the case, there were not such laches chargeable against the purchasers as would amount to abandonment of their rights under the agreement or deprive them of their remedy of specific performance. *Bark-Fong v. Cooper*, xlix., 14.

193. *Vendor and purchaser—Sale of land—Payment by instalments—Specified dates—Time of essence—Forfeiture—Penalty—Payment declared to be deposit.*—An offer to purchase land provided for payment of the price as follows: \$500 "as deposit accompanying this offer" to be returned if offer not accepted, the balance by instalments at specified dates; it also provided that if the vendor was unable or unwilling to remove any valid objection to the title, and purchaser did not wish to accept it otherwise, the former could return the deposit and cancel the contract; that the offer if accepted should constitute a binding contract of purchase and sale, and "time shall in all respects be strictly of the essence hereof"; and that should the purchaser fail to complete the purchase in the manner and at the time specified the vendor could retain any monies paid on account as liquidated damages, rescind the contract and re-sell the property.—*Held*, reversing the judgment appealed from (28 Ont. L. R. 358), Fitzpatrick, C.J., and Anglin, J., dissenting, that the \$500 paid "as deposit" was part of the purchase money, that the retention by the vendor of monies paid when the purchase was not completed was only a penalty for failure to make the payments promptly; and that the court could grant the purchaser relief from the consequences of such failure. *Kilmer v. British Columbia Orchard Lands* ([1913] A. C. 319), followed. *Snell v. Brickles*, xlix., 360.

194. *Illicit—Lottery—Sale of land—Subsequent purchaser—Action pétitoire—Right of recovery—Ultra vires—Legal maxim—Notary.*—D. sold lands to an incorporated company for the purpose of assisting in carrying on a lottery scheme and, subsequently, conveyed the same lands to the plaintiff, who brought an action, *au pétitoire*, claiming the lands and to have the deed to the company set aside.—*Held*, per Fitzpatrick, C.J., and Anglin and Brodeur, J.J., that the conveyance to the company was void for illegality and that the plaintiff had the right of action to be declared owner of the lands subsequently conveyed to him, and to have the prior conveyance to the company set aside as having been granted for illicit consideration. *Lapointe v. Messier* (49 Can. S. C. R. 271), followed.—*Per Duff, J.*—In the circumstances of the case the pretended contract was *ultra vires* and void and no right of property passed to the company. *Ashbury Railway Carriage and Iron Co. v. Riche* (L. R. 7 H. L. 653) followed. And, further, as the notary before whom the deed in question was executed was, at the time of its execution, an official of the company assuming to purchase the lands, the deed was without

validity as an authentic conveyance of the lands to the company.—*Per* Idington, J., dissenting.—As the plaintiff obtained his conveyance in circumstances which placed him in the same position as the vendor, who had knowingly entered into the illicit contract with the company and to whom the right of recovery was not open, there could be no relief given by the courts as prayed in the action.—Judgment appealed from (Q. R. 43 S. C. 50) affirmed, Idington, J., dissenting. *Prevost v. Bedard*, li., 149.

195. *Construction—Sale of foxes—Mixed breeds.*—By contract in writing G. agreed to sell to C., who agreed to buy, two black foxes "to be the offspring of certain foxes purchased by the vendor from Charles Dalton and W. R. Oulton in the year 1911."—*Held* (Davies and Duff, JJ., dissenting), that the proper construction of the contract was that the two foxes to be sold must have both Dalton and Oulton parentage, and G. could not be compelled to deliver a pair bred from the Dalton strain only. *Coffin v. Gillies*, li., 539.

196. *Sale — Payment in company stock — Unorganized company — Time for delivery — Company law.*—J. agreed, by contract in writing, to sell certain coal areas to R., a promoter of a mining company which, it was expected, would eventually take them over. The price was to be paid partly in cash and the balance in stock of the company to be delivered within six months. The promoters were unable to secure the necessary capital and the company has never been organized. In an action claiming damages for breach of the contract to deliver the stock.—*Held*, Duff, J., expressing no opinion, that the time limit in the contract and circumstances disclosed at the trial, shewed that the parties intended that the stock to be delivered was that of a fully organized company.—*Per* Fitzpatrick, C.J., and Davies, J., that both parties knew when the contract was made that no such stock existed; and as it never came into existence, for which R. was not to blame, the contract could not be enforced. Idington and Anglin, JJ., *contra*—*Per* Davies, J.—The contract to deliver the stock was not an unqualified one, but was dependent upon the successful flotation of the bonds in the market.—*Per* Duff, J.—The stipulation as to time in the contract was not of its essence, but R. was to have a reasonable time, the nature of the business he was engaged in being considered, for delivery of the stock; some time before the action J. abandoned his claim to the stock and demanded its value in money as damages, but up to that time there had been no breach on R.'s part, and he had done nothing to entitle J. to claim that the contract was rescinded.—*Per* Idington and Anglin, JJ.—The contract was absolute for delivery of the shares within six months or a reasonable time thereafter; the Court cannot import into it the condition of successful flotation; R. has not fulfilled his part and J. is entitled to substantial damages for the breach.—Judgment of the Supreme Court of Nova Scotia (49 N. S. Rep. 12), reversed, Idington and Anglin, JJ., dissenting. *Roche v. Johnson*, liiii., 18.

197. *Sale of pulp wood—Measurement—Scaling of timber. The St. George Pulp and Paper Co. v. Rose*, xxxvii., 687.

198. *Vendor and purchaser—Misrepresentation—Fraud—Rescission of contract—Error—Sale or exchange—Dation en paiement—Option of party aggrieved—Action to rescind—Actio quantum minoris—Latent defects—Damages—Warranty—Agreement in writing—Formal deed*, xxxiv., 102.

See CONTRACT.

199. *Resolution by municipal corporation—Acceptance of offer to purchase—Evidence—Written instruments—Statute of Frauds—Estoppel*, xxxiv., 132.

See CONTRACT.

200. *Agreement for sale of land—Falsa demonstratio—Position of vendor's signature—Specific performance*, xxxv., 282.

See SPECIFIC PERFORMANCE.

201. *Construction of agreement—Sale of goods—Specific performance—Damages*, xxxv., 482.

See CONTRACT.

202. *Sale of goods—Suspensive condition—Terms of credit—Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Banking—Bailee receipt—Brokers and factors—Principal and agent—Resilicition of contract—Revendication—Damages—Practice—Pleading*, xxxvi., 406.

See SALE.

203. *Sale of goods—Contract by correspondence—Delivery—Principal and agent—Illicit sale of intoxicating liquors—Knowledge of seller—Validity of contract*, xxxvii., 55.

See CONTRACT.

204. *Patent of invention—Infringement—Sale for reasonable price—Use of patented device—Evidence*, xxxvii., 651.

See PATENT OF INVENTION.

205. *Agreement for sale of land—Principal and agent—Estoppel—"Land Commissioner"—Specific performance*, xxxix., 169.

See SPECIFIC PERFORMANCE.

206. *Municipal corporation—Sale of corporate property—Committee of council—Authority to sell—Ratification*, xxxix., 586.

See MUNICIPAL CORPORATION.

207. *Contract for sale—Particular chattel—Representations*, xviii., 700; *Cam. Cas.* 449.

See CONTRACT.

208. *Guarantee—Conditional sale—Rescission—Mortgagor and mortgagee—Power of sale—Creditor re-taking possession—Continuing liability—Appropriation—Funds realized by creditor—Release of debtor—Discharge of surety*, *Cout. Cas.* 217.

See CONTRACT.



209. *Title to land—Railway aid—Land grant—Crown patents—Dominion land regulations—Reservation of minerals—Construction of statute—Free grants—Parliamentary contract, Cout. Cas. 271.*

See CONTRACT.

210. *Land tax sale—Purchase by corporation—Agreement to reconvey—Necessity of by-law, xli., 18.*

See MUNICIPAL CORPORATION.

211. *Sale of goods by sample—Delivery—Condition f.o.b.—“Sale of Goods Act,” R. S. M. 1902, c. 152—Notice of rejection—Reasonable time—Breach of warranty—Damages, xli., 435.*

See SALE.

212. *Vendor and purchaser—Agreement for sale of land—Principal's duty and interest—Fiduciary relationship—Specific performance, xli., 445.*

See SPECIFIC PERFORMANCE, 1.

213. *Sale of land—Misrepresentation—Deceit—Warranty. May v. Simpson, xlii., 230.*

See SALE OF LAND, 2.

214. *Sale of land—Contract for sale—Time of essence—Delay of vendor—Description—Statute of Frauds—Specific performance. Anderson v. Foster, xlii., 251.*

See SPECIFIC PERFORMANCE.

215. *Vendor and purchaser—Condition of agreement—Sale of land—Payment on account of price—Cancellation—Notice—Return of money paid—Rescission—Form of action—Practice, xlv., 338.*

See VENDOR AND PURCHASER.

216. *Vendor and purchaser—Sale of mortgaged lands—Condition precedent—Cash payment—Default—Objection to title—Redemption—Specific performance, xlvi., 555.*

See VENDOR AND PURCHASER.

217. *Sale of hay—Rejection—Conversion—Damages—Counterclaim—Evidence. Poirier v. The King, xlvi., 638.*

218. *Sale of goods—Condition as to prices—Last invoices—Secondary evidence—Waiver—Breach of contract—Damages, xlvii., 289.*

See SALE.

219. *Vendor and purchaser—Sale of land—Agreement—Bond to secure payment of price—Conditions as to title. Colwell v. Neufeld, xlviii., 506.*

220. *Sale of goods—Delay in delivery—Damages—Construction of agreement—Deficiencies in machinery—Exemption clause—“Unable to deliver”—“On or about” stated date. Leonard & Sons v. Kremer, xlviii., 518.*

See SALE, 3.

221. *Vendor and purchaser—Agreement for sale of land—Option—Acceptance—Un-*

*certainty as to terms—Condition precedent—Specific performance, xlix., 211.*

See VENDOR AND PURCHASER.

222. *Sale of lands—Agreement for re-sale—Novation—Rescission—Specific performance—Defence to action—Practice—Evidence—Statute of Frauds—Principal and agent—Agent purchasing—Disclosure—Findings of fact, xlix., 354.*

See SPECIFIC PERFORMANCE.

223. *Vendor and purchaser—Agreement for sale—Agent to procure purchaser—Agent joining in purchase—Non-disclosure to co-purchaser—Payment of commission—Rescission of contract, xlix., 403.*

See VENDOR AND PURCHASER.

224. *Vendor and purchaser—Sale of land—Deferred payment—Omission of date—Completion of contract—Acceptance by purchaser—New term—Instruments of title—Delivery—Arts. 1025, 1235, 1472, 1491-1494, 1534, C. C.—Specific performance, li., 637.*

See SALE OF LAND.

225. *Vendor and purchaser—Judgment—Sale of mining land—Substituted purchaser—Reservation of claim against original purchaser—Forfeiture of second contract—Sale to other parties—Effect of reserved claim, li., 527.*

See SALE OF LAND.

226. *Company—Powers—Sale of business premises—Seal—Agreement signed by officer. McKnight v. Vansickler, li., 374.*

See COMPANY.

227. *Lease of land—Special condition—Promise of sale—Option—Pacte de préférence—Unilateral contract—Real rights—Registry laws—Arts. 2082, 2085 C. C.—Specific performance—Damages—Right of action. St. Denis v. Quevillon, li., 603.*

See LEASE.

## 24. SPECIFIC PERFORMANCE.

228. *Partnership—Syndicate for promotion of joint stock company—Trust agreement—Construction of contract—Administration by majority of partners—Lapse of time limit—Specific performance.]—A syndicate consisting of seven members agreed to form a joint stock company for the development, etc., of properties owned by two of their number, the defendants, under patent rights belonging to two other members; the three remaining members, of whom plaintiff was one, furnishing capital, and all members agreeing to assist in the promotion of the proposed company. In the meantime the lands were acquired by the defendants and patent rights were assigned to them, in trust for the syndicate, and the lands and patent rights were to be transferred to the syndicate or to the company without any consideration save the allotment of shares proportionately to the interest of the par-*

ties. The stock in the proposed company was to be allotted, having in view the proprietary rights and moneys contributed by the syndicate members, in proportion as follows, 37½ per cent. to the defendants who held the property, 32½ per cent. to the owners of the patent rights, the other three members to receive each 10 per cent. of the total stock. A time limit was fixed within which the company was to be formed and, in default of its incorporation within that time, the lands were to remain the property of the defendants, the transfers of the patent rights were to become void and all parties were to be in the same position as if the agreement had never been made. The tenth clause of the agreement provided that, in case of difference of opinion, three-fourths in value should control. Owing to differences in opinion, the proposed company was not formed but, within the time limited, the plaintiff, and the other two members, holding together 30 per cent. interest in the syndicate, caused a company to be incorporated for the development and exploitation of the enterprise and demanded that the property and rights should be transferred to it under the agreement. This being refused, the plaintiff brought action against the trustees for specific performance of the agreement to convey the lands and transfer the patent rights to the company so incorporated, or for damages.—*Held*, that the tenth clause of the agreement controlled the administration of the affairs of the syndicate and that as three-fourths in value of the members had not joined in the formation of a company, as proposed, within the time limited, the lands remained the property of the defendants, the patent rights had reverted to their original owners and the plaintiff could not enforce specific performance. *Hopper v. Hoctor*, xxxv., 645.

229. *Principal and agent—Sale of land—Authority to make contract—Specific performance.*] — The defendant gave a real estate agent the exclusive right within a stipulated time, to sell, on commission, a lot of land for \$4,270 (the price being calculated at the rate of \$40 per acre on its supposed area), an instalment of \$1,000 to be paid in cash and the balance, secured by mortgage, payable in four annual instalments. The agent entered into a contract for sale of the lot to the plaintiff at \$40 per acre, \$50 being deposited on account of the price, the balance of the cash to be paid "on acceptance of title," the remainder of the purchase money payable in four consecutive instalments and with the privilege of "paying off the mortgage at any time." This contract was in the form of a receipt for the deposit and signed by the broker as agent for the defendant. *Held*, affirming the judgment appealed from (15 Man. Rep. 205) that the agent had not the clear and express authority necessary to confer the power of entering into a contract for sale binding upon his principal.—*Held*, further, that the term allowing the privilege of paying off the mortgage at any time was not authorized and could not be enforced against the defendant. *Gilmour v. Simon*, xxxvii., 422.

230. *Trust—Co-trustees — Joint action—Delegation of trust.*]—A trustee in Toronto

wrote to a co-trustee in St. Mary's stating that an offer had been made to purchase a portion of the trust estate for \$12,000 and giving reasons why it should be accepted. The co-trustee replied concurring in said reasons and consenting to the proposed sale. The Toronto trustee afterwards had negotiations with the solicitors of G., and at their suggestion offered to sell the same property to G. for \$13,000, but without further notice to his co-trustee. The offer was accepted by the solicitors, whereupon the party who had offered \$12,000 raised his offer to \$14,000, and the trustee notified the solicitors of G. that the sale to him was cancelled. In a suit by G. for specific performance:—*Held*, affirming the judgment of the Court of Appeal (9 Ont. L. R. 522), that the letter written by the co-trustee in St. Mary's contained a consent to the particular sale mentioned therein only and could not be construed as a general consent to a sale to any person even for a higher price. Even if it could there were circumstances which occurred between the time it was written and the signing of the contract with G., which should have been communicated to the co-trustee before he could be bound by said contract. *Gibb v. McMahon*, xxxvii., 362.

231. *Specific performance — Tender for land—Agreement for tender—One party to acquire and divide with other—Division by plan—Reservation of portion of land from grant.*]—By agreement through correspondence the G. T. R. Co. was to tender for a triangular piece of land, offered for sale by the Ontario Government containing 19 acres and convey half to the C. P. R. Co., which would not tender. The division was to be made according to a plan of the block of land with a line drawn through the centre from east to west, the C. P. R. Co. to have the northern half. The G. T. R. Co. acquired the land but the Government reserved from the grant two acres in the northern half. In an action by the C. P. R. Co. for specific performance of the agreement:—*Held*, affirming the judgment of the court of appeal (14 Ont. L. R. 41), Macleannan and Duff, J.J., dissenting, that the C. P. R. Co. was entitled to one-half of the land actually acquired by the G. T. R. Co., and not only to the balance of the northern half as marked on the plan.—The court of appeal directed a reference to the master in case the parties could not agree on the mode of division.—*Held*, that such reference was unnecessary and the judgment appealed against should be varied in this respect. *Grand Trunk Ry. Co. v. Canadian Pacific Ry. Co.*, xxxix., 220.

232. *Conveyance of lands—Description of property—Partition — "Quebec Act, 1774" — Introduction of English criminal law — Champerty — Maintenance — Affinity and consanguinity—Parties interested in litigation — Litigious rights — Pacte de quota litis — Illegal consideration — Specific performance—Retrait successoral — Pleading*, xxxiv., 24.

See CHAMPERTY.

233. *Construction of agreement — Sale of goods—Refusal to deliver—Damages*, xxxv., 482.

See CONTRACT.

234. *Vendor and purchaser—Sale of land—Formation of contract—Conditions—Acceptance of title—New term—Statute of Frauds—Principal and agent—Secret commission—Avoidance of contract—Fraud—Specific performance, xxxviii., 588.*  
See CONTRACT.

235. *Tramway—Contract with municipality—Limited tickets—Specific performance—Injunction—Right of action—Parties, xxxix., 673.*  
See CONTRACT.

236. *Specific performance—Agreement for sale of land—Inability to perform—Liability to damages—Diminution in price. Ont. Asphalt v. Montreal, lii., 541.*  
See DAMAGES.

## 25. STATUTE OF FRAUDS.

237. *Statute of Frauds—Part performance—Evidence.]—M. leased land to his two sons, S. and W., of which fifty acres was to be in the sole tenancy of W. In an action by M. against S. for waste by cutting wood on said fifty acres the defence set up was that, by parol agreement, in consideration of S. conveying one hundred acres of his land to W. he was to have a deed of the fifty acres, and having so conveyed to W. he had an equitable title to the latter. M. admitted the agreement but denied that the land to be conveyed to S. was the said fifty acres.—Held, per Nesbitt and Idington, JJ., that the conveyance to W. was a part performance of the parol agreement and the Statute of Frauds was no answer to his defence.—The majority of the court held that as the possession of the fifty acres was referable to the lease as well as to the parol agreement, part performance was not proved, and affirmed the judgment appealed from in favour of the plaintiff (37 N. S. Rep. 23) on this and other grounds. Meisner v. Meisner, xxxvi., 34.*

238. *Location of mineral claims—Construction of contract—Fictitious signature—Unauthorized use of a firm name—Transfer by bare trustee—Statute of Frauds—R. S. B. C. (1897), c. 135, ss. 50, 130.]—Where B., acting as principal and for himself only, signed a document containing the following provision: "We hereby agree to give F. one-half ( $\frac{1}{2}$ ) non-assessable interest in the following claims" (describing three located mineral claims), in the name of "J. B. & Sons," without authority from the locatees of two of the claims which had been staked in the names of other persons, and without their knowledge or consent.—Held, affirming the judgment appealed from (13 B. C. Rep. 20) that, although no such firm existed and notwithstanding that two of the claims had been located in the names of the other persons, who, while disclaiming any interest therein, had afterwards transferred them to B., the latter was personally bound by the agreement in respect to all three claims, and F. was entitled to the half interest therein.—A subsequent agreement for the reduction of the interest of F. from one-*

half to one-fifth, which had been drawn up in writing, but was not signed by F., was held void under the Statute of Frauds. *McMeekin v. Furry, xxxix., 378.*

239. *Resolution by municipal corporation—Acceptance of offer to purchase—Evidence—Written instruments—Statute of Frauds—Estoppel, xxxiv., 132.*  
See CONTRACT.

240. *Contract by correspondence—Delivery—Principal and agent—Statutory prohibition—Validity of contract, xxxvii., 55.*  
See CONTRACT.

241. *Vendor and purchaser—Sale of land—Formation of contract—Conditions—Acceptance of title—New term—Principal and agent—Secret commission—Avoidance of contract—Fraud—Specific performance, xxxviii., 588.*  
See CONTRACT.

## 26. STATUTE OF LIMITATIONS.

242. *Cause of action—Limitation of actions—Foreign judgment—Yukon Ordinance, c. 31 of 1890—Statute of James—Statute of Anne—Lex fori—Lex loci contractus—Absence of debtor, xxxvii., 546.*  
See LIMITATION OF ACTIONS.

## 27. STOCK JOBBING.

243. *Principal and agent—Gambling in stocks—Advances by agent—Brokerage—Criminal Code, 1892, s. 201, xxxv., 380.*  
See BROKER.

## CONTRACTOR.

See BUILDERS AND CONTRACTORS.

## CONTRIBUTORY NEGLIGENCE.

*Nichols Chem. Co. v. Lefebvre, xlii,*

See NEGLIGENCE.

## CONTROVERTED ELECTIONS.

See ELECTION LAW.

## CONVERSION.

1. *Crown lands—Mining lease—Trespass—Title to land—Evidence—Description in grant—Plan of survey—Certified copy, xxxv., 527.*

See TITLE TO LAND.

2. Title to land—Plan of survey—Evidence—Onus of proof—Findings of jury—Error—New trial, xxxviii., 336.

See NEW TRIAL.

3. Placer mining—Disputed title—Trespass pending litigation—Colour of right—Invasion of claim—Adverse acts—Sinister intention—Blending materials—Accounts—Assessment of damages—Mitigating circumstances—Compensation for necessary expenses—Estoppel—Standing-by—Acquiescence, xxxviii., 516.

See MINES AND MINING.

4. Ships and shipping—Material used in construction—Sale of goods—Contract—Principal and agent—Misrepresentations—Mistake—Trover—Evidence—Misdirection—New trial—Ship's husband—Pleading credit of owners—Necessary outfitting at home port, *Cont. Cas.* 131.

See SHIPS AND SHIPPING.

5. Contract—Delivery of goods—Conditions as to weight, quality, etc.—Inspection—Rejection—Sale by Crown officials—Liability of Crown—Deductions for short weight—Costs. *Boulay v. The King*, xliii., 61.

See CONTRACT, 1.

6. Gift—Money received—Pleading—Evidence—Presumption—Proceeds of prostitution—Lien—*Johnston v. Desaulniers*, xli., 620.

7. Insolvent company—Sale of assets by liquidator—Sale "free from incumbances"—Breach of contract—*Dominion Linen Co. v. Langley*, xli., 633.

8. Contract—Sale of hay—Rejection—Damages—Counterclaim—Evidence. *Poirier v. The King*, xli., 638.

## CONVEYANCE.

Crown lands—Settlement of Manitoba claims—Construction of statute—Title to lands—Operation of statutory grant—Transfer in present—Condition precedent—Ascertainment and identification of swamp lands—Revenues and emblems—Constitutional law, xxxiv., 287.

See CONSTITUTIONAL LAW.

## CONVICTION.

1. Criminal law—Criminal Code, 1892, ss. 241, 242—Wounding with intent—Verdict—Crown case reserved, xxxv., 607.

See CRIMINAL LAW.

2. Canada Temperance Act—Conviction—"Criminal case"—R. S. C. (1886) c. 135, s. 32—*Habeas corpus*—Penalty—"Not less than \$50"—Conviction for \$200—Imposition of fine for first offence—Powers of Su-

preme Court judge—Reference of application to full court, xxxviii., 394.

See CANADA TEMPERANCE ACT.

AND see SUMMARY CONVICTION.

## COPYRIGHT.

Literary property—Foreign reprints—Notice to English Commissioner of Customs—Entry to Stationers' Hall—Imperial Acts in force in Canada.]—The judgment appealed from, (8 Ont. L. R. 9) was affirmed, the court, however, declining to decide whether or not the doctrine laid down in *Smiles v. Belford* (1 Ont. App. R. 436) was rightly decided. Leave to appeal to Privy Council refused; May, 1905. *Imperial Book Co. v. Black*, xxxv., 488.

## CORPORATION SOLE.

Roman Catholic Bishop—Devise of personal and ecclesiastical property—Construction of will, xxxiv., 419.

See WILL.

## COSTS.

1. Appeal—Jurisdiction—Amount in controversy.]—Where the Court of King's Bench affirmed the judgment of the Superior Court dismissing the action but varied it by ordering the defendant to pay a portion of the costs:—*Held*, that, though \$2,217 was demanded by the action, the defendant had no appeal to the Supreme Court of Canada as the amount of the costs which he was ordered to pay was less than \$2,000. *Allan v. Pratt* (13 App. Cas. 780), and *Monette v. Lefebvre* (16 Can. S. C. R. 387) followed. *Beauchemin v. Armstrong*, xxxiv., 285.

2. Opposition *afin de charge*—Order for security—Interlocutory judgment—*Res judicata*—Subsequent final order—Revision of merits of appeal—Practice.]—An order requiring opposants *afin de charge* to furnish security that lands seized, if sold in execution subject to the charge, should realize sufficient to satisfy the claim of the execution creditor was held to be interlocutory and non-appealable (33 Can. S. C. R. 340.) Subsequently, upon default to furnish such security, the opposition was dismissed. On appeal from the judgment of the Court of King's Bench affirming the order for the dismissal of the opposition:—*Held*, that, under the circumstances, the order dismissing the opposition was the only one which could be properly made, and that the merits of the former order could not be revealed on appeal from the final judgment. *Desaulniers v. Payette*, xxxv., 1.

3. Solicitor and client—Costs—Confession of judgment—Agreement with counsel—Overcharge.]—A solicitor may take security from a client for costs incurred though the relationship between them has not been terminated and the costs not taxed, but the

amount charged against the client must be made up of nothing but a reasonable remuneration for services and necessary disbursements. A country solicitor had an agreement with a barrister at Halifax for a division of counsel fees earned by the latter on business given him by the solicitor. The solicitor took a confession of judgment from a client for a sum which included the whole amount charged by the Halifax counsel, only part of which was paid by him:—*Held*, that though the arrangement was improper it did not vitiate the judgment entered on the confession, but the amount not paid to counsel should be deducted therefrom. *Knock v. Owen*, xxxv., 168.

4. *Appeal — Equal division of opinion — Dismissal without costs.*—Upon an equal division of opinion among the judges, the appeal stood dismissed without costs. *Côté v. The James Richardson Co.*, xxxviii., 41.

AND see APPEAL.

5. *Practice — Revising minutes of judgment — Mistake — Costs of abandoned defences — Reference to trial judge.*—The plaintiffs' action was maintained with costs in the courts below, but on appeal, it was dismissed with costs by the Supreme Court of Canada (37 Can. S. C. R. 546), no reference being made to certain costs incurred by the plaintiffs in respect of several defences which the defendant had abandoned in the trial court. On motion to vary the minutes, the matter was referred to the judge of the trial court to dispose of the question of the costs on the abandoned defences. *Rutledge v. United States Savings and Loan Co.*, xxxviii., 103.

6. *Mortgage — Money advanced to construct buildings — Lien for materials supplied — Payment to contractor — Transactions in fraud of mortgagor's rights — Redemption.*—A building and loan company advanced money to an illiterate woman for the purpose of aiding in the construction of a house to be erected upon lands mortgaged to it to secure the loan. The mortgage contained no provision for advances to contractors, etc., as the work progressed, beyond the following: "And it is hereby agreed between the parties hereto, that the mortgagees, their successors and assigns, may pay any taxes, rates, levies, assessments, charges, moneys for insurance, liens, costs of suit, or matters relating to liens or incumbrances on the said lands, and solicitors' charges in connection with this mortgage, and valuator's fees, together with all costs and charges which may be incurred by taking proceedings of any nature in case of default by the mortgagor, her heirs, executors, administrators or assigns, and shall be payable with interest, at the rate aforesaid, until paid, and in default the power of sale hereby given shall be forthwith exercisable. And it is further agreed that monthly instalments in arrear shall bear interest at the rate aforesaid until paid." In a suit for redemption:—*Held*, first that the clause in the mortgage did not justify the mortgagees in making advances to contractors and persons supplying material, without the express order of the mortgagor. Secondly, that the mortgagees ought not to have recog-

nized an order in favour of the contractor for the total amount of the loan when they knew that the contractor had not completed his contract and was, therefore, not entitled to the money when the order contained no name of a witness, and showed that the mortgagor was unable to sign her name. — The payment having been made by the loan company to a lumber company supplying material to the contractors for the building without the express authority of the mortgagor, and the lumber company having taken an assignment of the mortgage and attempted to enforce it against the mortgagor, the transaction was declared fraudulent as against the mortgagor, and the payment to the lumber company disallowed.—*Held*, also, that the only costs the assignees of the mortgage were entitled to add to the mortgage debt were the costs of an ordinary redemption suit consented to by a mortgagee. — Judgment appealed from varied, and appeal dismissed with costs. *Black v. Heibert*, xxxviii., 557.

7. *Appeal — Question of costs.*] — Per Davies and Idington, JJ., dissenting.—As the appeal involved merely a question as to costs, it should not be entertained. *Chicoutimi Pulp Co. v. Price*, xxxix., 81.

AND see PRACTICE.

8. *Champerty — Maintenance — Malicious motive — Cause of action — Costs of unsuccessful defence — Damages.*—A defendant against whom a lawsuit has been successfully prosecuted cannot recover the costs incurred for his defence as damages for the unlawful maintenance of the suit by a third party who has not thereby been guilty of maliciously prosecuting unnecessary litigation. *Bradlaugh v. Newdegate* (11 Q. B. D. 1) distinguished; *Giegerich v. Fleutot* (35 Can. S. C. R. 327) referred to. Judgment appealed from (12 B. C. 272) affirmed. *Newswander v. Giegerich*, xxxix., 354.

9. *Discretionary order — Revision of assessment of damages — Refusal of costs on appeal to court below.*—The judgment appealed from was reversed with costs and the judgment at the trial restored to the extent of \$277.11, but, in the special circumstances of the case, no costs were allowed in respect of the appeal to the court below. *Corbin v. Thompson*, xxxix., 575.

AND see CONTRACT.

10. *Taxing costs to the Crown — Fees to counsel and solicitor — Salaried officer representing the Crown.*] — As the statutes of Canada defining the duties and salaries of the Attorney-General and his deputy deny additional compensation for services rendered by them in connection with litigation affecting the Crown, it is improper to allow counsel fees or solicitor's fees in respect of services rendered in such capacities by either of these officers on the taxation of costs awarded in favour of the Crown. *Jarvis v. The Great Western Railway Co.* (8 U. C. C. P. 280), and *The Charlevoix Election Case* (Cout. Dig. 388), followed. *Hamburg-American Packet Co. v. The King*, xxxix., 621.

11. *Taxation of costs — Stay of execution — Setting-off costs in court below.*—A mend-

*ing minutes of judgment—Practice.*]—Ordered that the costs which had been previously allowed to the appellant in the Supreme Court of Canada should be set off against whatever costs might be taxed and allowed to the respondent in the court below, and should be satisfaction *pro tanto* of said last mentioned costs, when so set-off, and that all proceedings upon the execution should, in the meantime, be stayed. [Cf. No. 5, *ante*, *Rutledge v. United States S. & L. Co.* (38 Can. S. C. R. 103.) *North Ontario Election Case*; *Wheeler v. Gibbs*, *Cout. Cas.* 19.

12. *Varying minutes of judgment—Division of costs—Appellant partly successful.*]—A motion to vary the minutes of judgment (35 Can. S. C. R. 168) as settled by the registrar, or for amendment of the judgment by declaring the appellant entitled to her costs, on the ground that, as she had succeeded on one point, and in part as to another point, 'the costs ought to be allowed in her favour' in the first case, and ought not to go against her in the other, was dismissed, as the question of costs had been fully considered by the court when that judgment was rendered, and it did not overlook the fact that the appellant had partially succeeded, and the partial modification of the judgment appealed from did not alter the fact that substantially the respondent succeeded in both courts. *Knock v. Owen*, *Cout. Cas.* 325.

13. *Equal division of opinion — Appeal standing dismissed—No costs allowed.*]—Where the judges who heard the appeal were equally divided in opinion, the appeal stood dismissed and no costs were allowed. *Montreal Pipe Foundry Co. v. Jean* (5th Nov., 1907).

14. "Lawful costs" — *Taxation of fees to counsel and solicitor — Construction of statute, 1 & 2 Edw. VII. c. 77 (Man.) — Contract with solicitor engaged on salary — Conflict of laws.*]—Section 468 of the charter of the City of Winnipeg (1 & 2 Edw. VII. c. 77), provides that where the city solicitor is engaged at a stated salary, the city has the right, in law suits and proceedings, to recover and collect "lawful costs," in the same manner as if such solicitor were not receiving such salary. The corporation enacted a by-law appointing its solicitor at an annual salary and, in addition thereto, that he should be entitled, for his own use, to such lawful costs as the corporation might recover in actions and proceedings, except disbursements paid by the city. Upon the taxation of the costs awarded to the respondent on an appeal to the Supreme Court of Canada (41 Can. S. C. R. 18):—*Held*, that the statute and contracts above recited applied to costs awarded on said appeal and that, on the taxation, the usual fees to counsel and solicitor should be allowed. *Hamburg-American Packet Co. v. The King* (39 Can. S. C. R. 621), distinguished, *Ponton v. City of Winnipeg*, xli., 366.

15. *Practice—Costs—Counsel fees. Montmerancy Election Case; Valin & Langlois*, *Cout. Cas.* 16.

16. *Rideau canal lands—Mis-user—Forfeiture — Condition subsequent—Jurisdiction of Exchequer Court of Canada. Wright v. The Queen*, *Cout. Cas.* 151.

17. *Agreement — Settlement of judgment—Opposing execution*, xxxiv., 169.  
See CONTRACT.

18. *Varying minutes of judgment—Matters not mentioned at hearing—No costs allowed*, xxxiv., 502.  
See PRACTICE.

19. *Foreclosure of mortgage—Redemption—Assignment pending suit—Procedure in court below*, xxxv., 181.  
See PRACTICE.

20. *Special leave to appeal—Matter in controversy — Assessment of damages — Costs*, xxxv., 184.  
See APPEAL.

21. *Case on appeal—Security for costs—Waiver by consent—Reduction of amount of security*, xxxv., 187.  
See APPEAL.

22. *Appeal — Jurisdiction — Amount in controversy — Conditions and reservations—Supreme Court Act s. 29—Refusal to accept conditional renunciation—Costs of appeal in court below — Costs of enquête—Nuisance—Statutory powers — Negligence—Legal maxim*, xxxv., 265.  
See APPEAL.

23. *Constitutional law — Construction of statute—"Crown Procedure Act"—R. S. B. C. c. 57—Duty of responsible minister of the Crown—Refusal to submit petition of right—Tort—Right of action—Damages—Pleading—Practice—Withdrawal of case from jury—New trial—Costs*, xxxix., 202.  
See ACTION.

24. *Railways — Negligence — Contributory negligence — Accident at crossing — Life insurance — Deduction from damages—Practice—Appeal—Equal division of opinion—No costs allowed*, *Cam. Cas.* 228.  
See NEGLIGENCE.

25. *Appeal — Special leave to proceed in forma pauperis — Dispensing with security for costs — Mode of bringing appeal—Construction of statute—Right of appeal*, *Cout. Cas.* 6.  
See APPEAL.

26. *Appeal — Jurisdiction — Supreme Court Act, 1875, 38 Vict. c. 11—Demurrer—Final judgment — Quashing with costs*, *Cout. Cas.* 11.  
See APPEAL.

27. *Appeal — Jurisdiction — Amount in controversy—Addition of interest and costs disallowed*, *Cout. Cas.* 30.  
See APPEAL.

28. *Equal division of opinion — Appeal standing dismissed with costs*, *Cout. Cas.* 325.

See COSTS.

29. *Varying minutes of judgment—Repayment of costs—Payment under threat of execution—Jurisdiction*, *Cout. Cas.* 306.

See PRACTICE.

30. *Operation of tramway—Negligence—Dangerous way — Removal of snow and ice—Right of way—Equal division of opinion—Costs allowed*, *Cout. Cas.* 309.

See NEGLIGENCE.

31. *Non-prosecution of motion—Practice—Costs allowed*, *Cout. Cas.* 309.

See PRACTICE.

32. *Controversy on appeal—Change in position of parties—Costs only involved*, *Cout. Cas.* 425.

See APPEAL.

33. *Appeal—Amount in dispute—Interest—Collateral matter.*

See APPEAL.

34. *Railways — Carriers — International through traffic — Reduction of joint rate — Jurisdiction of Board of Railway Commissioners — Practice — Want of parties — Refusal of costs. Niagara, St. Catharines & Toronto Ry. Co. v. Davy*, *xliii.*, 277.

See RAILWAYS.

35. *Appeal — Jurisdiction — Matter in controversy — Damming watercourse — Flooding of lands — Servitude — Damages — Objection to jurisdiction—Practice*, *xlv.*, 292.

See APPEAL.

36. *Judgment on appeal—Equal division in opinion—Costs. Maclaren v. Attorney-General for Quebec*, *xlv.*, 656.

37. *Will—Trust for benefit of son—Discretion of executor—Death of beneficiary—Funds not disposed of. In re Rispin, Canada Trust Co. v. Davis*, *xlvi.*, 649.

38. *Will — Extension of powers of executors—Universal legatee—Special legacy—Appeal—Jurisdiction—Amount in controversy — Order to take accounts—Interlocutory judgment—Costs*, *xlvii.*, 400.

See APPEAL.

39. *Solicitor and client — Retainer—Subsequent proceedings — Habeas corpus—Evidence. Duff v. Lane*, *xlviii.*, 508.

See SOLICITOR.

40. *Solicitor and client—Special statute—Fixed sum for costs — Delivery of bill — "Solicitors' Act," 2 Geo. V. c. 28, s. 34. Gundy v. Johnstane*, *xlviii.*, 516.

See SOLICITOR.

41. *Practice — Crown — "Expropriation Act," R. S. C. 1906, c. 143, ss. 8, 23, 31—Abandonment of proceedings—Compensation*

*—Allowance of interest—Construction of statute—Taxation of costs — Solicitor and client—Reimbursement of expences—Interpretation of formal judgment—Reference to opinion of judge*, *li.*, 594.

See CROWN.

42. *Quashing appeal—Refusal of costs—Supreme Court Rule 4. Lachance v. Cauhan*, *lii.*, 223.

See APPEAL.

43. *Appeal — Jurisdiction — Injunction—Matter in controversy — Refusal of costs — Supreme Court Rule 4—"Supreme Court Act," s. 46*, *lii.*, 223.

See APPEAL.

44. *Quashing appeal — Procedure — Supreme Court Rules 4, 5—Withholding costs.]—In default of conforming with Supreme Court Rules 4 and 5, in regard to the quashing of appeals to the Supreme Court of Canada for want of jurisdiction, the respondent was only given the general costs of the appeal to the date of the motion to quash. St. John Lumber Co. v. Roy*, *liiii.*, 310.

AND see APPEAL.

45. *Jurisdiction on appeal — Adding cost of exhibits. Montreal Tramways v. McGill*, *liiii.* 390.

See APPEAL.

## COUNSEL.

1. *Judicial sales — Interested bidders — Disqualification as purchaser—Art. 1484 C. C. — Public policy.] — Solicitors and counsel retained in proceedings for the sale of property are not within the classes of persons disqualified as purchasers by article 1484 of the Civil Code of Lower Canada. Judgment appealed from (10 Ex. C. R. 139) affirmed. Rutland Railroad Co. v. Béique; White v. Béique; Morgan v. Béique*, *xxxvii.*, 303.

AND see RAILWAYS.

2. *Negligence — Electric wires—Trespasser on electric company's poles—Evidence—Remarks of counsel — Contributory negligence — Disagreement of jury — New trial*, *xxxiv.*, 698.

See EVIDENCE.

3. *Solicitor and client — Costs — Confession of judgment—Agreement with counsel — Overcharge*, *xxxv.*, 168.

See COSTS.

4. *Taking costs to Crown—Fees to counsel and solicitor — Salaried officer representing the Crown*, *xxxix.*, 621.

See COSTS.

5. *Opening arguments — Quebec appeals.*

See APPEAL.

6. *Evidence — Burden of proof—Admissions — Shifting of onus—Sale of bank stock—Allotment to shareholders — Shares*

refused or relinquished—Sale to public—*Authority*—R. S. C. (1906) c. 29, s. 34, xlv., 157.

See EVIDENCE.

7. Lessor and lessee—Lease of adjoining lots—Separate demises—Assignment to one person—Termination of lease—Valuation of improvements—Valuation as a whole—Consent of counsel. *Irwin v. Campbell*, li, 358.

See LEASE.

### COUNTERCLAIM.

Company law—Payment for shares—Transfer of business—Debt due partnership—Set-off—Accord and satisfaction—Liability on subscription for shares—R. S. B. C. c. 44, ss. 50, 51, xxxiv., 160.

See COMPANY.

### COUNTY COURT JUDGES CRIMINAL COURT.

1. Criminal law—Venue—Indictment—Commitment to penitentiary—Form of warrant—Copy of sentence—Court of record—Inferior tribunal, xxxv., 490.

See CRIMINAL LAW.

2. Reserved case—Quorum of full court, xxxv., 376.

See COURTS.

### COUNTY OFFICERS.

Municipal corporation—Statutory duty—Crown Attorney—Office accommodation—Discretion, xlv., 137.

See MANDAMUS.

### COURTS.

1. Criminal law—Jurisdiction of magistrate—Criminal Code, s. 785—Constitutional law—Constitution of criminal courts—General Sessions of the Peace.]—By s. 785 of the Criminal Code any person charged before a police magistrate in Ontario with an offence which might be tried at the General Sessions of the Peace, may, with his own consent, be tried by the magistrate and sentenced, if convicted, to the same punishment as if tried at the General Sessions. By an amendment in 1900 (63 Vict. c. 46) the provisions of said section were extended to police and stipendiary magistrates of cities and towns in other parts of Canada.—*Held*, that though there are no courts of General Sessions except in Ontario, the amending Act is not, therefore, inoperative, but gives to a magistrate in any other province the jurisdiction created for Ontario by s. 785.—Though the organization of courts of criminal jurisdiction is within the exclusive powers of the provincial legislature, the Parliament of Canada may impose upon existing courts or individuals the duty

of administering the criminal law and its action to that end need not be supplemented by provincial legislation. *In re Vancini*, xxxiv., 621.

2. Appeals to court of King's Bench—Art. 124] C. P. Q.—Practice—Quorum of judges—Judgment pronounced in absence of disqualified judge—Jurisdiction.]—Art. 124] C. P. Q. permits four judges of the Court of King's Bench to give judgment in a cause heard before five when the remaining judge, after hearing the case argued, recused himself as disqualified. *Davies and Nesbitt, JJ., contra. Angers v. Mutual Reserve Fund Life Association*, xxxv., 330.

3. County Court Judges' Criminal Court—Court in banco—Jurisdiction of quorum.]—The Supreme Court of Nova Scotia, composed of a quorum of four judges only, has jurisdiction to hear and decide a Crown case reserved stated by the judge of the County Court Judges' Criminal Court for the opinion of the Supreme Court. *George v. The King*, xxxv., 376.

AND see CRIMINAL LAW.

4. Appeal—Jurisdiction—Land Titles Act—"Torrens System"—Involuntary transfers—Registry laws—Confirmation of tax sale—Persona designata—Court of superior jurisdiction—Interlocutory proceeding.]—The confirmation of a tax sale transfer by a judge of the Supreme Court of the North-West Territories under section 97 of the "Land Titles Act, 1894," is a matter or proceeding originating in a court of superior jurisdiction and an appeal will lie from a final judgment of the full court affirming the same to the Supreme Court of Canada. *City of Halifax v. Reeves* (23 Can. S. C. R. 340) followed. *Sedgewick and Killam, JJ., contra. North British Canadian Investment Co. v. Trustees of St. John School District No. 16, North-West Ter.*, xxxv., 461.

5. Appeal—Jurisdiction—Judgment of—Modification of trial judgment—Affirmance—"Supreme Court Act," R. S. C. 1906, c. 139, s. 40.]—An action to restrain the flooding of the plaintiff's land from the defendants' railway ditch, was maintained by the Superior Court and an order made directing the railway company to construct the necessary works to cause the trouble to cease within a time mentioned, failing which the plaintiff was authorised to do the works at the company's expense. On an appeal from this judgment, the Court of Review, of its own motion, added more specific directions as to the works to be done and, instead of authorizing the plaintiff to construct the works, in case of default, reserved his recourse for future damages and dismissed the appeal.—*Held*, that the judgment of the Court of Review had confirmed that of the court of first instance, and, therefore, an appeal therefrom would lie to the Supreme Court of Canada under the provisions of section 40 of the "Supreme Court Act," R. S. C. 1906, c. 139. *Hull Electric Co. v. Clement* (41 Can. S. C. R. 419), followed. *Canadian Northern Quebec Railway Co. v. Gignac*, li, 136.



6. Court of record—Inferior tribunal—Criminal law—Venue—Indictment—Commitment to penitentiary—Form of warrant—Copy of sentence, xxxv., 490.

See CRIMINAL LAW.

7. Railways—Farm crossings—Jurisdiction of the Board of Railway Commissioners for Canada—Statutory contract—Railway Clauses Act, 1851—Grand Trunk Railway 1852—"Railway Act, 1888"—"Railway Act, 1903"—Appeal to the Supreme Court of Canada—Jurisdiction—Controversy involved, xxxvi., 671.

See BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

8. Admiralty law—Foreign bottoms—Collision in foreign waters—Jurisdiction of Canadian courts, xxxviii., 303.

See SHIPS AND SHIPPING.

9. Appeal—Railway Act—Expropriation—Appeal from award—Jurisdiction—Choice of forum—*Curia designata*, xxxviii., 511.

See APPEAL.

10. Time limit for appeal to King's Bench—Opposite party appealing to Court of Review—Arts. 927, 1203, 1209 C. P. Q.—Practice—Injunction—Discretionary order—Reversal on appeal—Question of costs only, xxxix., 81.

See APPEAL.

11. Executor and trustee—Moneys of testator—Sale by executor—Under value—Jurisdiction of Probate Court, xxxix., 122.

See EXECUTORS AND ADMINISTRATORS.

12. Husband and wife—Institution of action by divorced wife—Judicial authorization—Arts. 176, 178 C. C.—Art. 14 C. C. P.—Divorce—Decree by foreign tribunal—Jurisdiction—Effect in Quebec—Comity of nations, Cam. Cas. 392.

See DIVORCE.

13. Habeas corpus—Criminal law—jurisdiction of judge of Supreme Court of Canada—Issue of writ out of jurisdiction of provincial courts—Concurrent jurisdiction—R. S. O. (1886) c. 135, s. 32—Construction of statute—Constitutional law—Powers of Parliament—"Inland Revenue Act"—"Selling and delivering a still and worm"—Cumulative charge—Summary conviction—Adjournment—Conviction in absence of accused, Cout. Cas. 110.

See HABEAS CORPUS.

14. Collection of municipal taxes—Action in Recorder's Court—Montreal City Charter, 62 V. c. 58 (Que.)—Appeal—Jurisdiction—Judgment by Court of Review—Special tribunal—Court of last resort—Supreme Court Act, R. S. C. 1906, c. 139, s. 41, xli., 427.

See APPEAL.

15. Appeal—Court of Review—Appeal to Privy Council—Appealable amount—Amendment to statute—Application—Notice of appeal, *Sedgewick v. Montreal*, xli., 639.

See NEW TRIAL.

16. Constitutional law—Construction of statute—B. N. A. Act, 1867, ss. 91, 92, 101—"Supreme Court Act," R. S. C. 1906, c. 139, ss. 3, 60—References by Governor-General in Council—Opinions and advice—Jurisdiction of Parliament—Independence of judges—Judicial functions—Constitution of courts—Administration of the laws of Canada—Provincial legislative jurisdiction. In *re* References by the Gov.-Gen. in council, xliii., 536.

See APPEAL, 3.

## COVENANT.

Landlord and tenant—Lease—Licensed hotel—Accommodation required by regulations—Covenant by lessor—Repairs and improvements—Loss of liquor license—Determination of lease—Implied condition.

See LANDLORD AND TENANT.

## "CREDITORS' RELIEF ACT."

Construction of statute—9 Edw. VII. c. 48, s. 6, s.s. 4 (Ont.)—Contesting creditor's lien—"Assignments and Preferences Act," 10 Edw. VII. c. 64, s. 14 (Ont.), xli., 119.

See STATUTE.

## CRIMINAL LAW.

1. Habeas corpus—Certiorari—Conviction—Keeping a house of "ill-fame"—Reviewing evidence—Construction of statute—29 & 30 Vict. c. 45 ss. 1, 5 (Can.)—R. S. O. (1877), c. 70, ss. 1, 8—Liberty of the subject.—Under the provisions of the Act 29 & 30 Vict. c. 45 (Can.), (R. S. O. 1877, c. 70), it is the duty of the judge of a Superior Court in Ontario, before whom writs of habeas corpus *ad subjiciendum* and certiorari are returned, to review and consider the evidence upon which the prisoner has been convicted, and to decide as to its sufficiency.—In the absence of proof that the person occupying a house knowingly kept therein persons of bad reputation or guilty of lewd conduct, general evidence that the keeper of the house was of evil reputation, or guilty of lewd conduct, is insufficient to support a conviction for keeping a house of "ill-fame" under the Act 32 & 33 Vict. c. 28 (D.), and its amendments.—*The Queen v. Mosier* (4 Ont. P. R. 64), and *The Queen v. Levêque* (30 U. C. Q. B. 509), referred to.—[NOTE.—*Cf.* R. S. O. (1887) c. 70, ss. 1, 5, and R. S. O. (1897) c. 83, ss. 1, 5. The Act of 1866, 29 & 30 Vict. c. 45 (Can.), was not consolidated in the Rev. Stats. of Can. 1886. See Sch. B. at p. 2302. See also R. S. L. C. c. 95, ss. 22-26; *Re Trepanier* (12 Can. S. C. R. 111); *Ex p. Macdonald* (27 Can. S. C. R. 683), *per* Girouard, J., at pp. 686-7; *Re Richard* (38 Can. S. C. R. 394); *Re Arabin* (Cout. Cas. 95); and *Re Tellier* (Cout. Cas. 100)]. *Re Hamilton*, Cout. Cas. 35.

2. *Habeas corpus*—*Jurisdiction of judge of Supreme Court of Canada*—*Issue of writ out of jurisdiction of provincial courts*—*Concurrent jurisdiction*—*R. S. C. (1886) c. 135, s. 32*—*Construction of statute—Constitutional law*—*Powers of Parliament*—*"Inland Revenue Act"*—*"Selling and delivering a still and worm"*—*Cumulative charge*—*Summary conviction—Adjournment—Conviction in absence of accused.*]—On an application for a writ of *habeas corpus ad subjiciendum* on a commitment, under a conviction in a criminal matter, to a term of imprisonment in the common gaol of the County of Richelieu, in the Province of Quebec, made in chambers at the City of Ottawa in Ontario, His Lordship Mr. Justice Patterson considered that, under these circumstances, he had no jurisdiction to issue the writ there, as the concurrent jurisdiction given by the statute in such matters was limited to that of a judge of the Superior Court of the Province of Quebec.—[NOTE.—The views above expressed by His Lordship are not in accord with the course of decisions of the court. *Cf. In re Trepanier* (12 Can. S. C. R. 111); *In re Sproule* (12 Can. S. C. R. 140); *In re Boucher* (Cout. Dig. 635); *Ex p. Macdonald* (27 Can. S. C. R. 683); *In re Richard* (38 Can. S. C. R. 394). See also *In re Hamilton* (No. 12, ante); and *In re Arabin* (Cout. Cas. 95).]—A charge that the person accused "sold and delivered a still and worm" without the necessary license under the "Inland Revenue Act," R. S. C. c. 34, constitutes only one offence under section 159 (c) of that Act.—Irregularities in procedure by a magistrate under the "Summary Convictions Act," are not properly open to review by a judge of the Supreme Court of Canada on an application.—*Semble*, that the jurisdiction given by the Act was intended to be limited to cases of emergency, or those in which, for some reason there might be an obstacle in the way of effective resort to provincial courts.—*Quere*—Has the Parliament of Canada power to confer such original jurisdiction upon judges of the Supreme Court of Canada? *Re Tellier*, Cout. Cas. 110.

3. *Conveyance of land*—*Partition*—*Petitory action*—"Quebec Act, 1774"—*Introduction of English criminal law*—*Champertry*—*Maintenance*—*Affinity and consanguinity*—*Litigious rights*—*Pacte de quota litis*—*Contract*—*Illegal consideration*—*Specific performance.*]—The heirs of M. induced several persons related to them either by consanguinity or by affinity to assist them as plaintiffs in the prosecution of a lawsuit for the recovery of lands belonging to the succession of an ancestor and, in consideration of the necessary funds to be furnished by these persons, six of the respondents and the *mis en cause*, entered into the agreement sued on by which said plaintiffs conveyed to each of the seven persons giving the assistance one-tenth of whatever might be recovered should they be successful in the lawsuit. In an action *au pétitoire et en partage*, by the parties who furnished such funds, for specific performance of this agreement:—*Held*, reversing the judgment appealed from (Q. R. 12 K. B. 298), Davies, J., dissenting, that the

agreement could not be enforced as it was tainted with champerty, notwithstanding that the consanguinity or affinity of the persons in whose favour the conveyance had been made might have entitled them to maintain the suit without remuneration as the price of the assistance.—*Held*, further, that the laws relating to champerty were introduced into Lower Canada by the "Quebec Act, 1774," as part of the criminal law of England and as a law of public order the principles of which and the reasons for which apply as well to the province of Quebec as to England and the other provinces of the Dominion of Canada. *Price v. Mercier* (18 Can. S. C. R. 303), referred to. (Leave to appeal to Privy Council refused.) *Meloche v. Déguire*, xxxiv., 24.

AND see TITLE TO LAND.

4. *Court of General Sessions of the Peace*—*Jurisdiction of magistrate*—*Criminal Code, s. 785*—*Constitutional law*—*Constitution of criminal courts.*]—By s. 785 of the Criminal Code, any person charged before a police magistrate in Ontario with an offence which might be tried at the General Sessions of the Peace, may with his own consent, be tried by the magistrate and sentenced, if convicted, to the same punishment as if tried at the General Sessions. By an amendment in 1900 (63 Vict. c. 46), the provisions of said section were extended to police and stipendiary magistrates of cities and towns in other parts of Canada.—*Held*, that though there are no courts of General Sessions except in Ontario, the amending Act is not, therefore, inoperative but gives to a magistrate in any other province the jurisdiction created for Ontario by s. 875.—Though the organization of courts of criminal jurisdiction is within the exclusive powers of the provincial legislatures, the Parliament of Canada may impose upon existing courts or individuals the duty of administering the criminal law and its action to that end need not be supplemented by provincial legislation. *In re Vancini*, xxxiv., 621.

5. *Commitment*—*Imprisonment in penitentiary*—*Form of warrant*—*Venue*—*Commencement of sentence.*]—The certified copy of sentence is sufficient warrant for the imprisonment of a convict in the penitentiary, and it is not necessary that it should contain every essential averment of a conviction.—Where the venue is mentioned in the margin of a commitment, in the case of an offence which does not require local description, it is not necessary that the warrant should describe the place where the offence was committed.—A warrant of commitment need not state the time from which the term of imprisonment shall begin to run, as, under the seventh sub-section of section 955 of the Criminal Code, terms of imprisonment commence on and from the day of the passing of the sentence. (Affirmed by full court, 35 Can. S. C. R. 490; No. 5, *infra*.) *Ex parte Smitheman*, xxxv., 189.

6. *Crown case reserved*—*Form of charge*—*Theft*—*Taking "fraudulently and without colour of right"*—*Criminal Code, 1892, ss. 305 and 611*—*Form FF*—*County Court*

*Judge's Criminal Court—Court in banco—Jurisdiction of quorum.*]—The Supreme Court of Nova Scotia, composed of a quorum of four judges only, has jurisdiction to hear and decide a Crown case reserved stated by the judge of the County Court Judges' Criminal Court for the opinion of the Supreme Court.—The prisoner was charged before the County Court Judges' Criminal Court with unlawfully stealing goods, but the charge did not allege that the offence was committed fraudulently and without colour of right:—*Held*, affirming the decision appealed from, that the offence of which the prisoner was accused was sufficiently stated in the charge. *George v. The King*, xxxv., 376.

7. *Venue — Indictment — Commitment to penitentiary — Warrant — Criminal Code, 1892, ss. 609, 745—R. S. C. c. 182, s. 42.*]—The venue mentioned in section 609 of the Criminal Code, 1892, means the place where the crime is charged to have been committed and, in cases where local description is not required, there is an implied allegation that the offence was committed at the place mentioned in the venue in the margin of the record. It is of no consequence whether or not the trial court should be considered an inferior court.—Under section 42 of "The Penitentiary Act," R. S. C. c. 182, a copy of the sentence of the trial court certified by a judge or by the clerk or acting clerk of that court is a sufficient warrant for the commitment and detention of the convict.—Judgment appealed from (35 Can. S. C. R. 189) affirmed. *Smitheman v. The King*, xxxv., 490.

8. *Criminal Code, 1892, ss. 241, 242 — Wounding with intent—Verdict—Conviction—Crown case reserved.*]—On an indictment for wounding with intent a verdict of "guilty without malicious intent" is an acquittal. Judgment appealed from (9 Can. Crim. Cas. 53) reversed, *Davies and Idington, J.J.*, dissenting. *Slaughenwhite v. The King*, xxxv., 607.

9. *Crown case reserved — Appeal—Extension of time for notice of appeal—"Criminal Code," s. 1024 — Order after expiration of time for service of notice—Jurisdiction.*]—The power given by section 1024 of the "Criminal Code" (R. S. C. (1906) c. 146) to a judge of the Supreme Court of Canada to extend the time for service on the Attorney-General of notice of an appeal in a reserved Crown case may be exercised after the expiration of the time limited by the code for the service of such notice, *Banner v. Johnston* (L. R. 5 H. L. 157), and *Vaughan v. Richardson* (17 Can. S. C. R. 703), followed. *Gilbert v. The King*, xxxviii., 207.

10. *Practice — Crown case reserved—Reserved questions — Dissent from affirmation of conviction — Appeal — Jurisdiction — Criminal Code, 1892, ss. 742, 743, 744, 750 — R. S. C. (1906), c. 146, ss. 1013, 1015, 1016, 1024 — Admission of evidence — Res gestæ.*]—Evidence of statements made by a person, since deceased, immediately after an assault upon him, under apprehension of

further danger and requesting assistance and protection, is admissible as part of the *res gestæ*, even though the person accused of the offence was absent at the time when such statements were made. *Reg. v. Beddingfield* (14 Cox 341); *Rea v. Foster* (6 C. & P. 325), and *Aveson v. Kinnaid* (6 East 188) followed.—Statements not coincident, in point of time, with the occurrence of the assault, but uttered in the presence and hearing of the accused and under such circumstances that he might reasonably have been expected to have made some explanatory reply to remarks in reference to them, are admissible as evidence.—On the trial of an indictment for murder the evidence was that the deceased had been killed by a gun-shot wound inflicted through the discharge of a gun in the hands of the accused and the defence was that the gun had been discharged accidentally:—*Held*, that, in view of the character of the defence and the evidence in support of it, there could be no objection to a charge by the trial judge to the jury that the offence could not be reduced by them from murder to manslaughter, but that their verdict should be either for acquittal or one of guilty of murder.—Two questions were reserved by the trial judge for the opinion of the court of appeal, but he refused to reserve a third question as to the correctness of his charge on the ground that no objection to the charge had been taken at the trial. The court of appeal took all three questions into consideration and dismissed the appeal, there being no dissent from the affirmation of the conviction on the first and third questions, but one of the judges being of opinion that the appeal should be allowed and a new trial ordered upon the second question reserved. On an appeal to the Supreme Court of Canada.—The majority of the court, being of opinion that the appeal should be dismissed, declined to express any opinion as to whether or not an appeal would lie upon questions as to which there had been no dissent in the court appealed from, but it was held:—*Per Girouard, J.*—That the Supreme Court of Canada was precluded from expressing an opinion on points of law as to which there had been no dissent in the court appealed from. *McIntosh v. The Queen* (23 Can. S. C. R. 180) followed. *Viau v. The Queen* (29 Can. S. C. R. 90); *The Union Colliery Company v. The Queen* (31 Can. S. C. R. 81) and *Rice v. The King* (32 Can. S. C. R. 480) referred to. *Gilbert v. The King*, xxxviii., 284.

11. *Disorderly house — Common betting house — Place for betting—Betting booth—Racecourse of incorporated association — Crim. Code, 1892, ss. 197, 204—Crim. Code, 1906, ss. 227, 235.*]—A perambulating booth used on the racecourse of an incorporated racing association for the purpose of making bets is an "office" or "place" used for betting between persons resorting thereto as defined in s. 197 of the Criminal Code, 1892 (Crim. Code, 1906, s. 227).—Sub-section 2 of s. 204 of the former Code (now s. 235) which exempts from the provisions of the main section (dealing with the recording or registering of bets, etc.), bets made on the racecourse of an incorporated association does not apply to the offence of keeping

a common betting-house. Girouard and Davies, JJ., dissenting. — Judgment of the Court of Appeal (12 Ont. L. R. 615) affirmed. Girouard and Davies, JJ., dissenting. *Saunders v. The King*, xxxviii., 382.

12. *Stated case—Dissent in court of appeal—Practice—Special leave for appeal—R. S. C. (1906) c. 139, s. 37 (c).*—In an appeal from the judgment of the Supreme Court of the North-West Territories, *in banc*, whereby the conviction of the respondent was quashed, two of the judges dissenting, special leave for the appeal was granted on motion before the full court, under the provisions of R. S. C. (1907) c. 139, s. 39 (c), on the 19th of February, 1907. *Lafferty v. Lincoln*, xxxviii., 620, 625  
AND see CONSTITUTIONAL LAW.

13. *Appeal — Criminal law — Reserved case — Application for “during trial” — Criminal Code, s. 1014 (3).*—By s. 1014 (3) of the Criminal Code either party may “during the trial” of a prisoner on indictment apply to have a question which has arisen reserved for adjudication by the Court of Appeal:—*Held*, that for the purposes of such provision the trial ends with the verdict after which no such application can be entertained. *Ead v. The King*, xl., 272.

14. *Criminal law — Indictable offence — Summary trial — Jurisdiction of magistrate — Offence committed in another county.*—If a person is brought before a justice of the peace charged with an offence committed within the province, but out of the limits of the jurisdiction of such justice, the latter, in his discretion, may either order the accused to be taken before some justice having jurisdiction in the place where the offence was committed (Cr. Code [1892] sec. 557; Cr. C. [1906] sec. 665) or may proceed as if it had been committed within his own jurisdiction.—S. was brought before the stipendiary magistrate of the City of Halifax charged with having committed burglary in Sydney, C. B. — *Held*, that the stipendiary magistrate could, with the consent of the accused, try him summarily under (Cr. C. [1892] sec. 785) as amended in 1900 (Cr. C. [1906] sec. 777). *Re Seeley*, xli., 5.

15. 6 & 7 *Edw. VII. c. 8 — Procedure — Alberta and Saskatchewan — Indictable offence — Preliminary inquiry — Preferring charge — Consent of Attorney-General — Powers of deputy — “Lord’s Day Act,” s. 17.*—Section 873 (a) of the Criminal Code (6 & 7 *Edw. VII. ch. 8*) provides that, “In the Provinces of Alberta and Saskatchewan it shall not be necessary to prefer any bill of indictment before a grand jury, but it shall be sufficient that the trial of any person charged with a criminal offence shall be commenced by a formal charge in writing setting forth as an indictment the offence with which he is charged.—2. “Such charge may be preferred by the Attorney-General or an agent of the Attorney-General or by any person with the written consent of the judge of the court or of the Attorney-General or by order of the court.”—*Held*, Idington, J., dissenting, that a preliminary inquiry

before a magistrate is not necessary before a charge can be preferred under this section.—*Held*, also, the deputy of the Attorney-General for either of said provinces has no authority to prefer a charge thereunder without the written consent of the judge or of the Attorney-General or an order of the court.—Section 17 of the “Lord’s Day Act” provides that “no action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney-General for the province in which the offence is alleged to have been committed . . .” —*Held*, that the deputy of the Attorney-General of a province has no authority to grant such leave. *Re Criminal Code*, xliii., 434.

16. *Trial for murder — Improper admission of evidence — New trial — Substantial wrong or miscarriage — Criminal Code, s. 1019.*—By section 1019 of the “Criminal Code,” it is provided that “no conviction shall be set aside or any new trial directed, although it appears that some evidence was improperly admitted or rejected or that something not according to law was done at the trial, . . . unless, in the opinion of the court of appeal, some substantial wrong or miscarriage was thereby occasioned on the trial.”—*Held*, reversing the judgment appealed from (16 B. C. Rep. 9), Davies and Idington, JJ., dissenting, that where evidence has been improperly admitted or something not according to law has been done at the trial which may have operated prejudicially to the accused upon a material issue, although it has not been and cannot be shewn that it did, in fact, so operate, and although the evidence which was properly admitted at the trial warranted the conviction, the Court of appeal may order a new trial. *Allen v. The King*, xli., 831.

17. *Evidence — Verdict.*—Evidence making a *prima facie* case for the Crown in a criminal prosecution, if unanswered and believed by the jury, is sufficient to support a conviction of the person accused. *Girvin v. The King*, xlv., 167.

18. *Indictment for murder — Trial — Evidence — Criminal intent — Provocation — “Heat of passion” — Charge to jury — Misdirection — Reducing charge to manslaughter — New trial — “Substantial wrong” — Criminal Code, ss. 261, 1019 — Appeal — Questions to be reviewed.*—On a trial for the murder of a police officer there was evidence that E. and J. had set out from their home, during the night when the deceased was killed, with the intention of committing theft; J. and his wife testified that, on returning home, E. had told them that a man, whom he supposed to be a secret-police constable, had pointed a pistol at him and told him to “go to hell” and that he had shot him. The defence was rested entirely upon *alibi*. and the accused testified on his own behalf stating that he had been at home during the whole of the night in question, but making no mention of any facts concerning the shooting. In his charge the trial judge reviewed the evidence, in a general way, and told the jury that, upon the evidence adduced, they must either convict or acquit of the crime of murder, that they could not return a

verdict of manslaughter, that if they believed J.'s account of what happened to be substantially true they should convict of murder; and he did not instruct the jury as to what, in law, constituted manslaughter nor as to circumstances on which the verdict might be reduced to manslaughter. E. was convicted of murder.—*Held*, Duff, J., dissenting, that, on the evidence, the charge of the trial judge was right, and that the omission to instruct the jury in respect to manslaughter did not occasion any substantial wrong or miscarriage which could justify the setting aside of the conviction nor a direction for a new trial.—*Per* Fitzpatrick, C.J., and Idington, J.—In a criminal appeal, it is doubtful whether any question except that upon which there was a dissent in the court below could be reviewed on an appeal to the Supreme Court of Canada.—*Per* Duff, J., dissenting.—In the circumstances of the case, the effect of the charge was to withdraw from the jury some evidence which ought to have been considered by them and which, if considered by them, might have influenced them favourably towards the accused in arriving at their verdict; consequently, some substantial wrong was thereby occasioned on the trial and the conviction should not be permitted to stand. *Eberts v. The King*, xlvi., 1.

19. *Habeas corpus* — “*Supreme Court Act*,” s. 39 (c)—*Criminal charge—Prosecution under Provincial Act—Application for writ—Judge’s order.*—By sec. 39 (c), of the “*Supreme Court Act*,” an appeal is given from the judgment in any case of proceedings for or upon a writ of *habeas corpus* . . . not arising out of a criminal charge.—*Held*, *per* Fitzpatrick, C.J., and Davies and Anglin, JJ., that a trial and conviction for keeping liquor for sale contrary to the provisions of the “*Nova Scotia Temperance Act*,” are proceedings on a criminal charge, and no appeal lies to the Supreme Court of Canada from the refusal of a writ of *habeas corpus* to discharge the accused from imprisonment on such conviction. Duff, J., *contra*. Brodeur, J., *hesitante*. — By the “*Liberty of the Subject Act*” of Nova Scotia on an application to the court or a judge for a writ of *habeas corpus* an order may be made calling on the keeper of the gaol or prison to return to the court or judge whether or not the person named is detained therein with the day and cause of his detention. On the return of an order so made, an application for the discharge of the prisoner was refused, and an appeal from this refusal was dismissed by the full court.—*Held*, *per* Idington and Brodeur, JJ., that such order is not a proceeding for or upon a writ of *habeas corpus* from which an appeal lies under said sec. 39 (c).—*Per* Duff, J.—That the judgment of the full court was given in a case of proceedings for a writ of *habeas corpus* within the meaning of sec. 39 (c), and that the proceedings did not arise out of a “*criminal charge*,” within the meaning of that provision; but that, on the merits, the appeal ought to be dismissed. *In re McNutt*, xlvii., 259.

20. *Indictment for murder* — *Trial* — *Charge to jury—Misdirection—Constructive*

*murder—Natural consequence of act—New trial.*—On the trial of an indictment for murder of one Kenneth Lea it was proved that the prisoners, who had been drinking, came on the deceased’s lawn and commenced to shout and sing and use profane and insulting language towards him. He twice warned them away, and finally appeared with a loaded gun threatening to shoot. A rush was made towards the verandah where he stood, when he took hold of the barrel of the gun and struck one of the prisoners with the stock. The gun was discharged into his body and there was evidence that the prisoners then maltreated him and his wife. He was taken to a hospital in Halifax where he died shortly after. The trial judge in charging the jury instructed them that the prisoners were doing an unlawful act in trespassing on the property of deceased, and that if they were actuated by malice it would be murder, if not it was manslaughter, drawing their attention especially to sections 256 and 259 (b) of the Criminal Code. The prisoners were found guilty of murder. On appeal from the decision of the Supreme Court of Nova Scotia on a reserved case:—*Held*, that the above direction to the jury ignored the requirements of the Code formulated in sub-section (d) of section 259, to which the Judge should also have drawn their attention directing them to find whether or not the prisoners knew, or ought to have known, that their acts were likely to cause death, and his failure to do so left his charge open to objection and constituted misdirection for which the prisoners were entitled to a new trial. *Graves v. The King*, xlvii., 568.

21. *Habeas corpus—Common law offences—Construction of statute—“Supreme Court Act,” R. S. C. 1906, c. 139, s. 62—Jurisdiction of Supreme Court judges.*—The jurisdiction of judges of the Supreme Court of Canada in respect of *habeas corpus ad subjiciendum* extends only to cases of commitment on charges of offences which are criminal by virtue of statutes enacted by the Parliament of Canada; it does not extend to cases of commitment for offences at common law or under statutes enacted prior to Confederation which are still in force. *Re Sproule* (12 Can. S. C. R. 140) referred to.—The offence of housebreaking as described in the Imperial statute, 7 & 8 Geo. IV. ch. 29, sec. 15, became part of the criminal law of British Columbia on the introduction of the criminal law of England into that colony by the Ordinance of 19th November, 1858, continued to be so until the Union of the province with Canada, and since then by virtue of sec. 11 of the “*Criminal Code*,” and it is not an offence to which sec. 62 of the “*Supreme Court Act*,” R. S. C. 1906, c. 139, has application. *Re Charles Dean*, xlvi., 235.

22. *Perjury—Form of oath.*—A witness who testifies to what is false is guilty of perjury, although, without being asked if he had any objection to being sworn in the usual manner, but without objecting to the form used, he was directed to take the oath by raising his right hand instead of kissing the Bible. *Curry v. The King*, xlviii., 532.

23. *Constitutional law—Legislation respecting Orientals—Chinese places of business—Employment of white females—Statute.*—2 Geo. V. c. 17 (Sask.)—"B. N. A. Act, 1867," ss. 91, 92—*Local and private matters—Property and civil rights—Naturalized British subject—Conviction under provincial statute.*—The provisions of the statute of the Province of Saskatchewan, 2 Geo. V. c. 17, containing a prohibition against the employment of white female labour in places of business and amusement kept or managed by Chinamen, sanctioned by fine and imprisonment, is *intra vires* of the Provincial Legislature. *Union Colliery Co. v. Bryden* ([1899] A. C. 580), and *Cunningham v. Tomey Homma* ([1903] A. C. 151), referred to.—*Per Duff, J.*—The imposition of penalties for the purpose of enforcing the provisions of a provincial statute does not, in itself, amount to legislation on the subject-matter of criminal law within the meaning of item 27 of the 91st section of the "British North America Act, 1867." *Hodge v. The Queen* (9 App. Cas. 117), *The Attorney-General of Ontario v. The Attorney-General for the Dominion* ([1896] A. C. 348), and *The Attorney-General of Manitoba v. The Manitoba License Holders' Association* ([1902] A. C. 73), referred to.—The judgment appealed from (4 West. W. R. 1135) was affirmed, Idington, J., dissenting.—(Leave to appeal to the Privy Council refused, 19th May, 1914.) *Quong-Wing v. The King*, xlix., 440.

24. *Stated case—Extension of time—Notice of appeal—Criminal Code, ss. 901, 1014, 1021, 1022, 1024.*—Where, on an application under section 901 of the Criminal Code, the court, in the exercise of judicial discretion, has refused to allow a postponement of the trial of the person indicted, there can be no review of the decision by an appellate court and the question presented does not constitute a question of law upon which there may be a reserved case under the provisions of section 1014 of the Criminal Code. Judgment appealed from (5 W. W. R. 1229; 26 West. L. R. 955) affirmed. *The Queen v. Charlesworth* (1 B. & S. 460); *Winsor v. The Queen* (L. R. 1 Q. B. 390); *Rea v. Lewis* (18 L. J. K. B. 722); *Rea v. Blyth* (19 Ont. L. R. 386); *Reg. v. Johnson* (2 C. & K. 354); and *Rea v. Slavin* (17 U. C. C. P. 205) referred to. *Mulvihill v. The King*, xlix., 587.

25. *Perjury—Form of oath—Practice—Voire dire.*—After examination on *voire dire*, in a judicial proceeding, a person called as a witness (with the assistance of an interpreter) went through a ceremony accepted as the taking of an oath in the form usual with his race and class, knowing and intending that his testimony should be received and acted upon as evidence given under oath.—*Held*, that on prosecution for perjury in giving his testimony the witness could not set up the defence that he had not been duly sworn. *Rea v. Lai Ping* (11 B. C. Rep. 102); *The Queen's Case* (2 Brod. & Bing. 284); *Omychund v. Barker* (1 Atk. 21); *Attorney-General v. Bradlaugh* (14 Q. B. D. 667), and *Curry v. The King* (48 Can. S. C. R. 532), referred to.—Judgment appealed from (19 D. L. R. 313; 30 West.

L. R. 65) affirmed. *Shajoo Ram v. The King*, li., 392.

26. *Indictment—Separate counts—Verdict—Conspiracy—Extraditable offence—Inadmissible evidence—Conviction—Inconsistency—Irregularity of procedure—Charge to jury—Address of counsel—Substantial wrong or miscarriage—New trial—"Criminal Code," s. 1019—Penalty.*—On an indictment containing several counts, including charges for theft, receiving stolen property and obtaining money under false pretences, in respect of which the person accused had been extradited from the United States of America, evidence was admitted on behalf of the Crown, for the purpose of showing *mens rea*, which involved participation of the accused in an alleged conspiracy. The principal objections urged against a conviction upon the charges mentioned were (a) that by the manner in which the trial had been conducted the jury may have been given the impression that the accused was on trial for conspiracy, a non-extraditable offence; (b) that misstatements and inflammatory observations had been made by counsel for the Crown in addressing the jury; and (c) that, in his charge, the trial judge had failed to correct impressions which may have been thus made on the minds of the jury or to instruct them that portions of the evidence admitted in regard to other counts ought not to be considered by them in disposing of the charge of obtaining money under false pretences.—*Held*, that, as there was sufficient evidence to support the verdict of the jury on the charge of obtaining money under false pretences, quite apart from the irregularities alleged to have taken place at the trial, no substantial wrong or miscarriage had been occasioned, and there could be no ground for setting aside the conviction or directing a new trial under the provisions of section 1019 of the Criminal Code.—Judgment appealed from (11 West. W. R. 46), affirmed. *Kelly v. The King*, liv., 220.

27. *Constitution of grand jury—Bias—Presentment of true bill—Presence of accuser on grand jury—Prejudice—Criminal Code, s. 899—Evidence.*—The appellant was indicted for perjury. The complainant had been summoned to act as a grand juror for the assizes at which the trial took place. The complainant was present with the grand jury when it was charged and when the presentment of a true bill was made. While the bill was under consideration by the grand jury one of the jurymen to whom the complainant had stated that it was a deplorable case, but it had come to the pass that either he or the accused would have to leave the town, repeated this statement to other grand jurors. In the reserved case it was stated by the trial judge that the complainant had in no manner taken any part in the deliberations of the grand jury on the indictment.—*Held*, affirming the judgment appealed from (Q. R. 25 K. B. 275), Anglin and Brodeur, JJ., dissenting, that, in the circumstances stated in the reserved case, neither the fact of the presence of the complainant as a member of the grand jury nor the statement made by him constituted a well-founded objection to the constitution

of the grand jury which had passed upon the indictment, which therefore could not be quashed under the provisions of section 899 of the Criminal Code.—*Per Davies, Anglin and Brodeur, JJ.*—An indictment preferred after consideration in which a grand juror disqualified by interest had participated should be quashed. *Re w. Hayes* (9 Can. Crim. Cas. 101) disapproved.—*Per Anglin and Brodeur, JJ.*—The reasonable inference from the facts stated in the special case is that the complainant was present with the grand jury during their deliberation upon the bill against the accused. The statement made by the complainant to the jurymen B., and by him repeated to his fellow-jurymen, was calculated to influence them. It is impossible to know whether the complainant's presence and his statement, so repeated, did or did not affect the grand jury adversely to the accused. He is entitled to have it assumed that they did. He was thereby deprived of his right to have his case passed upon by a duly qualified grand jury which was not improperly biased, and he thereby suffered prejudice within section 899 of the Criminal Code which warrants the quashing of the indictment. *Reg. v. Justices of Hertfordshire* (6 Q. B. 753); *The Queen v. Inhabitants of Upton St. Leonards* (10 Q. B. 827); *The Queen v. Gorbet et al.* (1 P. E. I. Rep. 262), and *Reg. v. McGuire* (4 Can. Crim. Cas. 12) referred to.—*Per Anglin, J.*—On a motion to quash an indictment found by a grand jury it is improper to admit evidence of what took place in the grand jury-room during the inquiry in regard to the indictment. *Reg. v. Justices of Hertfordshire* (6 Q. B. 753); *Reg. v. Lancashire Justices* (75 L. J. K. B. 198); *Reg. v. Meyer* (1 Q. B. 173) and *Reg. v. London County Council* ((1892) 1 Q. B. 190) referred to. *Veroneau v. The King*, liv., 7.

28. *Criminal law — Refusal of reserved case—Appeal to Supreme Court of Canada—Conviction in Yukon Territory—Admission of evidence—Procedure at trial.* *Labelle v. The King*, Cout. Cas. 282.

29. *Habeas corpus — Criminal appeals—Grand jurors — Selection of talesmen — Jurisdiction.* *Re Menard*, Cout. Cas. 313.

30. *Principal and agent — Gambling in stock — Advances by agent—Brokerage—Criminal Code, 1892, s. 201, xxxv., 380.*

See BROKER.

31. *Extradition — Prohibition — Agent—Supreme Court Act—Construction of statute—Public policy—Criminal proceedings, xxxvi., 247.*

See EXTRADITION.

32. *Canada Temperance Act—Conviction—"Criminal case"—R. S. C. (1886) c. 135, s. 32—Habeas corpus—Penalty—"Not less than \$50" — Conviction for \$200—Imposition of fine for first offence—Powers of Supreme Court judge—Reference of application to full court, xxxviii., 394.*

See "CANADA TEMPERANCE ACT."

33. *Constitutional law—Penitentiaries—Imprisonment of criminals — Expense of*

*maintenance — B. N. A. Act, 1867—Legislative jurisdiction of Parliament—Provincial legislation—Practice on references by Governor-General in Council, Cout. Cas. 24.*

See CONSTITUTIONAL LAW.

34. *Summary convictions and orders — Procedure by magistrate—Delay in issuing commitment—Term of imprisonment—Commencement of sentence—"Canada Temperance Act, 1878," Cout. Cas. 71.*

See HABEAS CORPUS.

35. *Construction of statute — Quebec "Sunday Act" — Prohibition of theatrical performances—Local, municipal and police regulations — Legislative jurisdiction — Validation by federal legislation—"Lord's Day Act," xlvii., 502.*

See CONSTITUTIONAL LAW.

36. *Judgment appealed from (19 D. L. R. 313; 30 West. L. R. 65) affirmed.* *Shajoo Ram v. The King*, li., 392.

37. *Restraint of trade—Contract—Consideration — Crim. Code, s. 498.* *MacEwan v. Toronto Gen. Trusts Corp.*, liv., 381.

See CONTRACT.

38. *Contract — Consideration — Settlement of action—Statute of Frauds—Trade agreement—Restraint of trade—Criminal Code, s. 498, liv.*

See CONTRACT.

## CROSS-DEMAND.

*Pleading — Compensation — Arts. 3, 203, 205, 207—C. P. Q. — Practice—Damages—Construction of contract—Liquidated damages—Penal clause—Arts. 1076, 1187, 1188, C. C. — Estoppel—Waiver, xxxvi., 347.*

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## CROWN ATTORNEY.

*Municipal corporation — Statutory duty — County officers—Discretion — Mandamus.* *Rodd v. County of Essex*, xlv., 137.

## CROWN.

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2. ESCHEAT AND FOFEITURE, 3.
3. HIGHWAYS, BRIDGES AND FERRIES, 4.
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## 1. CONTRACT.

1. *Delivery of goods—Conditions as to quality, weight, etc.—Inspection—Rejection—Conversion—Sale by Crown officials—Liability of Crown—Deductions for short weight—Costs. Boulay v. The King, xliii., 61.*

See CONTRACT.

2. *Contract—Sale of hay—Rejection—Conversion—Damages—Counterclaim—Evidence. Poirier v. The King, xlvi., 638.*

## 2. ESCHEAT.

3. *Devolution of estates—Intestacy—Failure of heirs—Escheat—Royalty—Bona vacantia—Dominion lands—Constitutional law—Surrender of Hudson Bay Company's lands—Construction of statute—"B. N. A. Act, 1867"—"Dominion Lands Act"—"Land Titles Act"—"Alberta Act"—(Alta.) 5 Geo. V. c. 5, Intestate estates, liv.*

See ESCHEAT.

## 3. HIGHWAY.

4. *Highway—Road allowances—Reservations in township survey—General instructions—Model plan—Evidence, xxxiv., 513.*

See EVIDENCE.

## 4. NEGLIGENCE.

5. *Negligence of fellow-servant—Operation of railway—Defective switch—Public work—Tort—Liability of Crown—Right of action—Exchequer Court Act, s. 16 (c)—Lord Campbell's Act—Art. 1056 C. C.—*In consequence of a broken switch, at a siding on the Intercolonial Railway (a public work of Canada), failing to work properly, although the moving of the crank by the pointsman had the effect of changing the signal so as to indicate that the line was properly set for an approaching train, an accident occurred by which the locomotive engine was wrecked and the engine-driver killed. In an action to recover damages from the Crown, under article 1056 of the Civil Code of Lower Canada:—*Held*, affirming the judgment appealed from (11 Ex. C. R. 119), that there was such negligence on the part of the officers and servants of the Crown as rendered it liable in an action in tort; that the "Exchequer Court Act," 50 & 51 Vict. c. 16, s. 16 (c), imposed liability upon the Crown, in such a case, and gave jurisdiction to the Exchequer Court of Canada to entertain the claim for damages; and that the defence that deceased, having obtained satisfaction or indemnity within the meaning of article 1056 of the Civil Code, by reason of the annual contribution made by the Railway Department towards The Intercolonial Railway Employees' Relief and Insurance Association, of which de-

ceased was a member, was not an answer to the action. *Miller v. The Grand Trunk Railway Co.* ([1906] A.C. 187) followed. (Leave to appeal to Privy Council was refused; 18th July, 1908.) *The King v. Armstrong*, xl., 229.

6. *Negligence—Injury on public work—Government railway—Fire from engine—R. S. [1906] c. 140, s. 20 (c)—Words and phrases.*—The words "on a public work" in sub-sec. (c) of R. S. [1906] c. 140, s. 20 (The Exchequer Court Act), are descriptive of locality and to make the Crown liable for injury to property under that sub-section such property must be situated on the work when injured. *Chamberlin v. The King*, xlii., 350.

7. *Public work—Damage to adjacent lands—Negligence—Liability of—Exchequer Court Act, s. 20—Litigious rights—Bar to action—"Rideau Canal Act," 7 Geo. IV. c. 1 (U.C.)—Limitation of actions.*—The Crown is not liable, under sec. 20, sub-sec. (c) of the "Exchequer Court Act" (R. S. C. [1906] c. 140), for injury to property by negligence of its servants unless the property is on a public work when injured. *Chamberlin v. The King* (42 Can. S. C. R. 350), and *Paul v. The King* (38 Can. S. C. R. 126), followed.—*Per Fitzpatrick, C.J.*—Where property is purchased for the purpose of enforcing a claim against the Crown for injury thereto, such purpose constitutes a bar to the prosecution of the claim.—*Per Brodeur, J.*—Section 26 of the "Rideau Canal Act," 8 Geo. IV., c. 1 (U. C.), providing that any plaint brought against any person or persons for anything done in pursuance of said Act must be commenced within six months next after the act committed, applies to proceedings against the Crown though the Crown was not mentioned and no claim against it founded on tort could then be prosecuted. *Idington, J., contra. Anglin, J., dubitante. Olmstead v. The King*, liii., 450.

8. *Negligence—Injury to "property on public work"—Jurisdiction—R. S. C. [1906] c. 140, s. 20 (b) and (c).*—To make the Crown liable, under sub-sec. (c) of section 20 of the "Exchequer Court Act" (R. S. C. [1906] c. 140), for injury to property, such property must be on a public work when injured. *Chamberlin v. The King* (40 Can. S. C. R. 350) and *Paul v. The King* (38 Can. S. C. R. 126) followed. *Letourneau v. The King* (33 Can. S. C. R. 335) overruled.—Injury to property by an explosion of dynamite on property adjoining a public work is not "damage to property injuriously affected by the construction of a public work" under sec. 20 (b) of the Act. *Piggott v. The King*, liii., 626.

9. *Government railways—Construction and maintenance—Level crossings—Regulations by Governor in Council—Construction of statute—"Government Railways Act," R. S. C. 1906, c. 36, ss. 16, 49, 54—Negligence—Act of third person—Liability of Crown for damages—Highways.*—The right to construct Government railways across highways conferred by section 16 of the "Gov-



ernment Railways Act," R. S. C. 1906, c. 36, is subject to the continuing duty imposed upon the Government railway authorities that, in regard to the relative levels of the railway tracks and the highways, so long as any such crossings are maintained on the level of the roads the railway tracks shall not rise or sink more than one inch above or below the surface of the highways. — Regulations made by the Governor in Council under the provisions of section 49 and falling within section 54 of the "Government Railways Act," R. S. C. 1906, c. 36, must not conflict with specific enactments of the statute; a regulation which may be the cause of conditions existing which are inconsistent with explicit requirements of the statute must be construed as subordinate to an implied proviso that nothing therein shall sanction a departure from any special requirement of the statute: *Institute of Patent Agents v. Lockwood* (1894) A. C. 347 and *Booth v. The King* (51 Can. S. C. R. 20) referred to.—A level crossing of the Intercolonial Railway had planking between the rails which raised the roadbed so that the tracks did not rise more than an inch above the surface of the highway. Under a regulation for the guidance of trackmasters and trackmen, made by the railway authorities, the planks were removed during the winter season to permit safe operation of snowploughs and flangers, during this season the space occupied by the planking being filled by snow and ice. In April, before the use of snowploughs and flangers had been discontinued, the ice and snow melted and left the tracks about six inches above the roadbed. After the usual inspection by the trackmen, some unknown person placed a fence-rail against one of the tracks to assist sleighs over the obstruction and, later in the day, suppliant in driving his sleigh along the highway had his foot crushed between the fence-rail and the track and sought damages from the Crown for the injuries sustained: — *Held*, that the condition of the crossing constituted negligence of officers and servants of the Crown while acting within the scope of their duties and employment in the construction and maintenance of the railway in consequence of which the Crown was liable in damages notwithstanding that the resulting injury might not have occurred but for the intervening act of some unknown third person: *Latham v. R. Johnson & Nephew* (1913), 1 K. B. 398, referred to. *Belanger v. The King*, *liv.*, 265.

10. *Navigation of inland waters—Collision—Government ships and vessels—"Public work"—"The Eschequer Courts Act," s. 16—Construction of statute—Right of action*, xxxviii., 126.

See NEGLIGENCE.

11. *Negligence—Tort—Liability of the Crown—Demise of the Crown—Personal action—Release—Operation of railway—Common employment—Eschequer Court Act, 50 & 51 V. c. 16, s. 16 (c)—Appeals to Privy Council*, xli., 71.

See NEGLIGENCE.

12. *Injury on public work—Government railway—Fire from engine—R. S. C. 1906, c. 140, s. 20 (c). Chamberlain v. The King*, xlii., 350.

See PUBLIC WORK.

##### 5. OFFICERS AND SERVANTS.

13. *Negligence—Common employment—Defence by Crown—Workmen's Compensation Act.*—The Manitoba Workmen's Compensation Act does not apply to the Crown. *Idington, J.*, dissenting.—In Manitoba the Crown as represented by the Government of Canada may, in an action for damages for injuries to an employee, rely on the defence of common employment. *Idington, J.*, dissenting. *Ryder v. The King*, xxxvi., 462.

14. *Taxing costs to the Crown—Fees to counsel and solicitor—Salaried officer representing the Crown.*—As the statutes of Canada defining the duties and salaries of the Attorney-General and his deputy deny additional compensation for services rendered by them in connection with litigation affecting the Crown, it is improper to allow counsel fees or solicitor's fees in respect of services rendered in such capacities by either of these officers on the taxation of costs awarded in favour of the Crown. *Jarvis v. the Great Western Railway Co.* (8 U. C. C. P. 280), and *The Charlevoix Election Case* (Cout. Dig. 388) followed. *Hamburg-American Packet Co. v. The King*, xxxix., 621.

15. *Railway aid—Provincial subsidy—Construction of statute—60 Vict. c. 4, s. 12 (Que.)—54 Vict. c. 88, s. 1j (Que.)—Breach of conditions—Compromise by Crown officers—Obligation binding on the Crown—Right of action—Extension of railway—Application of subsidy.*—The suppliants claimed that by the Quebec statutes, 54 Vict. c. 88 and 60 Vict. c. 4, a balance was due them on subsidy in aid of the Baie des Chaleurs Railway, that the subsidy was attributable to the first 60 miles from Metapedia towards Gaspé Basin, that such subsidy was subject only to the conditions in the second part of s.-s. 1j. of the Act 54 Vict., and that the Provincial Government was bound by the terms of a transaction with the Lieutenant-Governor in Council, compromising for the land subsidy at a rate per acre in cash. The Supreme Court affirmed the judgment appealed from (Q. R. 15 K. B. 120) dismissing the petition of right and holding that the subsidy applied to the 80 miles terminating at or near Gaspé Basin, and that the construction placed on the statutes by officers of the Crown in effecting the compromise and part payment in money gave the suppliants no right of action against the Crown for the balance claimed by them. *De Galindez et al. v. The King*, xxxix., 682.

16. *Contract—Delivery of goods—Conditions as to quality, weight, etc.—Inspection—Rejection—Conversion—Sale by Crown officials—Deductions for short weight—Costs*

—Sale.]—The Minister of Agriculture of Canada entered into a contract with the suppliants for the supply of a quantity of pressed hay for the use of the British army engaged in the operations during the late South African war, the quality of the hay and the size, weight and shape of the bales being specified. Shipments were to be made f.o.b. cars at various points in the Province of Quebec to the port of Saint John, N.B., and were to be subject to inspection and rejection at the ship's side there by government officials. Some of the hay was refused by the inspector, as deficient in quality, and some for short weight in the bales. In weighing, at Saint John, fractions of pounds were disregarded, both in respect to the hay refused and what was accepted; there was also a shrinkage in weight and in number of bales as compared with the way-bills. The hay so refused was sold by the Crown officials without notice to the suppliants, for less than the prices payable under the contract, and the amount received upon such sales was paid by the government to the suppliants. In making payment for hay accepted, deductions were made for shortage in weights shewn on the way-bills and invoices, and credit was not given for the discarded fractions.—*Held*, the Chief Justice and Davies, J., dissenting, that the appellants were entitled to recover for so much of the amount claimed on the appeal as was deducted for shrinkage or shortage in the weight of the hay delivered on account of the government weighers disregarding fractions of pounds in the weight of that accepted and discharged from the cars at Saint John.—*Per* Girouard, Idington and Duff, J.J.—The manner in which the government officials disposed of the hay so refused amounted to an acceptance which would render the Crown responsible for payment therefor at the contract price.—Judgment appealed from (12 Ex. C. R. 198) allowed in part with costs, the Chief Justice and Davies, J., dissenting. *Boulay v. The King*, xliii., 61.

## 6. PUBLIC LANDS.

17. *Crown out of possession—Adverse possession—Grant during—21 Jac. I., c. 14 (Imp.)—Information for intrusion.*—Though there has been adverse possession of Crown lands for more than twenty years the Act 21 Jac. I., c. 14, does not prevent the Crown from granting the same without first re-establishing title by information of intrusion. Judgment appealed from (36 N. B. Rep. 260) reversed, Davies, J., dissenting. (Affirmed on appeal to Privy Council, 47 Can. Gaz. 424). *Maddison v. Emmer-son*, xxxiv., 533.

18. *Mining lease—Trespass—Conversion—Title to lands—Evidence—Description in grant—Plan of survey—Certified copy.*—The provisions of s. 20 of "The Evidence Act," R. S. N. S. (1900), c. 160, do not permit the reception of a certified copy of a copy of a plan of survey deposited in the Crown Lands Office to make proof of the original annexed to the grant of lands from the

Crown. *Nova Scotia Steel Co. v. Bartlett*, xxxv., 527.

19. *Subaqueous mining—Crown grants—Dredging lease—Breach of contract—Subsequent issue of placer mining licenses—Damages—Pleading and practice—Statement of claim—Demurrer—Cause of action.*—A statement of claim which alleges that the Crown, after granting a lease of areas for subaqueous mining and while that lease was in force, in derogation of the rights of the lessee to peaceable enjoyment thereof, interfered with the rights vested in him by transferring the leased area to placer miners who were put in possession of them by the Crown to his detriment, discloses a sufficient cause of action in support of a petition of right for the recovery of damages claimed in consequence of such subsequent grants.—Judgment appealed from (10 Ex. C. R. 390) reversed, Davies and Idington, J.J., dissenting.—Davies, J., dissented on the ground that there was no sufficient allegation in the petition either of interference with the submerged beds or bars of the stream, which alone were included in the dredging lease, or of such active interference by the Crown as would justify an action. (Appeal to Privy Council dismissed with costs; 10th July, 1908). *McLean v. The King*, xxxviii., 542.

20. *Mines and minerals—Hydraulic regulations—Application for mining location—Duties imposed on Minister of the Interior—Status of applicant—Vested rights—Contract binding on the Crown.*—Under the hydraulic regulations for the disposal of mining locations in the Yukon Territory, enacted by the Governor-General in Council on 3rd December, 1898, as amended by subsequent regulations and by the order in council of 2nd February, 1904, the Minister of the Interior is charged with the duty not only of pronouncing on the question whether or not the locations applied for should be reserved for disposal under such hydraulic regulations, but also of determining the priority of rival claimants, the extent of the locations and the conditions of any lease to be granted.—Until the minister has given a decision favourable to an applicant, there can be no implied contract binding upon the Crown in respect to the location applied for, and the mere filing of an application for an hydraulic lease confers no status or prior rights on the applicant in respect to the ground therein described. *Smith v. The King*; *Frooks v. The King*, xl., 258.

21. *Mining regulations—Hydraulic lease—Breach of conditions—Construction of deed—Forfeiture—Right of lessees—Procedure on inquiry—Judicial duties of arbiter.*—Under a condition for defeasance in a lease of a mining location, made by the Crown in virtue of the hydraulic mining regulations of 3rd December, 1898, a provision that the Minister of the Interior is to be the "sole and final judge" of the fact of default by the lessee does not entitle the Crown to cancel the lease and re-enter until the fact of such default has been determined by the Minister in the exercise of the functions vested in him after an inquiry of a judicial nature in which an opportunity has been

afforded to all parties interested of knowing and being heard in respect to the matters alleged against them in such investigation.—*Quære, per Idington, J.*—Was there not sufficient evidence in the case to shew that there had been no such breach of the conditions as could work a forfeiture of the lease?—(Leave to appeal to Privy Council was refused, 18th July, 1908). *Bonanza Creek Hydraulic Concession v. The King*, xl., 281.

22. *Mining regulations—Hydraulic lease—Breach of conditions—Construction of deed—Forfeiture—Right of lessees—Procedure on inquiry—Judicial duties of arbiter.*—Under circumstances similar to those involved on the appeal in the case of *The Bonanza Creek Hydraulic Concession v. The King* (40 Can. S. C. R. 281), this appeal was allowed with costs for the reason that there could be no right of cancellation of the lease or re-entry by the Crown until default by the lessees had been established upon an investigation of a judicial nature by the Minister of the Interior in the exercise of the functions vested in him by the hydraulic regulations and the terms of the lease.—*Per Idington, J.*—The facts disclosed by the evidence could not justify the cancellation of the lease or re-entry for breach of the conditions thereof.—(Leave to appeal to Privy Council was refused, 18th July, 1908). *Klondyke Government Concession v. The King*, xl., 294.

23. *Sale of Crown lands—Holders of location ticket—Privilege reserved—Prior right—“Proprietor of the soil”—Construction of statute—R. S. Q. (1888) ss. 1269, 1440, 1441; 55 & 56 Vict. c. 20 (Que.)*—The expression “proprietor of the soil” in s. 1441 of the Revised Statutes of Quebec, 1888, as amended by 55 & 56 Vict. c. 20, read in connection with s. 1269, Rev. Stats. Que., 1888, is not intended to designate the holder of a location ticket, and consequently, persons holding Crown lands, merely as locatees, have no vested preferential rights to grants from the Crown of the mining rights therein, under ss. 1440 and 1441 of the Revised Statutes of Quebec, 1888, as amended by the “Act to amend and consolidate the Mining Law,” 55 & 56 Vict. c. 20 (Que.). *Green v. Blackburn*, xl., 647.

24. *Title to lands—Homestead and pre-emption rights—Unpatented Dominion lands—“Transfer”—Incumbrance—Charge to secure debts—Sanction of minister—Absolute nullity—Construction of statute—60 & 61 Vict. c. 29, s. 5; R. S. C. (1906) c. 55, s. 142.*—On 6th August, 1904, the holder of rights of homestead and pre-emption in Dominion lands, in Manitoba, which had not then been patented or recommended for patent, assumed to “incumber, charge and create a lien” upon the lands as security for the payment of a debt by an instrument executed without the sanction of the Minister of the Interior. — *Held*, affirming the judgment appealed from (11 West. L. R. 185), that the instrument was in effect a “transfer” and was absolutely null and void under the provisions of the “Dominion Lands Act.” *American-Abell Engine and Thresher Co. v. McMillan*, xli., 377.

25. *Location—Public policy—Evasion of statute—B. C. “Land Act,” 8 Edw. VII. c. 30, ss. 34, 36—Sale of Crown lands—Principal and agent—Commission on sales—Quantum meruit—Tainted contract.*—B., who had laid out and inspected Crown lands as a Government surveyor, furnished information to the defendant and an associate which enabled them to secure choice locations, comprising over 7,000 acres of these lands, in the names of a number of persons nominated by them and employed as “stakers.” Subsequently B. assisted in the disposal of the lands thus secured to innocent purchasers under an arrangement with the defendant and his associate that he was to participate in any profits which should be obtained on such sales. In an action by B. to recover compensation for the services he had rendered in regard to these sales:—*Held*, that the circumstances disclosed a scheme concocted in opposition to the policy of the British Columbia “Land Act” and in violation of its provisions respecting the disposal of Crown lands; consequently, the agreement, being tainted with the character of the scheme, ought not to be enforced by the courts.—*Per Idington and Anglin, JJ.*—The plaintiff’s claim fails for want of evidence of any request by the defendant that he should render the services in respect of which remuneration is claimed nor an agreement to remunerate him for assistance in effecting the sales in question.—The judgment appealed from (3 West. W. R. 725; 23 West. L. R. 30; 9 D. L. R. 400), stood affirmed. *Brownlee v. McIntosh*, xlviii., 588.

26. *Colonization—Location ticket—Transfer by locatee—Sale—Issue of letters patent—Title to land—Registry laws—Notice—Arts. 1487, 1488, 2082, 2084, 2085, 2098 C. C.*—*Per Idington, Anglin and Brodeur, JJ.*—Prior to 1st July, 1909, the holder of a location ticket for colonization land in the Province of Quebec had an interest in the land capable of being sold. In case of sale the purchaser’s title became absolute on issue of the letters patent. Such title was good, even if unregistered, against a purchaser from the original locatee after the issue of letters patent who had notice of the prior sale.—*Per Duff, J.*—Without the approval of the Crown Lands Department, a locatee of Crown lands was incapable of transferring any *jus in re* therein while the location was vested in him. Nevertheless he could make a contract for the sale of his rights in the located land, while he remained locatee thereof, which, under the provisions of article 1488 of the Civil Code, would have the effect of transferring the land upon the issue of letters patent thereof to him by the Crown. On the proper construction of article 2098 of the Civil Code, where the title of the transferor does not come within the classes of rights exempted from the formality of registration by article 2084 C. C. and has not been registered, a transfer of that title does not take effect until the prior title deed has been registered.—Judgment of the Court of King’s Bench (Q. R. 23 K. B. 80), reversed, *Davies, J., dissenting.*—*Per Davies, J., dissenting.*—A transfer by the locatee of his rights is void if made to a person or a company who could not become a *bona fide* settler and, therefore, could not, himself

or itself, obtain a location ticket for colonization land. *Howard v. Stewart*, l, 311.

27. *License to cut timber—Indian lands—R. S. C. [1886] c. 43, ss. 54 and 55—License for twelve months—Regulations—Renewal of license.*—Section 54 of R. S. C. [1886] c. 43 (now R. S. C. [1906] c. 81), enacted that licenses might be issued to cut timber on Indian lands, and s. 55 that "no license shall be so granted for a longer period than twelve months from the date thereof." By a regulation made by the Governor-General in Council and sanctioned by Parliament it was provided that license holders who had complied with all existing regulations should be entitled to renewal on application.—*Held*, affirming the judgment of the Exchequer Court (14 Ex. C. R. 115), that a license holder who has complied with the regulations has no absolute right to a renewal as a regulation making perpetual renewal obligatory would be inconsistent with the statutory limitation of twelve months and, therefore, non-operative. *Booth v. The King*, li, 20.

28. "*Expropriation Act*," R. S. C., 1906, c. 143, ss. 8, 23, 31—*Abandonment of proceedings—Compensation—Allowance of interest—Construction of statute—Practice—Taxation of costs—Solicitor and client—Reimbursement of expenses—Interpretation of formal judgment—Reference to opinion of judge.*—While the owners still continued in possession of lands in respect of which expropriation proceedings had been commenced under the "Expropriation Act," R. S. C., 1906, c. 143, and before the indemnity to be paid had been ascertained, the proceedings were abandoned, no special damages having been sustained.—*Held*, that in assessing the amount to be paid as compensation to the owners, under the provisions of the fourth sub-section of section 23 of the "Expropriation Act," there could be no allowance of interest either upon the estimated value of the lands or upon the amount tendered therefor by the Government.—The trial judge, by his written opinion, held that the owners were entitled to be fully indemnified for their costs as between solicitor and client and for all legitimate and reasonable charges and disbursements made in consequence of the proceedings which had been taken. The formal judgment provided merely that costs should be taxed as between solicitor and client.—*Per Davies, Idington, Anglin and Brodeur, JJ.*—In the taxation of costs, the registrar should follow the directions given in the judge's opinion to interpret the formal judgment as framed. *Duff, J., contra.*—*Per Duff, J.*—The registrar, in taxing costs, is required by law to follow the terms of the formal judgment and it is not open to him to correct it in order to make it accord with his interpretation of the opinion judgment. The court appealed from, however, may correct the formal judgment in so far as it does not express the intention of the opinion judgment. *Quebec, Jacques-Cartier Electric Co. v. The King*, li, 594.

29. *Dominion lands—Lease of mining areas—"Dominion Lands Act," s. 47—Statutory regulations—Conditions of lease—Defeasance—Notice—Cancellation on default—Forfeiture of rights—Principal and*

*agent—Solicitor.*—A lease granted under the regulations regarding the leasing of school lands in the North-West Territories for coal mining purposes, made pursuant to s. 47 of the "Dominion Lands Act," provided that, on default by the lessee to perform conditions of the lease, the Minister of the Interior should have power to cancel the lease by written notice to the lessee, whereupon the lease should become void and the Crown might re-enter, re-possess and enjoy its former estate in the lands.—*Held*, reversing the judgment appealed from (15 Ex. C. R. 252), *Idington and Brodeur, JJ.* dissenting, that in order to determine such a lease it is essential that the cancellation should be effected by a notice in writing from the Minister which actually reaches the lessee.—*Per Fitzpatrick, C.J.*—The notice should declare the intention of the Minister to make the cancellation on account of breach of the conditions, and the lessee should be given an opportunity to remedy the breach in question or, at least, to be heard before forfeiture. No proposed cancellation can be effective against the lessee unless such a notice has been given to him before the forfeiture is declared.—*Per Duff, J.*—In the absence of special authority, solicitors employed by the lessee in respect of his business with the Department cannot be deemed agents to whom such notice of cancellation could be given on his behalf.—*Per Duff, J.*—Section 6 of the regulations has not the effect, upon default in performance of the nominated conditions, of terminating the lessee's interest *ipso jure*, but only on the election of the Crown manifested as provided for in the lease. *Davenport v. The Queen* (3 App. Cas. 115), applied.—*Per Idington, J.* (dissenting).—The lease in question was determinable at the election of the Crown upon the mere fact of breach of conditions, and the Crown having so elected, the Minister was not competent to revive it or to waive the consequences of default.—*Per Idington and Brodeur, JJ.*—By notification to his solicitors and the effect of the correspondence with the Department, which took place thereafter, it must be taken that the lessee had actual notice of the intention of the Minister to cancel the lease for breach of conditions. *Paulson v. The King*, li, 317.

30. *Lands vesting in Crown—Constitutional law—"B. N. A. Act, 1867," ss. 91 (24), 109-117—Title to "Indian lands"—Surrender—Sale by Commissioner—Property of Canada and provinces—Construction of statute—"Indian Act," 39 V. c. 18—R. S. C. 1886, c. 43, s. 42—Words and phrases—"Reserve"—"Person"—"Located Indian"—Evidence—Public document—Legal maxim.—Per curiam.*—The "Indian Act," 39 V. c. 18, does not prohibit the sale by the Crown to an "Indian" of public lands which have, on surrender to the Crown, ceased to be part of an Indian "reserve," nor prevent an individual of Indian blood, who is a member of a band or tribe of Indians, from acquiring title in such lands. The use of the word "person" in the provisions of the "Indian Act" (39 V. c. 18, s. 31; R. S. C. 1886, c. 43, s. 42), relating to sales of Indian lands, has not the effect of excluding Indians from the class

entitled to become purchasers of such lands on account of the definition of that word in the interpretation clauses of the statutes in question.—*Per* Idington, J.—Crown lands of the Province of Canada, situate in Lower Canada, which had not (as provided by the statute 14 and 15 V. c. 106), been surveyed and set apart, as intended to be vested in the Commissioner of Indian Lands for Lower Canada, and appropriated to the use of Indians prior to the 1st July, 1867, do not fall within the definition of "Lands reserved for the Indians" in the 24th item enumerated in s. 91 of the "British North America Act, 1867," and, consequently, did not pass under the control of the Government of the Dominion of Canada at the time of Confederation. In regard, therefore, to the lands in question the presumption is that they then became vested in the Crown in the right of the Province of Quebec, and, in the absence of evidence to the contrary, the Attorney-General for Canada cannot now enforce any claim of title to such lands in the right of the Dominion.—*Per* Duff and Anglin, J.J.—The order-in-council of 1869, authorizing the acceptance of a surrender, and the surrender pursuant thereto by the Indians of the "reserve" within which the lands in question are situate, are public documents the recitals in which are *primâ facie* evidence of the facts stated therein (*Sturla v. Freccia* (5 App. Cas. 623), at pp. 643-4, referred to). Evidence is thereby afforded that the hand of Indians occupied the tract of land in question as a "reserve" and the principle "*omnia præsumuntur rite esse acta*" is sufficient to justify, *primâ facie*, the conclusion that the order-in-council of 1853, respecting the constitution of the reserve, was carried out and that the occupation thereof by the Indians was legal. Consequently, the rights acquired by the Indians constituted ownership, the surrender by them to the Crown was validly made and the lands passed under the control of the Government of Canada, at the time of Confederation, in virtue of the provisions as to "Lands reserved for the Indians" in s. 91 of the British North America Act, 1867." *St. Catherine's Milling and Lumber Co. v. The Queen* (14 App. Cas. 46), distinguished.—Judgment appealed from (Q. R. 24 K. B. 433), affirmed. *Attorney-General for Canada v. Giroux*, liii., 172.

31. *Title to land—Adverse possession against Crown—"Nullum Tempus Act"*—*Interruption of possession—Information of intrusion—Judgment by default—Acknowledgment of title—"Real Property Limitations Act"* (Ont.)—A judgment by default, on information of intrusion against persons in possession of Crown lands, which was never enforced, did not interrupt such possession and prevent it ripening into title under the "Nullum Tempus Act."—"The Real Property Limitations Act" of Ontario (C. S. U. C. c. 88, s. 15; R. S. O. [1914] c. 75, s. 14), providing that an acknowledgment of title in writing shall interrupt the adverse possession does not apply to possession of Crown lands and such acknowledgment is not an interruption under the "Nullum Tempus Act."—The provision in the "Ontario Limitation of Actions Act"

of 1902, making an acknowledgment apply to interrupt possession of Crown lands is not retroactive or, if it is, it cannot apply to a case in which the adverse possession had ripened into title before it was passed. *Per* Duff, J.—As intrusion does not, in itself, deprive the Crown of possession, the occupation required to attract the benefit of the first section of the "Nullum Tempus Act," 9 Geo. III., c. 16, is not technically possession; but lands are "held or enjoyed" within the meaning of that section where facts are proved which, in litigation between subject and subject, would constitute civil possession as against the subject owner.—The judgment of the Exchequer Court (16 Ex. C. R. 67), in favour of the Crown on information of intrusion was reversed, Fitzpatrick, C.J., holding that the Crown had failed to prove title, Idington, J., that the claim was barred by the negative clause of the first section of the "Nullum Tempus Act." and the other judges that the defendants had obtained title by operation of the "Nullum Tempus Act." *Hamilton v. The King*, liv., 331.

32. *Rideau canal lands—Forfeiture—Misuser—Condition subsequent—Jurisdiction of Exchequer Court of Canada—Costs. Wright v. The Queen*, Cout. Cas. 151.

33. *Title to land—Railway aid—Land grant—Crown patents—Dominion Lands Regulations—Reservation of minerals—Construction of statute—53 V. c. 4—R. S. C. (1886), c. 54—Free grants—Parliamentary contract*, Cout. Cas. 271.

See TITLE TO LAND.

34. *Settlement of Manitoba claims—Construction of statute—Title to lands—Operation of statutory grant—Transfer in present—Condition precedent—Ascertainment and identification of swamp lands—Revenues and emblems—Constitutional law. xxxiv., 287.*

See MANITOBA SWAMP LANDS.

35. *Title to lands—Grant from Crown—Implied reservations—Description—Navigable waters—Floatable streams—Inlet of navigable river—Public law—Construction of deed—Possession—Estoppel—Evidence—Waiver, xxxiv., 603.*

See RIVERS AND STREAMS.

36. *Mining lease—Prospector's license—Testing machinery—Annexation to the freehold—Trade fixtures—Fi. fa. de bonis—Sale under execution, xxxv., 539.*

See EXECUTION.

37. *Assessment and taxes—Constitutional law—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of the boundaries of Manitoba—Construction of statutes respecting the constitution of Canada, Manitoba and the North-West Territories—Construction of contract—Grant in present—Cause of action—Jurisdiction—Waiver, xxxv., 550.*

See ASSESSMENT AND TAXES.

38. *Title to land—Ambiguous description of grantee—"Greek Catholic Church"—Evi-*

dence—Construction of deed—Reversal of concurrent findings, xxxvii., 177.

See TITLE TO LAND.

39. *Equitable mortgage—Mines and mining—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgagee—Registry laws—Priority—Actual notice—Lien for Crown dues paid as rent—C. S. N. B. (1903) c. 30, s. 139, xxxvii., 517.*

See MINES AND MINING.

40. *Subaqueous mining—Crown grants—Dredging lease—Breach of contract—Subsequent issue of placer mining licenses—Damages—Pleading and practice—Statement of claim—Demurrer—Cause of action, xxxviii., 542.*

See CROWN GRANT.

41. *Specific performance—Tender for land—Agreement for tender—One party to acquire and divide with other—Division by plan—Reservation of portion of land from Crown grant, xxxix., 220.*

See SPECIFIC PERFORMANCE.

42. *Crown lands—Extinguishment of title to Indian lands—Payment by Dominion—Liability of province. Ontario v. Dominion of Canada, xlii., 1.*

See CONSTITUTIONAL LAW.

43. *Arbitration and award—Statutory arbitrators—Jurisdiction—Awards "from time to time"—Res judicata. Quebec v. Ontario, xlii., 161.*

See ARBITRATION AND AWARD.

44. *Title to lands—Homestead and pre-emption rights—Unpatented Dominion lands—"Transfer"—Incumbrance—Charge to secure debts—Sanction of minister—Absolute nullity—Construction of statute—Dominion Lands Act. American-Abell Co. v. McMillan, xlii., 377.*

See TITLE TO LAND.

45. *Water lots—Expropriation—Statutory authority to grant lands. Cunard v. The King, xliii., 88.*

See EXPROPRIATION.

46. *Timber license—Crown lands in British Columbia—Real estate—Personalty—Contract—Sale—Exchange—Consideration—Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof—Pleading and practice, xliv., 458.*

See LIEN.

47. *Assessment and taxes—Lease of Crown lands—Interest of occupier—Constitutional law—Exemption from taxation—Construction of statute—"B. N. A. Act, 1867," s. 125—(Sask.) 6 Edw. VII., c. 36, "Local Improvements Act"—(Sask.) 7 Edw. VII., c. 9, "Supplementary Revenue Act"—Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts, xlix., 563.*

See CONSTITUTIONAL LAW.

48. *Action—Timber on pre-empted lands—Rights of pre-emptor—B. C. "Land Act,"*

*R. S. B. C. 1911, c. 129, ss. 77 et seq. and 132—Negligence—Fire set by railway locomotive—Assessment of damages, xlix., 33.*

See DAMAGES.

49. *Trespass—Cutting timber—Conflicting claims—Priority of title—Evidence. Hirtle v. Boehner, l., 264.*

See TRESPASS.

50. *License to cut timber—Indian lands—R. S. C. 1906, c. 43, ss. 43, 54, 55—License for twelve months—Regulations—Renewal of license. Booth v. The King, li., 20.*

See INDIAN LANDS.

51. *Information of intrusion—Adverse possession—Interruption—Nullum Tempus Act—Acknowledgment of title. Hamilton v. The King, liv., 331.*

See LIMITATION OF ACTIONS.

## 7. PUBLIC WORK.

52. *Public work—Incorporation of company—Construction of canal—Governor-in-Council—Approval of plans—Discretion—Refusal to approve—Right of action.—The statute 61 V. c. 107 (D.), incorporated a company for the purpose of constructing and operating a canal between the St. Lawrence and Richelieu Rivers. Sec. 22 provided that before the work of constructing the canal was begun, the plans, etc., were to be approved by the Governor-in-Council.—Held, affirming the judgment appealed from (16 Ex. C. R. 125), Fitzpatrick, C.J., and Brodeur, J., dissenting, that the refusal of the Governor-in-Council to approve plans submitted did not give the company a claim for damages which could be enforced against the Crown.—Per Duff, J., that the refusal to consider the plans did not give birth to a claim for which a petition of right lies.—Held, per Fitzpatrick, C.J., and Anglin and Brodeur, JJ., that the Governor-in-Council had no discretionary power to refuse approval of the plans on the ground that the undertaking authorized by Parliament was opposed to public policy. Lake Champlain & St. Lawrence Ship Canal Co. v. The King, liv., 461.*

53. *Public work—Work dehors contract—Acceptance by Crown—Payment—Fair value, xlv., 208.*

See PUBLIC WORK.

## 8. RAILWAY.

54. *Petition of right—Contract—Powers of Commissioners of the Transcontinental Railway—Liability of Crown—Construction of statute—9 Edw. VII. c. 71.—"The National Transcontinental Railway Act," 3 Edw. VII. c. 71 (D.), does not confer powers upon the Commissioners of the Transcontinental Railway in respect to the inspection and valuation of lands required for the purposes of the "Eastern Division" of the railway; consequently, a petition of*

right will not lie for the recovery of remuneration for services of that nature.—Judgment appealed from (13 Ex. C. R. 155) affirmed, *Idington, J.*, dissenting. *Johnston v. The King*, xlv., 448.

55. *Arbitration and award—Procedure—Prolonging date for award—Special circumstances — “Railway Act,” R. S. C. 1906, c. 37, s. 204.*—On an arbitration respecting compensation to be paid for lands taken under the “Railway Act,” R. S. C. 1906, c. 37, the arbitrators had fixed a day for their award according to the provisions of s. 204. After some proceedings before them it was arranged, for the convenience of counsel for the parties, that further proceedings should be suspended until the return of counsel who were obliged to be present at the sittings of the Judicial Committee of the Privy Council and nothing further was done until after the return of counsel from abroad at a date later than the time so fixed for the award. The arbitrators had not prolonged the time for making the award but, upon reassembling after the day originally fixed had passed, they fixed a later date for that purpose. The company's arbitrator and counsel then refused to take part in any subsequent proceedings and the two remaining arbitrators continued the hearing and made an award in favour of the claimant greater than that offered by the company for the lands expropriated. In an action by the company to have the award set aside and for a declaration that the sum offered should be the compensation payable for the lands.—*Held*, *Fitzpatrick, C.J.*, and *Anglin, J.*, dissenting, that, in the circumstances of the case, the company should not be permitted to object to the manner in which the arbitrators had proceeded in prolonging the time and making the award. The appeal from the judgment of the Court of King's Bench (Q. R. 22 K. B. 221), declaring the award to have been validly made was, consequently, dismissed with costs. *Canadian Northern Quebec Railway Co. v. Naud*, xlviii., 242.

56. *Railway aid—Crown grant—Patent for lands—Dominion land regulations—Free grants—Reservation of minerals*, *Cout. Cas.* 271.

See TITLE TO LANDS.

57. *Joint operation of railway — Master and servant—Negligence—Responsibility for act of joint employee—Traffic agreement—62 & 63 V. c. 5 (D.)*, xxxvi., 655.

See RAILWAYS.

58. *Lease—Canal—Water-power — Improvements on canal—Temporary stoppage of power—Compensation—Total stoppage—Measure of damages—Loss of profits*, xxxvii., 259.

See LEASE.

59. *Construction of statute — “Alberta Local Improvement Act” —Assessment and taxation—Constitutional law—Railway aid —Land subsidy—Crown lands—Interests of private owner*, xlv., 170.

See STATUTE.

60. *Railway subsidies — Aid to construction — Purchase of constructed line—Con-*

*struction of statute—Supplementary agreement — Rights of transferee — Obligation binding on the Crown. Quebec, Montreal & Southern v. The King*, liii., 275.

See RAILWAYS.

61. *Railway subsidies—Aid to construction — Purchase of constructed line — Construction of statute—Supplementary agreement — Rights of transferee — Obligation binding on the*, liii., 275.

See RAILWAY.

## 9. WAIVER.

62. *Breach of trust—Purchase of debentures out of Common School Fund—Knowledge of misapplication of moneys — Payment of interest—Statutory prohibition—Evasion of statute — Estoppel against the Crown—Action — Adding parties—Practice.]*—In an action by the Crown against the Quebec North Shore Turnpike Road Trustees to recover interest upon debentures purchased from them by the Government of the late Province of Canada (with trust funds held by them belonging to the Common School Fund), the defendants pleaded that the Crown was estopped from recovery inasmuch as, at the time of their purchase, the advisers of the Crown were aware that these debentures were being issued in breach of a trust and with the intention of misapplying the proceeds towards payment of interest upon other debentures due by them in violation of a statutory prohibition:—*Held*, affirming the judgment appealed from (8 Ex. C. R. 390) that, as there was statutory authority for the issue of the debentures in question, knowledge of any such breach of trust or misapplication by the advisers of the Crown could not be set up as a defence to the action. *Quebec North Shore Turnpike Road Trustees v. The King*, xxxviii., 62.

63. *Banks and banking—Forged cheques—Payment — Representation by drawee—Implied guarantee — Estoppel—Acknowledgment of bank statements—Liability of indorsers — Mistake — Action — Money had and received.]*—A clerk in a department of the Government of Canada, whose duty was to examine and check its account with the Bank of Montreal, forged departmental cheques and deposited them to his credit in other banks. The forgeries were not discovered until some months after these cheques had been paid by the drawee to the several other banks, on presentation, and charged against the Receiver-General on the account of the Department with the bank. None of the cheques were marked with the drawee's acceptance before payment. In the meantime, the accountant of the department, being deceived by false returns of checking by the clerk, acknowledged the correctness of the statements of the account as furnished by the bank where it was kept. In an action by the Crown to recover the amount so paid upon the forged cheques and charged against the Receiver-General:—*Held*, affirming the judgment appealed from (11 Ont. L. R. 595), that the bank was



liable unless the Crown was estopped from setting up the forgery.—*Per Davies, Idington and Duff, J.J.*, that estoppel could not be invoked against the Crown.—*Per Girouard and MacLennan, J.J.*, that, apart from the question of the Crown being subject to estoppel, under the circumstances of this case a private person would not have been estopped had his name been forged as drawer of the cheques.—*Per Davies and Idington, J.J.* — The acknowledgment by the accountant of the department of the correctness of the statements furnished by the bank, being made under a mistake as to the facts, the accounts could be re-opened to have the mistake rectified. *Bank of Montreal v. The King*, xxxviii., 258.

AND SEE BANKS AND BANKING.

## 10. WATERS.

64. *Rivers and streams — Crown domain — Title to land — "Flottage" — Driving loose logs — Public servitude — Riparian ownership — Action possessoire — Arts. 400, 503, 507, 2192 C. C. — Art. 1064 C. P. Q.]* — In the Province of Quebec, water-courses which are capable merely of floating loose logs (*flottables à buches perdues*) are not dependencies of the Crown domain within the meaning of article 400 of the Civil Code. The owners of the adjoining riparian lands are, consequently, the proprietors of the banks and beds of such streams and have the right of action *au possessoire* in respect thereof. — There is, however, a right of servitude over such watercourses in respect to all advantages which the streams and their banks, in their natural condition, can afford to the public, there being no distinction in this regard between navigable or floatable streams and those which are neither navigable nor floatable. *MacBean v. Carlisle* (19 L. C. Jur. 276) and *Tanguay v. Price* (37 Can. S. C. R. 657) followed. — Judgment appealed from (*Q. R.* 16 K. B. 48) affirmed. *Girouard and Idington, J.J.*, dissenting. *Tanguay v. Canadian Electric Light Co.*, xl., 1.

65. *Expropriation of land — Water lots — Expectation of enhanced value — Crown grant — Statutory authority.]* — Land in Halifax, N.S., including a lot extending into the harbour, was expropriated for the purposes of the Intercolonial Railway. The title to the water lot was originally by grant from the Government of Nova Scotia, but no statutory authority for making such grant was produced. The lot could have been made much more valuable by the erection of wharves and piers for which, however, as they would constitute an obstruction to navigation, a license from the Dominion Government would have to be obtained. \$10,000 was tendered as the value of all the land expropriated and the owners, claiming much more, appealed from the judgment of the Exchequer Court allowing that amount. — *Held, Duff, J.*, dissenting, that the owners were not entitled to compensation based on the enhanced value that could be given to the water lot by the erection of wharves and piers and the expectation that a license would be granted therefor, and if they were

the amount tendered was, in the circumstances, sufficient. — *Quære.* — Can a Crown grant of lands be made without statutory authority. — *Held, per Duff, J.*, that there was such authority in this case. — Judgment of the Exchequer Court (12 Ex. C. R. 414) affirmed. *Cunard v. The King*, xliii., 88.

66. *Rivers and streams — Navigable waters — Floatability — Ownership of beds — Grant of Crown lands — Conveyance of bed of navigable waters — Title to land — Art. 400 C. C.]* — In the Province of Quebec, a river which, owing to natural obstructions, is capable only of floating loose timber (*flottables à buches perdues*), in portions of its course may, at least from its mouth upwards until some such obstruction is reached, be navigable and subject to the rule of law applicable to navigable waters. As the river in question for several miles from its mouth upwards to a point where its course is obstructed by rapids is in fact capable of being utilized for the purposes of navigation the bed of the stream for that distance forms part of the Crown domain. (Art. 400 C. C.) — Without express terms to that effect a Crown grant, made in 1806, of township lands in the territory now comprised in the Province of Quebec did not pass title to the grantee in the bed of navigable waters within the area described in the letters patent of grant. — *Idington, J.*, dissented on the ground that the language of the letters patent in question was intended and was sufficiently explicit and comprehensive to convey to the grantee the bed of the navigable waters included within the limits of the description of the lands granted. — The judgment appealed from (15 Ex. C. R. 189), was affirmed, *Idington, J.*, dissenting. *Leamy v. The King*, liv., 143.

67. *Rivers and streams — Navigable and floatable waters — Obstructions to navigation — Letters patent of grant — Evidence — Collateral circumstances leading to grant — Limitation of terms of grant — Title to land — Riparian rights — Fisheries — Arts. 400, 411, 503 C. C.*, xxxvii., 577.

See RIVERS AND STREAMS.

68. *Title to land — Rivers and streams — Navigable or floatable waters — Crown grant — Riparian rights — Title to bed of river — Erection of townships — Description of area included — Costs. Maclaren v. Attorney-General for Quebec*, xlvi., 656.

69. *Canadian waters — Sea coasts — Property in foreshores — Harbours — Havens — Roadsteads — Ownership in beds — Construction of statute — "B.N.A. Act," 1867, ss. 108, 109. Attorney-Gen. v. Ritchie*, lii., 78.

See CONSTITUTIONAL LAW.

## CROWN ATTORNEY.

*Municipal corporation — Statutory duty — County officers — Office accommodation — Discretion — Mandamus.]* — The courts should not interfere by mandamus with the reasonable exercise by a County Council of its discretion in selecting the place in the county



at which an office shall be provided for the County Crown Attorney and Clerk of the Peace.—Judgment of the Court of Appeal (19 Ont. L. R. 659) affirmed. *Rodd v. County of Essex*, xlv., 137.

*Crown* — *Refusal to submit petition of right* — *Tort* — *Right of action* — *Damages* — *Pleading* — *Practice* — *Withdrawal of case from jury* — *New trial* — *Costs*, xxxix., 202.

See ACTION.

### CROWN CASES.

See CRIMINAL LAW.

### CROWN CASES RESERVED.

1. *Criminal law* — *Practice* — *Reserved questions* — *Dissent from affirmance of conviction* — *Appeal* — *Jurisdiction* — *Criminal Code*, 1892, ss. 742, 743, 744, 750 — *R. S. C.* (1906) c. 146, ss. 1013, 1015, 1016, 1024 — *Admission of evidence* — *Res gestæ*, xxxviii., 284.

See CRIMINAL LAW.

2. *Appeal* — *Criminal law* — *Reserved—case* — *Application for "during trial"* — *Criminal Code*, s. 1014 (3) — *Construction of statute*, xl., 272.

See CRIMINAL LAW.

### CROWN, MINISTER OF.

*Constitutional law* — *Construction of statute* — "*Crown Procedure Act*" — *R. S. B. C.* c. 57 — *Duty of responsible minister of the Crown* — *Refusal to submit petition of right* — *Tort* — *Right of action* — *Damages*, xxxix., 202.

See ACTION.

AND see COSTS.

### CROWN OFFICER.

1. *Mines and mining* — *Hydraulic regulations* — *Application for mining location* — *Duties imposed on Minister of the Interior* — *Status of applicant* — *Vested rights* — *Contract binding on the Crown*, xl., 258.

See MINES AND MINING.

2. *Mining regulations* — *Hydraulic lease* — *Breach of conditions* — *Construction of deed* — *Forfeiture* — *Right of lessees* — *Procedure on inquiry* — *Judicial duties of arbiter*, xl., 281, 294.

See MINES AND MINING.

3. *Breach of trust* — *Interest on bonds* — *Unlawful acts by Crown officers* — *Ultra vires* — *Withholding interest from Crown* — *Necessity of impleading other interested parties* — *Practice*, Cout. Cas. 316.

See PRACTICE.

### CROWN PROCEDURE.

*Constitutional law* — *Construction of statute* — "*Crown Procedure Act*," *R. S. B. C.* c. 57 — *Duty of responsible minister of the*

### CURATOR.

*Payment by insolvent* — *Preference* — *Recovery back by curator* — *Gaming transaction* — *Illegal contract* — *Right of action* — *Arts.* 1031, 1032, 1036, 1927 *C. C.* — *Arts.* 853 *et seq.*, *C. P. Q.*, xlix., 91.

See INSOLVENCY.

### CUSTOMS.

1. *Customs Act* — *Importation of cattle* — *Smuggling* — *Clandestinely introducing cattle into Canada* — *Claim for return of deposit made to secure release of cattle seized* — *Evidence*.] — The suppliants claimed the return of money deposited by them to obtain the release of cattle seized for the infraction of the "Customs Act," and held by the Crown as forfeiture. Upon conclusions as to facts drawn from the evidence the petition of right was refused by the Exchequer Court (10 Ex. C. R. 79). On appeal the judgment of the Exchequer Court was affirmed. *Spencer Brothers v. The King*, xxxix., 12.

2. *Customs duty* — *Canadian Tariff, 1907*, items 503-506 — *Importation of lumber* — "*Sawn planks*" — "*Dressed on one side only*" — "*Not further manufactured*" — *Sizing by saw* — *Free entry*.] — Under item 504 of the "Customs Tariff, 1907," the importation into Canada is permitted free of duty of lumber described as "planks, boards and other lumber of wood, sawn, split or cut, and dressed on one side only, but not further manufactured." — *Held*, reversing the judgment appealed from (14 Ex. C. R. 53), Duff and Anglin, J.J., dissenting, that sawn boards or planks which have been "dressed on one side only" by a machine which not only dresses them on one side but, at the time of such operation, reduces them to uniform widths, by means of another sawing process which has the effect of "sizing" the lumber, have not thereby been subjected to such "further manufacture" as would bring them within the exception from free entry under item 504. *Foss Lumber Co. v. The King*, xlvii., 130.

### CUSTOM OF TRADE.

1. *Construction of contract* — *Arts.* 8, 1016 *C. C.* — *Sale of goods* — *Delivery*.] — The construction of a contract for the sale of goods cannot be affected by the introduction of evidence of local mercantile usage unless the terms of the contract are doubtful and ambiguous. *Dufresne v. Fee*, xxxv., 274.

2. *Shipping* — *Time for loading limited by charter party* — *Loading at port* — *Custom* — *Obligation of charterer*, xxxiv., 578.

See SHIPS AND SHIPPING.

3. *Fire insurance—Contract of re-insurance—Trade custom—Conditions of contract—"Rider" to policy—Limitations of actions—Commencement of prescription—Art. 2236 C. C., xxxv., 208.*

See INSURANCE, FIRE.

### CY-PRES.

*Will—Devise—Discretion of executors—Withholding income—Reasonable time—Failure of object of devise—Costs, xxxv., 182.*

See WILL.

### DAMAGES.

1. ASSESSMENT AND MEASURE OF DAMAGES, RIGHT OF ACTION, 1-23.
2. BREACH OF COVENANT, 24-25.
3. EXPROPRIATION, 26.
4. LIBEL, 27.
5. NEGLIGENCE, 28-40.
6. NUISANCE, 41-43.
7. WAIVER, 44-45.
8. WARRANTY, 46.
9. OTHER CASES, 47-48.

#### 1. ASSESSMENT, ETC.

1. *Assessment of damages—Concurrent findings—Practice on appeal.*]—Where the judge at the trial had heard and seen the witness and had, on proper principles, assessed damages according to his appreciation of the evidence, his decision being adopted by the court *in banco*, the court refused to interfere on appeal. *Wood v. Leblanc*, *Cout. Cas.* 409.

2. *Breach of contract—Exemplary damages—Evidence—Discretionary order by judge at trial—Interference by court of appeal.*]—The trial court condemned the defendant to pay \$122.50 damages for breach of contract for the sale of goods but, in view of unnecessary expenses caused in consequence of exaggerated demands by the plaintiffs, which were rejected, they were ordered to bear half the costs. On an appeal by the defendant, the Court of King's Bench varied the trial court judgment by adding \$100 exemplary damages to the condemnation and giving full costs against the defendant:—*Held*, reversing the judgment appealed from, that in the absence of any evidence of bad faith or wilful default on the part of the defendant, there was no justification for the addition of exemplary damages nor for interference with the judgment of the trial court. *Coghlin v. Fonderie de Joliette*, xxxiv., 153.

3. *River improvements—Continuing damages—Contract—Protective works—Discretion of court—Practice—Varying minutes of judgment—Costs.*]—Owing to the condition of the locality and the character of certain improvements made for the pur-

pose of increasing the water power at Chambly Rapids in the Richelieu River, the parties entered into an agreement respecting the construction of dams and other works at the *locus in quo*, and it was provided that the company should assume the responsibility and pay for all damages caused by "flooding of land, bridges or roads, if any, as well as all other damages caused" to the plaintiff "during or by reason of" the construction:—*Held*, reversing the judgment appealed from, that, under the agreement, the plaintiff could recover only such damages as he might suffer from time to time in consequence of the floods at certain seasons being aggravated by the constructions in the stream and that, in the special circumstances of the case, the courts below erred in decreasing the construction of protective works, inasmuch as the company was entitled to take the risks on payment of indemnity as provided by the contract. *Chambly Mfg. Co. v. Willett*, xxxiv., 502.

AND see PRACTICE.

4. *Railways—Negligence—Free pass—Consideration for transportation—Misdirection—Findings of jury—New trial—Excessive damages—Art. 503 C. P. Q.*]—Where there was misdirection as to the assessment of damages merely and it appeared to the court that the damages assessed by the jury were grossly excessive, the Supreme Court of Canada made a special order, applying the principle of article 503 of the Code of Civil Procedure, directing that the appeal should be allowed and a new trial had to assess damages, unless the plaintiff consented that the damages should be reduced to an amount mentioned. *Central Vermont Rway. Co. v. Franchère*, xxxv., 68.

5. *Overholding tenant—Negligence—Trespasser—Licensee—Master and servant.*]—A trespasser or bare licensee injured through negligence may maintain an action.—The workmen of a contractor for tearing down portions of a building in order to make alterations turned on a water tap in a room where they were working and neglected to turn it off whereby goods in the story below were damaged by water:—*Held*, *Davies and Nesbitt, JJ.*, dissenting, that the act of the workmen was done in course of their employment; that it was negligence; and that the owner of the goods could recover damages though he was in possession merely as an overholding tenant who had not been ejected. *Sievert v. Brookfield*, xxxv., 494.

6. *New trial—Contradictory evidence—Wilful trespass—Rule in assessing damages—Practice—Adding party—Reversal on appeal.*]—In an action for damages for entry upon a placer mining claim and removing valuable gold bearing gravel and dirt, the trial judge found the defendants guilty of gross carelessness in their work, held that they should be accounted wilful trespassers, and referred the cause to the clerk of the court to assess the damages. The referee adopted the severer rule applicable in cases of fraud in assessing the damages. The Territorial Court *en banc* reversed the trial judge in his findings of fact upon the evi-

dence:—*Held*, reversing the judgment appealed from, that the trial judge's findings should be sustained with a slight variation, but that the referee had erred in adopting the severer rule against the defendants in assessing the damages, and that his report should be amended in view of such error.—*Semble*, that the record and pleadings should be amended by adding the plaintiff's partner as co-plaintiff.—*Held*, per Taschereau, C.J., dissenting, that although not convinced that there was error in the judgment of the trial judge which the court *en banc* reversed, while at the same time it did not appear that there was error in the judgment *in banco*, yet the latter judgment should stand, as the court *in banco* should not be reversed unless the Supreme Court, on the appeal, be clearly satisfied that it was wrong. (Leave to appeal to Privy Council refused, 4th Aug., 1905.) *Kirkpatrick v. McNamee*, xxxvi., 152.

7. *New trial—Decree of appellate court—Reasons for judgment.*—B., a passenger on a railway train was thrice assaulted by a fellow-passenger during the passage. The conductor was informed of the first assault immediately after it occurred and also of the second, but took no steps to protect B. In an action against the railway company B. recovered damages assessed generally for the injuries complained of. The verdict was maintained by the Court of Appeal, but the Supreme Court of Canada ordered a new trial unless B. would consent to his damages being reduced (34 Can. S. C. R. 74). In the reasons given for the last-mentioned judgment, written by Mr. Justice Sedgewick for the court, it was held that damages could be recovered for the third assault only, but the judgment, as entered by the registrar, stated that the court ordered the reversal of the judgment appealed from and a new trial unless the plaintiff accepted the reduced amount of damages. Such amount having been refused, a new trial was had, on which B. again obtained a verdict, the damages being apportioned between the second and third assaults. On appeal to the Supreme Court of Canada from the judgment of the Court of Appeal maintaining this verdict:—*Held*, Taschereau, C.J., and Davies, J., dissenting, that as the decree was in accordance with the judgment pronounced by the court when its decision was given, and as it left the whole case open on the second trial, the jury were free to give damages for the second assault and their verdict should not be disturbed.—*Held*, per Taschereau, C.J., that the decree of the court should have been framed with reference to the opinion giving the reasons for the judgment, and, if necessary, could be amended so as to be read as the court intended. *Canadian Pacific Railway Co. v. Blain*, xxxvi., 159.

8. *Mines and mining — Vendor and purchaser—Sale of mining locations—Consideration in lump sum — Separate valuations — Misrepresentation—Deceit and fraud—Measure of damages.*—Upon representations made by the vendor the plaintiffs purchased several mining locations, the consideration therefor being stated in a lump sum. In an action of fraud and deceit brought by the

purchaser against the vendor the trial judge, in discussing the total consideration for the properties purchased, found that there was evidence to shew the values placed by the parties upon each of two of these properties as to which false and fraudulent representations had been made, and which had turned out worthless or nearly so:—*Held*, reversing the judgment appealed from, the Chief Justice and Idington, J., dissenting, that the finding of the trial judge as to the consideration ought not to be disturbed upon appeal and that the proper measure of damages, in such a case, was the actual loss sustained by the purchaser by acting upon the misrepresentations of the vendor in respect of the two mining locations in question irrespectively of the results or values yielded by the other locations purchased at the same time and as to which no false representations had been made. *Peek v. Derry* (37 Ch. D. 541) followed. (Appeal to Privy Council allowed, 9th May, 1907.) *Syndicat Lyonnais du Klondyke v. Barrett*, xxxvi., 279.

9. *Lease—Canal—Water-power—Improvements on canal — Temporary stoppage of power — Compensation—Total stoppage—Measure of damages — Loss of profits.*—A mill was operated by water-power taken from the surplus water of the Galops Canal under a lease from the Crown. The lease provided that in case of a temporary stoppage in the supply caused by repairs or alterations in the canal system the lessee would not be entitled to compensation unless the same continued for six months, and then only to an abatement of rent:—*Held*, Idington, J., *dubitante*, that a stoppage of the supply for two whole seasons necessarily and *bonâ fide* caused by alterations in the system was a temporary stoppage under this provision.—The lease also provided that, in case the flow of surplus water should at any time be required for the use of the canal or any public purpose whatever, the Crown could, on giving notice to the lessee, cancel the lease, in which case the lessee should be entitled to be paid the value of all the buildings and fixtures thereon belonging to him with ten per cent. added thereto. The Crown unwatered the canal in order to execute works for its enlargement and improvement, contemplating at the time only a temporary stoppage of the supply of water to the lessee, but later changes were made in the proposed work which caused a total stoppage and the lessee, by petition of right, claimed damages.—*Held*, Girouard, J., dissenting, that as the Crown had not given notice of its intention to cancel the lease, the lessee was not entitled to the damages provided for in case of cancellation.—*Held*, also, that the lessee was not entitled to damages for loss of profits during the time his mill was idle owing to the water being out of the canal.—Judgment of the Exchequer Court (9 Ex. C. R. 287) affirmed, Girouard and Idington, J.J., dissenting. *Beach v. The King*, xxxvii., 259.

10. *Watercourses — Riparian rights—Expropriation — Trespass — Torts — Diversion of natural flow—Injurious affection—Damages.*—A riparian proprietor whose property has been injuriously affected by the unlawful diversion of the natural flow of a

watercourse may recover damages therefor and may also obtain relief by injunction restraining the continuation of the tortious acts so committed. (Leave to appeal refused by Privy Council, 17th July, 1906). *Leahy v. Town of North Sydney*, xxxvii., 464.

AND see RIVERS AND STREAMS.

11. *Expropriation of land—Payment—Market value—Potential value.*—D. purchased at different times and in sixteen different parcels 623 acres of land, paying for the whole nearly \$7,000, or about \$11 per acre. The Crown on expropriating the land offered him \$20 per acre, which he refused, claiming \$22,000, which on a reference to ascertain the value was increased to \$45,000. The referee allowed \$38,000, which the Exchequer Court reduced to the sum first claimed:—*Held*, reversing the judgment of the Exchequer Court (10 Ex. C. R. 208), Gironard, J., dissenting, that there was no user of the land nor any special circumstances to make it worth more than the market value, which was established by the price for which it was sold shortly before expropriation.—D. claimed the large price as potential value of the land for orchard purposes to which he had intended to devote it.—*Held*, that as he had not proved the land to be fit for such purpose and the evidence tended to disprove it, he could not receive compensation on that ground. *Dodge v. The King*, xxxviii., 149.

AND see EVIDENCE.

12. *Breach of contract—Conspiracy—Fraud—Assessment of damages.*—In an action for the price of pills manufactured according to a special formula supplied by defendants, under a contract with a condition that the formula should not be used for or sold to persons other than defendants, the defendants denied liability and counterclaimed for damages for breach of this condition and conspiracy by the plaintiffs with persons who had infringed their trademark, and injured their business. The action was maintained in part, without costs, and the incidental demand sustained in respect to damages for loss of profits through sales of the pills to others and expenses of obtaining evidence as to the breach of contract, with costs, but the counterclaim was disallowed in respect to other expenses in the prosecution of the conspirators; it was also found that the plaintiffs had not participated in the conspiracy. On an appeal from the judgment of the Court of King's Bench, affirming this decision, the majority of the judges of the Supreme Court upheld the decision. Davies and MacLennan, JJ., dissenting, in respect to the damages allowed for the loss of profits in consequence of the sale of pills in breach of the contract. *Wampole v. Simard*, xxxix., 160.

13. *Champerty—Maintenance—Malicious motive—Cause of action—Costs of unsuccessful defence.*—A defendant against whom a lawsuit has been successfully prosecuted cannot recover the costs incurred for his defence as damages for the unlawful maintenance of the suit by a third party who has not thereby been guilty of maliciously prosecuting unnecessary litigation. *Brad-*

*laugh v. Newdegate* (11 Q. B. D. 1) distinguished; *Giegerich v. Fleutot* (35 Can. S. C. R. 327) referred to. — Judgment appealed from (12 B. C. Rep. 272) affirmed. *News-wander v. Giegerich*, xxxix., 354.

14. *Breach of contract—Measure of damages—Notice of special circumstances—Collateral enterprises—Loss of primary and secondary profits—Costs.*—The plaintiffs sold defendant a boiler to be used in a mill to be set up in connection with his lumbering operations and guaranteed its efficiency for that purpose. When delivered, it proved inefficient, and, while necessary alterations and repairs were being made, two months elapsed during which the defendant was deprived of the use of his mill, was obliged to keep a gang of men idle and under expense for wages and board, and, in unsuccessfully attempting to carry on his operations, temporarily hired another boiler. On being sued for the price of the boiler, the defendant counterclaimed for damages and, at the trial, was awarded \$427.11, being \$277.11 for wages, board and expenses incurred in consequence of the failure of the boiler to satisfy the guarantee, and also \$150 for damages for the "loss of the use of the mill." By the judgment appealed from the first item for wages, etc., was rejected and the item for "loss of the use of the mill" only allowed:—*Held*, per Fitzpatrick, C.J. and Davies and MacLennan, JJ. (Idington, J., *contra*), that, as the loss of primary profits directly resulting from the breach of the contract only should have been allowed, the item of \$150 for loss of anticipated profits should be rejected as being merely secondary, speculative and uncertain; but that the item assessed by the trial judge in respect of the wages, board and other expenses should be allowed, as they were direct and immediate results of such breach.—Duff, J., was of the opinion that the appeal should be allowed and the judgment by the trial judge restored. *Corbin v. Thompson*, xxxix., 575.

AND see CONTRACT.

15. *Contract—Share of profits—Absolute or conditional undertaking—Construction of contract.*—A contract between W. and B. recited that W. owned land to be worked as a gravel-pit; that he was about to enter into contracts for supplying sand therefrom; and that he had requested B. to assist him financially, to which B. had consented on certain conditions; it then provided that "the said W. is to enter into contracts as follows," naming five corporations and persons to whom he would supply sand to a large amount at a minimum price per yard; that B. would indorse W.'s note to the extent of \$5,000 and have 60 days to declare his option to take a one-fourth interest in the profits from said contracts, or purchase a one-third interest in the property and business; that each party would account to the other for moneys received and expended in connection with the property; that if either party wished to sell his interest he would give the other the first choice of purchase; and that "each of the parties hereto agrees to carry out this agreement to the best of his ability according to the true

intent and meaning of the same and to do what he can of mutual benefit to the parties hereto." B. indorsed notes as agreed. W. entered into two of the five contracts, sold a quantity of sand and then sold the property, without notice to B., who brought an action claiming his share of the profits that would have been earned if the five contracts had been entered into and fully carried out:—*Held*, Fitzpatrick, C.J., and MacLennan, J., dissenting, that the undertaking by W. to enter into the five contracts was absolute, and having by the sale put it out of his power to perform it he was liable to B., who was entitled to damages on the basis of the contracts having been carried out.—*Held*, also, Duff, J., *hesitante*, that the clause quoted did not modify the rigour of the absolute covenant by W. to procure these contracts in any event.—Judgment of the Court of Appeal (10 Ont. W. R. 732) reversed, and the judgment of the Divisional Court (9 Ont. W. R. 48) reversing that of Anglin, J. (8 Ont. W. R. 4) restored. *Battle v. Willow*, xl., 198.

16. *Trespass — Cutting timber — Sale to bonâ fide purchaser — Action by owner of land.*—F. conveyed land to his wife for valuable consideration. Shortly after it was discovered that a trespasser had cut timber on said land and sold it to G., who bought in good faith and sold to another *bonâ fide* purchaser. In an action by F.'s wife against the two purchasers the money was paid into court and an interpleader issue granted to decide which of the claimants, the plaintiff or G., was entitled to have it:—*Held*, affirming the judgment of the Court of Appeal (16 Ont. L. R. 123) which reversed the decision of the Divisional Court (14 Ont. L. R. 160) that the plaintiff was entitled to the whole sum. Duff, J., expressed no opinion on the question.—*Held*, also, Idington, J., *dubitante*, and Duff, J., dissenting, that if necessary the writ and interpleader order could be amended by adding F. as a co-plaintiff with his wife. *Greer v. Faulkner*, xl., 399.

17. *Builders and contractors — Responsibility for faults in construction — Latent defect — Installations in constructed building — "Automatic Sprinkler System" — Damages by flooding — Injury sustained by subsequent purchaser — Right of action — Assessment of damages — Enterprise.*—The plaintiff's *auteur* employed the defendant to install an "automatic sprinkler" in his building (subsequently sold to plaintiff) and, in executing the work, the defendant made insufficient connections with the city water-mains by means of a pipe already existing in the building. As the result of this fault in construction, the pipes became disjointed and the plaintiff's goods, consisting largely of cases containing wines in labelled bottles, were damaged. The plaintiff notified defendant that he would hold him liable for the damages thus sustained, and requested him to attend at an expert valuation to be made by fire insurance adjusters and valuers, but plaintiff disregarded the notification and did not attend. The experts assessed the damages, in the manner usually adopted in similar cases of damages caused by fire, at \$3,397.11, and the plaintiff's ac-

tion was for this amount with amounts added for expenses incurred in repairs to the pipes, fees to the experts and for expenses of protest. The judgment appealed from (Q. R. 17 K. B. 449), affirmed the trial judgment (14 R. L. (N.S.) 172) maintaining the action, and held that, under arts. 1055, 1688 and 1696 C. C., the contractor was responsible for the damages sustained, that the subsequent purchaser had a right of action against him, as he was the person injured through the latent defects in construction, that the method of assessing damages adopted was a proper mode to follow under the circumstances, and that the repairs, experts' fees and costs of protest were items of damages which could properly be recovered in the action. This decision was affirmed by the Supreme Court, on appeal, Davies, J., *dubitante*, for the reasons given by Teller, J., at the trial, and Bossé and Trenholme, JJ., in the court appealed from. *McGuire v. Fraser*, xl., 577.

18. *Appeal — Jurisdiction — Court of Review — Reduction of damages — Confirmation of Superior Court judgment — R. S. C. [1906] c. 139, s. 40.*—There can be no appeal to the Supreme Court of Canada from a judgment of the Court of King's Bench, appeal side, quashing an appeal from the Superior Court, sitting in review, for want of jurisdiction. *City of Ste. Cuvégonde v. Gougeon* (25 Cau. S. C. R. 78) followed, Idington, J., dissenting.—In an action for damages where the plaintiff obtains a verdict at the trial and the Court of Review reduces the amount awarded thereon the judgment of the Superior Court is confirmed and, therefore, no appeal lies to the Court of King's Bench, but there might be an appeal from the judgment of the Court of Review to the Supreme Court of Canada. *Simpson v. Palliser* (29 Can. S. C. R. 6) distinguished. Idington, J., dissenting. *Hull Electric Co. v. Clement*, xli., 419.

19. *New trial — Misdirection — Questions for jury — Verdict on issues — Quantum of damages.*—An order for a new trial should not be granted merely on account of error in the form of the questions submitted to the jury where no prejudice has been suffered in consequence of the manner in which the issues were presented by the charge of the judge at the trial and the jury has passed upon the questions of substance. The judgment appealed from (18 Man. R. 134) was affirmed, the Chief Justice dissenting, and Davies, J., *hesitante*, as to the quantum of the damages awarded. *Winnipeg Electric Ry. Co. v. Wold*, xli., 431.

20. *Action — Timber on pre-empted lands — Rights of pre-emptor — B.C. "Land Act," R.S. B.C. 1911, c. 129, ss. 77 et seq. and 132 — Issue on appeal — Practice — Negligence — Fire set by railway locomotive — Assessment of damages — Findings of trial judge.*—A pre-emptor of Crown lands, under the provisions of the British Columbia "Land Act," R. S. C. 1911, c. 129, who has not forfeited his rights, is entitled to maintain an action for such damages as he has sustained in consequence of the destruction of timber growing upon his pre-empted lands.—As to the quantum of damages, the trial

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*Vibrations, smoke, duct, etc.—Series of torts—Statutory franchise—Permanent injury—Abatement of nuisance—Prospective damages—Method of assessing damages—Art. 2261 C. C.]—The permanent character of damages cannot in all cases be assumed from the manner in which the works may have been constructed, and, where the nuisance might, at any time, be abated by the improvement of the system of operation of machinery, etc., or the discontinuance of the negligent acts complained of, prospective damages ought not to be allowed, nor could the assessment, in a lump sum, for damages, past, present and future, in order to prevent successive litigation, be justified upon grounds of equity or public interest. Judgment appealed from (Q. B. 13 K. B. 531), reversed, the Chief Justice and Girouard, J., dissenting. *Fritz v. Hobson* (14 Ch. D. 342) referred to. *Gareau v. The Montreal Street Railway Co.* (31 Can.-S. C. R. 463) distinguished. *Montreal Street Railway Co. v. Boudreau*, xxxvi., 329.*

AND see NUISANCE.

31. *Action for negligence—Practice—Assessment of damages—Funeral expenses.]—*In an action by the father of a person whose death was occasioned by the negligence of the defendants, it was held that the plaintiff could not recover funeral and other expenses incurred, as damages in the action. *Toronto Ry. Co. v. Mulvaney*, xxxviii., 327.

AND see NEGLIGENCE.

32. *Insurance — Sprinkler system—Damage from leakage or discharge—Injury from frost—Application — Interim receipt.]—*A policy of insurance covered loss by leakage or discharge from a sprinkler system for protection against fire but provided that it would not cover injury resulting, *inter alia*, from freezing. The water in a pipe connected with the system froze and, the pipe having burst, damage was caused by the consequent escape of water.—*Held*, affirming the judgment of the Court of Appeal (14 Ont. L. R. 166) *Davies, J.*, dissenting, that the damage did not result from freezing and the insured could recover on the policy.—In the Hawthorne case the majority of the court dismissed the appeal on the same grounds. The policy in that case was sent to the brokers who had applied for it on behalf of the assured shortly before, and the latter did not see it until the loss occurred.—*Held*, per *Davies, J.*, that the contract of insurance was not contained in the policy, which the assured had no opportunity to accept, but in what took place between the brokers and the agent of the insurers on applying for it and as the latter informed the brokers that damage by frost was insured against the insured could recover. *Canadian Casualty and Boiler Ins. Co. v. Boulter, Davies & Co., and Hawthorne & Co.*, xxxix., 558.

33. *River improvements — Precaution against danger to existing constructions—Alteration of natural conditions—Responsibility for damages—Vis major.]—*Where works constructed in a river so altered its natural conditions as to create a reservoir

in which ice formed in larger quantities than it did prior to such works, and which, during the spring freshets after a severe winter, was driven with such force against the superstructure of a bridge as to partially demolish it, those who constructed the works are responsible for the damages so caused, notwithstanding that they had taken precautions for the protection of the bridge against like troubles, foreseen at the time of the construction of the works, and that the formation of ice in increased weight and thickness in the reservoir had resulted from natural climatic conditions during an unusually rigorous winter.—Judgment appealed from (Q. R. 16 K. B. 410) affirmed. *Montreal Light, Heat & Power Co. v. Atty.-Gen. of Quebec*, xli., 116.

34. *Municipal corporation—Negligence—Drainage—Capacity of drain—Vis major.]—*F. brought action against the City of Ottawa claiming damages for the flooding of his premises by water backed up from the sewer with which his drain pipe was connected.—*Held*, *Idington and Duff, JJ.*, dissenting, that according to the evidence the sewer is capable of carrying off a fall of 1½ inches of water per hour, which is considered as meeting the requirements of good engineering and is the standard adopted by all the cities of Canada and the Northern States; the city, therefore, was not liable.—*Held*, also, that a fall of rain at the rate of 3 inches per hour for nine minutes was one which could not reasonably be expected and for which the city was not obliged to provide. *Faulkner v. City of Ottawa*, xli., 190.

35. *Negligence — Operation of railway—Solatium doloris—Verdict—New trial.]—*The court refused to order a new trial or reduction of damages, under the provisions of articles 502, 503, C. P. Q., where it did not appear that, under the circumstances, the amount of damages awarded by the verdict was so grossly excessive as to make it evident that the jury had been led into error or were influenced by improper motives. *Davies, J.*, dissented in respect of that part of the verdict awarding damages in favour of one of the sons who was almost 21 years of age and earning wages at the time deceased was killed.—*Quære*.—In an action under article 1056 C. C. can a jury award damages in *solatium doloris*? *Robinson v. The Canadian Pacific Railway Co.*, ([1892] A. C. 481) referred to. *Canadian Pacific Railway Co. v. Lachance*, xlii., 205.

36. *Negligence — Physical injuries — Mental shock — Severance of damages.]—*T. was riding in a street car when it collided with a train. He was thrown violently forward on the back of the seat in front of him, but was able to leave the car and walk a short distance towards his place of business when he collapsed and was taken home in a cab. He was laid up for several weeks and never recovered his former state of health. On the trial of an action against the Railway Co. one medical witness gave as his opinion that the physical shock received by T. was the exciting cause of his condition, while others ascribed it to a disturbed nervous system. Negligence on the part of the company was not denied,



but the trial judge was asked to direct the jury to distinguish, in assessing damages, between the physical and nervous injuries, which he refused to do.—*Held*, affirming the judgment of the Court of Appeal (22 Ont. L. R. 204), that the trial judge properly refused to direct the jury as requested; that the injuries to T.'s nervous system were as much the direct result of the negligence of the company as those to his physical system, and he could recover compensation for both; and that in any case it was impossible for the jury to sever the damages. *Victorian Railway Commissioners v. Coultas* (13 App. Cas. 222) distinguished. *Toronto Rwy. Co. v. Toms*, xliv., 268.

37. *Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Removal of mortgaged property—Negligence—Measure of damages.*—Where loss occurs to mortgaged property in consequence of want of reasonable care in its removal from the place of seizure to the place of sale under the authority of a chattel mortgage, the proper measure of damages recoverable by the mortgagor is the amount of depreciation in value caused by the negligent manner in which the removal was effected. *Union Bank of Canada v. McHugh*, xliv., 473.

AND see CHATTEL MORTGAGE.

38. *Tramway company—Construction of works—Independent contractor—Dangerous system—Injury to property—Negligence—Exercise of statutory authority—Correlative duty—Damages—Special release.*—A company with statutory authority to construct a tramway acquired a strip of plaintiff's land for its right-of-way, the vendor granting a release for all damages which he might sustain by reason of the construction and operation of the tramway and the severance of his farm. The company let the work to a contractor who, in the construction of the road-bed blasted away a hillside by a method known as "top-lofting," thereby throwing large quantities of rock outside the right-of-way and upon plaintiff's adjoining lands in such a manner as to interfere with his use thereof. This injury could have been avoided by proper precautions. — *Held*, affirming the judgment appealed from (18 B. C. Rep. 81). *Fitzpatrick, C.J., hesitante*, that the company was responsible in damages for the omission of their contractor to take precautions necessary to prevent his blasting operations producing the injury to the plaintiff's lands. — *Held*, further, that the general language of the release should be so construed as to restrict it to the matters in regard to which it had been granted with reference to the proper exercise of the powers of the company to construct the tramway in question, and that it could not apply to injuries caused through negligence. — *Per Duff, J.*—Where statutory powers respecting the construction of works are being exercised through an independent contractor, the correlative obligation of the beneficiaries of those powers to see that due care is taken to avoid unnecessary injurious consequences to the property of other

persons is not discharged when their contractor fails to perform that duty and they are responsible accordingly. *Hardaker v. Idle District Council* ((1896) 1 Q. B. 335), and *Robinson v. Beaconsfield Rural Council* ((1911) 2 Ch. 188), referred to. *Vancouver Power Co. v. Hounsome*, xlix., 430.

39. *Negligence—Sale of ruined building—Personal responsibility of vendor*, xli., 259.

See NEGLIGENCE.

40. *Municipal corporation—Contract with company—Franchise for water supply—Protection against fire—Negligence—Liability of company to ratepayer—Delit.*, l., 356.

See MUNICIPAL CORPORATION.

## 6. NUISANCE.

41. *Rivers and streams—Industrial improvements—Raising height of dam—Nuisance—Expertise and arbitration—Right of action—Measure of damages—Practice—Future damages—Pleading—New objection raised on appeal—Prescription—R. S. Q. 1888, arts. 5535, 5536—Arts. 2242, 2261 C.C.*—The provisions of the statutes respecting the improvement of watercourses in the Province of Quebec, permit the raising of the height of dams erected by proprietors of lands adjoining streams; this right is subject to the liability to make compensation for all damages resulting to other persons from such works.—The mode of ascertainment of such damages by the arbitration of experts provided by article 5536 of the Revised Statutes of Quebec, 1888, does not exclude the right of action to recover compensation in the courts.—In such cases the measure of damages is the amount of compensation for injuries sustained up to the time of the action; they ought not to be assessed once for all, *en bloc*, but recourse may be reserved in regard to future damages arising from the same cause. — *Per Anglin, J.*—An action, brought in 1908, for recovery of damages in respect of injuries occasioned by improvements executed in 1904, upon works constructed many years before that time, is not subject to the prescription of thirty years; nor can the prescription provided by article 2261 of the Civil Code be applied where the action has been commenced within two years from the time the injuries complained of were sustained. *Gale v. Bureau*, xliv., 305.

AND see RIVERS AND STREAMS.

42. *Railways—Construction and operation—Location plans—Delay in notice to treat—Action to compel expropriation—Compensation in respect of lands not acquired—Mandamus—Use of highway—Crossing public lane—Nuisance*, xliv., 65.

See RAILWAYS.

43. *Municipal corporation—Building by-law—Dangerous constructions—Abatement of nuisance—Condition precedent—Notice—Order to repair—Demolition of*

*structure — Trespass — Forcible entry — Tort—Construction of statute—Montreal city charter, xli., 579.*

See MUNICIPAL CORPORATION.

#### 7. WAIVER.

44. *Pleading — Cross-demand — Compensation—Arts. 3, 203, 215, 217, C.P.Q.—Practice—Construction of contract—Liquidated damages—Penal clause—Arts. 1076, 1187, 1188, C. C.—Estoppel—Waiver.*—By a clause in a contract for the construction of works, the completion thereof was undertaken within a specified time and in default of completion as stipulated it was agreed that the contractor should pay "as liquidated damages, and not as a penalty, the sum of fifty dollars for every subsequent day until the completion." The works were not completed within the time limited, and, in consequence, both parties joined in a petition to a municipal corporation for extension of the time during which subsidies it had granted towards the cost of the works could be earned. The petition was granted and the works were completed within the extension of time allowed by the corporation:—*Held*, Nesbitt and Idington, J.J., dissenting, that damages accruing under the clause in question did not, upon mere default, become sufficiently liquidated and ascertained so as to be set off in compensation against a claim upon a promissory note.—*Held*, per Girouard and Davies, J.J. (Nesbitt and Idington, J.J., *contra*), that by joining in the petition for extension of time the party in whose favour the penal clause might take effect had waived the right to claim damages thereunder during the period of the extension so obtained in the interests of both parties to the contract. *Ottawa, N. & W. Railway Co. v. Dominion Bridge Co.*, xxxvi., 347.

AND see CONTRACT.

45. *Placer mining—Disputed title—Trespass pending litigation—Colour of right—Invasion of claim—Adverse acts—Sinister intention — Conversion — Blending materials — Accounts — Assessment of damages —Mitigating circumstances—Compensation for necessary expenses — Estoppel—Standing-by—Acquiescence.*—After a favourable judgment by the Gold Commissioner in respect to the boundary between contiguous placer mining locations and while an appeal therefrom was pending, the defendants, with the knowledge of the plaintiffs, entered upon the location and removed a quantity of auriferous material from the disputed and undisputed portions thereof, intermixed the products without keeping any account of the quantities taken from these portions respectively, and appropriated the gold recovered from the whole mass.—In an action for damages, taken subsequently, the plaintiffs recovered for the total value of the gold estimated to have been taken from the disputed portion of the claim, without deduction of the necessary expenses of workings and winning the gold:—*Held*, affirming the judgment appealed from, Davies, J., dissenting, that a correct appreciation of

the evidence disclosed a sinister intention on the part of the defendants, that they had deliberately blended the materials taken from both parts of the location, converted the whole mass to their own use and thereby destroyed the means of ascertaining the respective quantities so taken and the proportionate expense of recovering the precious metal therefrom, and that, consequently, they were liable in damages for the total value of so much of the intermixed products as were not strictly proved to have come from the undisputed portion of the location.—*Quere*—Does the English rule governing the assessment of damages in respect of trespasses in coal mines supply a method of assessment applicable in its entirety to placer mining locations? *Lamb v. Kincaid*, xxxviii., 516.

#### 8. WARRANTY.

46. *Sale of goods by sample—Delivery—Condition f.o.b.—“Sale of Goods Act,” R. S. M. 1902, s. 152 — Notice of rejection — Reasonable time — Breach of warranty — Damages, xli., 453.*

See SALE.

#### 9. OTHER CASES.

47. *Mis-user of canal lands — Condition subsequent — Jurisdiction of Exchequer Court of Canada—Forfeiture. Wright v. The Queen*, *Cout. Cas.* 151.

48. *Expropriation — Compensation—Assessment of damages. Warburton v. Attorney-General for Canada*, *Cout. Cas.* 307.

49. *Vendor and purchaser — Sale of lands — Misrepresentation — Fraud—Error—Rescission of contract—Sale or exchange—Dation en paiement — Improvement on property given in exchange—Option of party aggrieved—Action to rescind—Action quantum minoris—Latent defects — Damages—Warranty—Agreement in writing—Formal deed, xxxiv., 102.*

See VENDOR AND PURCHASER.

50. *Public works — Lands injuriously affected—Closing highway — Inconvenient substitute—Right of action, xxxiv., 570.*

See PUBLIC WORK.

51. *Water commission—Construction of statute—Damages to existing works—Appropriation of water, xxxiv., 650.*

See WATERWORKS.

52. *Special leave to appeal — Matter in controversy—Assessment of damages—Costs, xxxv., 184.*

See APPEAL.

53. *Construction of contract — Implied covenant—Verdict—New trial, xxxv., 186.*

See CONTRACT.

54. *Practice — Pleading—Condition precedent — Construction of statute—59 Vict.*

c. 62, ss. 9, 25 (B.C.)—Mineral claim—Expropriation — Water courses — Water-works — Waiver — Injunction—Trespass, xxxv., 309.

See EXPROPRIATION.

55. Construction of agreement — Sale of goods—Breach of contract — Specific performance—Damages, xxxv., 482.

See CONTRACT.

56. Pleadings — Procedure — Evidence, xxxvi., 7.

See EVIDENCE.

57. Constitutional law — Railway company — Negligence—Agreements for exemption from liability—Power of Parliament to prohibit, xxxvi., 136.

See RAILWAYS.

58. Sale of goods—Suspensive condition—Term of credit—Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Banking — Bailee receipt—Brokers and factors—Principal and agent—Resiliation of contract—Revendication—Practice—Pleading, xxxvi., 406.

See SALE.

59. Admiralty law — Navigation — Narrow channels—Rule of the road—Look-out—Meeting ships — Collision — Special rule of port—Sorel harbour regulations—Lights and signals—Negligence—Evidence—Damages, xxxvi., 564.

See ADMIRALTY LAW.

60. Negligence — Navigation of inland waters—Collision — Government ships and vessels — "Public work" — "The Exchequer Court Act," s. 16 — Construction of statute—Right of action, xxxviii., 126.

See NEGLIGENCE.

61. Breach of contract—Breach of trust—Assessment of damages — Sale of mining rights—Promotion of company—Failure to deliver securities—Principal and agent—Account—Evidence—Salvage — Indemnity for necessary expenses — Laches—Estoppel, xxxviii., 198.

See TRUSTS.

62. Negligence—Trespass—Horse racing — Intruder upon race-track — Carelessness, xxxviii., 226.

See NEGLIGENCE.

63. Public work — Contract—Change in plans and specifications—Waiver by order in council—Powers of executive—Construction of statute — Directory and imperative clauses — Words and phrases — "Stipulations" — Exchequer Court Act, s. 33 — Extra works — Engineer's certificate — Instructions in writing — Schedule of prices — Compensation at increased rate — Damages—Right of action — Quantum meruit, xxxviii., 501.

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64. Subaqueous mining—Crown grants—Dredging lease—Breach of contract—Subse-

quent issue of placer mining licenses — Pleading and practice—Statement of claim — Demurrer—Cause of action, xxviii., 542.

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65. Possessory action — Trouble de possession — Right of action—Actio negatoria servitutis — Trespass — Interference with watercourse — Agreement as to user—Expiration of license by non-use — Tacit renewal — Conciliation of agreement — Recourse for damages, xxxix., 81.

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66. Rights appurtenant to dominant tenement—Construction of ice-house — Change in natural conditions—Flooding of servient tenement — Aggravation of servitude—Injunction—Abatement of nuisance — Arts. 406, 501, 549 C. C., xxxix., 103.

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67. Constitutional law — Construction of statute—"Crown Procedure Act"—R. S. B. C. c. 57—Duty of responsible minister of the Crown—Refusal to submit petition of right—Tort—Right of action—Pleading—Practice—Withdrawal of case from jury — New trial—Costs, xxxix., 202.

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68. Common fault — Concurrent findings — Apportionment of damages, xxxix., 332.

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69. Malicious prosecution — Reasonable and probable cause — Bonâ fide belief in guilt—Burden of proof—Right of action—Art. 1053 C. C.—Pleading and practice, xl., 128.

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70. Negligence of fellow servant—Operation of railway—Defective switch—Public work—Tort—Liability of Crown—Right of action—Exchequer Court Act, s. 16 (c) — "Lord Campbell's Act" — Art. 1056 C. C. xl., 229.

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71. Admiralty law — Jurisdiction of the Exchequer Court of Canada—Claim under mortgage on ship—Action in rem—Pleading — Abatement of contract price—Defects in construction, xl., 418.

See SHIPS AND SHIPPING.

72. Carriers by water — Special contract — Exemption from liability — Construction of terms—"At owner's risk"—"Baggage" — Wilful misconduct, Cam. Cas. 66.

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73. Railways — Negligence — Contributory negligence—Accident at crossing—Life insurance—Deduction from damages—Practice — Appeal — Equal division of opinion — Costs, Cam. Cas. 228.

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74. Government railway — Expropriation — Injury to property—Crossing at embankment and cutting—Riparian rights—Access

to shore—Assessment of damages, *Cam. Cas.* 344.

See RAILWAYS.

75. *Municipal corporation — Highway — Negligence — Bad state of repair — Snow cleaning — Loss of profits — Right of action — Injuries to omnibus owner, Cam. Cas.* 569.

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76. *Municipal corporation — Drainage — Construction of sewers — Nuisance — Injunction — Right of action — Practice, Cout. Cas.* 162.

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77. *Municipal corporation — Reservation for highway — Opening by-road, Cout. Cas.* 210.

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78. *Negligence — “Lord Campbell’s Act” — Findings of jury — Verdict — Assessment of damages, Cout. Cas.* 343.

See NEGLIGENCE.

79. *Admiralty law — Salvage — Injury to sailing ship — Necessities of service — Seamanship — Appeal on nautical question, xli.* 168.

See ADMIRALTY LAW.

80. *Appeal — Final judgment — Jurisdiction, xli.* 13.

See APPEAL.

81. *Appeal — Amount in controversy — Reference to assess damages — Final judgment, xli.* 603.

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82. *Employer and employee — Compensation for injury — Contributory negligence — Construction of statute — “Workmen’s Compensation Act” — 2 Edw. VII. c. 74, s. 2 — Remedial legislation — Refusal of damages — Right of appeal — Evidence, xlv.* 106.

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83. *Appeal — Nature of action — Equitable relief — “Supreme Court Act,” s. 38c — Appeal from referee — Final judgment — Assessment of damages, xlv.* 284.

See APPEAL.

84. *Municipal corporation — Water-rates — Statutory authority — Construction of statute — Water for domestic, fire and other purposes — Motive power — Discretion of council, xlv.* 606.

See MUNICIPAL CORPORATION.

85. *Fishery and games leases — Personal servitude — Use and occupation — Right of action — Action en complainte — Renewed leases — Priority — Works to facilitate lumbering operations — Watercourses — Driving logs — Storage dams — Penning back waters out of tract of transmission — Injury to preserves — Injunction — Demolition of works, xlv.* 1.

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86. *Appeal — Jurisdiction — Matter in controversy — Damming watercourse — Flood-*

*ing of lands — Servitude — Objection to jurisdiction — Practice — Costs, xlv.* 292.

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87. *Contract — Sale of hay — Rejection — Conversion — Counterclaim — Evidence, Poirier v. The King, xlv.* 638.

88. *Contract — Construction — Conditions — Mutual performance, lii.* 514.

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1. *River improvements — Protective works — Continuing damages, xxxiv.* 502.

See DAMAGES.

2. *Water commission — Construction of statute — Damages to existing works — Appropriation of water, xxxiv.* 650.

See WATERWORKS.

## DATION EN PAIEMENT.

*Vendor and purchaser — Sale of lands — Misrepresentation — Fraud — Error — Rescission of contract — Sale or exchange — Dation en paiement — Improvements on property given in exchange — Option of party aggrieved — Action to rescind — Actio quantum minoris — Latent defects — Damages — Warranty — Agreement in writing — Formal deed, xxxiv.* 102.

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## DEBENTURES.

*Crown — Breach of trust — Purchase of debentures out of Common School Fund — Knowledge of misappropriation of moneys — Payment of interest — Statutory prohibition — Evasion of statute — Estoppel against Crown — Action — Adding parties — Practice, xxxviii.* 62.

See QUEBEC NORTH SHORE TURNPIKE ROAD TRUST.

## DEBTOR AND CREDITOR.

1. COMPOSITION AND DISCHARGE, 1-2.
2. FRAUD AGAINST CREDITORS, 3-4.
3. LIMITATION OF ACTIONS, 5.
4. PAYMENT, INTEREST, 6-7.
5. PREFERENCES, 8-11.
6. OTHER CASES, 12-33.

## 1. COMPOSITION AND DISCHARGE.

1. *Composition and discharge—Payment of debt—Reservation of security—Novation.*]—By deed of composition and discharge the bank agreed to accept composition notes in discharge of its claim against the plaintiff at a rate in the dollar, special reserve being made as to the securities it then held for the debt due by the plaintiff. The original debt was to revive in full on default in payment of any of the composition notes. Upon receiving the composition notes the bank surrendered the notes representing the full amount of its claim:—*Held*, reversing the judgment appealed from, that the effect of the agreement coupled with the reservation made was that the debtor was to be discharged merely from personal liability on payment of the composition notes, but that the securities were to be still held by the bank for the purpose of reimbursing itself, if possible, to the extent of the balance of the original debt.—*Held*, also, that the surrender of the original notes by the bank did not extinguish the debt they represented and under the circumstances there was no novation. *Banque d'Hochelega v. Beauchamp*, xxxvi., 18.

2. *Construction of deed—Ambiguity—Discharge of debtor—Contract—Illegal consideration—Right of action.*]—Where the language of an instrument is ambiguous or obscure the intention of the parties should be ascertained by consideration of the circumstances attending the execution of the agreement.—A deed of settlement between B. and a bank declared that he owed the bank \$4,731.61 for interest on an advance in respect to a lottery scheme and a further sum of \$18,762.02 for advances on an account for the purchase of stock, two notes being given for these amounts, respectively, and the shares of stock being pledged as security for the large note only. Subsequently, the directors of the bank passed a resolution authorizing the discharge of B., on payment of \$15,000 by one V., "*jusqu'à concurrence de la dite somme de \$15,000*" and the transfer of the shares to V. This resolution was followed by a deed of compromise, V. paying the \$15,000, and obtaining a transfer of the shares, and it was thereby declared that, by the transaction B. was discharged in so far as concerned the bank's advances on the stock account "*vis-à-vis la banque des avances qu'elle lui a faites du chef susdit mentionnées en un acte de règlement,*" etc., the resolution being annexed and the deed of settlement referred to for imputation of the payment, and V. was to become creditor of B. under conditions mentioned, "*jusqu'à concurrence de \$15,000,*" the note which had not become due and the securities being allowed to remain in possession of the bank. In an action by D. to whom the notes held by the bank were assigned:—*Held*, reversing the judgment appealed from, that the effect of the deed of compromise was to discharge B. merely to the extent of the \$15,000 on account of the larger note, and further, affirming the judgment appealed from, that no action could lie upon the smaller note as it represented interest on a claim in relation to a contract of an illegal nature. *L'Association St. Jean Baptiste v. Brault* (30 Can.

S. C. R. 598) followed. *Desroses v. Brault* xxxvii., 613.

## 2. FRAUD AGAINST CREDITORS.

3. *Banks and banking—Security for advance—Assignment of goods—Claim on proceeds of sale—53 Vict. c. 31, s. 7; (D.).*]—A bank to which goods have been transferred as security for advances under s. 74 of the Bank Act, 1890, can follow the proceeds of sale of goods in the hands of a creditor of the assignor to whom the latter has paid them when the purchaser knew, or must be presumed to have known, that the same belonged to the bank. *Union Bank of Halifax v. Spinnacy*, xxxviii., 187.

4. *Title to land—Conveyance in fraud of creditor—Husband and wife—Advancement—Trustee—Equitable relief—Restitution—Evidence—Statute of Frauds.*]—Lands which, at the time of the transaction, would be exempted from seizure and sale under execution by the Alberta "Exemptions Ordinance" were purchased by S. and, with the intention of protecting them from pursuit by his judgment creditor, he caused them to be conveyed to his wife, on a parol agreement with her that the title should remain in her name until the judgment debt was satisfied. The debt was subsequently paid by S. and he brought suit against his wife for a declaration that she held the lands in trust for him and for reconveyance.—*Held, per curiam.*—That the court should not grant relief to the husband against the consequence of his unlawful attempt to delay and hinder his creditor, although the illegal purpose had not been carried out. *Mucklestone v. Brown* (6 Ves. 68); *Taylor v. Chester* (L. R. 4 Q. B. 309) followed. *Rochefoucauld v. Bousted* ((1897), 1 Ch. 196) referred to. Judgment appealed from (8 Alta. L. R. 417), reversed, Anglin, J., dissenting on the ground that the conveyance of exempted lands could not prejudice the rights of creditors and, although it had been made with fraudulent intent, it was not fraudulent as against them. *Mundell v. Tinkis* (6 O. R. 625); *Mathews v. Fewer* (1 Cox 278); *Rider v. Kidder* (10 Ves. 360); *Day v. Day* (17 Ont. App. R. 157); *Symes v. Hughes* (L. R. 9 Eq. 475), and *Taylor v. Bowers* (1 Q. B. D. 291), referred to.—*Per Duff, J.*—In the absence of proof that his creditor had not been prejudiced in consequence of the conveyance being taken in the name of his wife the plaintiff was not entitled to relief. *Scheurman v. Scheurman*, lii., 625.

## 3. LIMITATION OF ACTIONS.

5. *Assignment of debt—Sheriff's sale—Equitable assignment—Statute of Limitations—Payment—Ratification—Principal and agent.*]—In Nova Scotia book debts cannot be sold under execution and the act of the judgment debtor in allowing such sale does not constitute an equitable assignment of such debts to the purchaser.—The purchaser received payment on account of a debt so sold which, in a subsequent action by the creditor and others, was relied on to

prevent the operation of the Statute of Limitations.—*Held*, that though the creditor might be unable to deny the validity of the payment he could not adopt it so as to obtain a right of action thereon, and the payment having been made to a third party who was not his agent did not interrupt the prescription. *Keighley, Mawstead & Co. v. Durant* ([1901] A. C. 240) followed. *Moore v. Roper*, xxxv., 533.

#### 4. PAYMENT, INTEREST.

6. *Vendor and vendee—Sale of securities—Interpretation of contract—Arts. 1018, 1019 C. C.—Railways—Debtor and creditor—Right of way claims—Legal expenses incurred in settlement.*—The plaintiffs sold the defendants stock and bonds of the P. & I. Ry. Co. with an agreement in writing which contained a clause stipulating as a condition that the vendees might declare the option of paying a further sum of \$30,000, in addition to the price of sale, in consideration of which the vendors agreed to pay all the debts of the P. & I. Ry. Co. except certain specially mentioned claims, some of which were in respect of settlement for the right of way. The final clause of the agreement was as follows:—"After two years from the date hereof the Montreal Street Railway Company will assume the obligation of settling any right of way claims which the vendors may not previously have been called upon to settle, and will contribute \$5,000 towards the settlement of any such claims which the vendors may be called upon to settle within the said two years. Any part of the said sum not so expended in said two years or required by the purchasers so to be, shall be paid over to the vendors at the end of the said period, it being understood that the purchasers will not stir up or suggest claims being made." The vendees exercised the option and paid the \$30,000 to the vendors who reserved their right to any portion of the \$5,000 to be contributed towards settlement of the right of way claims which might not be expended during the two years. An unsettled claim for right of way, in dispute at the time of the agreement, was, subsequently, settled by the vendors within the two years. The question arose as to whether or not this claim, then known to exist, and legal expenses connected therewith, was a debt which the vendors were obliged to discharge in consideration of the extra \$30,000 so paid to them, and whether or not the \$5,000 was to be contributed only in respect of right of way claims arising after the date of the agreement:—*Held*, affirming the judgment appealed from, that the agreement must be construed as being controlled by the provisions of the last clause thereof; that said last clause was not inconsistent with the previous clauses of the agreement and that the vendees were bound to contribute to the payment of such claims and legal expenses in respect of the right of way to the extent of the \$5,000 mentioned in the last clause. *Montreal Street Ry. Co. v. Montreal Construction Co.*, xxviii., 422.

7. *Surety—Statute of Frauds—Advances to company—Third party's promise to repay.*—B., a director of a mining company, advanced money for the company's purposes, which G., the president and largest shareholder, orally agreed to repay.—*Held*, affirming the decision of the Appellate Division (35 Ont. L. R. 218), which reversed the judgment for the defendant at the trial (34 Ont. L. R. 210), Fitzpatrick, C.J., and Idington, J., dissenting, that this was not a promise to pay a debt of the company and void as a contract by virtue of the fourth section of the Statute of Frauds; that G. was a primary debtor for the monies advanced by B. and liable to the latter for their re-payment. *Gillies v. Brown*, llii., 557.

#### 5. PREFERENCES.

8. *Preferential assignment—Debtor and creditor—Pressure—Knowledge of insolvency—Yukon Con. Ord. 1902, c. 38, ss. 1 and 2.*—The effect of the second section of the Yukon Ordinance, ch. 38, Consolidated Ordinances, 1902, is to remove the doctrine of pressure in respect to preferential assignments, and consequently, all assignments made by persons in insolvent circumstances come within the terms of the ordinance.—In order to render such an assignment void there must be knowledge of the insolvency on the part of both parties and concurrence of intention to obtain an unlawful preference over the other creditors. *Molsons Bank v. Halter* (18 Can. S. C. R. 88); *Stephens v. McArthur* (19 Can. S. C. R. 446); and *Gibbons v. McDonald* (20 Can. S. C. R. 587) referred to. *Bennallack v. Bank of British North America*, xxxvi., 120.

9. *Insolvency—Fraudulent preference—Security to creditor—Knowledge of insolvency—R. S. O. [1897] c. 147, s. 2, ss. 2 and 3.*—G. had assisted S. with loans and also guaranteed his credit at the Dominion Bank to the extent of \$3,000. His own cheque at the bank having been refused payment, until the indebtedness of S. of \$1,900 was settled, the latter promised to arrange it within a month which he did by transferring to G. goods pledged in the Imperial Bank, G. paying what was due to both banks. Shortly after S. sold out his stock in trade and absconded owing large sums to foreign creditors and being insolvent. On the trial of a creditor's action to set aside the transfer to G. as a fraudulent preference the manager of the Dominion Bank testified that G.'s cheque was not refused from any doubt of S.'s solvency but because he had heard that S. was dealing with another bank, and he wished to close the account:—*Held*, Idington and Duff, JJ., dissenting, that under the evidence produced, G. had no reason to suppose, when the goods were transferred, that S. was insolvent, and he had satisfied the onus placed upon him by the provincial statute of shewing that he had not intended to hinder or defraud the creditors of S. *Baldocchi v. Spada*, xxxviii., 577.

10. *Insolvency — Preferential transfer of cheque — Deposit in private bank—Application of funds to debt due banker—Sinister intention—Payment to creditor—R. S. O. (1897) c. 147, s. 3 (1).*—McG., a merchant in insolvent circumstances, although not aware of that fact, sold his stock-in-trade and deposited the cheque received for the price to the credit of his account with a private banker to whom he was indebted, at the time, upon an overdue promissory note that had been, without his knowledge, charged against his account a few days before the sale. Within two days after making the deposit, McG. gave the banker his cheque to cover the amount of the note. In an action to have the transfer of the cheque, so deposited, set aside as preferential and void:—*Held*, affirming the judgment appealed from (13 Ont. L. R. 232) that the transaction was a payment to a creditor within the meaning of the statute, R. S. O. (1897) c. 147, s. 3, s.-s. 1, which was not, under the circumstances, void as against creditors. *Robinson, Little & Co. v. Scott & Son*, xxxix., 281.

11. *Agreement for extension of time—Preference—Public order—Advantage to creditor—Security for debt—Conflict of laws—Lex loci.*]—Where a debtor obtains the assent in writing of his creditors to an extension of time for payment of their respective debts, upon an undertaking that he will not "give a preference" without their consent, a prior secret arrangement by which one of such creditors obtains security and more favourable terms of payment than that provided in the agreement is void as a fraud against the other creditors and as against public order. — The debtor carried on his business in Toronto, where the deed granting the extension of time was drawn and executed. H., a New York creditor, obtained security by means of the debtor's promissory notes, drawn up and made payable in Toronto and indorsed by the defendant, residing in Montreal. The action on the notes was brought, in Quebec, against the indorser.—*Held*, per Idington and Anglin, J.J., that the case should be decided according to the law of Ontario if there is any difference between it and the Quebec law on the subject-matter.—Judgment appealed from (Q. R. 25 K. B. 421), affirmed. *Hochberger v. Rittenberg*, liv., 480.

#### 6. OTHER CASES.

12. *Execution of will—Mismanagement of estate—Fraud against creditors of beneficiary. Union Bank of Canada v. Brigham*, Cout. Cas. 355.

13. *Lease — Sheriff's sale—Title to land—Insurable interest—Fire insurance—Trust—Beneficiary — Principal and agent — Fraudulent contrivances—Estoppel*, xxxiv., 1.

See LANDLORD AND TENANT.

14. *Company law—Payment for shares—Transfer of business—Debt due partnership—Set-off—Counterclaim — Accord and satisfaction — Liability on subscription for*

shares—R. S. B. C. c. 44, ss. 50, 51, xxxiv., 160.

See COMPANY.

15. *Contract — Promissory note—Security for debt—Husband and wife — Parent and child—Pressure*, xxxv., 393.

See OBLIGATION.

16. *Assignment of obligation—Part performance—Notice of debtor—Acceptance of creditor by suit to set aside obligation—Notice—Signification of transfer of debt—Art. 1517 C. C.*, xxxvi., 686.

See ACTION.

17. *Surety — Collateral deposit — Ear-marked fund—Appropriation of proceeds—Set-off—Release of principal debtor—Constructive fraud — Discharge of surety — Right of action—Common counts—Equitable recourse*, xxxvii., 331.

See PRINCIPAL AND SURETY.

18. *Equitable mortgage—Mines and mining—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgagee —Registry laws — Priority—Actual notice —Lien for Crown dues paid as rent—C. S. N. B. (1903) c. 30, s. 139, xxxvii., 517.*

See MINES AND MINING.

19. *Cause of action—Limitation of actions—Contract — Foreign judgment—Yukon Ordinance, c. 31 of 1890—Statute of James —Statute of Anne—Lex fori—Lex loci contractus—Absence of debtor*, xxxvii., 546.

See LIMITATION OF ACTIONS.

20. *Assignment by mortgagor for benefit of creditors — Priorities — Assignment of claims of execution creditors—Redemption—Assignments and Preferences Act, s. 11 (Ont.)*, xxxix., 229.

See MORTGAGE.

21. *Liquidation of insolvent corporation—Distribution and collocation — Privileged claim—Expenses for preservation of estate—Fire insurance premiums — Practice—Ex parte inscription—Notice*, xxxix., 318.

See COMPANY LAW.

22. *Married woman — Separate property—Liability for debts of husband—Registry law—"Real Property Act"—"Married Women's Act"—Conveyance during coverture*, xl., 384.

See MARRIED WOMAN.

23. *Interpleader issue—Chattel mortgage —Hire receipt — Equitable doctrine*, Cam. Cas. 30.

See CHATEL MORTGAGE.

24. *Administration proceedings—Statute of Limitations — Champertous agreement—Practice*, Cam. Cas. 119.

See CHAMPERTY.

25. *"Winding-up Act" — Insolvent bank —Appointment of liquidators — Appointing another bank—Discretion of judge—Appeal*, (xviii., 707), Cam. Cas. 209.

See "WINDING-UP ACT."

26. *Assignment of chose in action—Notice—Statute of limitations—Acknowledgment of debt—Interest, Cam. Cas. 239.*

See LIMITATION OF ACTIONS.

27. *Sale of goods—Set-off—Partnership—Evidence—Books of account—Practice—New trial—Reducing verdict on appeal, Cam. Cas. 282.*

See NEW TRIAL.

28. *Partnership—Dissolution—New firm by continuing partner—Liability of new partnership—Rights of creditors—Trust—Novation, Cam. Cas. 323.*

See TRUSTS.

29. *Contract—Conditional sale—Guarantee—Rescission—Mortgagor and mortgagee—Power of sale—Creditor retaking possession—Continuing liability—Appropriation of money received by creditor—Release of debtor—Discharge of surety, Cout. Cas. 217.*

See CHATTEL MORTGAGE.

30. *Trust—Banking—Hypothecation of securities—Terms of pledge—Duty of pledgee, xli., 561.*

See BANKS AND BANKING.

31. *Donatio inter vivos—Ante-nuptial contract—Gift to wife—Payment at death of husband—Institution contractuelle—Onerous gift, xliv., 197.*

See DONATION.

32. *Powers of company—Sale of shares—Security by mortgage—Subsequent creditor—Status—Jurisdiction—Foreclosure. Hughes v. W. Electric & Mfg. Co., l., 626.*

See COMPANY, 3.

33. *Construction of statute—Alberta "Assignments Act"—Assignment for benefit of creditors—Occupation of leased premises—Liability of official assignee. Northwest Theatre Co. v. McKinnon, lii., 588.*

See ASSIGNMENT.

## DECEIT.

1. *Action for deceit—Agreement for sale of lands—False representations—Compromise—Notice.]—P., living in Montreal, owned stock in a Cobalt mining company, and D., of Ottawa, looked after his interests therein. Being informed by D. that the mine was badly managed and the property of little value, and that other holders were selling their stock, P. signed an agreement to sell his at par. D. assigned this agreement to a third party. Later P., learning that the stock was selling at a premium, and believing that he had made an improvident bargain, entered into negotiations with the holder of his agreement, and a compromise was effected by a portion of P.'s holdings being sold to the assignee at par and the remainder returned to him. It transpired afterwards that D. and the assignor were in collusion to get possession of the stock, and P. brought action against D. for damages.—Held, that the compromise hav-*

ing been effected when P. was in ignorance of the real state of affairs, it did not bind him as against D., from whom he could recover as damages, the difference between the par value of his remaining shares and their market value at the date of such compromise.—Judgment of the Court of Appeal (12 Ont. W. R. 824) reversed and that of the trial judge (9 Ont. W. R. 380) affirmed by a Divisional Court (11 Ont. W. R. 127) restored. *Pitt v. Dickson*, xlii., 478.

2. *Misrepresentation—Fraud—Error—Rescission of contract—Latent defects—Damages—Action—Option, xxxiv., 102.*

See CONTRACT.

3. *Contract—Deceit and fraud—Rescission—Evidence—Concurrent findings of lower courts—Duty of second appellate court, xxxiv., 145.*

See CONTRACT.

4. *Mines and mining—Vendor and purchaser—Sale of mining locations—Consideration in lump sum—Separate valuations—Misrepresentation—Deceit and fraud—Measure of damages, xxxvi., 279.*

See VENDOR AND PURCHASER.

5. *Company—Sale of shares—Misrepresentation—Fraud—Action for deceit—Accord and satisfaction, xl., 437.*

See FRAUD.

6. *Sale of land—Misrepresentation—Honest belief—Pleading—Amendment—Adding new cause of action, xlvii., 399.*

See SALE.

## DECREE.

See JUDGMENT.

## DEDICATION.

1. *Highway—Conveyance—Acceptance by public—User.]—An action was brought by the City of Toronto against the G. T. Ry. Co. to determine whether or not a street crossed by the railway was a public highway prior to 1857, when the company obtained its right of way. It appeared on the hearing that in 1850, the Trustees of the General Hospital conveyed land adjoining the street, describing it in the deed as the western boundary of allowance for road, and in another conveyance made in 1853, they mention in the description a street running south along said lot. Subsequent conveyances of the same land prior to 1857 also recognized the allowance for a road:—*Held*, Idington, J., dissenting, that the said conveyances were acts of dedication of the street as a public highway.—The first deed executed by the Hospital Trustees, and a plan produced at the hearing, shewed that the street extended across the railway track and down to the River Don, but at the time the portion between the track and the river was a marsh.—Evidence was given of use by the public of the street down to the edge of*



the marsh:—*Held*, Idington, J., dissenting, that the use of such portion was applicable to the whole dedicated road down to the river, and the evidence of user was sufficient to shew an acceptance by the public of the highway. *Grand Trunk Railway Company v. City of Toronto*, xxxvii., 210.

2. *Highway — Road allowance—Reservations in township survey—General instructions—Model plan—Evidence*, xxxiv., 513.

See EVIDENCE.

3. *Negligence — Electric lighting—Wires on public highway—Proximity to bridge—Injury to child*, xxxviii., 27.

See NEGLIGENCE.

4. *Title to land—Public highway—Expropriation — Presumption — User*, Cam. Cas. 53.

See HIGHWAY.

5. *Dedication of highway—Conditions in Crown grant—Access to beach—Plan of subdivision—Destination by owner—Limitation of user—Long usage by public—Acquisitive prescription—Recitals in deeds—Cadastral plans, references and notices—Evidence—Presumptions*, xli., 264.

See HIGHWAY.

6. *Railways — Jurisdiction of Board of Railway Commissioners — Highway — User — “Public way or means of communication” — Access to harbour—Deviation of tracks—Navigable waters—Construction of statute—R. S. C. 1906, c. 37, ss. 2 (11), 3, 237, 238, 241. G. T. R. v. Toronto*, xlii., 613.

See RAILWAYS.

7. *Trespass — Easement — Public way—User—Prescription—Estoppel — “Law and Transfer of Property Act,” R. S. O. 1897, c. 119. Peters v. Sinclair*, xlviii., 57.

See EASEMENT.

8. *Trespass—Easement — Public way — User — Prescription — Estoppel — “Law and Transfer of Property Act,” R. S. O. 1897, c. 119, xlviii., 57.*

See HIGHWAY.

9. *Dedication of lands for highway — Opening of street—Construction of agreement*, xlix., 621.

See MUNICIPAL CORPORATION.

10. *Highways — Old trails of Rupert's Land — Survey — Width of highway—Construction of statute — “North-West Territories Act,” s. 108—Transfer of highway—Plans—Registration — Estoppel—Expenditure of public funds. Rowland v. City of Edmonton*, l., 520.

See HIGHWAY.

## DEED.

1. CONSTRUCTION, 1-9.
2. DESCRIPTION OF LANDS, 10-13.
3. MISTAKE, 14.
4. OTHER CASES, 15-45.

## 1. CONSTRUCTION.

1. *Construction of deed—Ambiguity—Discharge of debtor—Contract—Illegal consideration — Right of action.*] — Where the language of an instrument is ambiguous or obscure, the intention of the parties should be ascertained by consideration of the circumstances attending the execution of the agreement.—A deed of settlement between B. and a bank declared that he owed the bank \$47,316.61 for interest on an advance in respect to a lottery scheme and a further sum of \$18,762.02 for advances on an account for the purchase of stock, two notes being given for these amounts, respectively, and the shares of stock being pledged as security for the large note only. Subsequently, the directors of the bank passed a resolution authorizing the discharge of B., on payment of \$15,000 by one V., “*jusqu'à concurrence de la dite somme de \$15,000,*” and the transfer of the shares to V. This resolution was followed by a deed of compromise, V. paying the \$15,000 and obtaining a transfer of the shares, and it was thereby declared that, by the transaction, B. was discharged in so far as concerned the bank's advances on the stock account “*vis-à-vis la banque des avances qu'elle lui a faites du chef susdît mentionnées en un acte de règlement.*” etc. the resolution being annexed and the deed of settlement referred to for imputation of the payment, and V. was to become creditor of B. under conditions mentioned, “*jusqu'à concurrence de \$15,000,*” the note which had not become due and the securities being allowed to remain in possession of the bank. In an action by D. to whom the notes held by the bank were assigned:—*Held*, reversing the judgment appealed from, that the effect of the deed of compromise was to discharge B. merely to the extent of the \$15,000 on account of the larger note; and further, affirming the judgment appealed from, that no action could lie upon the smaller note as it represented interest on a claim in relation to a contract of an illegal nature. *L'Association St. Jean Baptiste v. Brault* (30 S. C. R. 598) followed. *Deserres v. Brault*, xxxvii., 613.

2. *Construction of deed—Description of lands—License to cut timber — Ambiguities latens — Evidence—Boundary.*]—A license to cut timber on a lot of land described the portion affected as bounded on the south by a river. The river almost crossed the lot at a point near its northern boundary and, at another point, about nineteen arpents further south, it again crossed the lot, completely. In an action to eject the licensee from the portion of the lot between the first and second bends of the river and to recover damages:—*Held*, that, under the circumstances, there was no ambiguity in the designation of the quantity of the land affected by the license and, in any event, the language of the instrument must be literally construed in favour of the grantee and the party bound thereby could not be permitted to shew a different intention by evidence of surrounding circumstances. *Morel v. Lafrancois*, xxxviii., 75.

3. *Construction of deed — Title — Servitude — Acquiescence—Estoppel by con-*

*duct—Actio negatoria servitutis—Operation of waterworks.*] — By a deed executed in 1879, C. granted to R. the right of building a reservoir in connection with a system of waterworks, laying pipes and taking water from a stream on his land, and in 1897, executed a deed of lease of the same land to him with the right, for the purposes of the waterworks established thereon, “de vaquer sur tout le terrain . . . et le droit d’y conduire des tuyaux, y faire des citernes et autres travaux en rapport au dit aqueduc et aux réparations d’icelui” :—*Held*, that the deed executed in 1897 gave R. the right of bringing water from adjoining lands through pipes laid on the lands so leased. *Cliche v. Roy*, xxxix., 244.

4. *Supply of electric light—Cancellation of contract—Condition for terminating service—Interest in premises ceasing—“Heirs” —“Assigns.”*] — The electric company and S. entered into an agreement for the supply of electric lighting in a hotel for ten years from 1st May, 1902, and it was provided that either party might cancel the agreement by notice in writing, if, after the expiration of five years, neither S. nor his heirs, executors, administrators or assigns should be owner, tenant, or occupier of the hotel, alone or with other persons. The lease to S. extended only until 1st May, 1907; it gave him no right to a renewal, and he had no other interest in the building. He sold a half interest in the lease to two persons with whom he formed a partnership in the hotel business, which was carried on till 1904, when the partnership terminated by his death, and the defendants were appointed administrators of his intestate estate. The affairs of the partnership were settled between the defendants and the surviving partners who became transferees of the business, exclusive owners of the lease and sole occupants of the hotel for the unexpired term. The defendants gave notice to the plaintiffs to cancel the agreement on 1st May, 1907, and, on that date, the surviving partners obtained a new lease of the premises under which they continued in occupation and possession:—*Held*, that, after 1st May, 1907, the new tenants of the hotel were not assigns of S. and, consequently, the defendants were entitled to cancel the agreement for electric lighting by notice according to the proviso. *Deschenes Electric Co. v. Royal Trust Co.*, xxxix., 567.

5. *Title to land—Sale—Construction of deed—Reservation of growing timber—Rights of vendor and purchaser—Resolutive condition.*] — A deed of sale of wild lands to be used for agricultural purposes, clearly expressed certain specific reservations and contained, in addition, a clause as follows: “Et de plus la présente vente est faite à la condition expresse que le dit acquéreur n’aura pas le droit de couper, enlever ou charroyer aucun bois sur le terrain ci-dessus vendu autrement que pour son propre usage pour faire des bâtisses sur le terrain, des clôtures, et du bois de chauffage; il est, en conséquence, convenu que si l’acquéreur coupait du bois en violation de la présente clause, les vendeurs auront droit de demander la résiliation des présentes et de reprendre possession

des immeubles ci-dessus vendus sans rien payer à l’acquéreur pour les améliorations qu’il pourra avoir faites. Et tout bois coupé en violation des présentes deviendra, aussitôt coupé, la propriété des vendeurs, car tel est la convention expresse des parties et sans laquelle les présentes n’auraient pas eu lieu” :—*Held*, that, in the absence of any contrary intention expressed in the deed, the title to the lot of land sold passed absolutely to the purchaser with the exception of the special reservation.—*Held*, also, that the clause in question had not the effect of reserving to the vendors all the timber standing upon the land sold, nor can it be construed as giving them the right (without rescission upon breach of the resolutive condition) to re-enter on said land for the purpose of removing stumps or second growth timber. *Réoux v. St. Lawrence Terminal Co.*, xl., 98.

6. *Title to land—Construction of deed—Easement appurtenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Trespas—Right of action.*]—A grant of the right to use a lane in rear of city lots “in common with others,” as an easement appurtenant to the lots conveyed, entitles the purchaser to make any reasonable use, consistent with the common user, not only of the surface but also of the space over the lane. The construction of a fire-escape three feet wide with its lower end 17 feet above the ground (in compliance with municipal regulations), is not an unreasonable use nor inconsistent with the use of the lane in common by others; consequently its removal should not be decreed at the suit of the owner of the land across which the lane has been opened.—Judgment appealed from affirmed, *Maclean, J.*, dissenting. *Meighen v. Pacaud*, xl., 188.

7. *Mining regulations—Hydraulic lease—Breach of conditions—Construction of deed—Forfeiture—Right of lessees—Procedure on inquiry—Judicial duties of arbiter.*]—Under a condition for defeasance in a lease of a mining location, made by the Crown in virtue of the hydraulic mining regulations of 3rd December, 1898, a provision that the Minister of the Interior is to be the “sole and final judge” of the fact of default by the lessee does not entitle the Crown to cancel the lease and re-enter until the fact of such default has been determined by the Minister in the exercise of the functions vested in him after an inquiry of a judicial nature in which an opportunity has been afforded to all parties interested of knowing and being heard in respect to the matters alleged against them in such investigation.—*Quere, per Idington, J.*—Was there not sufficient evidence in the case to shew that there had been no such breach of the conditions as could work a forfeiture of the lease? (Leave to appeal to Privy Council was refused, 18th July, 1908.) *Bonanza Creek Hydraulic Concession v. The King*, xl., 281.

8. *Mining regulations—Hydraulic lease—Breach of conditions—Construction of deed—Forfeiture—Right of lessees—Procedure on inquiry—Judicial duties of arbiter.*]—

Under circumstances similar to those involved on the appeal in the case of *The Bonanza Creek Hydraulic Concessions v. The King* (40 Can. S. C. R. 281) this appeal was allowed with costs for the reason that there could be no right of cancellation of the lease or re-entry by the Crown until default by the lessees had been established upon an investigation of a judicial nature by the Minister of the Interior in the exercise of the functions vested in him by the hydraulic regulations and the term of the lease.—*Per* Idington, J.—The facts disclosed by the evidence could not justify the cancellation of the lease or re-entry for breach of the conditions thereof. (Leave to appeal to Privy Council was refused, 18th July, 1908.) *Klondyke Government Concessions v. The King*, xl., 294.

9. *Servitude—Construction of deed—Purchase of dominant and servient tenements—Unity of ownership—Extinction of servitude—Revival by sale of dominant tenement—Effect of sheriff's sale—Purgation of apparent servitude—Reference to former deed creating charge—Lost deed—Evidence.*—By the judgment appealed from (Q. R. 18 K. B. 24), reversing the judgment of the Superior Court (Q. R. 32 S. C. 289), it was held that (1) Where the purchaser of two parcels of land upon one of which there existed a servitude for the benefit of the other, that was extinguished by the unity of ownership thus restored, executes a deed of sale of the former, subject to the servitude as constituted by the original title deed to which it made reference, such deed of sale in turn becomes a title which revives the servitude; (2) The situation of a servitude giving a right of passage, which has not been defined in the title by which it was created, is sufficiently determined by the description given of its position, accompanied by a plan, in a deed of compromise between the owners of the two parcels of land submitting their differences in regard to the servitude to the decision of an arbitrator; (3) Both before and since the promulgation of the Civil Code, apparent servitudes are not purged by adjudication on a sale by the sheriff under a writ of execution.—On appeal to the Supreme Court of Canada the judgment appealed from was affirmed. *Thompson v. Simard*, xli., 217.

## 2. DESCRIPTION OF LANDS.

10. *Title to land—Ambiguous description of grantee—"Greek Catholic Church"—Evidence—Construction of deed—Reversal of concurrent findings.*—Where Crown lands were granted "in trust for the purposes of the congregation of the Greek Catholic Church at Limestone Lake," N.W.T., and it appeared that this description was ambiguous and might mean either the Greek Orthodox Church or the Greek Church in communion with the Church of Rome, it was held that the construction of the grant should be determined by the facts and circumstances antecedent to and attending the issue of the grant and that, in view of the evidence adduced, the words did not mean a church united with the Roman Catholic

Church and subject to the jurisdiction of the Pope. Judgment appealed from reversed, the Chief Justice and Girouard, J., dissenting, on the ground that the concurrent findings of the courts below upon matters of fact ought not to be disturbed. (Appeal to Privy Council dismissed, [1908] A. C. 65.) *Polushie v. Zacklynski*, xxxvii., 177.

11. *Highway—Dedication—Acceptance by public—Uesr.*—An action was brought by the City of Toronto against the G. T. Ry. Co., to determine whether or not a street crossed by the railway was a public highway prior to 1857, when the company obtained its right of way. It appeared on the hearing that, in 1850, the Trustees of the General Hospital conveyed land adjoining the street describing it in the deed as the western boundary of allowance for road, and in another conveyance, made in 1853, they mentioned in the description a street running south along said lot. Subsequent conveyances of the same land prior to 1857 also recognized the allowance for a road:—*Held*, Idington, J., dissenting, that the said conveyances were acts of dedication of the street as a public highway.—The first deed executed by the Hospital Trustees, and a plan produced at the hearing, showed that the street extended across the railway track and down to the River Don, but at the time the portion between the track and the river was a marsh. Evidence was given of use by the public of the street down to the edge of the marsh.—*Held*, Idington, J., dissenting, that the use of such portion was applicable to the whole dedicated road down to the river, and the evidence of user was sufficient to shew an acceptance by the public of the highway. *Grand Trunk Rwy Co. v. City of Toronto*, xxxvii., 210.

12. *Deed of land—Description—Ambiguity—Admissions.*—In an action for trespass to land, both parties claimed title from the same source, and the dispute was as to which title included the locus. The deed under which S. claimed contained the following as part of the description: "Then running in an eastwardly direction along the said highway until it comes to a crossway in the public highway and running in a southerly direction until it comes to the waters of Broad Cove." There were two crossways in the highway and S. contended that the first one reached on the course was indicated and R. that it was the second lying a little farther west.—*Held*, reversing the judgment of the Supreme Court of Nova Scotia (44 N. S. Rep. 332), Idington and Duff, JJ., dissenting, that to run the course to the first crossway would take it over land not owned by the grantor; that there were other difficulties in the way of taking that course; that S. had apparently for many years treated the second crossway as the boundary; and what evidence there was favoured that view. The construction should, therefore, be that the crossway mentioned in the description was the second of the two. *Reddy v. Strople*, xliiv., 246.

13. *Land reservation—Easement—Right of passage—Changed conditions—Title to lands—Object of conveyance.*—F.

sold land to the Cement Co., reserving by the deed "the right to pass over for cattle, etc., for water going to and from Dry Lake." The company, in using the land for excavating the marl deposit, cut away the shelving bank of Dry Lake and rendered it inaccessible for cattle.—*Held*, Fitzpatrick, C.J., dissenting, that cutting away the bank at this place without providing another suitable watering-place with a proper way leading thereto was an unwarranted interference with the rights of F., and the fact that the company purchased the land for the purpose of digging marl did not give them a right to extinguish F.'s easement of passage for his cattle. *Canada Cement Co. v. Fitzgerald*, llii., 263.

### 3. MISTAKE.

14. *Agreement for delivery of bonds—Mistake.*—In an action by a trust corporation against a railway company a reference was made to the master to decide the ownership of certain bonds of which Blake, one of the defendants, had become purchaser at a judicial sale in the course of litigation between the appellants and the respondent. They had executed an agreement providing that, on payment of \$5,000, the price of adjudication, and a judgment for \$67,000 against Ritchie, the bonds should be transferred to him. Ritchie contended that only \$5,000 was to be paid, and that after he had signed the agreement he discovered the mistake in its provision for payment of the larger sums. The master decided that Ritchie was entitled to the bonds upon payment of the smaller sum. His ruling was reversed by Meredith, C.J., but was restored by the judgment of the Court of Appeal:—*Held*, reversing the judgment appealed from, that upon a correct view of the evidence, the judgment of Meredith, C.J., was right and should be restored. (Leave to appeal to Privy Council refused with costs; 18th July, 1907.) *Burke v. Ritchie*, *Cout. Cas.* 365.

### 4. OTHER CASES.

15. *Rideau canal lands—Condition subsequent—Mis-user by Crown—Forfeiture.* *Wright v. The Queen*, *Cout. Cas.* 151.

16. *Construction of deed—Mortgage or sale—Equity of redemption.* *McLean v. McKay*, *Cout. Cas.* 334.

17. *Conveyance of land—Description of property—Partition—Petitory action—Parties interested in litigation—Litigious rights—Pacte de quotâ litis—Illegal consideration—Specific performance—Retrait successoral—Pleading*, xxxiv., 24.

See CHAMPERTY.

See TITLE TO LAND.

18. *Title to land—Grant from Crown—Description—Navigable or floatable waters—Inlet of navigable river—Implied reservations—Crown domain—Public law—Con-*

*struction of deed—Evidence—Estoppel—Waiver*, xxxiv., 603.

See TITLE TO LAND.

19. *Mistake—Misrepresentations—Lay agreement—Mortgage—Execution of documents by illiterate persons—Evidence*, xxxv., 110.

See CONTRACT.

20. *Construction of contract—Custom of trade—Arts. 8, 1016 C. C.*, xxxv., 274.

See CONTRACT.

21. *Agreement of the sale of land—Falsa demonstratio—Position of vendor's signature—Specific performance*, xxxv., 282.

See SPECIFIC PERFORMANCE.

22. *Description in Crown grant—Mining lease—Evidence—Certified copy—Plan of survey*, xxxv., 527.

See EVIDENCE.

23. *Assessment and taxation—Constitutional law—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of boundaries of Manitoba—Construction of statutes in respect to the constitution of Canada, Manitoba and the North-West Territories—Construction of contract—Grant in present—Cause of action—Jurisdiction—Waiver*, xxxv., 550.

See ASSESSMENT AND TAXES.

24. *Composition and discharge—Construction of deed—Novation—Reservation of collateral security—Delivering up evidence of debt*, xxxvi., 18.

See DEBTOR AND CREDITOR.

25. *Title to land—Conveyance in fee—Reservation of life estate—Possession—Ejectment*, xxxvi., 231.

See TITLE TO LAND.

26. *Pleading—Cross-demand—Compensation—Arts. 3, 203, 215, 217 C. P. Q.—Practice—Damages—Construction of contract—Liquidated damages—Penal clause—Arts. 1076, 1187, 1188 C. C.—Estoppel—Waiver*, xxxvi., 347.

See CONTRACT.

27. *Limitation of actions—Unregistered deed—Subsequent registered mortgage—Possession—Right of entry*, xxxvi., 455.

See LIMITATION OF ACTIONS.

28. *Title to land—Servitude—Construction of deed—Reservations—"Representatives"—Owners par individus—Common lanes—Right of passage—Private wall—Windows and openings in line of lane—Arts. 535-538 C. C.*, xxxvi., 618.

See SERVITUDE.

29. *Dominion mining regulations—Hydraulic mining—Placer mining—Lease—Water grant—Conditions of grant—User of flowing waters—Diversion of watercourses—Dams and flumes—Construction of deed—Riparian rights—Priority of right—Injunction*, xxxviii., 79.

See MINES AND MINING.

30. Mortgage — Money advanced to construct buildings — Lien for materials supplied — Payment to contractor — Transactions in fraud of mortgagee's rights — Redemption — Costs, xxxviii., 557.

See MORTGAGE.

31. Title to land — Promise of sale — Entry in land register — Tenant by sufferance — Squatter's rights — Possession in good faith — Eviction — Tender of deed — Restrictive conditions — Evidence — Commencement de preuve par écrit — Pleading and Practice — Arts. 411, 412, 417, 419, 1204, 1233, 1476, 1478 C. C., xxxix., 47.

See ACTION.

See TITLE TO LAND.

32. Title to land — Interest in mining areas — Sale by trustee — Recovery of proceeds of sale — Agreement in writing — Statute of Frauds — R. S. N. S. (1900) c. 141, ss. 4 and 7 — Part performance — Acts referable to contract — Evidence — Pleading, xxxix., 608.

See TITLE TO LAND.

33. Parent and child — Guardianship — Family arrangement — Public policy, xl., 115.

See PARENT AND CHILD.

34. Married woman — Separate property — Liability for debts of husband — Registry law — "Real Property Act" — "Married Women's Act" — Conveyance during coverture, xl., 384.

See MARRIED WOMEN.

35. Construction of agreement — Sale of timber — Removal — Reasonable time, xl., 557.

See CONTRACT.

36. Lessor and lessee — Covenant for renewal — Option of lessor — Second term — Possession by lessee after expiration of term — Construction of deed — Specific performance, Cam. Cas. 486.

See LEASE.

37. Ships and shipping — Material used in construction — Sale of goods — Contract — Principal and agent — Misrepresentations — Mistake — Conversion — Trover — Evidence — Misdirection — New trial — Ship's husband — Pledging credit of owners — Necessary outfitting at home port, Cout. Cas. 131.

See SHIPS AND SHIPPING.

38. Title to land — Lease for years — Possession by sub-tenant — Purchase at sheriff's sale — Adverse occupation — Evidence — Conveyance of rights acquired — Compromise — Waiver — Estoppel, Cout. Cas. 158.

See TITLE TO LAND.

39. Contract — Agreement for sale of land — Deferred conveyance — Default in payment — Remedy of vendor — Reading "or" as "and," xli., 607.

See CONTRACT.

40. Sale of land — Stipulation as to user — Covenant or condition — Detached dwelling house — Apartment house, l.

See SALE OF LAND.

41. Sale of land — Stipulation as to user — Covenant or condition, l.

See SALE OF LAND.

42. Sale of lands — Covenant — Simple contract — Specialty. Re Muir., li., 428.

See CONSTITUTIONAL LAW.

43. Sale of land — Contract for sale — Time of essence — Delay of vendor — Description — Statute of Frauds — Specific performance. Anderson v. Foster, xlii., 251.

See SPECIFIC PERFORMANCE.

44. Company — Powers — Sale of business premises — Seal — Agreement signed by officer. McKnight v. Vansickler, li., 374.

See COMPANY, l.

45. Assessment and taxation — Sale for delinquent taxes — Tax sale — Premature delivery — Statutory authority — Condition precedent — Evidence — Presumption — Curative enactment — "Assessment Act," B. C. Con. Acts, 1888, c. 114, s. 92 — B. C. "Assessment Act," 1903, 3 & 4 Edw. VII. c. 53, ss. 125, 153, 156 — Certificate of title (B.C.) — Registry law, liii., 503.

See ASSESSMENT AND TAXATION.

## DEFAMATION.

Printing report of ghost haunting premises — Slander of title — Fair comment — Disparaging property — Special damages — Evidence — Presumption of malice — Right of action, xxxix., 340.

See SLANDER.

## DELAY.

See TIME.

## DELIT.

1. Malicious prosecution — Reasonable and probable cause — *Bona fide* belief in guilt — Burden of proof — Right of action — Damages — Art. 1053 C. C. — Pleading and practice, xl., 128.

See MALICIOUS PROSECUTION.

AND see NEGLIGENCE.

2. Municipal corporation — Contract with company — Franchise for water supply — Protection against fire — Negligence — Liability of company to ratepayer — Damages. Belanger v. Mont. Water & Power Co., l., 356.

See ACTION, 4.

## DELIVERY.

1. Sale of goods — Construction of contract — Custom of trade — Evidence, xxxv., 274.

See CONTRACT.

2. *Sale of goods—Suspensive condition—Term of credit—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Banking—Bailee receipt—Brokers and factors—Principal and agent—Resiliation of contract—Revendication—Damages—Practice—Pleading, xxxvi., 406.*

See SALE.

3. *Sale of goods—Contract by correspondence—Statute of Frauds—Principal and agent—Statutory prohibition—Illicit sale of intoxicating liquors—Knowledge of seller—Validity of contract, xxxvii., 55.*

See CONTRACT.

4. *Broker—Stock—Purchase on margin—Pledge of stock by broker—Possession for delivery to purchaser, xxxviii., 601.*

See BROKER.

5. *Construction of contract—Sale of machinery—Agreement for lien—Delivery, xxxix., 274.*

See CONTRACT.

6. *Sale of goods—Lien of unpaid vendor—Stoppage in transitu—Goods not separated from larger bulk—Estoppel, Cam. Cas. 511.*

See SALE.

7. *Contract—Supplying electrical energy—Condition—Payment at flat rate—Obligation to pay for pressure not utilized—Sale of commodity—Agreement for service. Montreal v. Montreal Light, Heat, &c., xlii., 431.*

See CONTRACT.

8. *Contract—Sale—Payment in company stock—Unorganized company—Time for delivery. Roche v. Johnson, liii., 18.*

See CONTRACT.

## DEMURRER.

1. *Subaqueous mining—Crown grants—Dredging lease—Breach of contract—Subsequent issue of placer mining licenses—Damages—Pleading and practice—Statement of claim—Demurrer—Cause of action.]—A statement of claim which alleges that the Crown, after granting a lease of areas for subaqueous mining and while that lease was in force, in derogation of the rights of the lessee to peaceable enjoyment thereof, interfered with the rights vested in him transferring the leased area to placer miners who were put in possession of them by the Crown to his detriment, discloses a sufficient cause of action in support of a petition of right for the recovery of damages claimed in consequence of such subsequent grants. — Judgment appealed from (10 Ex. C. R. 390) reserved, Davies and Idington, J.J., dissenting.—Davies, J., dissented on the ground that there was no sufficient allegation in the petition either of interference with the submerged beds or bars of the stream, which alone were included in the dredging lease, or of such active interference by the Crown as would justify an action. (Appeal to Privy Coun-*

*cil dismissed with costs; 10th July, 1908.) McLean v. The King, xxxviii., 542.*

2. *Appeal—Jurisdiction—Supreme Court Act (1875), 38 Vict. c. 11—Demurrer—Final judgment—Costs.]—On appeal from a judgment overruling a demurrer (12 N. S. Rep. 376; Russ. Eq. Dec. 287); — *Held, per Fournier, Taschereau and Gwynne, J.J.* (the Chief Justice and Strong, J., *contra*), that, under the circumstances, the judgment appealed did not dispose of the matters in controversy finally, and the appeal was quashed for want of jurisdiction under the Supreme Court Act of 1875, with costs of a motion to quash. (Cf. 7 App. Cas. 178.) *Western Counties Railway Co. v. Windsor and Annapolis Railway Co.*, Cout. Cas. 11.*

3. *Appeal from Exchequer Court—Judgment on demurrer—Decision upon issues—Jurisdiction, xxxvi., 593.*

See APPEAL.

4. *Appeal—Final judgment—Jurisdiction, xl., 139.*

See JUDGMENT.

5. *Action in rem—Pleading—Abatement of contract price—Mortgage on ship—Damages, xl., 418.*

See ADMIRALTY LAW.

## DEPOSIT.

1. *Succession duties—New Brunswick statute—Foreign bank—Special deposit in local branch—Depositor domiciled in Nova Scotia—Debt due by bank—Notice of withdrawal—Enforcement of payment. Lovitt v. The King, xliiii., 106.*

See SUCCESSION DUTY.

2. *Vendor and purchaser—Sale of land—Payment by instalments—Specified dates—Time of essence—Forfeiture—Penalty—Payment declared to be deposit, xlix., 360.*

See VENDOR AND PURCHASER.

## DERNIER EQUIPEUR.

*Shipping—Material men—Supplies furnished for "last voyage"—Privilege of dernier equipour—Round voyage—Charter-party—Personal debts of hirers—Seizure of ship—Arts. 2383, 2391 C. C.—Art. 931 C. P. Q.—Construction of statute—Ordonnances de la Marine, 1681.]—A steamship lying at the port of Liverpool was chartered by the owners to P. for six months, for voyages between certain European ports and Canada, the hirers to bear all expenses of navigation and upkeep until she was returned to the owners. The ship was delivered to the hirers at Rotterdam where she took on cargo and sailed for Montreal. On arriving at Montreal she unloaded and re-loaded for a voyage to Rotterdam, with the intention of returning to Montreal, and obtained a supply of coal from the plaintiffs which was furnished on the order of the hirers' agent at Montreal. The ship*

sailed to Rotterdam and returned to Montreal in about a month, touching at Havre and Quebec, discharged her cargo and proceeded to re-load, obtaining another supply of coal from the plaintiffs in the same manner as the first supply had been furnished. Within a few days, the price of these supplies of coal being still owing and unpaid, the hirers became insolvent, and the plaintiffs arrested the ship at Montreal, claiming special privilege upon her as *derniers équipiers* in furnishing the first supply of coal on her last round voyage, the right of attachment before judgment in respect of both supplies, and seizing her under the provisions of arts. 2391 of the Civil Code and 931 of the Code of Civil Procedure.—*Held, per Fitzpatrick, C.J., and Davies, Maclean and Duff, J.J.*, that the voyage from Montreal to Rotterdam and return was not the ship's "last voyage" within the meaning of art. 2383 (5) of the Civil Code; that the voyage out from Montreal and that returning from Rotterdam did not constitute one round voyage but were separate and complete voyages, and that, consequently, there was no privilege upon the ship for the supply of coal furnished for her voyage from Montreal to Rotterdam. And also, that the provisions of art. 3391 of the Civil Code did not render the ship liable to seizure for personal debts of the hirers, and consequently, that she could not be attached therefor by *saisie-arrêt*.—Judgment appealed from (Q. R. 16 K. B. 16) affirmed, Girouard, J., dissenting.—*Per Davies, J.*—The "last voyage" mentioned in art. 2383 C. C. refers only to a voyage ending in the Province of Quebec. — *Per Idington, J.*—As the terms of the charter-party expressly excluded authority in the hirers to bind the ship for any expenses of supply, and as nothing arose later that could by any implication of law confer any such authority on anyone and especially so in a port where the owners had their own agents, any possible rights that might in a proper case arise under art. 2383 of the Civil Code did not arise here; and, therefore, though agreeing in the result he expressed no opinion on the meaning of the term "last voyage" therein. *Lloyd v. Guibert* (L. R. 1 Q. B. 115) should govern this case. *Inverness Ry. and Coal Co. v. Jones et al.*, xl., 45.

### DESCRIPTION.

1. *Mines and mining*—*Removal of ore*—*Boundary*—*Copy of plan*—*Evidence*—*Falsa demonstratio*. *Nova Scotia Steel Co. v. Bartlett*, Cout. Cas. 268.

2. *Title to lands*—*Grant from Crown*—*Navigable or floatable waters*—*Inlet of navigable river*—*Implied reservations*—*Crown domain*—*Public law*—*Construction of deed*—*Evidence*—*Estoppel*—*Waiver*, xxxiv., 603.

See TITLE TO LANDS.

3. *Agreement of the sale of land*—*Falsa demonstratio*—*Position of vendor's signature*—*Specific performance*, xxxv., 282.

See SPECIFIC PERFORMANCE.

4. *Crown lands*—*Mining lease*—*Trespass*—*Conversion*—*Title to land*—*Evidence*—*Description in grant*—*Plan of survey*—*Certified copy*, xxxv., 527.

See EVIDENCE.

5. *Construction of statute*—*Toll-bridge*—*Franchise*—*Exclusive limits*—*Measurement of distance*—*Encroachment*—58 Geo. III. c. 20 (L. C.), xxxvi., 224.

See STATUTE.

6. *Chattel mortgage*—*Renewal*—*Time for filing*—*Identification of goods*—*Sufficiency of description*—*Proof of judgment and execution*, Cam. Cas. 436.

See CHATTEL MORTGAGE.

7. *Construction of will*—*Usufruct*—*Substitution*—*Partition between institutes*—*Validating legislation*—60 Vict. c. 95 (Q.)—*Construction of statute*—*Restraint of alienation*—*Interest of substitutes*—*Devise of property held by institute under partition*—*Devolution of corpus of estate en nature*—*Accretion*—*Res judicata*—Arts. 358, 948 C. C., xxxviii., 1.

See WILL.

### DEVOLUTION OF ESTATES.

1. *Doweress*—*Title to land*—*Prescription*—*Statute of limitations*—*Heirs at law*—*Parol evidence*—*Will*—*Residuary devise*, Cam. Cas. 338.

See TITLE TO LAND.

2. *Construction of will*—*Substitution*—*Trust*—*Death of grevé*—*Accretion*—*Partition*—*Apportionment in aliquot shares*—*Distribution of estate*—*Partial intestacy*, xlvii., 42.

See WILL.

3. *Escheat*—*Dominion or provincial land*—5 Geo. V. (Alta.). *Trusts & Guarantee Co. v. The King*, liv., 107.

See CONSTITUTIONAL LAW.

### DILATORY EXCEPTION.

See EXCEPTION.

### DIRECTORS.

*Trust*—*Company law*—*Extra remuneration*—*Ultra vires act of directors*—*Ratification*—*Recovery of moneys illegally paid*—*Mistake of law*, xxxix., 614.

See COMPANY.

### DISCRETION.

*Leave to appeal*—"Supreme Court Act," R. S. C. [1906] c. 139, s. 37.

See APPEAL.

**DISTRIBUTION AND COLLOCATION**

*Liquidation of insolvent corporation — Distribution and collocation — Privileged claim—Expenses for preservation of estate — Fire insurance premiums—Practice—Ex parte inscription—Notice—Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2009 C. C., xxxix., 318.*

See COMPANY.

**DIVORCE.**

*Husband and wife—Institution of action by divorced wife — Judicial authorization — Arts. 176, 178 C. C. — Art. 14 C. C. P. — Divorce—Decree by foreign tribunal—Jurisdiction—Effect in Quebec — Comity of nations.]—S. and F., both being domiciled in the State of New York, were married there in 1871 without ante-nuptial contract. Shortly after the marriage, F. received his wife's fortune from her trustees. Subsequently F. established a business in the city of Montreal and resided there when the action was instituted. S. followed her husband to Canada but only resided there a short time. In 1876 S. was granted a decree of divorce from F. by the Supreme Court of New York and, in 1881, brought this action for an account of his administration and management of her property, but without obtaining the authorization of a judge as provided by art. 178 of the Civil Code. The defence was that the divorce obtained in the United States was invalid in the Province of Quebec, and secondly that S. was not authorized to institute the action. The Superior Court overruled the pleas and held that the divorce alleged in the declaration was good and valid in the Province of Quebec (5 Leg. News 79), but the Court of Queen's Bench reversed this judgment on the ground that the alleged divorce had no force in the Province of Quebec and that, consequently, S. being still the wife of F. could not institute her proceedings without marital or judicial authorization (6 Leg. News 329). On appeal to the Supreme Court of Canada:—*Held*. (Strong, J., dissenting), *per* Ritchie, C.J., and Henry and Gwynne, JJ., that S. having obtained without fraud or collusion a decree for divorce from the Supreme Court of New York, this decree, upon the principle of the comity of nations, should be recognized as valid in the courts of the provinces of Canada.—*Per* Ritchie, C.J., and Henry and Gwynne, JJ., that F. having submitted to the jurisdiction of the Supreme Court of New York when served with the proceedings in the action, could not now be allowed to affirm that that court had no jurisdiction.—*Per* Fournier, Henry and Gwynne, JJ.—The fact being established that in the State of New York, where the parties were married, S. could have sued her husband without previous authorization, art. 14 C. C. P., which gives to all persons having the right to sue in their own country the like power in the Province of Quebec, had the effect of clothing the plaintiff with the same right to sue as a *feme sole* in the Province of Quebec as she had in her own country, notwithstand-*

ing the provisions for authorization contained in arts. 176 and 178 C. C. *Stevens v. Fisk*. (Cout. Dig. 874; 8 Legal News 42, 53); Cam. Cas. 592.

**DOMICILE.**

1. *Succession duties — New Brunswick statute—Foreign bank—Special deposit in local branch—Depositor domiciled in Nova Scotia—Debt due by bank—Notice of withdrawal—Enforcement of payment—Duties.]—L., whose domicile was in Nova Scotia, had, when he died, \$90,000 on deposit in the branch of the Bank of British North America, at St. John, N.B. The receipt given him when the deposit was made provided that the amount would be accounted for by the Bank of British North America on surrender of the receipt and would bear interest at the rate of 3 per cent. per annum. Fifteen days' notice was to be given of its withdrawal. L.'s executors, on demand of the manager at St. John, took out ancillary probate of his will in that city, and were paid the money. The Government of New Brunswick claimed succession duty on the amount.—*Held*, reversing the judgment of the Supreme Court of New Brunswick (37 N. B. Rep. 558), Idington and Duff, JJ., dissenting, that the Government was not entitled to such duty.—*Held*, *per* Davies and Anglin, JJ., that notice of withdrawal could be given and payment enforced at the head office of the bank in London, England, and perhaps at the branch in Montreal, the chief office of the bank in Canada.—*Attorney-General of Ontario v. Newman* (31 O. R. 340, 1 Ont. L. R. 511), questioned. *Lovitt v. The King*, xliii., 106.*

2. *Constitutional law — Construction of statute—Legislative jurisdiction — "Direct taxation within the province" — Succession duty — Extra-territorial movables — Decedent domiciled within province, xl., 469.*

See CONSTITUTIONAL LAW.

**DOMINION ARBITRATORS.**

*Constitutional law — Liability of provinces at confederation — Special funds—Rate of interest — Trust funds of debt — Award of 1870—B. N. A. Act, 1867, ss. 111 and 142, xxxix., 14.*

See CONSTITUTIONAL LAW.

**DOMINION LANDS.**

See CROWN; MINES AND MINING; RIVERS AND STREAMS.

**DONATION.**

1. *Executor and trustee—Moneys of testator — Deposit in bank — Authority to draw against—Gift.]—D. deposited money in bank in the joint names of himself and a*



daughter with power in either to draw against it. The daughter never exercised this power and when D. died she and her co-executor of his will, in applying for probate, included said money in their statement of the property of the testator:—*Held*, that the money in bank remained the property of D. and did not pass to the daughter on his death. *Re Daly; Daly v. Brown*, xxxix., 122.

AND see EXECUTORS AND ADMINISTRATORS.

AND see GIFT.

2. *Donatio inter vivos*—*Ante-nuptial contract*—*Gift to wife*—*Payment at death of husband*—*Institution contractuelle*—*Onerous gift*.]—An ante-nuptial contract provided that "in the future view of the said intended marriage he, the said Edward O'Reilly, for and in consideration of the love and affection and esteem which he hath for and beareth to the said Miss Eliza Petrie, hath given, granted and confirmed and by these presents doth give, grant and confirm unto the said Miss Eliza Petrie, accepting hereof . . . the sum of twenty-five thousand dollars, currency of Canada, payable unto the said Miss Eliza Petrie by the heirs, executors, administrators or assigns of him the said Edward O'Reilly, the payment whereof shall become due and demandable after the death of him the said Edward O'Reilly." The parties were married and on the death of the said O'Reilly his wife claimed the right to rank on his estate as a creditor for the said sum of \$25,000, which claim was contested by the general body of creditors who had all become such after said contract was made.—*Held*, affirming the judgment of the Court of Appeal (21 Ont. L. R. 201) that this clause in the contract must be construed as a *donatio inter vivos* creating a present debt in favour of the future wife, payment of which was deferred; that, in the absence of proof of fraud, such a contract could not be attacked by subsequent creditors; and that the wife was entitled to rank on the estate for the amount of said gift.—*Held*, per Girouard, J., that the donation was one "a titre onéreux." *Garland, Son & Co. v. O'Reilly*, xlv., 197.

### DOWER.

*Doweress*—*Title to land*—*Prescription*—*Statute of Limitations*—*Heirs at law*—*Paral evidence*—*Will*—*Residuary devise*, Cam. Cas. 338.

See TITLE TO LAND.

### DRAINAGE.

1. *Actio negatoria servitutis*—*Boundary*—*Estoppel*—*Waiver of objections*—*Evidence*. *Breton v. Gonthier dit Bernard*, Court. Cas. 350.

2. *Construction of statute*—"*Marsh Act*," R. S. N. S. 1900, c. 66, ss. 22, 66—

*Jurisdiction of Marsh Commissioners*—*Assessment of lands*—*Certiorari*—*Limitation for granting writ*—*Practice*—*Expiration of time limit*—*Delays occasioned by judge*—*Legal maxim*—*Order nunc pro tunc*, xxxvii., 79.

See CERTIORARI.

3. *Municipal corporation*—*Construction of sewers*—*Nuisance*—*Injunction*—*Damages*—*Right of action*—*Practice*, Court. Cas. 162.

See APPEAL.

4. *Municipal drainage*—*Capacity of city sewers*—*Negligence*—*Vis major*, xli., 190.

See MUNICIPAL CORPORATION.

### DREDGING.

*Subaqueous mining*—*Crown grants*—*Dredging lease*—*Breach of contract*—*Subsequent issue of placer mining licenses*—*Damages*—*Pleading and practice*—*Statement of claim*—*Cause of action*, xxxviii., 542.

See MINES AND MINING.

### DROITS DU VOISINAGE.

See NUISANCE.

### DURESS.

1. *Will*—*Testamentary capacity*—*Evidence*—*Art. 331 C. C.*—*Marriage contract*, xxxv., 477.

See MARRIAGE CONTRACT.

See WILL.

2. *Revocation of will*—*Testamentary capacity*—*Findings of fact*—*Practice*—*Improper suggestion*—*Undue influence*—*Capitation*—*Bounty taken by promoter*—*Fraudulent representations*—*Evidence*—*Onus of proof*, xxxviii., 460.

See WILL.

3. *Will*—*Testamentary capacity*—*Capitation*—*Suggestion*—*Undue influence*—*Interdiction*—*Evidence*—*Onus of proof*, xli., 391.

See WILL.

### DUTIES.

1. *Appeal*—*Jurisdiction*—*Supreme Court Act*—*Duty or fee*—*Interest in land*—*Future rights*, xli., 35.

See APPEAL.

2. *Succession duties*—*New Brunswick statute*—*Foreign bank*—*Special deposit in local branch*—*Depositor domiciled in Nova Scotia*—*Debt due by bank*—*Notice of with-*

*drawal—Enforcement of payment—Domestic*, xliiii., 106.

See SUCCESSION DUTIES.

3. *Constitutional law—Construction of statute—Legislative jurisdiction—“Direct taxation within the province”—Succession duty—Extra-territorial movables—Decedent domiciled within province*, xlv., 469.

See CONSTITUTIONAL LAW.

## EASEMENT.

1. *Title to land—Easement appurtenant—User of lane—Prescription—Agreement for right of way—Construction of contract—Practice.*—In 1860 J. D. conveyed to J. D. the younger (the plaintiff) the east half of lot 19 in the 5th concession west of Yonge street in the township of York “together with all and singular . . . ways . . . easements . . . and appurtenances whatsoever in the said land . . . belonging or in any wise appertaining or therewith used and enjoyed, etc.” Lots 19 and 18 were contiguous lots of which 18 lay to the south of 19, and both lots were bounded on the east by the 5th concession road and on the west by the 6th concession road. At the time ceding, the occupants of the east half of lot 19 were accustomed to drive to the 6th concession road across the west half of lot 18, and, by his statement of claim, the plaintiff claimed a right of way as an easement over the west half of 18 by reason of the conveyance from his father and twenty-five years’ user. J. D. died in 1877, and by his will devised to J. D. the younger the north-east quarter of lot 18, and to W. D. (the grantor of the defendant) the residue of lot 18, and by an agreement between J. D. (the plaintiff) and W. D., the latter conveyed to J. D. a right of way over a lane then existing upon the west half of lot 18, and over an extension to be made of said lane, so as to give him access to the 6th concession-road, in the following language: “Agree and permit the said J. D., his heirs, etc., a full and free right of way along the lane where it now is on lot number 18, leading from the 6th line and extending 40 rods east from the centre of said lot, so as to allow a free communication for all his and their teams, etc.” The lane on the west half of lot 18, if extended easterly in a straight line, would be upon the north-east quarter of lot 18, the lands devised to J. D., and one matter in dispute between the parties was whether or not a proper construction of the agreement required that the extension of the lane should be by means of a jog continuing solely upon the land of W. D., or should be extended in a straight line upon the lands of J. D. Upon the trial before Galt, J., and a jury, a verdict was found that the plaintiff was entitled to the right of way over the west half of 18 to the 6th concession road by reason of grant and continuous user, and also that the extension of the lane should be wholly on the defendant’s land. An order *nisi* to set aside the verdict and to enter a nonsuit or verdict for the defendant was made absolute by the Divisional Court.

and judgment entered for the defendant. On appeal to the Court of Appeal this judgment was set aside and the judgment at the trial restored. On appeal to the Supreme Court of Canada:—*Held*, Ritchie, C.J., dissenting, reversing the judgment of the Court of Appeal, that a way must be a defined way in order to pass by the general words “all ways used and enjoyed,” when the way is not an existing easement or way of necessity; and that in this case the way claimed as an easement was not a well defined, permanent road or way, but simply a track in no settled or defined direction, and that all J. D. obtained from his father was a user purely of tolerance, under license and permission, and one which neither constituted an easement in fact at the time of the conveyance, nor a user which, however long its continuance, would ripen into an easement by prescription.—*Held*, affirming the judgment of the Court of Appeal, that according to the true construction of the agreement between J. D. and W. D., the extension of the lane was to be wholly upon the lands of W. D., and not in a straight line.—*Held*, that under Con. Rule 755, the court having all the material before it necessary for determining the case, and as no useful purpose would be served by sending the case back for a new trial, the court should give the final judgment in the action.—Rule 755 being a transcript of the English Order 40, Rule 10 of 1875, and there being no rule in Ontario corresponding to Rule 568 of the English rules, which restricts the court to such inferences of fact as are not inconsistent with the findings of the jury, the observations of the Lord Chancellor in *Toulmin v. Millar* (12 App. Cas. 746), have no application. *Rogers v. Duncan* (xviii., 710), Cam. Cas. 352.

2. *Title to land—Construction of deed—Easement appurtenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Trespass—Right of action.*—A grant of the right to use a lane in rear of city lots “in common with others,” as an easement appurtenant to the lots conveyed, entitles the purchaser to make any reasonable use, consistent with the common user, not only of the surface but also of the space over the lane. The construction of a fire-escape, three feet wide with its lower end 17 feet above the ground (in compliance with municipal regulations), is not an unreasonable use nor inconsistent with the use of the lane in common by others; consequently, its removal should not be decreed at the suit of the owner of the land across which the lane has been opened.—Judgment appealed from affirmed, MacLennan J., dissenting. *Meighen v. Pacaud*, xl., 188.

3. *Deed of land reservation—Right of passage—Changed conditions—Object of conveyance—Title to lands.*—F. sold land to the Cement Co., reserving by the deed “the right to pass over for cattle, etc., for water going to and from Dry Lake.”—The company, in using the land for excavating the marl deposit, cut away the shelving bank of Dry Lake and rendered it inaccessible for cattle.—*Held*, Fitzpatrick, C.J., dissenting, that cutting away the bank at this

place without providing another suitable watering-place with a proper way leading thereto was an unwarranted interference with the rights of F., and the fact that the company purchased the land for the purpose of digging marl did not give them a right to extinguish F.'s easement of passage for his cattle. *Canada Cement Co. v. Fitzgerald*, liii., 263.

4. *Private way—Unity of ownership—Subsequent severance—Revival of easement—Reservation.* *McClellan v. Powassan Lumber Co.*, xlii., 249.

5. *Construction of deed—Title to land—Servitude—Acquiescence—Estoppel by conduct—Actio negatoria servitutis—Operation of waterworks*, xxxix., 244.

See DEED.

6. *Title to land—Room in building—Adverse possession—Statute of Limitations—Incidental rights—Implied grant—License or easement*, xi., 313.

See TITLE TO LAND.  
AND see SERVITUDE.

7. *Trespass—Public way—Dedication—User—Prescription—Estoppel—“Law and Transfer of Property Act,” R. S. O. 1897, c. 119, xlviii., 57.*

See HIGHWAY.

## ECCLESIASTICAL CORPORATION.

*Corporation sole—Roman Catholic Bishop—Devise of personal and ecclesiastical properties—Construction of will*, xxxiv., 419.

See WILL.

## EDUCATION.

1. *Assessment and taxes—County School Fund—Contributions by incorporated towns—Construction of statute—3 Edw. VII. c. 6, s. 7 (N. S.)*, xxxvii., 514.

See ASSESSMENT AND TAXES.

2. *Legislative jurisdiction—Constitutional law—Company—Private bills—Questions referred for opinions—Construction of statute*, Cout. Cas. 1.

See LEGISLATION.

3. *Leave to appeal—Municipal by-law—High School District—Public importance.* *In re Henderson and Township of West Nissouri*, xlvi., 627.

4. *School boards—Assessment and taxation—Taxes payable by incorporated companies—Apportionment—Shares for public and separate school purposes—Notice—Construction of statute—Legislative jurisdiction—“B. N. A. Act, 1867,” sec. 92—“Saskatchewan Act,” 4 & 5 Edw. VII. c. 42, s. 17—“School Assessment Act,” R. S. Sask, 1909, c. 101, ss. 93, 93a., 1., 589.*

See ASSESSMENT AND TAXATION.

## EJECTMENT.

1. *Crown lands—Adverse possession—Grant during—Information for intrusion—21 Jac. I. c. 14 (Imp.)*, xxxiv., 533.

See CROWN LANDS.

2. *Title to land—Conveyance in fee—Reservation of life estate—Possession—xxxvi., 231.*

See TITLE TO LAND.

## ELECTION LAW.

1. AGENCY, 1.
2. APPEAL, 2-6.
3. DISQUALIFICATION, 7.
4. LIBEL AND SLANDER, 8.
5. PETITION, 9-10.
6. PRELIMINARY OBJECTIONS, 11-14.
7. PROCEDURE, 15-20.
8. TRIAL, 21.

### 1. AGENCY.

1. *Controverted election—Trial of petition—Evidence—Corrupt acts at former election—Agency—System of corruption.*—A petition against the return of a member for the House of Commons at a general election in 1904 contained allegations of corrupt acts by respondent at the election in 1900 which were struck out on preliminary objections. On the trial of the petition evidence of payments by respondents of accounts in connection with the former election was offered to prove agency and a system and was admitted on the first ground. A question as to the amount of one account so paid was objected to and rejected:—*Held*, that such rejection was proper; that the question was not admissible to prove agency for agency was admitted or proved otherwise; nor as proof of a system which could not be established by evidence of an isolated corrupt act. — *Held*, also, that where evidence is tendered on one ground other grounds cannot be set up in a Court of Appeal. *Shelburne and Queen's Election Case*, xxxvii., 604.

### 2. APPEAL.

2. *Controverted election—Appeal to Supreme Court of Canada—Jurisdiction—Practice—37 Vict. c. 19, ss. 35, 56 (D.), 38 Vict. c. 11, s. 48 (D.).*—*Henry, J.*, held, in 1880, that the statute gave the appeal only upon fulfilment of the conditions prescribed, and, if security was not given within the prescribed time and the fee paid, no appeal would lie. *In re John Stewart; The Kingston Election Case*, Cout. Cas. 21.

3. *Controverted election—Appeal—Fixing time for trial.*—No appeal lies to the Supreme Court of Canada from an order of the judges assigned to try an election petition fixing the date for such trial. *Habifaw Election Cases*, xxxix., 401.

4. *Appeal—Preliminary objections—Interlocutory motions—Construction of statute—“Dominion Controverted Elections Act.”* R. S. C. 1906, c. 7, s. 64.]—Several of the preliminary objections to a petition against the election of a member of the House of Commons of Canada having remained undisposed of, on the day before the expiration of the six months limited for the commencement of the trial by section 39 of the “Dominion Controverted Elections Act,” R. S. C. 1906, c. 7, the petitioner applied to a judge, by motions, (a) to obtain an enlargement of the time for the commencement of the trial, and, (b) to have a day fixed for the hearing on such preliminary objections. On appeal from the judgment dismissing the motions.—*Held*, that the judgment in question was not appealable to the Supreme Court of Canada under the provisions of section 64 of the “Dominion Controverted Elections Act.” *L’Assomption Election Case* (14 Can. S. C. R. 429); *King’s County Election Case* (8 Can. S. C. R. 192); *Gloucester Election Case* (8 Can. S. C. R. 204), and *Halifax Election Case* (39 Can. S. C. R. 401) referred to. *Temiscouata Election*, xlvii, 211.

5. *Appeal—Jurisdiction—Provincial election—“Alberta Controverted Elections Act”—Preliminary objections—“Judicial proceeding”—“Final judgment.”*]—*Held*, per Davies, Idington and Anglin, JJ., that under the provisions of the “Alberta Controverted Elections Act” the judgment of the Supreme Court of the province in proceedings to set aside an election to the legislature is final and no appeal lies therefrom to the Supreme Court of Canada.—*Held*, per Davies, Anglin and Brodeur, JJ., that the judgment of the Supreme Court of Alberta on appeal from the decision of a judge on preliminary objections filed under the “Controverted Elections Act” is not a “final judgment” from which an appeal lies to the Supreme Court of Canada.—*Held*, per Duff, J., that a proceeding under said Act to question the validity of an election is not a “judicial proceeding” within the contemplation of section 2 (e) of the “Supreme Court Act” in respect of which an appeal lies to the Supreme Court of Canada. *Cross v. Carstairs, Edmonton Provincial Election*, xlvii, 559.

6. *Controverted election—Secrecy of ballot—Act of D. R. O.—Numbering ballot.*]—Under the Dominion Controverted Elections Act, a ballot cast at an election is avoided if there are any marks thereon by which the voter may be identified, whether made by him or not. Hence, when the deputy returning officer in a polling district placed on each ballot the number corresponding to that opposite the elector’s name on the voters’ list, the ballots were properly rejected. Judgment appealed from (9 Ont. L. R. 201) affirmed. *Sedgewick and Idington, JJ.*, dissenting. *Wentworth Election Case*, xxxvi, 497.

### 3. DISQUALIFICATION.

7. *Controverted election—Personal corruption—Charge in petition—Judge’s re-*

*port—Adjudication—Amendment—Evidence.*]—On a charge of personal corruption by the respondent if the adjudication by the trial judges does not contain a formal finding of such corruption this court may insert it if the recitals and reasons given by the judges warrant it.—Respondent, the night before the election, took a sum of over \$4,000 and divided it into several parcels of sums ranging from \$250 to \$1,500. He then, after midnight, visited all his committee rooms, and gave to the chairman of each committee, personally and secretly, one of such parcels. His financial agent had no knowledge of this distribution and no evidence was produced of the application of the money to legitimate objects:—*Held*, that the inference was irresistible, that the money was intended for corruption of the electors and respondent was properly held guilty of personal corruption.—Allegations in the petition that respondent had himself given and procured, undertaken to give and procure money and value to electors and others named, his agents, to induce them to favour his election and vote for him, for the purpose of having such moneys and value employed in corrupt practice were sufficient to cover the offence of which the respondent was found guilty. *St. Ann’s Election Case*, xxxvii, 563.

### 4. LIBEL AND SLANDER.

8. *Libel—Withdrawal of candidate—Allegation of improper motives—Trial of action—Verdict for defendant—New trial.* xliii.

See LIBEL.

### 5. PETITION.

9. *Controverted election—Practice—Service of petition abroad—Subsequent service in Canada.*]—Service of an election petition out of Canada being void, does not invalidate a subsequent legal service in Canada. *Shelburne-Queen’s Election Case*, xxxvi, 537.

10. *Controverted election—Service of petition—Extension of time—Substitutional service—R. S. C. [1906] c. 7, ss. 17 and 18.*]—The provision in sec. 18, sub-sec. 2 of the Controverted Elections Act (R. S. C. [1906] c. 7), for substitutional service of an election petition where the respondent cannot be served personally is not exclusive, and an order for such service on the ground that prompt personal service could not be effected as in the case of a writ in civil matters may be made under sec. 17.—The time for service may be extended, under the provisions of sec. 18, after the period limited by that section has expired. *Gilbert v. The King* (38 Can. S. C. R. 207) followed. *Peterborough West Election Case*, xli, 410.

### 6. PRELIMINARY OBJECTIONS.

11. *Controverted election—Preliminary objection—Status of petitioner—Corrupt*

acts — Evidence — Dominion Elections Act, 1900, s. 113.]—Section 113 of the Dominion Election Act, 1900), provides that any person hiring a conveyance for a candidate at an election, or his agent, for the purpose of conveying any voter to or from a polling place, shall, *ipso facto*, be disqualified from voting at such election:—*Held*, that the right of an elector to present a petition against the return of a candidate at an election may be questioned, by preliminary objection, on the ground that he is disqualified under the above section and that, on the hearing of the preliminary objection, evidence may be given of the corrupt act which caused such disqualification. *Beauharnois Election Case* (31 Can. S. C. R. 447) distinguished.—*Held*, also, that though, unless the commission of the corrupt act charged is admitted, it must be judicially established, such admission or judicial determination does not take effect merely from the time at which it is made but relates back to the commission of the act. *Cumberland Election Case; Pictou Election Case; North Cape Breton-Victoria Election Case*, xxxvi., 542.

12. *Controverted election—Petition—Preliminary objections — Status of petitioner—Evidence — Premature service — Return of member.*—On the hearing of preliminary objections to an election petition the status of the petitioner may be established by oral evidence not objected to by the respondent.—A petition alleging “an undue election” or “undue return” of a candidate at an election for the House of Commons cannot be presented and served before the candidate has been declared elected by the returning officer. *Girouard and Idington, J.J.*, dissented. *Yukon Election Case*, xxxvii., 495.

13. *Election petition — Preliminary objections — Cross-petition — Sufficiency of charge of corrupt acts—Particulars.*—By a preliminary objection to an election petition it was claimed that the petitioner was not a person entitled to vote at the election and the next following objection charged that he had disqualified himself from voting by treating on polling day.—*Held*, that the second objection was not merely explanatory of the first but the two were separate and independent; that the second objection was properly dismissed as treating only disqualifies a voter after conviction and not *ipso facto*; and that the first objection should not have been dismissed, the respondent to the petition being entitled to give evidence as to the status of the petitioner.—The respondent, by cross-petition, alleged that the defeated candidate personally and by agents “committed acts and the offence of undue influence.”—*Held*, that it would have been desirable to state the facts relied on to establish the charge of undue influence, but as these facts could be obtained by a demand for particulars a preliminary objection was properly dismissed. *Quebec West Election*, xlii., 140.

14. *Nomination — Irregularities — Omission of additions — Identification of candidate — Technical objections — Receipt for*

*deposit—Validating effect—Evidence—Construction of statute—R. S. C. 1906, c. 6, “Dominion Elections Act”—R.S.C. 1906, c. 7, “Dominion Controverted Elections Act.”*—*Per Fitzpatrick, C.J., and Davies, Anglin and Brodeur, J.J.*—Technical objections to the form of nomination papers filed with the returning officer at an election of a member of the House of Commons, under the provisions of the “Dominion Elections Act,” R. S. C. 1906, c. 6, should not be permitted to defeat the manifest purpose of the statute. The omission in nomination papers to mention the residence, addition or description of the candidate proposed in such a manner as sufficiently to identify him constitutes a patent and substantial failure to comply with the essential requirements of section 94 of the Act; on the objection in this respect taken by the only opposing candidate it is the duty of the returning officer to reject a nomination so irregularly made and to declare such opposing candidate elected by acclamation. Such rejection and declaration of election by acclamation may properly be made by the returning officer after the expiration of the time limited for the nomination of candidates by s. 100 of the Act. — *Per Fitzpatrick, C.J., and Davies, Anglin and Brodeur, J.J.* (Idington, and Duff, J.J., *contra*).—The receipt for the required deposit of \$200, accompanying the nomination papers, given by the returning officer under the provisions of section 97 of the “Dominion Elections Act,” is evidence merely of the production of the papers and payment of the deposit and not of the validity of the nomination.—*Per Idington and Duff, J.J.* (dissenting). — The receipt so given for the required deposit constitutes a legal assurance that the candidate has been duly and properly nominated; it cannot be revoked nor the nomination papers rejected by the returning officer after the expiration of the time limited by section 100 of the Act for the nomination of candidates; when that time has passed all questions touching the statutory sufficiency of the papers are concluded in so far as it is within the province of the returning officer to deal with such matters.—*Per Duff, J.* (dissenting).—Where the returning officer has received papers professing to nominate a proposed candidate with the consent of the candidate to such nomination and given his receipt for the required deposit pursuant to section 97 of the Act, and the time limited for the nomination of candidates at the election has expired, the status of such candidate becomes finally determined *quoad* proceedings under the control of the returning officer, and it is then the duty of that official to grant a poll for taking the votes of the electors.—*Per Duff, J.* (dissenting).—In view of the limited jurisdiction conferred upon judges in respect to election trials under the “Dominion Controverted Elections Act,” R. S. C. 1906, c. 7, where the returning officer has exceeded his legal powers by improperly returning a candidate as having been elected by acclamation the judgment should declare that the election was not according to law.—The judgment appealed from (Q. R. 42 S. C. 235) was affirmed, Idington and Duff, J.J., dissenting. *Two Mountains Election*, xviii., 185.

## 7. PROCEDURE.

15. *Controverted election — Dismissal on default of appearance — Reinstating appeal — Practice.*—When the case came on for hearing, no counsel appeared, and the appeal was dismissed with costs. A motion to reinstate the appeal and stay entry of judgment was dismissed, and a certificate of the judgment dismissing the appeal was transmitted to the Speaker of the House of Commons. *Hargraff v. Gravelly*; *West Northumberland Election Case*, *Cout. Cas.* 109.

16. *Controverted election — Abatement of appeal — Dissolution of Parliament — Return of deposit — Practice.*—When the appeal came on for hearing there had been a dissolution of the Parliament in which the respondent had been returned as elected. It was declared that the petition had abated, and that the petitioners were entitled to be repaid the deposit with accrued interest. *Lisgar Elec. Case*; *Woods v. Stewart*, *Cout. Cas.* 314.

17. *Amending minutes of judgment — Order as to further proceedings in election court — Commencement of trial — Cross-petitions.*—On motions to vary the minutes of judgment as settled in *The Halifax Election Cases* (37 *Can. S. C. R.* 601) [No. 6, ante], in so far as they directed that the election trials should be proceeded with in regard to the cross-petitions, and to vary them so that the parties should be sent back to the Controverted Elections Court in the same position as they were before the appeals, and that the said court should be directed, simply, to take such further proceedings as to law and justice might appertain, it was contended that such alterations were necessary because trial proceedings on the cross-petitions had never been actually commenced in the court below in so far as the issues thereon were concerned. The court dismissed the motions with costs. *Roche v. Borden*; *Carney v. O'Mullin*; *Halifax Election Cases*, *Cout. Cas.* 421.

18. *Controverted elections — Service of petition — Service out of jurisdiction — Second service on agent — Nova Scotia Election Court Rules.*—Under the Dominion Elections Act service of an election petition cannot be made outside of Canada. *Idington, J.*, dissented.—By Rule 10 of the Nova Scotia Rules under the Election Act, a candidate returned at an election may, by written notice deposited with the clerk of the court, appoint an attorney to act as his agent in case there should be a petition against him:—*Held*, that an agent so appointed is only authorized to act in proceedings subsequent to the service of the petition, and service of the petition itself on him is a nullity. *King's (N. S.) Election Case*, xxxvi., 520.

19. *Controverted election — Commencement of trial — Extension of time.*—An order fixing the time for the trial of an election petition at a date beyond the time prescribed under the Act operates as an enlargement of the time. *St. James Election Case* (33 *Can. S. C. R.* 137); *Beauharnois*

*Election Case* (32 *Can. S. C. R.* 111), followed. *Halifax Election Cases*, xxxvii., 601.

20. *Preliminary objections — Rules of practice — Repeal — Inconsistency with statutory provision — Judgment on preliminary objections — Final determination of stage of cause — Objections — Irregularity by returning officer — Appeal — Jurisdiction — Issues in question — Construction of statute — (D.) 37 V. c. 10, ss. 44, 45 — R. S. C. 1906, c. 7, ss. 16, 19, 20, 85 — R. S. C. 1906, c. 1, s. 20.*—Under the provisions of the "Dominion Controverted Elections Act, 1874," the judges of the Superior Court for the Province of Quebec made general rules and orders for the regulation of the practice and procedure with respect to election petitions whereby the returning officer was required to publish notice of such petitions once in the Quebec Official Gazette and twice in English and French newspapers published or circulating in the electoral division affected by the controversy. By section 16 of chapter 7, R. S. C. 1906, provision is made for the publishing of a similar notice by the returning officer once in a newspaper published in the electoral district.—*Held*, that the rule of practice is inconsistent with the provision as to the notice required by section 16, chapter 7, R. S. C. 1906, and consequently, has ceased to be in force.—*Per* Duff and Brodeur, JJ.—Even if such rule were still in force, failure on the part of the returning officer to comply with it would not be sufficient ground for the dismissal of the election petition.—*Per* Davies, Duff, and Anglin, JJ.—Under the provisions of the "Dominion Controverted Elections Act," R. S. C. 1906, c. 7, ss. 19 and 20, preliminary objections are required to be decided in a summary manner; consequently, a decision by an election court judge on any of the preliminary objections disposes of all the issues raised in that stage of the proceedings. Where an election petition is disposed of by the judge upon one of several objections, without consideration of the others, the Supreme Court of Canada has jurisdiction to hear and determine questions arising upon all the preliminary objections in issue before the election court judge; its jurisdiction is not confined to the objection upon which the judgment appealed from was solely based. *Idington, J.*, *contra*. *Fitzpatrick, C.J.*, and *Brodeur, J.*, expressing no opinion. *Richelieu Election*; *Paradis v. Cardin*, xlviii., 625.

## 8. TRIAL.

21. *Vote on municipal by-law — Scrutiny — Powers of judge — Inquiry into qualification of voter — Disposition of rejected ballots — "Ontario Municipal Act," 1903, ss. 369 et seq. — "Voters' Lists Act," 1906, s. 24.*—A County Court judge holding a scrutiny of the ballot papers deposited in a vote on a municipal by-law may go behind the voters' list and inquire if a tenant whose name is placed thereon has the residential qualification entitling him to vote. *Davies and Brodeur, JJ.*, dissenting.—The judge has no power to inquire whether rejected ballots were cast

for or against the by-law.—*Held, per Fitzpatrick, C.J., and Duff, J.*—Ballots rejected on a scrutiny must be deducted from the total number of votes cast in favour of the by-law. *Davies and Brodeur, J.J., contra.*—The Supreme Court affirmed the decision of the Court of Appeal (26 Ont. L. R. 339) reversing the judgment of a Divisional Court (25 Ont. L. R. 267) which reversed the decision at the hearing (23 Ont. L. R. 598). *In re West Lorne Scrutiny*, xlvii., 451.

## ELECTRICITY.

1. *Negligence—Electric Light Co.—Wires on public highway—Proximity to bridge—Injury to child—Dedication.*]—Several years ago the owners of land in the Township of York built a bridge over a ravine for access to and from the City of Toronto, and about 1894 the Toronto Electric Light Co. placed wires across the ravine about ten feet from the bridge. In 1904 the bridge was reconstructed and made wider, being brought to within from 14 to 20 inches of the wires, which had become worn and ceased to be insulated. G., a boy under nine years of age, while playing on the bridge, put his arm through the railing and his hand touching the wire he was badly injured.—*Held*, reversing the judgment of the Court of Appeal (12 Ont. L. R. 413), that the plans and deeds in evidence showed a dedication as a public highway of the bridge and land of each side of it, and such highway included the land over which the wires passed.—*Held*, also, that the wires in the condition in which they were at the time of the accident were dangerous to those using the highway, and the company were liable for the injury to G. *Gloster v. Toronto Electric Light Co.*, xxviii., 27.

2. *Negligence—Electric lighting—Dangerous currents—Trespass—Breach of contract—Surreptitious installations—Liability for damages.*]—P. obtained electric lighting service for his dwelling only, and signed a contract with the company whereby he agreed to use the supply for that purpose only, to make no new connections without permission and to provide and maintain the house-wiring and appliances "in efficient condition, with proper protective devices, the whole according to fire underwriters' requirements." He surreptitiously connected wires with the house-wiring and carried the current into an adjacent building for the purpose of lighting other premises by means of a portable electric lamp. On one occasion, while attempting to use this portable lamp, he sustained an electric shock which caused his death. In an action by his widow to recover damages from the company for negligently allowing dangerous currents of electricity to escape from a defective transformer through which the current was passed into the dwelling.—*Held*, reversing the judgment appealed from, that there was no duty owing by the company towards deceased in respect of the installation so made by him without their knowledge and in breach of his contract, and that, as the accident occurred through contact

with the wiring which he had so connected without their permission, the company could not be held liable in damages. *Montreal Light, Heat and Power Co. v. Laurence*, xxxix., 326.

3. *Negligence—Electrical installations—Necessary protection of employees—Onus of proof—Voluntary exposure to danger.* *Shawinigan Carbide Co. v. St. Onge*, xxxvii., 688.

4. *Electric lighting—Terms of franchise—Use of highway—Poles and wires.* *Consumers Electric Co. v. Ottawa Electric Co.*, Cont. Cas. 311.

5. *Negligence—Electric plant—Defective appliances—Master and servant—Electric shock—Engagement of skilled manager—Contributory negligence*, xxxiv., 215.

See NEGLIGENCE.

6. *Negligence—Electric wires—Trespasser on electric company's poles—Evidence—Remarks of counsel—Contributory negligence—Disagreement of jury—New trial*, xxxiv., 698.

See NEGLIGENCE.

7. *Negligence—Electrical installations—Cause of fire—Defective transformer—Improper installations—Evidence—Onus of proof*, xxxvii., 676.

See NEGLIGENCE.

8. *Supply of electric light—Cancellation of contract—Condition for terminating service—Interest in premises ceasing—"Heirs"—"Assigns"*, xxxix., 567.

See CONTRACT.

9. *Negligence—Master and servant—Duty of employee—Insulation of electric wires—Onus of proof*, xi., 181.

See NEGLIGENCE.

10. *Electric transmission—Statutory authority—Special Act—Negligence—Character of installations—System of operation—Grounding transformers—Defective fittings—Vis major—Responsibility without fault—Art. 1054 C. C.* *Vaudry v. Quebec Ry., Light, Heat, etc.*, liii., 72.

See NEGLIGENCE.

## ELECTRIC INSTALLATIONS.

*Taxation of electric and gas installations on streets—Construction of statute—Words and phrases—"Terrain"—"Lot"—Immovable property—Charter of Town of Westmount—56 V. c. 54, s. 100*, xlv., 364.

See ASSESSMENT AND TAXATION.

## ELECTRIC RAILWAY.

See TRAMWAYS.

**ELECTRIC TRANSMISSION.**

*Statutory authority—Special Act—Negligence—Character of installations—System of operation—Grounding transformers—Defective fittings—Vis major—Responsibility without fault—Art. 1054 C. C. liii., 72.*

See NEGLIGENCE.

**EMINENT DOMAIN.**

See EXPROPRIATION.

*Negligence—Electrical installations—Necessary protection of employees—Onus of proof—Voluntary exposure to danger. Shawinigan Carbide Co. v. St. Onge, xxvii., 688.*

AND see MASTER AND SERVANT.

See CONSTITUTIONAL LAW; EXPROPRIATION.

**EMPLOYER AND EMPLOYEE.**

See MASTER AND SERVANT.

**EMPLOYER'S LIABILITY.**

1. *Negligence—Ship labourer—Disregard of rules—"Accident in course of employment"—Action—Claim by dependents—Findings of jury—Evidence—Art. 1054 C. C.]—A labourer employed on board a ship went ashore for purposes of his own while the ship was in port and, on returning to his work, he attempted to descend from the upper deck by the hatchway, which was prohibited by rules laid down for the men engaged in stowing cargo. In doing so he fell into the hold, his body struck his foreman (who was there in the discharge of his duties) and caused injuries which resulted in the death of the foreman. There was evidence to shew that the rules, which required labourers to use the companion-way, instead of the hatchway by which the labourer had attempted to descend, had been habitually disregarded. The jury found that the defendants were at fault "in not having taken the necessary precautions to enforce their rules," judgment went for the plaintiff, and this judgment was affirmed by the Court of Review.—Held, that there was evidence to support the finding of the jury and, consequently, their verdict should not be disturbed on appeal.—*Quære, per Fitzpatrick, C.J.*—Whether or not the course of judicial decisions in the Province of Quebec has adopted the principle that in a case like the present, an employer is subject to liability derived from the law alone, and departed from the rule of the Roman Civil Law that there is no liability without fault.—*Per Brodeur, J.*—The exception, in article 1054 C. C., relieving parents, tutors, curators, schoolmasters and artisans from liability in cases where it is established that they could not prevent the act which caused injury, does not apply to employers. *Donaldson v. Deschenes; vide negligence, xlix., 136.**

2. *Negligence—Master and servant—Use of motor car—Disobedience—Act in course of employment, l., 471.*

See NEGLIGENCE.

**EQUITABLE ASSIGNMENT.**

*Builders and contractors—Materials supplied—Order for money payable under contract—Evidence—Estoppel—Lien—Practice.]—A building contractor gave a written order upon the owner directing him to pay the sum of \$800 to the plaintiff on account of the price of materials supplied for use in the building which was being erected. The order was presented to the owner and, although not accepted in writing, was held over to await the time for making payments under the contract. The contractor failed to complete the work, and it was finished by the owner at an outlay which left the balance of the contract price insufficient to meet the full amount of the order.—Held, the Chief Justice and Idington, J., dissenting, that the order was effective as an assignment of money payable under the contract, but, as there was no evidence of a promise to pay the amount thereof out of the fund, or of facts precluding the owner from denying the sufficiency of what ultimately was payable to the contractor, it could not be enforced against the owner as an equitable assignment.—*Per Duff, J.*—As the equitable relief sought could be granted only upon a consideration of all the circumstances and no claim therefor was made in the courts below nor was the evidence directed to any such claim, the claim came too late on an appeal to the Supreme Court of Canada.—*Per Fitzpatrick, C.J., and Idington, J., dissenting.*—As the conduct of the owner respecting the order was equivocal and misleading and induced the materialman to abstain from filing a lien to protect himself, the owner ought to be held liable for the full amount of the order as an equitable assignment.—The appeal from the judgment of the Appellate Division (8 West. W. R. 729) was dismissed with costs. *Ritchie v. Jeffrey, lii., 243.**

**EQUITABLE RELIEF.**

*Title to land—Conveyance in fraud of creditors—Husband and wife—Advancement—Trustee—Restitution—Evidence—Statute of Frauds, lii., 625.*

See TITLE TO LAND.

**EQUITY, COURTS OF.**

*Contract—Sale of lands—Exchange—Specific performance—Foreign lands—Jurisdiction of courts of equity—Mutuality of remedy—Relief in personam—Discretionary order—Appeal—Jurisdiction—"Final judgment." Jones v. Tucker, liii., 431.*

See SPECIFIC PERFORMANCE.



## ERROR.

1. *Vendor and purchaser—Sale of lands—Misrepresentation — Fraud — Error — Rescission of contract—Sale or exchange—Dation en paiement—Improvements on property given in exchange—Option of party aggrieved—Action to rescind—Actio quantum minoris—Latent defects—Damages — Warranty—Agreement in writing — Formal deed, xxxiv., 102.*

See VENDOR AND PURCHASER.

2. *Misrepresentation — Lay agreement—Mortgage—Execution of documents by illiterate persons—Evidence, xxxv., 110.*

See CONTRACT.

AND see MISTAKE.

## ESCHEAT.

*Devolution of estates—Intestacy—Failure of heirs—Royalty—Bona vacantia—Dominion lands—Constitutional law—Surrender of Hudson Bay Company's lands—Construction of statute — "B. N. A. Act, 1867" — "Dominion Lands Act" — "Land Titles Act" — "Alberta Act" — (Alta.) 5 Geo. V. c. 5, Intestate estates — Crown.] — In 1911, certain lands of the Dominion of Canada, situate in the Province of Alberta, were granted in fee to a person who died, in 1912, intestate and without heirs, being still seized in fee simple of the lands.—Held, Idington and Brodeur, JJ., dissenting, that the right of escheat arising in consequence of the intestacy and failure of heirs was a royalty reserved to the Dominion of Canada by virtue of the 21st section of the "Alberta Act," 4 & 5 Edw. VII. c. 3, and belonged to the Crown for the purposes of Canada. *Attorney-General of Ontario v. Mercer* (8 App. Cas. 767) followed.—*Per* Davies and Auglin, JJ.—It was not competent for the Legislature of the Province of Alberta, by the statute of 1915, 5 Geo. V. c. 5, relating to the property of intestates dying without next of kin, to affect the rights so reserved to the Dominion of Canada.—*Per* Idington and Brodeur, JJ.—Upon the grant of the lands in question by the Dominion Government they ceased to be Crown lands of the Dominion and royalties reserved to the Dominion could not attach thereto. Further, the effect of section 3 of the Dominion statute, 51 Vict. c. 20, amending the "Territories Real Property Act," R. S. C. 1886, c. 51, and declaring that lands in the North-West Territories should go to the personal representatives of the deceased owner thereof in the same manner as personal estate, constituted an absolute renunciation of all such claims to royalties by the Crown in the right of the Dominion of Canada.—The appeal from the judgment of the Exchequer Court of Canada (15 Ex. C. R. 403) was dismissed. *Trusts & Guarantee Co. v. The King*, liv., 107.*

See CONSTITUTIONAL LAW.

## ESTOPPEL AND WAIVER.

1. ESTOPPEL BY CONDUCT, 1-7.
2. ESTOPPEL BY DEED, 8.
3. ESTOPPEL BY RECORD, 9-10.
4. OTHER CASES, 11-43.

## 1. ESTOPPEL BY CONDUCT.

1. *Double insurance — Claims on both insurers—Right of action.] —* Where there had been a double insurance effected on account of the insured attempting to abandon one insurance and insure the same property in another company, it was held that, under the special circumstances of the case, the fact that the insured had made claims upon both insurers did not deprive him or his assignees of the right to recover against the insurer liable upon the risk at the time of the loss. *Manitoba Assurance Co. v. Whittle; Whittle v. Royal Insurance Co.*, xxxiv., 191.

AND see INSURANCE, FIRE.

2. *Sale of goods—Owner not in possession—Authority to sell—Secret agreement—Estoppel.] —* The owners of logs, by contract in writing, agreed to sell and deliver them to McK., the title not to pass until they were paid for. The logs being in custody of a boom company, orders were given to deliver them as agreed. E., a dealer in lumber, telephoned the owner asking if he had them for sale and was answered "No, I have sold them to McK." E. then purchased a portion of them from McK., who did not pay the owner therefor and he brought an action of trover against E.—*Held*, affirming the judgment appealed from (36 N. B. Rep. 169) Nesbitt and Killam, JJ., dissenting, that the owner having induced E. to believe that he could safely purchase from McK could not afterwards deny the authority of the latter to sell.—*Held*, *per* Nesbitt and Killam, JJ., that as there was no evidence that the owner knew the identity of the person making the inquiry by telephone, and nothing was said by the latter to indicate that he would not make further inquiry as to McK.'s authority to sell, there was no estoppel.—*Held*, *per* Taschereau, C.J., that as the owners had given McK. an apparent authority to sell, and knew that he had agreed to buy for that purpose, a sale by him to a *bond fide* purchaser was valid. *Peoples Bank of Halifax v. Estey*, xxxiv., 429.

3. *Conduct — Forgery—Promissory note—Discount — Duty to notify holder.] —* E. & Co., merchants at Montreal, received from the Dominion Bank, Toronto, notice in the usual form that their note in favour of the Thomas Phosphate Co., for \$2,000 would fall due at that bank on a date named and asking them to provide for it. The name of E. & Co. had been forged to said note which the bank had discounted. Two days after the notice was mailed at Toronto the proceeds of the note had been drawn out of the bank by the payees.—*Held*, affirming the judgment of the Court of Appeal (7 Ont. L. R. 90), Sedgewick and Nesbitt, JJ., dis-

sending, that on receipt of said notice E. & Co. were under a legal duty to inform the bank, by telegraph or telephone, that they had not made the note and not doing so they were afterwards estopped from denying their signature thereto. (Leave to appeal to Privy Council refused ([1904] A. C. 806.) *Ewing v. Dominion Bank*, xxxv., 133.

4. *Crown—Breach of trust—Purchase of debentures out of Common School Fund—Knowledge of misapplication of moneys—Payment of interest—Statutory prohibition—Evasion of statute—Estoppel against the Crown—Action—Adding parties—Practice.*]—In an action by the Crown against the Quebec North Shore Turnpike Road Trustees to recover interest upon debentures purchased from them by the Government of the late Province of Canada (with trust funds held by them belonging to the Common School Fund), the defendants pleaded that the Crown was estopped from recovery inasmuch as, at the time of their purchase, the advisers of the Crown were aware that these debentures were being issued in breach of a trust and with the intention of misapplying the proceeds towards payment of interest upon other debentures due by them in violation of a statutory prohibition.—*Held*, affirming the judgment appealed from (8 Ex. C. R. 390) that, as there was statutory authority for the issue of the debentures in question, knowledge of any such breach of trust or misapplication by the advisers of the Crown could not be set up as a defence to the action. *Quebec North Shore Turnpike Road Trustees v. The King*, xxxviii., 62.

5. *Crown — Banks and banking—Forged cheques—Payment — Representation by drawee—Implied guarantee — Estoppel—Acknowledgment of bank statements—Liability of indorsers — Mistake — Action — Money had and received.*]—A clerk in a department of the Government of Canada, whose duty was to examine and check its account with the Bank of Montreal, forged departmental cheques and deposited them to his credit in other banks. The forgeries were not discovered until some months after these cheques had been paid by the drawee to the several other banks, on presentation, and charged against the Receiver-General on the account of the department with the bank. None of the cheques were marked with the drawee's acceptance before payment. In the meantime, the accountant of the department, being deceived by false returns of checking by the clerk, acknowledged the correctness of the statements of the account as furnished by the bank where it was kept. In an action by the Crown to recover the amount so paid upon the forged cheques and charged against the Receiver-General.—*Held*, affirming the judgment appealed from (11 Ont. L. R. 595) that the bank was liable unless the Crown was estopped from setting up the forgery.—*Per* Davies, Idington and Duff, JJ., that estoppel could not be invoked against the Crown.—*Per* Girouard and MacLennan, JJ., that, apart from the question of the Crown being subject to estoppel, under the circumstances of this case a private person would not have been estopped had his name been forged as drawer

of the cheques.—*Per* Davies and Idington, JJ.—The acknowledgment by the accountant of the department of the correctness of the statements furnished by the bank, being made under a mistake as to the facts, the accounts could be re-opened to have the mistake rectified.—The defendant bank made claims against the other banks, as third parties, as indorsers or as having received money paid by mistake, for the reimbursement of the several amounts so paid to them respectively. On these third party issues, it was held.—*Per* Girouard and MacLennan, JJ.—The drawee, having paid the cheques on which the name of its customer was forged, could not recover the amounts thereof from holders in due course. *Price v. Neal* (4 Burr. 1355) followed.—*Per* Davies and Idington, JJ.—As the third party banks relied upon the representation that the cheques were genuine, which was to be implied from their payment on presentation, and subsequently paid out the funds to their depositor or on his order, the drawee was estopped and could not recover the amounts so paid from them either as indorsers or as for money paid to them under mistake.—In the result, the judgment appealed from (11 Ont. L. R. 595) was affirmed. *Bank of Montreal v. The King*, xxxviii., 258.

6. *Life insurance — Non-payment of premiums — Misrepresentation to insured.*]—P., in payment of premiums on a life policy, gave his note for one instalment and an overdue balance of another. Shortly before it matured an official of the company, specially authorized to deal with the matter, informed P. that his policy had lapsed owing to the inclusion in the note of the overdue balance which was against the company rules. In consequence of this representation P. did not pay the note nor tender the amount of another instalment falling due before his death. In an action on the policy by the beneficiary no rule of the company was proved avoiding the policy as stated.—*Held*, affirming the judgment appealed against (48 N. S. Rep. 404), Fitzpatrick, C.J., and Davies, J., dissenting, that the company was estopped, by conduct, from claiming that the policy lapsed on non-payment of the note and subsequent instalment.—*Per* Davies, J., that the non-payment of the note could not be relied on as avoiding the policy, but the estoppel did not extend to the failure to pay the quarterly premium which afterwards became due. *Capital Life Assurance Co. v. Parker*, li., 462.

7. *Principal and agent—Receipt delivered before payment.*]—The local agent of the railway company received the personal cheque of the defendants' agent in settlement of freight charges due by the defendants and thereupon receipted the freight bills. By means of these receipted bills the defendants' agent was enabled to obtain the amount of the freight charges from his employers and absconded, leaving no funds to meet his cheque which was dishonoured. In an action for the recovery of the amount of the freight charges.—*Held*, reversing the judgment appealed from (8 Alta. L. R. 363), Duff and Brodeur, JJ., dissenting, that the delivery of the receipts in advance of payment afforded

means of inducing the defendants to pay over the amount represented by them to their agent and, consequently, the plaintiffs were estopped from denying actual receipt of payment of the freight charges.—*Per Duff, J.*, dissenting.—In the circumstances disclosed by the evidence in the case the principle of estoppel could not be applied. *Gentles v. Canadian Pacific Railway Co.* (14 Ont. L. R. 286), distinguished. *Continental Oil Co. v. Canadian Pacific Railway Co.*, *lii.*, 605.

## 2. ESTOPPEL BY DEED.

8. *Title to land—Lease for years—Possession by sub-tenant—Purchase at sheriff's sale—Adverse occupation—Evidence—Conveyance of rights acquired—Compromise—Waiver.*—The court held that the acceptance of a deed of compromise in respect to the tenure of real property, which excluded certain lands, estopped the appellant from any claim for compensation for the expropriation of lands forming part of the excluded area. *Sheets v. Tait*, *Cout. Cas.* 158.

## 3. ESTOPPEL BY RECORD.

9. *Contract by municipal corporation—Powers—By-law or resolution—Right of action—Confession of judgment—Evidence—Admissions—Pleading—Estoppel by record—Art. 1245 C. C.—Concurrent findings of fact.*—A confession of judgment for a portion of the amount claimed is a judicial admission of the plaintiff's right of action and constitutes complete proof against the party making it. *The V. Hudson Cotton Co. v. The Canada Shipping Co.* (13 Can. S. C. R. 401) followed; *The Great North-West Central Railway Co. v. Charlebois et al.* ([1899] A. C. 114; 26 Can. S. C. R. 221) distinguished.—Upon issues raised as to matters of fact, the court refused to disturb the concurrent findings of the courts below.—Judgment appealed from (Q. R. 13 K. B. 19) reversed and judgment at the trial (Q. R. 21 S. C. 241) restored. *Citizens Light and Power Co. v. Town of St. Louis*, *xxxiv.*, 495.

10. *Pleading—Objections taken on appeal—Yukon territorial Court Rules—Yukon Ordinances—Waiver.*—In an action to set aside a conveyance as made in fraud of creditors, the defendant desiring to meet the action by setting up that there was no debt due and, consequently, that no such fraud could exist, must allege these objections in his pleadings.—In the present case the defendant, having failed to plead such defence, was allowed to amend on terms, the Chief Justice dissenting. *Syndicat Lyonnais du Klondyke v. McGrade*, *xxvi.*, 251.

## 4. OTHER CASES.

11. *Life insurance—Payment of premium—Thirty days' grace—Death of insured after premium due. People's Life Ins. Co. v. Tattersall*, *xxvii.*, 690.

12. *Action negatoria servitutis—Boundary ditch—Waiver of objections—Evidence. Breton v. Gonthier dit Bernard*, *Cout. Cas.* 350.

13. *Sheriff's sale—Title to land—Insurable interest—Trust—Beneficiary—Fraudulent contrivances—Estoppel*, *xxxiv.*, 1.

See LEASE.

14. *Commissioner of mines—Appeal from decision—Quashing appeal—Final judgment—Mandamus—Appropriate remedy*, *xxxiv.*, 328.

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15. *Title to lands—Grant from Crown—Description—Navigable or floatable waters—Inlet of navigable river—Implied reservations—Crown domain—Public law—Construction of deed—Evidence—Waiver*, *xxxiv.*, 603.

See RIVERS AND STREAMS.

16. *Mutual life insurance—Natural premium system—Level premium—Mortuary calls—Rate of assessment—Rating at attained age—Fraud—Puffing statements—Warranty—Misrepresentation—Acquiescence—Mistake—Prescription of contract*, *xxxv.*, 330.

See INSURANCE, LIFE.

17. *Debtor and creditor—Assignment of debt—Sheriff's sale—Equitable assignment—Statute of Limitations—Payment—Ratification—Principal and agent*, *xxxv.*, 533.

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18. *Pleading—Cross-demand—Compensation—Arts. 3, 203, 205, 207 C. P. Q.—Practice—Damages—Construction of contract—Liquidated damages—Penal clause—Arts. 1076, 1187, 1188 C. C.—Waiver*, *xxxvi.*, 347.

See CONTRACT.

19. *Sheriff's sale of lands—Opposition *afin de charge*—Discretionary order—Default in furnishing security—Res judicata—Estoppel by record*, *xxxvi.*, 613.

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20. *Breach of contract—Breach of trust—Assessment of damages—Sale of mining rights—Promotion of company—Failure to deliver securities—Principal and agent—Account—Evidence—Salvage—Indemnity for necessary expenses—Laches—Estoppel*, *xxxviii.*, 198.

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21. *Infringement of patent—Purchase of patented device*, *xxxviii.*, 451.

See PATENT OF INVENTION.

22. *Placer mining—Disputed title—Trespass pending litigation—Colour of right—Invasion of claim—Adverse acts—Sinister intention—Conversion—Blending materials—Accounts—Assessment of damages—Mitigating circumstances—Compensation for necessary expenses—Standing-by—Acquiescence*, *xxxviii.*, 516.

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23. Agreement for sale of land—Principal and agent — Estoppel — "Land Commissioner" — Specific performances, xxxix., 169.

See SPECIFIC PERFORMANCE.

24. Construction of deed—Title to land—Servitude—Acquiescence—Estoppel by conduct—Actio negatoria servitutis—Operation of waterworks, xxxix., 244.

See DEED.

25. Sheriff—Cause of action—Execution of writ of attachment — Abandonment of seizure, Cam. Cas. 78.

See ATTACHMENT.

26. Bills of exchange—Forgery—Ratification, Cam. Cas. 275.

See BILLS AND NOTES.

27. Sale of goods — Insolvency — Bonâ fides — Fraudulent preferences — Interpleader—Res judicata—Pleading—Bar to action, Cam. Cas. 306.

See SALE.

28. Sale of goods—Delivery—Lien of unpaid vendor—Stoppage in transitu—Goods not separated from larger bulk, Cam. Cas. 511.

See SALE.

29. Operation of railway — Negligence—Moving train — Regulations—Personal liability of employee, Cam. Cas. 589.

See NEGLIGENCE.

30. Mechanics' lien — Contract — Overpayment—Liability of owner of land—Attaching of lien — Negotiation of note — Claim of lien-holder — Waiver. *Travis v. Breckenridge-Lund Lumber & Coal Co.*, xliii., 59.

See MECHANICS' LIEN.

31. Board of Railway Commissioners—Jurisdiction — Private siding — Construction of statute—"Railway Act," R. S. C. (1906) c. 37, ss. 222, 226, 317—Branch of railway—Res inter alios, xlv., 92.

See RAILWAYS.

32. Deed of land — Description — Ambiguity—Admissions, xlv., 246.

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33. Company law—Issue of shares—Authority to sign certificate—Evidence, xlv., 232.

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34. Municipal corporation — Assessment and taxes — Meetings of council—Court of Revision — Transaction of business outside limits of municipality—Place of meeting—Revision of assessment rolls—By-laws — Sale for arrears of taxes—Construction of statute—Statutory relief—Acquiescence — Laches—Limitation of action, xlv., 425.

See MUNICIPAL CORPORATION.

35. Banking — Security for advances — Assignment — Chose in action — Moneys to arise out of contract—Unearned funds—

Equitable assignment to third party—Notice — Evidence — Priority of claim—Construction of statute — Manitoba "King's Bench Act" — "Bank Act," xvii., 313

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36. Trespass — Easement—Public way—Dedication — User — Prescription—"Law and Transfer of Property Act," R. S. O. 1897, c. 119. *Peters v. Sinclair*, xlviii., 57.

See EASEMENT.

37. Benevolent society — Life insurance — Contract — Payment of assessments — Extension of time—Rules and regulations — Place of payment — Demand — Default — Suspension — Authority to waive conditions—Conduct of officials—Company law, xlix., 229.

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38. Old trails of Rupert's Land—Survey — Width of highway—Construction of statute—"North-West Territories Act," s. 108 — Transfer of highway — Plans—Registration — Dedication — Expenditure of public funds. *Rowland v. City of Edmonton*, l., 520.

See HIGHWAYS.

39. Covenant in mortgage—Married woman—Signature procured by fraud—Pleading—Non est factum, l., 485.

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40. Builders and contractors—Materials supplied—Order for money payable under contract — Evidence — Lien — Enforcing equitable assignment—Practice. *Ritchie v. Jeffrey*, lii., 243.

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41. Appeal — Jurisdiction of provincial tribunal—Consent of parties — Assessment — Railway bridge over navigable river. *Township of Cornwall v. Ottawa & N. Y. R. R.*, lii., 466.

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42. Quebec marriage laws—Community of property—Dissolution by death—Failure to make inventory—Insolvent estate—Continuation of community—Renunciation. *Laroche v. Laroche*, lii., 662.

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43. Fire insurance — Statutory conditions — Notice — Conditions of application—R. S. Q. 1909, arts. 7034-7036—Conditions indorsed on policy—Keeping and storing coal oil—Agent's knowledge — Waiver—Adjustment of claim—Offer of settlement by adjuster—Transaction. *Laforest v. Factories Ins.*, liii., 296.

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## EVICTION.

1. Crown lands — Adverse possession — Grant during — Information for intrusion — 21 Jac. I. c. 14 (Imp.), xxxiv., 533.

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2. Title to land—Promise of sale—Entry in land register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Possessory action—Compensation for improvements—Rents, issues and profits—Set-off—Tender of deed—Restrictive conditions—Evidence—Arts. 411, 412, 417, 419, 1204, 1233, 1476, 1478 C. C., xxxix., 47.

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#### 1. ADMISSIBILITY.

1. Evidence—Parol—Commencement of proof in writing—Art. 1233 C. C.—Admissions—Art. 316 C. P. Q.—Practice—Adduction of evidence—Objections to testimony—Rule of public order.]—Admissions made to the effect that a notary had invested moneys and collected interest on loans for the plaintiff do not constitute evidence of agency on the part of the notary, nor could they amount to a commencement of proof in writing as required by art 1233 of the Civil Code, read in connection with art. 316 of the Code of Civil Procedure, to permit the adduction of parol testimony as to the authorization of the notary to receive payment of the capital so invested or as to the repayment thereof alleged to have been made to him as the mandatory of the creditor.—The prohibition of parol testimony, in certain cases, by the Civil Code is not a rule of public order which must be judicially noticed, and, where such evidence has been improperly admitted at the trial without objection, the adverse party cannot take objection to the irregularity on appeal. *Gervais v. McCarthy*, xxxv., 14.

AND see PRINCIPAL AND AGENT.

2. Crown lands—Mining lease—Trespass—Conversion—Title to lands—Description in grant—Plan of survey—Certified copy.]—The provisions of section 20 of "The Evidence Act." R. S. N. S. (1900) c. 160, do not permit the reception of a certified copy of a copy of a plan of survey deposited in the Crown Lands Office to make proof of the original annexed to the grant of lands from the Crown. *Nova Scotia Steel Company v. Barilett*, xxxv., 527.

3. Revendication—Statement of claim—Pleadings—Procedure—Arts. 110 and 339 C. P. Q.—Evidence—Judgment secundum allegata et probata—Ultra petita—Surprise.]—In an action for revendication of books, documents and records retained by a fire insurance agent after his dismissal and for damages in default of delivery thereof, several policy copy-books, which could not be found at the time of the seizure, were delivered up in a mutilated condition by the defendant during the pendency of the action, the defendant being unaware of such mutilation. Some time afterwards the answers to defendant's pleas were filed and contained no reference to the mutilated and incomplete condition in which these books were returned. At the trial plaintiffs were allowed to give evidence as to the cost of replacing these books in proper condition, although defendant objected to the adduction of such proof, and the trial court judge assessed damages in this respect at \$200, and at \$2,000 in respect of certain mutilated plans, at the same time declaring the revendication valid, etc. On appeal by the plaintiffs from the judgment of the Court of King's Bench, reversing the trial court judgment in regard to the pecuniary condemnation.—*Held*, affirming the judgment appealed from, that as the defendant had been surprised, in so far as the issues affecting the policy copy books were concerned, he was entitled to relief as to the item of \$200 for damages in respect thereof. With regard to the item of \$2,000 damages, however, as the defendant could not have been taken by surprise, he himself having mutilated the plans, the Supreme Court of Canada reversed the judgment appealed from and restored the trial court judgment as to that item of the damages assessed. *Norwich Union Fire Ins. Co. v. Kavanagh*, xxxvi., 7.

4. Title to land—Conveyance of fee—Reservation of life estate—Possession—Ejectment.]—In Oct., 1853, D. conveyed to his father and two sisters six acres of land for their lives or the life of the survivor. A few days later he conveyed a block of land to M. in fee "saving and excepting" thereout six acres for the life of the grantor's father and sisters or that of the survivor, or until the marriage of the sisters, on the happening of said respective events, the six acres to be and remain the property of M., his heirs and assigns under said deed. Three months later M. conveyed the block of land to R. M. in fee, and, when the life estate terminated, in 1903, the latter brought ejectment against the heirs of the life tenants who claimed the six acres on the ground that the deed to M. contained no grant of the same and also because the life tenant had had adverse possession for more than twenty years.—*Held*, that as the evidence shewed that the life tenants went into possession under R. M., the title of the latter could not be disputed and the statute would not begin to run until the life estate terminated.—*Held*, per Udington, J., that R. M. under his deed and that to his grantor had the reversion to the fee in the six acres after the life estate terminated.—The lease of the life estate was given to R. M. with the other title deeds on conveyance of the land to him and on the trial it was received in evidence

as an ancient document relating to the title and coming from proper custody. It was not executed by the lessee and no counterpart was proved to be in existence.—*Held*, that it was properly admitted in evidence. *Dods v. McDonald*, xxxvi., 231.

5. *Admissibility of evidence — Harmless error—New trial.*—The action was for the price of goods sold and delivered, and the defence that the goods were received by defendant as plaintiff's manager and not otherwise. A new trial was ordered on the ground that plaintiff's books of account were improperly received in evidence against the defendant. The Supreme Court of Canada reversed the judgment appealed from (37 N. S. R. 361) and restored the verdict at the trial, holding that the books were received on the taking of evidence under commission by the express consent of both parties, and their reception could not afterwards be objected to on the general ground that they were irrelevant and immaterial to the issue. *Carstens v. Muggah*, xxxi., 612.

6. *Controverted election — Petition—Preliminary objections—Status of petitioner—Premature service — Return of member.*—On the hearing of preliminary objections to an election petition the status of the petitioner may be established by oral evidence not objected to by the respondent. *Yukon Election Case*, xxxvii., 495.

AND see ELECTION LAW.

7. *Rivers and streams — Navigable and floatable waters—Obstructions to navigation—Crown lands—Letters patent of grant—Collateral circumstances leading to grant—Limitation of terms of grant—Title to land—Riparian rights—Fisheries — Arts. 400, 414, 503 C. C.]—A river is navigable when, with the assistance of the tide, it can be navigated in a practical and profitable manner, notwithstanding that at low tide it may be impossible for vessels to enter the river on account of the shallowness of the water at its mouth. *Bell v. The Corporation of Quebec* (5 App. Cas. 84), followed.—Evidence of the circumstances and correspondence leading to grants by the Crown of lands on the banks of a navigable river cannot be admitted for the purpose of shewing an intention to enlarge the terms of letters patent of grant of the lands, subsequently issued, so as to include the bed of the river and the right of fishing therein.—The judgment appealed from (Q. R. 14 K. B. 115) was reversed and the judgment of the Superior Court (Q. R. 25 S. C. 104) was restored. *Steadman v. Robertson* (18 N. B. Rep. 580) and *The Queen v. Robertson* (6 Can. S. C. R. 52) referred to; *In re Provincial Fisheries* (26 Can. S. C. R. 444; (1898) A. C. 700) discussed. (An appeal proposed to be taken to Privy Council was abandoned upon a settlement made between the parties, 5th June, 1907.) *Atty.-Gen. of Quebec v. Fraser*; *Atty.-Gen. of Quebec v. Adams*, xxxvii., 577.*

8. *Controverted election — Trial of petition — Corrupt acts at former election—Agency—System of corruption.*—A petition against the return of a member for the House of Commons at a general election in

1904 contained allegations of corrupt acts by respondent at the election in 1900 which were struck out on preliminary objections. On the trial of the petition, evidence of payments by respondents of accounts in connection with the former election was offered to prove agency and a system and was admitted on the first ground. A question as to the amount of one account so paid was objected to and rejected.—*Held*, that such rejection was proper; that the question was not admissible to prove agency for agency was admitted or proved otherwise; nor as proof of a system which could not be established by evidence of an isolated corrupt act.—*Held*, also, that where evidence is tendered on one ground other grounds cannot be set up in a Court of Appeal. *Shelburne and Queen's Election Case*, xxxvii., 604.

9. *Practice—Examination of witnesses—Expert testimony—2 Edw. VII. c. 9, s. 1.]—By 2 Edw. VII. c. 9, s. 1, only five expert witnesses can be called by either side on the trial of a case without leave. *Quere.*—If more are so called without objection by the opposite party is the testimony of the extra witness valid? *Dodge v. The King*, xxxviii., 149.*

AND see EXPROPRIATION.

10. *Criminal law — Practice—Crown case reserved — Reserved questions — Dissent from affirmation of conviction — Appeal — Jurisdiction — Criminal Code, 1892, ss. 742, 743, 744, 750—R. S. C. (1906) c. 146, ss. 1013, 1015, 1016, 1024—Admission of evidence—Res gestæ.]—Evidence of statements made by a person, since deceased, immediately after an assault upon him, under apprehension of further danger and requesting assistance and protection, is admissible as part of the *res gestæ*, even though the person accused of the offence was absent at the time when such statements were made. *Reg. v. Beddingfield* (14 Cox 341). *Rex v. Foster* (6 C. & P. 325) and *Arcon v. Kinnaird* (6 East 188) followed.—Statements not coincident, in point of time, with the occurrence of the assault, but uttered in the presence and hearing of the accused and under such circumstances that he might reasonably have been expected to have made some explanatory reply to remarks in reference to them, are admissible as evidence.—On the trial of an indictment for murder the evidence was that the deceased had been killed by a gun-shot wound inflicted through the discharge of a gun in the hands of the accused and the defence was that the gun had been discharged accidentally. — *Held*, that, in view of the character of the defence and the evidence in support of it, there could be no objection to a charge by the trial judge to the jury that the offence could not be reduced by them from murder to manslaughter, but that their verdict should be either for acquittal or one of guilty of murder. *Gilbert v. The King*, xxxviii., 284.*

AND see CRIMINAL LAW.

11. *Boundary — Order for borndage—Evidence—Existing posts and blazing—Injunction — Expertise—Reference to surveyors — Reports and plans — Costs in action en borndage.]—The Court of King's Bench, appeal side (Q. R. 15 K. B. 432), affirmed,*

with slight variations, a judgment ordering a reference to surveyors to run a boundary line according to a division line between posts said to exist and blazings on trees, directing them to make a plan and report, and rejecting objections to the reception of certain evidence. The judgment appealed from held that oral testimony as to a former *bornage* by a surveyor, with his field notes, as to the existence of posts at either end of the division line, blazings along the line, and of 18 years possession in conformity therewith was admissible and sufficient to establish a settlement of boundaries, in the absence of an official statement of *procès-verbal* thereof, and that costs had been properly awarded to the successful party in the action *en bornage*, which was governed by the usual rules as to costs. An appeal to the Supreme Court was dismissed for the reasons given in the court below. *Laurentide Mica Co. v. Fortin*, xxxix., 680.

12. *Improper admission — Uncorroborated testimony of plaintiff — Contradictory evidence—Verdict against weight of evidence.*—The plaintiff claimed the price of certain goods delivered to the defendant's brother, alleging that defendant verbally agreed that notes at three months should be given in payment of the goods by the brother, and when they matured the defendant would give his own promissory notes at four months. The defendant denied that he ever made any such agreement, and said that any notes given by him were to help his brother in his business and were not made payable to the defendant. The trial judge admitted evidence of the plaintiff of a statement alleged to have been made to him by the defendant's brother when bringing a note made by the defendant in favour of his brother to take up the latter's note. The jury gave a verdict for the plaintiff, and a new trial was refused by the court below.—*Held*, the Chief Justice and Taschereau, J., dissenting, that the plaintiff's dealings with the defendant's brother were inconsistent with the plaintiff's statement of the transaction, and that there should be a new trial.—*Held*, per Fournier, Henry and Gwynne, JJ., that the plaintiff was not entitled to give in evidence a statement made by the defendant's brother as to what the defendant had instructed him to say to the plaintiff when substituting the defendant's note for his own. *Fraser v. Stephenson* (Cout. Dig. 577; 996); *Cam. Cas.* 214.

13. *Board of Railway Commissioners — Consideration of complaints — Rejection — Agreement as to special rates—Unjust discrimination.*—A company operating, subject to Dominion authority, a tramway through several municipalities adjacent to the City of Montreal, and having connections and traffic arrangements with a provincial tramway in that city, entered into an agreement under statutory authority with one of the municipalities whereby in consideration of special privileges conceded in regard to the use of streets, etc. lower rates of passenger fares were granted to persons using the tramway therein, for transportation to and from the city, than to denizens of the adjoining municipality with which there was no such agreement.

On the hearing of a complaint, alleging unjust discrimination in respect to fares, the Board of Railway Commissioners for Canada refused to take the agreement into consideration when tendered in evidence to justify the granting of the special rates and ordered the company, appellants, to furnish the service to persons using the tramway in both municipalities at the same rates of fare. On an appeal, by leave of the Board, in respect of the propriety of overlooking the contract, submitted as a question of law:—*Held*, Davies and Anglin, JJ., dissenting, that, as the existence of the contract was one of the elements bearing upon the decision of the question of substantial similarity in circumstances, the Board should have admitted the evidence so tendered in regard to the agreement in consideration of which the special rates of fares had been granted. *Montreal Park and Island Railway Co. v. City of Montreal*, xliii., 256.

14. *Criminal law — Trial for murder — Improper admission of evidence—New trial — Substantial wrong or miscarriage — Criminal Code, s. 1019.*—By section 1019 of the "Criminal Code" it is provided that "no conviction shall be set aside or any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial, . . . unless, in the opinion of the court of appeal, some substantial wrong or miscarriage was thereby occasioned on the trial."—*Held*, reversing the judgment appealed from (16 B. C. Rep. 9), Davies and Idington, JJ., dissenting, that where evidence has been improperly admitted or something not according to law has been done at the trial which may have operated prejudicially to the accused upon a material issue, although it has not been and cannot be shewn that it did, in fact, so operate, and although the evidence which was properly admitted at the trial warranted the conviction, the court of appeal may order a new trial. *Allen v. The King*, xliv., 331.

15. *Expropriation of lands — Estimating compensation — Prospective value—Opinions.*—In expropriations of lands for public purposes, under the 198th section of the "Railway Act," R. S. C. 1906, c. 37, as authorized by section 15 of the "National Transcontinental Railway Act," 3 Edw. VII. c. 71, the estimation of compensation to be awarded to the owners of the lands should be made according to the value of the lands to such owners at the date of expropriation. The prospective potentialities of the lands should be taken into account, but it is only the existing value of such advantages at the date of expropriation that falls to be determined. *In re Lucas and the Chesterfield Gas and Water Board* (1909), 1 K. B. 16), and *Cedar Rapids Manufacturing and Power Co. v. Laeoste* (30 Times L. R. 293), followed.—*Per* Duff, J.—The opinions of witnesses to the effect that certain values would be assigned to expropriated lands upon a comparison of those lands with other lands in the vicinity for which selling prices might be estimated in a vague way cannot be deemed evidence

sufficient to establish values for the expropriated lands.—(Leave to appeal to the Privy Council was refused, 20th May, 1914). *The King v. Trudel*, xlix., 501.

16. *Sale of land — Consideration — Exchange of properties — Mortgage — Indemnity to vendor.*—In 1912 D. advanced money to P., who conveyed to him certain properties, in Ottawa, Ont., including one on LeBreton Street. In 1913, P. entered into an agreement with C. to exchange the LeBreton Street property for lots on Lisgar Street, which was carried out by conveyances between C. and D. In his deed C. stated that the consideration was "an exchange of lands and \$1.00," and conveyed the lots on Lisgar Street, subject to certain mortgages, the description being followed by the words, "the assumption of which mortgages is part of the consideration herein." C. was obliged to pay these mortgages, and brought suit against D. to recover the amount so paid.—*Held*, affirming the judgment of the Appellate Division (34 Ont. L. R. 580), that the case was not within the rule of equity whereby the purchaser of an equity of redemption may be obliged to indemnify his vendor against liability for the mortgage. *Small v. Thompson* (28 Can. S. C. R. 219) distinguished.—*Held*, also, that parol evidence was properly received to shew the relations between P. and D.; that D. received the conveyance from C. merely as P.'s nominee, and held it afterwards only as security for his advances to P.; that he never claimed to be owner and never went into possession except as P.'s agent; and that he was not a purchaser of the property, but only a mortgagee. *Campbell v. Douglas*, liv., 28.

17. *Reference to "Hansard Debates" — Construction of statute*, xxxvi., 42.

See RAILWAYS.

18. *Provincial laws in Canada — Conflict of laws*, xxxix., 311.

See EVIDENCE.

19. *Criminal law — Refusal of reserved case — Appeal to Supreme Court of Canada — Conviction in Yukon Territory — Admission of evidence — Procedure at trial.* *Labelle v. The King*, Cout. Cas. 282.

20. *Breach of trust — Accounts — Nova Scotia "Trusts Act" — 2 Edw. VII. c. 13 — Liability of trustee — N. S. Order XXXII., r. 3 — Judicial discretion — Statute of Limitations*, xxxvii., 163.

See TRUSTS.

21. *Sale of goods — Set-off — Debtor and creditor — Partnership — Books of account — Practice — New trial — Reducing verdict on appeal*, Cam. Cas. 282.

See NEW TRIAL.

## 2. ADMISSIONS.

22. *Contract by municipal corporation — Powers — By-law or resolution — Right of action — Confession of judgment — Evidence*

— *Admissions — Pleading — Estoppel by record — Art. 1245 C. C. — Concurrent findings of fact.*—A confession of judgment for a portion of the amount claimed is a judicial admission of the plaintiff's right of action and constitutes complete proof against the party making it. *The V. Hudson Cotton Co. v. The Canada Shipping Co.* (13 Can. S. C. R. 401) followed; *The Great North-West Central Railway Co. v. Charlebois et al.* ([1899] A. C. 114; 26 Can. S. C. R. 221) distinguished.—Upon issues raised as to matters of fact, the court refused to disturb the concurrent findings of the courts below.—Judgment appealed from (Q. R. 13 K. B. 19) reversed and judgment at the trial (Q. R. 21 S. C. 241) restored. *Citizens Light and Power Co. v. The Town of St. Louis*, xxxiv., 495.

23. *Evidence — Corrupt acts — Admissions — Dominion Elections Act, 1900, s. 113.*—Though, unless the commission of the corrupt act charged is admitted, it must be judicially established, such admission or judicial determination does not take effect merely from the time at which it is made but relates back to the commission of the act. *Cumberland Election Case; Pictou Election Case; North Cape Breton-Victoria Election Case*, xxxvi., 542.

AND see ELECTION LAW.

24. *Account stated — Admission of liability — Promise to pay — Collateral agreement — Parol evidence.*—On the dissolution of a partnership, the parties signed a statement shewing a certain amount as due to the plaintiff for his share and declaring that "for the sake of peace and quiet and to avoid friction and bother" the plaintiff waived examination of the firm's books and agreed that the amount so stated should be deemed to be the amount payable by the defendants to the plaintiff.—*Held*, that a promise to pay the amount of the balance so stated to be due should be implied from the admission of liability.—In an action for the amount of the balance, the defendants alleged that the plaintiff had verbally agreed that he would not sue upon the account as stated, and that the document should be treated as merely shewing what would be payable to him upon the collection of outstanding debts owing to the firm.—*Held*, that as the effect of the alleged collateral agreements was to vary and annul the terms of the written instrument they could not be proved by parol testimony. *Jackson v. Drake, Jackson & Helmcken*, xxxvii., 315.

25. *Life insurance — Policy — Memo. on margin — Want of countersignature — Effect of — Evidence — Admission of a deceased agent against interest of the principal — Secondary evidence — Contradicting evidence of deceased witness at former trial.*—A policy of life insurance sued on had in the margin the following printed memo.: "This policy is not valid unless countersigned by agent at \_\_\_\_\_ Countersigned this day of \_\_\_\_\_ Agent." This memo. was not filled up, and the policy was not, in fact, countersigned by the agent. The case was first tried before McDonald C.J., without a jury, and a judgment entered in favour of the plaintiff was affirmed by the Supreme Court of Nova Scotia, but on appeal to the



Supreme Court of Canada the judgment was set aside and a new trial ordered (10 Can. S. C. R. 92). The second trial was before McDonald, C. J., and a jury, when a judgment was entered in favour of the plaintiff on the findings of the jury. Upon appeal to the Supreme Court of Nova Scotia this judgment was affirmed, but a further appeal to the Supreme Court of Canada was allowed and a new trial ordered (13 Can. S. C. R. 218). The third trial was before Townshend, J., and a jury, and a judgment was again given for the plaintiff upon the findings of the jury. This judgment was affirmed by the Supreme Court of Nova Scotia, and, on appeal to the Supreme Court of Canada, *Held*, Gwynne, J., dissenting, that the judgment of the Supreme Court of Nova Scotia should be affirmed and the appeal dismissed with costs. — *Held*, per Strong J., that nothing but strictly legal evidence having been submitted to the jury, and the whole question being one of fact, the third verdict in favour of the plaintiff should be sustained.—*Held*, per Gwynne J., that evidence by a witness of an admission of a deceased agent of the company that he had received a premium upon the policy in question, when the agent had in his evidence at the first trial denied that he had received the said premium, and the witness at the same trial had not contradicted him, could not be received in evidence as an admission of the defendants, and had no binding effect upon them. *Confederation Life Association of Canada v. O'Donnell*, (xvi., 717) Can. Cas. 154.

26. *Actio negatoria servitutis*—Boundary ditch—*Estoppel*—*Waiver of objections*. *Breton v. Gonthier dit Bernard*, Cout. Cas. 350.

27. *Evidence by parol*—Commencement of proof in writing—Art. 1233 C. C.—Adduction of evidence—Practice—Objections to testimony—Rule of public order, xxxv., 14.  
See EVIDENCE.

28. *Doweress*—Title to land—Prescription—Statute of Limitations—Heirs at law—Parol evidence—Will—Residuary devise, Cam. Cas., 338.

See TITLE TO LAND.

29. *Title to land*—Lease for years—Possession by sub-tenant—Purchase at sheriff's sale—Adverse occupation—Conveyance of rights required—Compromise—*Waiver*—*Estoppel*, Cout. Cas. 158.

See TITLE TO LAND.

### 3. ON APPEAL.

30. *Evidence*—Provincial laws in Canada—Judicial notice—Conflict of laws.]—As an appellate tribunal for the Dominion of Canada, the Supreme Court of Canada requires no evidence of the laws in force in any of the provinces or territories of Canada. It is bound to take judicial notice of the statutory or other laws prevailing in every province or territory in Canada, even where they may not have been proved in the courts

below, or although the opinion of the judges of the Supreme Court of Canada may differ from the evidence adduced upon those points in the courts below. *Cooper v. Cooper* (13 App. Cas. 88) followed. (NOTE: Cf. R. S. C. (1906) ch. 145, sec. 17.) *Logan v. Lee*, xxxix., 311.

AND see NEOLIGENCE.

31. *Practice*—Pleading—B. C. Rule 168—New points raised on appeal—Condition precedent—Construction of statute—Damages—*Waiver*—*Injunction*, xxxv., 309.

See PRACTICE.

32. *Controverted election*—Trial of petition—*Corrupt acts at former election*—Agency—System of corruption, xxxviii., 604.

See EVIDENCE.

33. *Operation of railway*—Unnecessary combustibles left on right of way—"Railway Act," (1903) ss. 118 (j) and 239—R. S. C. (1906) c. 31, ss. 151 (j) and 297—Damages by fire—Point of origin—Charge by judge—Finding of jury—New trial—Practice—New evidence on appeal—Supreme Court Act, ss. 51 and 73, xxxix., 390.

See RAILWAYS.

34. *Railways*—"British Columbia Railway Act"—Fire on right-of-way—Combustible matter on berm—Origin of fire—Damage to adjoining property—Negligence—Practice—New points raised on appeal, xliii., 355.

See RAILWAYS.

### 4. CORROBORATION.

35. *Action by executors*—Witness—Evidence—Corroboration—R. S. O. (1897) c. 73, s. 10.]—In an action by executors to recover money due from C. to the testator it was proved that the latter when ill in a hospital had sold a farm to C., and \$1,000 of the purchase money was deposited in a bank to testator's credit; that subsequently C. withdrew this money on an order from testator who died some weeks after, when none was found on his person nor any record of its having been received by him. C. admitted having drawn out the money but swore that he had paid it over to testator but no other evidence of the kind was given of such payment.—*Held*, reversing the judgment of the Court of Appeal, that a *prima facie* case having been made out against C. and his evidence not having been corroborated as required by R. S. O. (1897) ch. 73, sec. 10, the executors were entitled to judgment. *Thompson v. Coulter*, xxxiv., 261.

36. *Execution of will*—Promoter—Evidence—Testamentary capacity.]—Where the promoter of, and a residuary legatee under a will executed two days before the testator's death and attacked by his widow and a residuary legatee under a former will, the devise to the latter of whom was revoked, failed to furnish evidence to corroborate his own testimony that the will was

read over to the testator who seemed to understand what he was doing and there was a doubt under all the evidence of his testamentary capacity, the will was set aside.—Girouard J. dissenting, held that the evidence was sufficient to establish the will as expressing the wishes of the testator.—*Per* Davies J. The will should stand except the portion disposing of the residue of the estate, the devise of which in the former will should be admitted to probate with it. *British and Foreign Bible Society v. Tupper*, xxxvii., 100.

### 5. EXPERTS.

37. *Life insurance — Misrepresentation — Findings of jury — Evidence of experts — Classes of opinions. Mutual Reserve Fund Life Assn. v. Dillon*, Cout. Cas. 339.

### 6. FINDINGS OF FACT.

38. *Negligence—Electric wire—Trespasser—Contributory negligence — New trial.*—Ahearn & Soper had a contract to illuminate certain buildings for the visit of the Duke of York to Ottawa and obtained power from the Ottawa Electric Co. For the purposes of the contract, wires were strung on a telegraph pole and fastened with tie-wires the ends of which were uninsulated. R. an employee of the Ottawa Electric Co., was sent by the latter to place a transformer on the same pole and, in doing so, his hands touched the ends of the tie-wire by which he received a shock and fell to the ground, being seriously injured. To an action for damages for such injury A. & S. pleaded that R. had no right to be on the pole and was a trespasser, and on the trial their counsel urged that the work he was doing was connected with the lighting of a building in the city. The Court of Appeal held that this defence was established and dismissed the action.—*Held*, reversing the judgment appealed from (6 Ont. L. R. 619), that the counsel's address did not indicate that the building referred to was not one of those to be illuminated under the contract and the evidence did not shew that R. was not engaged in the ordinary business of his employers and the case should be re-tried, the jury having failed to agree at the trial.—A rule of the O. E. Co. directed every employee whose work was near apparatus carrying dangerous currents to wear rubber gloves which would be furnished on application. R. was not wearing such gloves when he was hurt.—*Held*, that the mere fact of the absence of gloves was not such negligence on R.'s part as would warrant the case being withdrawn from the jury; that, as to A. & S., R. was not bound by said rules; and that though his failure to take such precaution was evidence of negligence he had a right to have it left to the jury and considered in connection with other facts in the case. *Randall v. Ahearn & Soper*, xxxiv., 698.

39. *Evidence — Verdict—New trial—Life insurance—Conditions of contract—Misrepresentation—Non-disclosure—Accident policies — Warranties — Words and terms — Rule of interpretation.*—Unless the evi-

dence so strongly predominates against the verdict as to lead to the conclusion that the jury have either wilfully disregarded the evidence or failed to understand or appreciate it, a new trial ought not to be granted.—On an application for life insurance, the applicant stated, in reply to questions as to insurances on his life then in force, that he carried policies in several life insurance companies named, but did not mention two policies which he had in accident insurance companies insuring him against death or injury from accidents. The questions so answered did not specially refer to accident insurance, but the policy provided that the statements in the application should constitute warranties and form part of the contract.—*Held*, affirming the judgment appealed from, the Chief Justice dissenting, that "accident insurance" is not insurance of the character embraced in the term "insurance on life" contained in the application and, consequently, that the questions had been sufficiently and truthfully answered according to the natural and ordinary meaning of the words used, and, even if the words used were capable of interpretation as having another or different meaning than the language was ambiguous and the construction as to its meaning must be against the company by which the questions were framed. *Confederation Life Association v. Miller*, (14 Can. S. C. R. 330) followed. *Mutual Reserve Life Insurance Co. v. Foster*. (20 Times L. R. 715) referred to. *Metropolitan Life Ins. Co. v. Montreal Coal and Towing Co.*, xxxv., 266.

40. *Will — Execution — Evidence—Appeal—Findings in courts below.*—In proceedings for probate of a will, the solicitor who drew it testified that it was signed by the testatrix when the subscribing witnesses were absent; that on their arrival he asked the testatrix if the signature to it was hers and if she wished the two persons present to witness it and she answered "yes"; each of the witnesses acknowledged his signature to the will but swore that he had not heard such question asked and answered. The Judge of Probate held that the will was not properly executed and his decision was affirmed by the Supreme Court of Nova Scotia. *Held*, affirming the judgment appealed from (36 N. S. Rep. 482) that two courts having pronounced against the validity of the will such decision would not be reversed by a second court of appeal. (Leave to appeal to Privy Council refused, 18th July, 1905.) *McNeil v. Cullen*, xxxv., 510.

41. *Negligence—Ferry wharf—Dangerous way—Precautions for preventing accidents—Evidence—Findings of jury—Non-suit.*—A passenger, arriving on the pontoon wharf as a ferry boat was swinging out and was a few feet away from the wharf with the gangways withdrawn, attempted to jump aboard over the stern bulwarks and was drowned. In an action by her representatives to recover damages from the ferry company on account of negligence in failing to provide proper means to prevent accidents at their wharf, the jury found that the drowning was caused by the fault of the company "in not having proper gates at the gangway openings leading from the pontoon to the boat," and that deceased was her-

self negligent "by her imprudence in attempting to board the boat after the gangway had been raised and the boat was swinging preparatory to leaving the pontoon," but that she "was not then aware that the boat had left the wharf."—*Held*, reversing the judgment appealed from (Girouard J. dissenting on a different appreciation of the facts), that, as there was no proof of any negligence on the part of the company which proximately and effectively contributed to the accident but, on the contrary, it appeared that the sole, direct, proximate and effective cause of the accident was the wilful and rash act of the deceased in attempting to jump aboard the ferry boat over the bulwarks, after the gangways had been withdrawn and the boat had got under way, the company could not be held responsible in damages. *Tooke v. Bergeron* (27 Can. S. C. R. 567) and *The George Matthews Co. v. Bouchard* (28 Can. S. C. R. 585) followed. *Quebec and Levis Ferry Co. v. Jess.*, xxxv., 693.

42. *Negligence—Railway company—Excessive speed—Fencing—Railway Act, 1888, ss. 194, 197—55 & 56 Vict. c. 27, s. 6 (D.)—Reasonable inferences.*—The provisions of 55 & 56 Vict. ch. 27, sec. 6, amending sec. 197 of The Railway Act, 1888, and requiring at every public road crossing at road level of the railway the fences on both sides of the crossing and of the track to be turned in to the cattle guards, applies to all public road crossings and not to those in townships only as is the case of the fencing prescribed by sec. 194 of The Railway Act, 1888. *Grand Trunk Railway Co. v. McKay* (34 Can. S. C. R. 81) followed.—Three persons were near a public road crossing when a freight train passed, after which they attempted to pass over the track and were struck by a passenger train coming from the direction opposite to that of the freight train and killed. The passenger train was running at the rate of forty-five miles an hour, and it was snowing slightly at the time. On the trial of actions under "Lord Campbell's Act," against the railway company, the jury found that the death of the parties was due to negligence "in violating the statute by running at an excessive rate of speed" and that deceased were not guilty of contributory negligence. A verdict for the plaintiff in each case was maintained by the Court of Appeal.—*Held*, that the railway company was liable; that the deceased had a right to cross the track and there was no evidence of want of care on their part and the same could not be presumed, and, though there may not have been precise proof that the negligence of the company was the direct cause of the accident, the jury could reasonably infer it from the facts proved and their finding was justified. *McArthur v. Dominion Cartridge Co.* ([1905] A. C. 72) followed; *Wakelin v. London & South Western Railway Co.* (12 App. Cas. 41) distinguished.—*Held*, also, that the fact of deceased starting to cross the track two seconds before being struck by the engine was not proof of want of care; that owing to the snowstorm and the escaping steam and noise of the freight train they might well have failed to see the headlight or hear the approach of the passenger train if they had looked and listened. *Grand Trunk Railway Co. v. Hainer; Grand Trunk*

*Railway Co. v. Hughes; Grand Trunk Railway Co. v. Bready*, xxxvi., 180.

43. *Promissory note—Illegal consideration—Smuggling transaction—Burden of proof—Findings of trial judge.*—The trial judge dismissed the action on the ground that the original note, of which those sued upon were renewals, was given without consideration or in connection with smuggling transactions. He considered the evidence unsatisfactory as the plaintiff did not produce the books of account showing how the consideration was made up and that there was evidence to support the plea of illegality. Upon equal division of opinion among the judges, on an appeal (39 N. S. Rep. 65), his judgment stood affirmed, and a further appeal to the Supreme Court of Canada was dismissed. *Ross v. Gannon*, xxxix., 675.

44. *Negligence—Dangerous works—Protection of employees—Evidence—Questions for jury—Judge's charge—Findings of fact—Inferences.*—An experienced employee of the defendants was killed by an explosion of illuminating gas while discharging his duties in the meter-room at the defendants' gas works. It was shown that there might possibly have been an escape of gas from the controllers or other fixtures in the room or in the blow-room adjoining it; that there had been no special precautions by the defendants to detect any such escape of gas that might occasionally happen, and that the meter-room had always been and, at the time of the accident, was lighted by means of open gas jets. There was no exact proof of any particular fault, attributable to the defendants, which could have been the whole cause of the explosion, and its origin and course were not explained. In an action for damages by the widow and representatives of deceased, the jury found that the explosion had resulted from the fault and imprudence of the defendants in lighting the meter-room by open gas jets, and contributory negligence on the part of deceased was negatived.—*Held*, affirming the judgment appealed from, (Q. R. 16 K. B. 246) *Davies and MacLennan, JJ.*, dissenting, that, in the circumstances, the jury were justified in finding that there had been such negligence and imprudence on the part of the defendants, in such use of open gas jets, as would render them responsible for the injury complained of. *Montreal Light, Heat and Power Co. v. Regan*, xl., 580.

45. *Privilege—Notary—Jury trial—Practice—Charge to jury—Objections after verdict—New trial—Misdirection—Discretion.*—H., to qualify as candidate in a municipal election procured from a friend a deed of land giving him a *contre-lettre* under which he collected the revenues. Having sworn that he was owner of real estate to the value of \$2,000 (that described in the deed), B. in his newspaper accused him of perjury and he took action against B. for libel. On the trial the deed to H. was produced, and the existence of the *contre-lettre* proved, but the notary having the custody of both documents refused to produce the latter, claiming privilege on the ground that it was a confidential document. The trial judge maintained this claim, but oral evidence was admitted proving to some extent what

the *contre-lettre* contained. A verdict having been given in favour of H.—*Held*, that the trial judge erred in ruling that the notary was not obliged to produce the *contre-lettre*, as it was impossible, without its production to determine what, if any, limitations it placed upon the deed, and there should be a new trial.—B, in his newspaper article also accused H, of having been drunk during the election, and the judge, in charging the jury, said, "You should consider the case as if the charge of drunkenness had been made against yourselves, your brother or your friend."—*Held*, that this was calculated to mislead the jury and was also a reason for granting a new trial.—If objection to one or more portions of the judge's charge is not presented until after the jury have rendered their verdict, the losing party cannot demand a new trial as of right, but in such case an appellate court, to prevent a miscarriage of justice, may order a new trial as a matter of discretion. *Barthe v. Huard*, xlii., 406.

46. *Rejection of evidence—Memorandum by witness—Withdrawing case from jury—New trial.*—On the trial of a case it is permissible for a witness to consult a copy of a memorandum respecting circumstances attending the occurrence of an accident, which was made by himself at the time, in order to refresh his memory. The refusal of the trial judge to permit him to do so is ground for ordering a new trial.—The trial judge is not justified in withdrawing a case from the jury on the ground that the evidence establishes contributory negligence on the part of a plaintiff unless no other conclusion can be drawn from it. *Daynes v. British Columbia Electric Rwy. Co.*, xlix., 518.

AND *see* PRACTICE AND PROCEDURE.

47. *Marine insurance—Abandonment—Repairs—Boston clause—Findings of jury—New trial—Practice—Evidence taken by commission—Judicial discretion.* *Ins. Co. of North America v. McLeod*, Cout. Cas. 214.

48. *Life insurance—Misrepresentations—Findings of jury—Evidence of experts—Classes of opinions. Mutual Reserve Fund Life Assn. v. Dillon*, Cout. Cas. 339.

49. *Contract by municipal corporation—Powers—By-law or resolution—Right of action—Confession of judgment—Evidence—Admissions—Pleading—Estoppel by record—Art. 1245 C. C.—Concurrent findings of fact*, xxxiv., 495.

*See* EVIDENCE.

50. *Dangerous way, works, etc.—Negligence—Master and servant—Workmen's Compensation for Injuries Act—Findings of jury—Evidence*, xxxiv., 710.

*See* NEGLIGENCE.

51. *Will—Testamentary capacity—Art. 831 C. C.—Marriage contract—Duress*, xxxv., 477.

*See* MARRIAGE CONTRACT.

*See* WILL.

52. *New trial—Contradictory evidence—Wilful trespass—Rule in assessing damages*

—*Practice—Adding party—Reversal on appeal*, xxxvi., 152.

*See* PRACTICE.

53. *Negligence—Findings of jury—Practice—Operation of railway—"The Railway Act" 51 Vict. c. 29, xxxvii., 1.*

*See* NEGLIGENCE.

54. *Jury trial—Judge's charge—Practical withdrawal of case—Evidence—New trial*, xxxviii., 165.

*See* NEW TRIAL.

55. *Findings of jury—Questions of fact—Duty of appellate court*, xxxix., 336.

*See* PRACTICE.

56. *Operation of railway—Unnecessary combustibles left on right of way—"Railway Act, 1903" ss. 118j and 229—Findings of jury—Damages by fire—Charge of judge—New evidence on appeal—New trial—Practice—Supreme Court Act, ss. 51, 73, xxxix., 390.*

*See* RAILWAYS.

57. *Employer and employee—Improper appliances—Negligence—Proximate cause—Findings of jury*, xl., 396.

*See* NEGLIGENCE.

58. *Operation of railway—Level crossing—Negligence—Statutory signals—Findings against weight of evidence—New trial—Practice*, 8 Can. Ry. Cas. 61.

*See* NEGLIGENCE.

59. *Life insurance—Policy—Memo. on margin—Want of countersignature—Admission of deceased agent against interest of principal—Secondary evidence—Contradicting deceased witness*, Cam. Cas. 154.

*See* EVIDENCE.

60. *Separate partnerships—Different partners—Same style of firm—Member making note in firm name—Liability to bank fide holder*, Cam. Cas. 200.

*See* PARTNERSHIP.

61. *Ships and shipping—Material used in construction—Sale of goods—Contract—Principal and agent—Misrepresentations—Mistake—Conversion—Trover—Misdirection—New trial—Ship's husband—Pledging credit of owners—Necessary outfitting at home port*, Cout. Cas. 131.

*See* SHIPS AND SHIPPING.

62. *Operation of tramway—Negligence—Findings of jury*, Cout. Cas. 349.

*See* PRACTICE.

63. *Construction of contract—Findings of trial judge—Appreciation of evidence—Reversal on appeal*, xli., 134.

*See* CONTRACT.

64. *Privilege—Notary—Jury trial—Practice—Charge to jury—Objections after verdict—New trial—Misdirection—Discretion.* *Barthe v. Huard*, xlii., 406.

*See* PRACTICE.

65. *Negligence—Operation of railway—Fatal injuries—Statutory signals—Highway crossing—Absence of eye-witness—Reasonable inference—Probabilities—Findings of jury*, xlv., 380.

See VERDICT.

66. *Promissory note—Signature in blank—Discount—Principal and agent—Condition as to use of note—Bond fide holder—"Bills of Exchange Act." S.C., 1906, c. 199, ss. 31, 32—Findings of trial court*, xlv., 401.

See BILLS AND NOTES.

67. *Criminal law—Indictment for murder—Trial—Criminal intent—Provocation—"Heat of passion"—Charge to jury—Misdirection—Reducing charge to manslaughter—New trial—"Substantial wrong"—Criminal Code, ss. 261, 1019—Appeal—Questions to be reviewed*, xlviii., 1.

See CRIMINAL LAW.

68. *Findings of fact—Inference by jury—Determining cause of accident—Evidence to support verdict—Practice*, xlix., 80.

See PRACTICE AND PROCEDURE.

69. *Negligence—Employer's liability—Ship labourer—Disregard of rules—"Accident in course of employment"—Action—Claim by dependents—Findings of jury—Art. 1054 C.C., xlix., 136.*

See NEGLIGENCE.

70. *Sale of lands—Agreement for re-sale—Novation—Rescission—Specific performance—Defence to action—Practice—Statute of Frauds—Principal and agent—Agent purchasing—Disclosure—Findings of fact*, xlix.

See SPECIFIC PERFORMANCE.

71. *Construction contract—Sub-contract—Dangerous premises—Servant or agent—Building materials—Duty of principal contractor—Injury to invitee—Responsibility for damages—Findings of jury*, xlix., 632.

See NEGLIGENCE.

72. *Railways—Operation—Transfer of cars—Interswitching—Negligent coupling—Duty of train crew—Scope of employment—Employer's liability—Jury—Findings of fact. G. T. P. R. R. Co. v. Pickering, l., 393.*

See RAILWAYS.

73. *Negligence—Dangerous works—Defective system—Careless management—Fault of fellow servant—Efficient superintendence—Employer's duty—Action—Liability at common law—"B.C. Employers' Liability Act"—Pleading—Practice—Charge to jury—New trial. Bergklint v. West. Can. Power Co., l., 39.*

See NEGLIGENCE.

74. *Operation of railway—Equipment—Coupling apparatus—Duty to provide and maintain—Protection of employee—Inspection—"Inevitable accident"—Negligence—Findings of jury—Common employment—Conflict of laws—"Railway Act," R.S.C.,*

1906, c. 37, s. 264—Construction of statute—Vis major. Plelan v. G. T. P., li., 113.

See RAILWAYS.

75. *Libel—Business reputation—Action by incorporated company—Truth of alleged facts—Fair comment—Justification—Public interest—Qualified privilege—Charge to jury—Misdirection—Misleading statements—Practice—Special damages—New trial. Price v. Chicoutimi, li., 179.*

See LIBEL.

76. *Negligence—Defective system—Injury to employee—Verdict—Practice—Exception to judge's charge—New points on appeal—New trial. Orevelling v. Can. Bridge Co., li., 216.*

See PRACTICE AND PROCEDURE.

77. *Criminal case—Proceedings before grand jury. Veronneau v. The King, liv., 7.*

See CRIMINAL LAW.

## 7. MALICE.

78. *Defamation—Printing report of ghost haunting premises—Slander of title—Fair comment—Disparaging property—Special damages—Presumption of malice—Right of action*, xxxix., 340.

See SLANDER OF TITLE.

79. *Malicious prosecution—Reasonable and probable cause—Bona fide belief in guilt—Burden of proof—Right of action for damages—Art. 1053 C. C.—Pleading and practice*, xl., 128.

See EVIDENCE.

## 8. ONUS OF PROOF.

80. *Arbitration and award—Setting aside award—Partiality or unfairness—Onus of proof.]—Where it does not appear that an arbitrator is in a position with regard to the parties or the matter in dispute such as might cast suspicion upon his honour and impartiality there must be proof of actual partiality or unfairness in order to justify the setting aside of the award. Doberer v. Megaw, xxxiv., 125.*

AND SEE ARBITRATION AND AWARD.

81. *Will—Promoter—Subsequent conduct of testator—Residuary devise—Trust.]—In proceedings for probate by the executors of a will which was opposed on the ground that it was prepared by one of the executors who was also a beneficiary, there was evidence, though contradictory, that before the will was executed it was read over to the testator who seemed to understand its provisions.—Held, Idington, J., dissenting, that such evidence and the facts that the testator lived for several years after it was executed and on several occasions during that time spoke of having made his will and never revoked or altered it, satisfied the onus, if it existed, on the executor to satisfy the court that the testator knew and approved of its provisions.—Held, also, that*

where the testator's estate was worth some \$50,000 and he had no children it was doubtful if a bequest to the propounder, his brother, of \$1,000 was such a substantial benefit that it would give rise to the onus contended for by those opposing the will. *Connell v. Connell*, xxxvii., 404.

82. *Railways — Negligence — Defective construction of road-bed—Dangerous way—Vis major—Onus of proof—Latent defect.*—The road-bed of appellants' railway was constructed, in 1893, at a place where it followed a curve round the side of a hill, a cutting being made into the slope and an embankment formed to carry the rails, the grade being one and one half per cent. or 78.2 feet to the mile. The whole of the embankment was built on the natural surface, which consisted, as afterwards discovered, of a layer of sandy loam of three or four feet in depth resting upon clay subsoil. No borings or other examinations were made in order to ascertain the nature of the subsoil and the road-bed remained for a number of years without shewing any subsidence except such as was considered to be due to natural causes and required only occasional repairs; the necessity for such repairs had become more frequent, however, for a couple of months immediately prior to the accident which occasioned the injury complained of, water, coming either from the berm-ditch, or from a natural spring formed beneath the sandy loam, had gradually run down the slope, lubricated the surface of the clay and, finally, caused the entire embankment and sandy layer to slide away about the time a train was approaching, on the evening of 20th September, 1904. The train was derailed and wrecked and the engine-driver was killed. In an action by his widow for the recovery of damages: *Held*, that in constructing the road-bed, without sufficient examination, upon treacherous soil and failing to maintain it in a safe and proper condition, the railway company was, *primâ facie*, guilty of negligence which cast upon them the onus of shewing that the accident was due to some undiscoverable cause; that this onus was not discharged by the evidence adduced from which inferences merely could be drawn and which failed to negative the possibility of the accident having been occasioned by other causes which might have been foreseen and guarded against, and that, consequently, the company was liable in damages. Judgment appealed from affirmed, following *The Great Western Railway Co. of Canada v. Braid* (1 Moo. P. C. (N. S.) 101). *Quebec and Lake St. John Ry. Co. v. Julien*, xxxvii., 632.

83. *Negligence—Electrical installations—Cause of fire—Defective transformer—Improper installations—Onus of proof.*—In an action to recover the amount of a policy of fire insurance paid by the plaintiffs upon the destruction of the premises insured by fire caused, as alleged, through the defective condition of a transformer of the defendant company, whereby a dangerous current of electricity was allowed to enter the insured building, the evidence failed to shew conclusively that the transformer was out of order previous to the occurrence of the fire, and at the same time it appeared that the wiring of the building may have been defective.—

*Held*, affirming the judgment appealed from, that the onus of proof upon the plaintiffs had not been satisfied and that they could not recover. *Abrath v. The North Eastern Railway Co.* (11 Q. B. D. 440) referred to. *Guardian Fire and Life Assurance Co. v. Quebec Railway, Light and Power Co.*, xxxvii., 676.

84. *Title to land—Plan of survey—Evidence—Onus of proof—Findings of jury—Error—New trial.*—Where it appeared that in directing the jury, at the trial, the judge attached undue importance to the effect of a plan of survey referred to in a junior grant as against a much older plan upon which the original grants of the lands in dispute depended, and that the findings were not based upon evidence sufficient in law to shift the onus of proof from the plaintiff and were, likewise, insufficient for the taking of accounts in respect to trespass and conversion of minerals complained of: *Held*, affirming the order for a new trial made by the judgment appealed from (1 East. L. R. 293), that, in the absence of evidence of error therein, the older grants and plan must govern the rights of the parties. *Bartlett v. Nova Scotia Steel Co.*, xxxviii., 336.

85. *Revocation of will — Testamentary capacity—Findings of fact—Practice—Improper suggestion—Undue influence — Captation—Bounty taken by promoter—Fraudulent representations—Evidence — Onus of proof.*—While testator was suffering from a wasting disease of which he died shortly afterwards, the defendant, his brother, took advantage of his weakness of mind and secretly obtained the execution of a will, in which he was made the principal beneficiary, by fraudulently suggesting and causing the testator to believe that his malady was caused and aggravated by the carelessness and want of skill of his wife in the preparation of his food. The testator and his wife had lived together in harmony for a number of years, and shortly after their marriage, had made wills by which each of them, respectively, had constituted the other universal residuary legatee and the testator's former will, so made, was revoked by the will propounded by the defendant.—*Held*, that, as the promoter of the will, by which he took a bounty, had failed to discharge the onus of proof cast upon him to shew that the testator had acted freely and without undue influence in the revocation of the former will, the second will was invalid and should be set aside. *Mayrand v. Dussault*, xxxviii., 460.

AND see WILL.

86. *Promissory note—Fraud in procuring—Discount—Good faith—Onus of proof.*—L. and others signed promissory notes each for the amount of ten shares in a company formed to manufacture rotary engines under an invention of the payee who fraudulently misrepresented to them the prospects and intentions of such company. At the same time each maker signed an application for ten shares. The payee and T., the assignee of his patent of invention, induced W. to discount these notes and received a portion of the proceeds, part being retained by W. in payment of debts due him from these two parties. On the trial of actions by W. on

the notes the evidence of T. who had absconded, was taken under commission and he swore that the form of application signed by the respective defendants had been shewn to W. before the notes were discounted. W. denied this and swore that he had been told that the notes were given in payment of stock held by the payee.—*Held*, that the evidence of W., on whom the onus of proof rested could not be accepted; that the whole testimony and attendant circumstances shewed that W. suspected that the proceeds of the notes belonged to the company; and, having discounted them without inquiry as to the right of the payee and T. to receive these proceeds, he was not in good faith and could not recover. *Lockhart v. Wilson*, xxxix., 541.

87. *Malicious prosecution — Reasonable and probable cause—Bonâ fide belief in guilt—Burden of proof—Right of action for damages—Art. 1053 C. C.—Pleading and practice.*—An action for damages for malicious prosecution will not lie where it appears that the circumstances under which the information was laid were such that the party prosecuting entertained a reasonable *bonâ fide* belief, based upon full conviction founded upon reasonable grounds, that the accused was guilty of the offence charged. *Abrath v. North Eastern Railway Co.* (11 App. Cas. 247) and *Cow v. English, Scottish and Australian Bank* ((1905) A. C. 168) referred to.—*Semble*, that, in such cases, the rule as to the burden of proof in the Province of Quebec is the same as that under the law of England, and the plaintiff is obliged to allege and prove that the prosecutor acted with malicious intentions, or, at least, with indiscretion or reprehensible want of consideration. *Sharpe v. Willis* (Q. R. 29 S. C. 14; 11 Rev. de Jur. 538) and *Durocher v. Bradford* (13 R. L. (N. S.) 73) disapproved. Judgment appealed from (Q. R. 16 K. B. 333) affirmed. *Hétu v. Diaville Butter and Cheese Assoc'n.*, xl, 128.

88. *Negligence — Master and servant — Duty of employee — Insulation of electric wires—Onus of proof.*—An electric lineforeman in the company's employ met his death from contact with imperfectly insulated live wires while at work in proximity to them in the power-house. The evidence left some doubt whether the duties of deceased included the inspection and care of the wires both inside and outside of the power-house, or whether his engagement was to perform the duties in question in respect only to the wires outside the power-house walls.—*Held*, that the onus of proof as to the point in dispute was on the defendants and, such onus not having been satisfied, they were liable in damages.—Judgment appealed from affirmed, *Davies, J.*, dissenting on a different view of the evidence, and holding that the duties of deceased included the inspection and care of the interior wiring. *Quebec Ry., Light and Power Co. v. Fortin*, xl, 181.

89. *Pleading—Purchase for value without notice—Onus—Evidence — Affirmative and negative evidence—Weight of evidence.*—The plea of purchase for value without notice must be proved in its entirety by the party offering it; it is not incumbent on the opposite party to prove notice after the pur-

chase for value is established. Where a conversation over the telephone was relied on as proof of notice the evidence of the party asserting that it took place and giving the substance of it in detail, must prevail over that of the other party who states only that he does not recollect it. *Union Bank of Halifax v. Indian and General Investment Trust*, xl., 510.

90. *Will—Testamentary capacity—Captation—Suggestion—Undue influence — Interdiction—Onus of proof.*—The existence of circumstances which might raise suspicion that the execution of a will was procured by captation, improper suggestions or undue influence on the part of those promoting it is not a sufficient ground to justify an appellate court in interfering with the concurrent findings of the courts below as to the validity of the will.—Judgment appealed from (Q. R. 17 K. B. 215) affirmed, *Girouard and Macleannan, J.J.*, dissenting. *Laramée v. Ferron*, xli., 391.

91. *Evidence—Burden of proof—Sale of bank stock—Allotment to shareholders — Shares refused or relinquished—Sale to public—Authority—R. S. C. [1906] c. 29, s. 34.*—M. was sued by a bank on a promissory note alleged to have been given in payment for a portion of an issue of increased stock. He pleaded want of consideration and non-receipt of the stock. On the trial evidence was given of a resolution by the bank directors authorizing the allotment of the new issue to the then shareholders of whom M. was not one, and counsel for the bank admitted that there was no resolution allotting it to anybody else. A verdict in favour of the bank was set aside by the Court of Appeal.—*Held*, *Idington and Duff, J.J.*, dissenting, that the onus was on M. to prove that the stock was issued to the public without authority and such onus was not satisfied.—*Held, per Idington and Duff, J.J.*, that such onus was originally on M. but the evidence produced and the said admission of counsel had shifted it to the bank, which did not furnish the requisite proof. *Sovereign Bank v. McIntyre*, xli., 157.

92. *Onus — Railway company — Negligence — Excessive speed—"Railway Act," s. 275—8 & 9 Edw. VII. c. 32, s. 13.*—By 8 & 9 Edw. VII. c. 32. s. 13. amending s. 275 of the "Railway Act." no railway train "shall pass over a highway crossing at rail level in any thickly peopled portion of any city, town or village at a greater speed than ten miles an hour," unless such crossing is constructed and protected according to special orders and regulations of the Railway Committee or Board of Railway Commissioners or permission is given by the Board. In an action against a railway company for damages on account of injuries received through a train passing over such a crossing at a greater speed than ten miles an hour.—*Held*, reversing the judgment of the Appellate Division (29 Ont. L. R. 247), that the onus was on the company of proving that the conditions existed which, under the provisions of said section, exempted them from the necessity of limiting the speed of their train to ten miles an hour or that they had the permission of the Board to exceed that limit, and as they had not satisfied that onus



the plaintiff's verdict should stand.—Sub-section 4, of s. 13, prohibits trains running "over any highway crossing" at more than 10 miles an hour, if at such crossing an accident has happened subsequent to 1st January, 1900, "by a moving train causing bodily injury," etc., "unless and until" it is protected to the satisfaction of the Board.—*Per* Duff and Brodeur, JJ.—The appellant's action could also be maintained on the ground that the prohibition of sub-section 4 applies to the crossing in question. *The Grand Trunk Railway Co. v. McKay* (34 Can. S. C. R. 81), distinguished. *Bell v. Grand Trunk Railway Co.*, xlviii., 561.

93. *Negligence—Electrical installations—Necessary protection of employees—Onus of proof—Voluntary exposure to danger.* *Shawinigan Carbide Co. v. St. Onge*, xxxvii., 688.

94. *Action by executors—Witness—Corroboration of evidence—R. S. O. 1897, c. 73, s. 10, xxxiv., 261.*

See EVIDENCE.

95. *Admissions—Corrupt acts—Dominion Elections Act, 1900, s. 113, xxxvi., 542.*

See EVIDENCE.

96. *Admiralty law—Navigation—Narrow channel—Rule of the road—Look-out—Meeting ships—Collision—Special rule of port—Sorel harbour regulations—Lights and signals—Negligence—Evidence—Damages—Practice—Improper comments in factum, xxxvi., 564.*

See ADMIRALTY LAW.

97. *Fixtures—Lessor and lessee—Buildings placed on leased land—Evidence—Onus of proof—Landlord and tenant, xliii., 334.*

See LANDLORD AND TENANT.

98. *Timber license—Crown lands in British Columbia—Real estate—Personalty—Contract—Sale—Exchange—Consideration—Payment in joint stock shares—Vendor's lien—Onus of proof—Pleading and practice, xlv., 458.*

See LIEN.

99. *Negligence—Carriers—Operation of railway—Defective system—Gratuitous passenger—Free pass—Limitation of liability—Employer and employee—Fellow servant—Onus of proof, xlv., 263.*

See NEGLIGENCE.

100. *Malicious prosecution—Probable cause—Onus of proof—Honest belief—Practice—Questions for jury, xlvii., 393.*

See MALICIOUS PROSECUTION.

101. *Execution of will—Testamentary capacity—Undue influence—Captation—Approval by testatrix—Beneficiary propounding will—Onus of proof, xlix., 305.*

See WILL.

102. *Trespass—Cutting timber—Crown grant—Conflicting claims—Priority of title.* *Hirtle v. Boehner*, l., 264.

See TRESPASS.

## 9. PRESUMPTIONS.

103. *Highway—Road allowance—Reservations in township survey—General instructions—Model plan.*—Where the Crown surveyor returned the plan of original survey returned of a township without indicating reservations for road allowances upon the boundaries of the township and his field notes appeared to the court to support the view that no such allowances had been made by him:—*Held*, that the general instructions and model plan for similar surveys did not afford a presumption sufficiently strong for the inference that there was an intention upon the part of the Crown to establish such road allowance. *Tanner v. Bissell* (21 U. C. Q. B. 553), and *Boley v. McLean* (41 U. C. Q. B. 260) approved. (Leave to appeal to Privy Council refused.) *Township of East Hawkesbury v. Township of Lochiel*, xxxiv., 513.

104. *Controverted election—Personal corruption—Inferences.*—Respondent, the night before the election, took a sum of over \$4,000 and divided it into several parcels of sums ranging from \$250 to \$1,500. He then, after midnight, visited all his committee rooms and gave to the chairman of each committee, personally and secretly, one of such parcels. His financial agent had no knowledge of this distribution and no evidence was produced of the application of the money to legitimate objects.—*Held*, that the inference was irresistible, that the money was intended for corruption of the electors and respondent was properly held guilty of personal corruption. *St. Ann's Election Case*, xxxvii., 563.

See ELECTION LAW.

105. *Customs Act—Importation of cattle—Smuggling—Clandestinely introducing cattle into Canada—Claim for return of deposit made to secure release of cattle seized—Evidence.*—The suppliants claimed the return of money deposited by them to obtain the release of cattle seized for the infraction of the "Customs Act," and held by the Crown as forfeiture. Upon conclusions as to facts drawn from the evidence the petition of right was refused by the Exchequer Court (10 Ex. C. R. 79). On appeal the judgment of the Exchequer Court was affirmed. *Spencer Brothers v. The King*, xxxix., 12.

106. *Construction of will—Description of legatee—Devise "to my wife"—Bigamous marriage—Burden of proof.*—A devise made in a will "to my wife" was claimed by two women, with both of whom the testator had lived in the relationship of husband and wife.—*Held, per* Idington, J.—That, even if the first marriage was assumed to have been validly performed, all the surrounding circumstances showed that, by the words "to my wife," the testator intended to indicate the woman with whom he was living, in that relationship at the time of the execution of the will and thereafter up to the time of his death.—*Held, per* Duff, J.—That the woman who claimed to have been first married to the testator had not sufficiently proved that fact, and that the other woman, who was living with the



testator as his wife at the time of the execution of the will and up to the time of his death, was entitled to the devise.—*Held, per Davies and MacLennan, JJ., dissenting.*—That the first marriage was sufficiently proved and, consequently, that the devise went to the only person who was the legal wife of the testator.—*Fitzpatrick, C.J.,* was of opinion that the appeal should be dismissed.—*Judgment appealed from (13 B. C. Rep. 161) affirmed, Davies and MacLennan, JJ., dissenting. Marks v. Marks, xl., 210.*

107. *Board of Revision—Judicial functions—Administrative powers—Minutes of proceedings.*]—In proceedings, by certiorari, to remove a decision of the Court of Revision, the evidence adduced in support of the contention that the court had failed to dispose of the question in a proper manner consisted merely of a minute of its proceedings whereby it was resolved "that all charitable institutions mentioned in subsection 3 of section 46 of 'Vancouver Incorporation Act' be exempted from taxation to the extent of the area occupied by the buildings thereon, and an additional amount of land equal to 25 per cent. of the area, and that the assessment roll for 1900, as amended, be confirmed."—*Held, affirming the judgment appealed from (15 B. C. Rep. 344), that this minute, in the absence of further evidence, was not incompatible with the view that the Court of Revision had examined each particular case before deciding to act in the sense of the minute, and that it would be a proper direction in each individual case. Sisters of Charity of Providence v. City of Vancouver, xlv., 29.*

AND see ASSESSMENT AND TAXATION.

108. *Benefit association—Life insurance—By-laws and regulations—Transfers between lodges—Member in good standing—Regularity of affiliation—Payment of dues and assessments—Evidence—Presumption—Waiver.*]—Where the constitution of a benefit association provides that members shall not be transferred from one lodge to another unless all dues and assessments have been paid, up to and including those for the month in which the application for affiliation is made, the fact that, upon such an application, a member was transferred from one lodge to another involves the presumption as against the association that the transfer was regularly made when the member was in good standing and in accordance with the regulations. *Ancient Order of United Workmen of Quebec v. Turner, xlv., 145.*

109. *Title to lands—Grant from Crown—Description—Navigable or floatable waters—Inlet of navigable river—Implied reservations—Crown domain—Public law—Construction of deed—Estoppel—Waiver, xxxiv., 603.*

See RIVERS AND STREAMS.

110. *Mines and mining—Dangerous ways, etc.—Inspection of pit—Employer and employee—Negligence—Presumptions—Reversal on findings of fact, xxxvi., 13.*

See NEGLIGENCE.

111. *Negligence—Railways—Excessive speed—Fencing—Railway Act, 1888, ss. 194, 197—55 & 56 Vict. c. 27, s. 6 (D.)—Inferences, xxxvi., 180.*

See EVIDENCE.

112. *Practice—Motion to refer case for further evidence—Presumption as to legislative power of Parliament, xxxvi., 596.*

See PRACTICE—STATUTE.

113. *Operation of railway—Straying animals—Negligence—Duty as regards trespassers on railway—Herding stock—Inferences as to facts, xxxvi., 641.*

See NEGLIGENCE.

114. *Title to land—Dedication—Public highway—Expropriation—Presumption—User, Cam. Cas. 53.*

See HIGHWAY.

115. *Chattel mortgage—Renewal—Time for filing—Identification of goods—Sufficiency of description—Proof of judgment and execution, Cam. Cas. 436.*

See CHATTEL MORTGAGE.

116. *Dedication of highway—Conditions in Crown grant—Access to beach—Plan of subdivision—Destination by owner—Limitation of user—Long use by public—Acquisitive prescription—Recitals in deeds—Cadastral plans, references and notices—Presumption, xli., 264.*

See HIGHWAY.

## 10. SECONDARY EVIDENCE.

117. *Will—Evidence Act—R. S. N. S. (1900) c. 163, ss. 22 and 27—Secondary evidence—Ejectment—Mesne profits.*]—Section 27 of the "Evidence Act" of Nova Scotia (R. S. N. S. (1900) c. 163) provides that "a copy of a notarial act or instrument in writing made in Quebec before a notary public, filed, enrolled or enregistered by such notary and certified by a notary or prothonotary to be a true copy of the original, thereby certified to be in his possession as such notary or prothonotary, shall be received in evidence in any court in place of the original, and shall have the same force and effect as the original would have if produced and proved."—(2) And by the first two sub-sections of section 22 it is provided that:—"The probate of a will or a copy thereof certified under the hand of the registrar of probate or found to be a true copy of the original will, when such will has been recorded, shall be received as evidence of the original will, but the court may, upon due cause shewn upon affidavit, order the original will to be produced in evidence, or may direct such other proof of the original will as under the circumstances appears necessary or reasonable for testing the authenticity of the alleged original will, and its unaltered condition and the correctness of the prepared copy."—(2) This section shall apply to wills and the probate and copies of wills proved elsewhere than in this province, provided that the original wills have

been deposited and the probate and copies granted in courts having jurisdiction over the proof of wills and administration of intestate estates, or the custody of wills."—*Held*, that a copy of a will executed before two notaries in the Province of Quebec under the provisions of article 834 C. C. certified by one of said notaries to be a true copy of the original in his possession, is admissible in evidence on the trial of an action of ejectment in Nova Scotia, as provided in section 27. *Musgrave v. Angle*, xliii., 484.

118. *Ownership of horses—Bill of sale—Foreign judgment—Interpleader—Secondary evidence—Parol testimony. Evans v. Evans*, l., 262.

See BILL OF SALE.

#### 11. SUFFICIENCY OF PROOF.

119. *Dangerous way—Defective works—Negligence—Employers' Liability Act—Injury to servant—Proximate cause—R. S. N. S. (1900) c. 79.*—D. was engaged in moving cars at the quarry of the company. The cars were loaded at a shaft under a crusher and had to be taken past an unused chute about 200 feet away supported by a post placed 7½ inches from the track. D. having loaded a car found that it failed to move as usual after unbraking and he had to come down to the foot-board and shove back the foot-rod connected with the brake. The car then started and he climbed up the steps at the side to get to the brake on top but was crushed between the car and the post. He could have got on the rear of the car instead of using the steps or jumped down and walked along after the car until it had passed the post. The manager of the quarry had been warned of the danger from the post but had done nothing to obviate it. *Held*, reversing the judgment appealed from (36 N. S. Rep. 113), Davies and Killam, J.J., dissenting, that D.'s own negligence was the cause of his injury and the company were not liable.—*Held*, per Davies and Killam, J.J., that the position of the post was a defect in the company's works under the Employers' Liability Act which was evidence of negligence. *Dominion Iron and Steel Co. v. Day*, xxxiv., 387.

120. *Illegal fishing—Seizure of vessel—Evidence of vessel's position.*—The American vessel "Kitty D." was seized by the Government cruiser "Petrel" for fishing on the Canadian side of Lake Erie. In proceedings by the Crown for forfeiture the evidence was conflicting as to the position of both vessels at the time of seizure and the local judge in admiralty held that the evidence did not establish that the vessel seized was in Canadian waters at the time. On appeal by the Crown: *Held*, Taschereau, C.J., dissenting, that as the "Petrel" was furnished with the most reliable log known to mariners for registering distances and her compass had been carefully tested and corrected for deviation on the morning of the seizure; as the "Kitty D." and the two tugs in her vicinity at the time, whose captains gave evidence to shew that she was on the American side, carried no log nor chart and

kept no log-book; and as the local judge had misapprehended the facts as to the course sailed by the "Petrel," the evidence of the officers of the "Petrel" must be accepted and it established that the "Kitty D." had been fishing in Canadian waters and her seizure was lawful. (Reversed by Privy Council, 21st Decr., 1905.) *The King v. The "Kitty D."*, xxxiv., 673.

121. *Statute of Frauds—Part performance—Evidence.*—M. leased land to his two sons, S. and W., of which fifty acres was to be in the sole tenancy of W. In an action by M. against S. for waste by cutting wood on said fifty acres the defence set up was that, by parol agreement, in consideration of S. conveying one hundred acres of his land to W. he was to have a deed of the fifty acres, and having so conveyed to W. he had an equitable title to the latter. M. admitted the agreement but denied that the land to be conveyed to S. was the said fifty acres.—*Held*, per Nesbitt and Idington, J.J., that the conveyance to W. was a part performance of the parol agreement and the statute of frauds was no answer to this defence.—The majority of the court held that as the possession of the fifty acres was referable to the lease as well as to the parol agreement, part performance was not proved, and affirmed the judgment appealed from in favour of the plaintiff (37 N. S. Rep. 23) on this and other grounds. *Meisner v. Meisner*, xxxvi., 34.

122. *Admiralty law—Collision—Violation of rules not affecting accident—Steering wrong course.*—A steamer coming up Halifax harbour ran into a schooner striking her stern on the port side. No sound signals were given. The green light of the schooner was seen on the steamer's port bow and the latter starboarded her helm to pass astern and then ported. She then was so close that the engines were stopped but too late to prevent the collision.—*Held*, that the steamer alone was to blame for the collision.—*Held*, also, that though under the rules the schooner should have kept her course and also was to blame for not having a proper look-out, neither fault contributed to the collision.—(Appeal to Privy Council stood dismissed, 27th May, 1907, for want of prosecution, under Privy Council Rule V. of 13th June, 1853). *SS. "Arranmore" v. Rudolph*, xxxviii., 176.

AND see SHIPS AND SHIPPING.

123. *Title to land—Possession—Prescription—Interruptive acknowledgment.*—The company claimed prescriptive title to a part of the bed of a small river on which D., the respondents' *auteur*, had been a riparian owner. D. had leased lands on the banks of the river to the company which, it was alleged, included the property in dispute. The only evidence as to interruption of prescription consisted of a letter by the company to D. enclosing a cheque in payment for "use of your interest in Cap Rouge River this year," with an indorsement by D. acknowledging receipt of the funds "with the understanding that the navigation of the river is not to be prevented.—*Held*, reversing the judgment appealed from (13 Ex. C.R. 116), Girouard and Idington, J.J., dissenting, that the memorandum was too

vague to serve as an interruptive acknowledgment sufficient to defeat the title claimed by the company. *Cap Rouge Pier Wharf and Dock Co. v. Duchesnay*, xliv., 130.

124. *Criminal law—Verdict.*—Evidence making a *prima facie* case for the Crown in a criminal prosecution, if unanswered and believed by the jury, is sufficient to support a conviction of the person accused. *Girvin v. The King*, xlv., 167.

125. *Company—Issue of shares—Authority to sign certificate—Estoppel—Evidence.*—*Held*, per Fitzpatrick, C.J., and Duff, J., that where by statute and the by-laws of a joint-stock company certain of its officers are empowered to sign stock certificates, and they sign a certificate under seal in favour of a person who has agreed to change his position on receipt of the shares it represents and who is declared therein to be the holder of such shares, the company is estopped from denying that it was issued by its authority, even if one of the officers signing it was acting fraudulently for his own purposes in doing so.—*Held*, per Anglin, J., that the certificate is only *prima facie* evidence of the statements therein and such evidence may be rebutted by shewing that it was issued without authority. In this case, however, Davies and Idington, J.J., *contra*, the company failed to make such proof.—Judgment of the Court of Appeal (23 Ont. L.R. 342) reversed, Davies and Idington, J.J., dissenting. *Mackenzie v. Monarch Life Assur. Co.*, xlv., 232.

126. *Municipal corporation—Repair of highways—Statutory duty—"Unfenced trap" in sidewalk—Misfeasance—Actionable negligence—Notice—Knowledge—Personal injuries—Liability of corporation—Findings of jury—"Res ipsa loquitur."*—where a municipal corporation is liable for damages sustained by reason of negligent nonfeasance of the statutory duty imposed upon it to maintain its highways in good repair, the questions of notice or knowledge of the defects do not arise. There is a presumption, in such cases, against the municipal corporation and upon it lies the onus of adducing positive evidence in rebuttal; it is not sufficient to shew that the existence of the defects were not known by the corporation officials. *Mersey Docks and Harbour Trustees v. Gibbs* (L.R. 1 H.L. 93), applied; *City of Vancouver v. McPhalen* (45 Can. S.C.R. 194) and *McClelland v. Manchester Corporation* ((1912) 1 K.B., 118) referred to. Davies and Anglin, J.J., *contra*.—An unprotected opening in the sidewalk of one of the principal streets of the city, having the appearance of being recently made for some purposes in connection with the laying of gas-pipes, was permitted to remain without proper repair during most of the day, and, at about four o'clock in the afternoon, the plaintiff's injuries were sustained by stepping into the hole while making use of the sidewalk.—*Held*, affirming the judgment appealed from (1 West. Weekly Rep. 31; 19 W.L.R. 322), Davies and Anglin, J.J., dissenting, that evidence of these facts made out a proper case for submission to the jury, and upon which they could return findings of breach of statutory duty and misfeasance on the part of the municipal

corporation. *City of Vancouver v. Cummings*, xlvi., 457.

127. *Election law—Nomination—Irregularities—Omission of additions—Indentification of candidate—Technical objections—Receipt for deposit—Validating effect—Construction of statute—R.S.C., 1906, c. 6, "Dominion Elections Act"—R.S.C., 1906, c. 7, "Dominion Controverted Elections Act."*—Per Fitzpatrick, C.J., and Davies, Anglin and Brodeur, J.J.—Technical objections to the form of nomination papers filed with the returning officer at an election of a member of the House of Commons, under the provisions of the "Dominion Elections Act," R. S. C., 1906, ch. 6, should not be permitted to defeat the manifest purpose of the statute. The omission in nomination papers to mention the residence, addition or description of the candidate proposed in such a manner as sufficiently to identify him constitutes a patent and substantial failure to comply with the essential requirements of section 94 of the Act; on the objection in this respect taken by the only opposing candidate it is the duty of the returning officer to reject a nomination so irregularly made and to declare such opposing candidate elected by acclamation. Such rejection and declaration of election by acclamation may properly be made by the returning officer after the expiration of the time limited for the nomination of candidates by section 100 of the Act.—Per Fitzpatrick, C.J., and Davies, Anglin and Brodeur, J.J., (Idington and Duff, J.J., *contra*).—The receipt for the required deposit of \$200, accompanying the nomination papers, given by the returning officer under the provisions of section 97 of the "Dominion Elections Act," is evidence merely of the production of the papers and payment of the deposit and not of the validity of the nomination.—Per Idington and Duff, J.J., (dissenting).—The receipt so given for the required deposit constitutes a legal assurance that the candidate has been duly and properly nominated: it cannot be revoked nor the nomination papers rejected by the returning officer after the expiration of the time limited by section 100 of the Act for the nomination of candidates; when that time has passed all questions touching the statutory sufficiency of the papers are concluded in so far as it is within the province of the returning officer to deal with such matters.—Per Duff, J., (dissenting).—Where the returning officer has received papers professing to nominate a proposed candidate with the consent of the candidate to such nomination and given his receipt for the required deposit pursuant to section 97 of the Act, and the time limited for the nomination of candidates at the election has expired, the status of such candidate becomes finally determined *quoad* proceedings under the control of the returning officer and it is then the duty of that official to grant a poll for taking the votes of the electors.—Per Duff, J., (dissenting).—In view of the limited jurisdiction conferred upon judges in respect to election trials under the "Dominion Controverted Elections Act," R.S.C., 1906, ch. 7, where the returning officer has exceeded his legal powers by improperly returning a candidate as having been elected by acclamation the judgment should declare that the

election was not according to law. — The judgment appealed from (Q.R. 42 S.C. 235) was affirmed, Idington and Duff, J.J., dissenting. *Two Mountains Election*, xlvii., 185.

128. *Sale of goods — Condition as to prices—Lost invoices—Secondary evidence—Waiver—Breach of contract—Damages.* —The defendants agreed to purchase the plaintiff's stock-in-trade at a valuation to be based upon an advance of 13% on the invoice prices of the goods when taken into stock. On stock being taken by the parties the plaintiff was unable to produce invoices for a large portion of the goods, but insisted that their prices could be ascertained from private markings on the packages which, she alleged, represented the prices taken from the missing invoices. Differences arose between the parties respecting the prices of these goods, but the inventory was closed with the prices, as they had been marked on the packages, carried into the valuation columns. The defendants refused to complete the purchase on account of failure to produce the invoices in question and the action was brought to recover damages for breach of the contract.—*Held*, reversing the judgment appealed from (2 D.L.R. 293; 1 West. W.R. 1103), Duff, J., dissenting, that the consent of the defendants to the closing of the inventory with the prices in question stated according to the information obtained from the private markings constituted satisfactory proof of the fulfilment of the original agreement and, consequently, damages could be recovered for breach of the contract to purchase.—*Per* Duff, J., dissenting.—There could be no contract capable of enforcement until the prices of the whole of the stock had been ascertained in the manner contemplated by the agreement, and the closing of the inventory with prices supplied from the unverified statements of the plaintiff did not constitute a new contract, varying the condition in the agreement as to the fixing of the prices to be paid. Therefore, no action could lie to recover damages for breach of the contract to purchase. *Periard v. Bergeron*, xlvii., 289.

129. *Fisheries—Seizure of foreign ship—Fishing within territorial waters—Jurisdiction of Canadian court—Concurrent findings of fact.*—Where the evidence as to the place of the seizure of a vessel for unlawful fishing within Canadian waters is unsatisfactory, and leaves it doubtful whether or not the vessel seized was, at the time of seizure, within the three-mile limit of the Canadian coast, it would be unsafe and unjust to condemn her.—*Per* Fitzpatrick, C.J., and Anglin, J.—Where a charge of unlawful fishing within the territorial waters of Canada involves the condemnation of a foreign ship, the evidence must establish with accuracy and certainty the fact that the offence was committed within such territorial waters.—*Per* Duff, J.—Where condemnation involves the forfeiture of a ship belonging to an alien friend, as well as the jurisdiction of the trial court to award the condemnation and of the legislature over the locus of the act complained of, the evidence must establish more than a probability barely sufficient to sustain a verdict in any ordinary civil action in which

none of these exceptional elements are present.—The judgment appealed from was reversed. Idington and Brodeur, J.J., dissenting on the ground that the concurrent findings of both courts below ought not to be disturbed on appeal. *Carlson v. The King*, xlix., 180.

130. *Bill of sale—Transfer between near relatives—Preferential assignment—Suspicious circumstances—Corroborative evidence—Bona fides—Practice—Fraudulent preference.*—Where a bill of sale made between near relatives is impeached as being in fraud of creditors and the circumstances attending its execution are such as to arouse suspicion the court may, as a matter of prudence, exact corroborative evidence in support of the reality of the consideration and the *bona fides* of the transaction.—Judgment appealed from (7 West. W.R. 416) reversed. *Koop v. Smith*, lj., 554.

131. *Mines and minerals—Removal of ore—Boundary—Copy of plan—Falsa demonstratio. Nova Scotia Steel Co. v. Bartlett*, *Cont. Cas.* 268.

132. *Contract—Resolution by municipal corporation—Acceptance of offer to purchase—Written instruments—Statute of Frauds—Estoppel*, xxxiv., 132.

See CONTRACT.

133. *Sale of goods—Owner not in possession—Authority to sell—Secret agreement—Estoppel*, xxxiv., 429.

See SALE.

134. *Title to lands—Colourable title—Constructive possession—Statute of Limitations*, xxxiv., 627.

See POSSESSION.

135. *Appeal—Jurisdiction—Life pension—Amount in controversy—Actuaries' tables*, xxxv., 5.

See APPEAL.

136. *Mistake—Misrepresentation—Lay agreement—Mortgage—Execution of documents by illiterate persons*, xxxv., 110.

See CONTRACT.

137. *Construction of contract—Custom of trade—Arts. 8 and 1016 C. C.—Sale of goods—Delivery*, xxxv., 274.

See CONTRACT.

138. *Crown lands—Mining lease—Trespass—Conversion—Title to lands—Description in grant—Plan of survey—Certified copy*, xxxv., 527.

See EVIDENCE.

139. *Negligence—Railways—Excessive speed—Fencing—Railway Act, 1883, ss. 194, 197—55 & 56 Vict. c. 27, s. 6 (D.)—Reasonable inferences*, xxxvi., 180.

See EVIDENCE.

140. *Title to lands—Conveyance in fee—Reservation of life estate—Possession—Ejectment*, xxxvi., 231.

See EVIDENCE.

141. *Execution of will—Promoter—Testamentary capacity—Corroborative testimony*, xxxvii., 100.

See EVIDENCE.

142. *Appeal—Order extending time—Jurisdiction—R. S. C. (1886) c. 135, s. 42—Practice—Trespass—Possession—Evidence—Eapropriation—Railways*, xxxviii., 230.

See APPEAL.

See TRESPASS.

143. *Title to land—Promise of sale—Entry in land-register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Possessory action—Compensation for improvements—Rents, issues and profits—Set-off—Tender of deed—Restrictive conditions—Commencement de preuve écrit—Arts. 411, 412, 417, 419, 1204, 1233, 1476, 1478 C. C., xxxix., 47.*

See ACTION.

See TITLE TO LAND.

144. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with watercourse—Agreement as to user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages*, xxxix., 81.

See ACTION.

See PRACTICE.

145. *Promissory note—Protest in London, England—Notice of dishonour to indorser in Canada—Knowledge of address—First mail leaving for Canada—Notice through agent—Agreement for time—Discharge of surety—Appropriation of payments*, xxxix., 290.

See BILLS AND NOTES.

146. *Title to land—Interest in mining areas—Sale by trustee—Recovery of proceeds of sale—Agreement in writing—Statute of Frauds—R. S. N. S. (1900) c. 141, ss. 4 and 7—Part performance—Acts referable to contract—Evidence—Pleading*, xxxix., 608.

See TITLE TO LAND.

147. *Title to land—Trespass—Conventional line—Boundary—Agreement at trial—Pleading—Practice*, Cam. Cas. 171.

See TRESPASS.

148. *Builders and contractors—Materials supplied—Order for money payable under contract—Estoppel—Lien—Entering equitable assignment—Practice*. *Ritchie v. Jeffrey*, lii., 243.

See BUILDERS AND CONTRACTORS.

149. *Title to land—Conveyance in fraud of creditors—Husband and wife—Advancement—Trustee—Equitable relief—Restitution—Statute of Frauds*. *Scheuerman v. Scheuerman*, lii., 625.

See TITLE TO LAND.

150. *Evidence—Sale for delinquent taxes—Tax sale deed—Premature delivery—Statutory authority—Condition precedent—Pre-*

*sumption—Curative enactment—Certificate of title (B.C.)*. *Heron v. Lalonde*, liii., 503.

See ASSESSMENT AND TAXATION.

151. *Debtor and creditor—Surety—Statute of Frauds—Advances to company—Third party's promise to pay*. *Gilles v. Brown*, liiii., 557.

See DEBTOR AND CREDITOR.

152. *Sale of land—Purchase of equity—Indemnity against mortgage—Parol evidence of relations*. *Campbell v. Douglas*, liv., 28.

See MORTGAGE.

153. *Broker—Transactions on change—Sale of goods—Principal and agent—Action—Parol testimony—Arts. 1206, 1233, 1235 C.C., liv., 131.*

See BROKER.

## 12. VARYING TERMS OF WRITINGS.

154. *Construction of deed—Description of lands—License to cut timber—Ambiguitas latens—Evidence—Boundary*.]—A license to cut timber on a lot of land described the portion affected as bounded on the south by a river. The river almost crossed the lot at a point near its northern boundary and, at another point, about nineteen arpents further south, it again crossed the lot completely. In an action to eject the licensee from the portion of the lot between the first and second bends of the river and to recover damages: *Held*, that, under the circumstances, there was no ambiguity in the designation of the quantity of the land affected by the license and, in any event, the language of the instrument must be literally construed in favour of the grantee and the party bound thereby could not be permitted to shew a different intention by evidence of surrounding circumstances. *Morel v. Le-françois*, xxxviii., 75.

155. *Account stated—Admission of liability—Promise to pay—Collateral agreement—Parol testimony*, xxxvii., 315.

See EVIDENCE.

156. *Rivers and streams—Navigable and floatable waters—Obstructions to navigation—Crown lands—Letters patent of grant—Collateral circumstances leading to grant—Limitation of terms of grant—Riparian rights—Fisheries*, xxxvii., 577.

See EVIDENCE.

157. *Chattel mortgage—Fraudulent conveyance—Pleading—Practice—Approbating and reprobating transaction—Right to redeem—Oral evidence to vary deed—Sheriff's sale—Equity of redemption—Execution*, Cam. Cas. 251.

See PLEADING.

## 13. WEIGHT OF EVIDENCE.

158. *Railways—System of construction—Exposed switch-roads—Negligence—Danger-*

*ous contrivance — Verdict — Findings against.*]—In accordance with what was shewn to be good railway practice the tracks in the company's yards were provided with switch-rods which were left uncovered and elevated a slight distance above the ties. While in performance of his work, during the day-time, an employee sustained injuries which, it was alleged, happened in consequence of tripping on switch-rods while a car was being moved over the switch. In an action by him for damages, the jury based their verdict in his favour on a finding that the railway company had been negligent in permitting the switch-rods to remain in an exposed condition. — *Held, per curiam*, affirming the judgment appealed from (8 West. W.R. 853), that the finding of negligence by the jury in regard to the switch-rods in question was against the evidence as to proper method of construction and could not be upheld. Idington and Brodeur, J.J., dissented on the view that evidence respecting the unsafe condition of the switch-rods had been properly submitted to the jury and their findings thereon ought not to be questioned. *Mallory v. Winnipeg Joint Terminals*, liii., 323.

159. *Discretion of court below—Order for new trial—Weight of evidence—Verdict — New grounds taken on appeal*, xxxiv., 338.  
See APPEAL.

160. *Master and servant—Contract of service—Termination by notice—Incapacity of servant—Permanent disability—Findings of jury—Weight of evidence*, xxxiv., 366.  
See MASTER AND SERVANT.

161. *Pleading—Purchase for value without notice—Onus—Affirmative and negative evidence—Weight of evidence*, xl., 510.  
See EVIDENCE.

162. *Expropriation of land—Compensation—Sales in vicinity. Toronto Suburban Ry. Co. v. Everson*, liv., 395.  
See EXPROPRIATION OF LAND.

163. *Maritime law—Collision—Negligence—Failure to hear signals*, xli., 54.  
See ADMIRALTY LAW.

164. *Sale of stock—Evidence of title — Duty of vendor—Defective certificate*, xlii., 88.  
See COMPANY.

165. *Servitude—Construction of deed — Purchase of dominant and servient tenements—Unity of ownership—Extinction of servitude—Revival by sale of dominant tenement—Effect of sheriff's sale—Purgation of apparent servitude—Reference to former deed creating charge—Lost deed*, xlii., 217.  
See SERVITUDE.

166. *Mines and mining—"B. C. Mineral Act, 1891"—Apex location—Exploitation of vein—Continuity—Extralateral workings — Encroachment—Trespass — Onus of proof*, xlii., 377.  
See MINES AND MINING.

167. *Ships and shipping—Perils of the sea—Unseaworthy ship—Warranty—Inspection of shipping—Certificate of seaworthiness—Construction of statute—R.S.C. 1906, c. 118, s. 342—Drowning of sailors—Negligence of master—Liability of owner. Connolly v. Grenier*, xliii., 242.

See SHIPS AND SHIPPING.

168. *Sale of land—Contract for sale — Time of essence—Delay of vendor—Description—Statute of Frauds—Specific performance. Anderson v. Foster*, xliii., 251.

See SPECIFIC PERFORMANCE.

169. *Bailment—Negligence — Damages — Storage of meat. Charrest v. Man. Cold Storage*, xliii., 253.

See BAILMENT.

170. *Chattel mortgage—Sale under powers — Notice—Offer to redeem—Tender—Equitable relief—Proceedings taken in good faith*, xlv., 3.

See CHATTEL MORTGAGE.

171. *Complaints to Railway Commissioners—Agreement for special rates—Unjust discrimination*, xlv., 321.

See RAILWAYS.

172. *Gift-money received—Pleading—Presumption—Proceeds of prostitution — Conversion—Lien. Johnston v. Desaulniers*, xlvii., 620.

173. *Sale of goods—Express or implied warranty. Canadian Gas Power and Launches v. Orr Brothers*, xlvii., 636.

174. *Negligence — Explosion of dynamite — Inferences. Toronto Construction Co. v. Strati*, xlvii., 636.

175. *Fire insurance—Change of risk — Evidence—Use of gasoline. Anglo-American Fire Ins. Co. v. Morton*, xlvii., 653.

176. *Telephone conversation — Corroboration. Warren, Gzowski & Co. v. Forst & Co.*, xlvii., 642.

177. *Contract—Sale of hay—Rejection—Conversion—Damages—Counterclaim. Patrier v. The King*, xlvii., 638.

178. *Banking—Security for advances — Assignment—Chose in action—Moneys to arise out of contract—Unearned funds—Equitable assignment to third party—Notice—Priority of claim—Estoppel—Construction of statute—Manitoba "King's Bench Act"—"Bank Act," xlvii., 313.*

See BANKING.

179. *Negligence—Operation of tramway—Passenger riding on platform—Dangerous arrangement of car*, xlvii., 395.

See NEGLIGENCE.

180. *Negligence—Operation of railway—Protection of passenger—Mere conjecture*, xlvii., 397.

See NEGLIGENCE.

181. *Operation of railway—Condition of yard—“Lay-out” of concourse—Switching—“Workmen’s Compensation for Injuries Act,” R.S.M., 1902, c. 178—Contributory negligence—Volenti non fit injuria—Non-suit—New trial, xlvii., 403.*

See RAILWAYS.

182. *Bills and notes—Mortgage—Collateral security—Recovery on mortgage—New evidence—Lapse of time—Appeal, xlvii., 404.*

See MORTGAGE.

183. *Negligence—Tramway—Explosion—Defective controller—Inspection, xlvii., 612.*

See TRAMWAYS.

184. *Construction of statute—“Quebec Public Health Act,” R.S.Q., 1909, art. 3913—Inspection of food—Duty of health officers—Quality of food—Condemnation—Seizure—Notice—Effect of action by health officers—Controlling power of courts—Injunction—Appeal—Jurisdiction—Question in controversy, xlvii., 514.*

See STATUTE.

185. *Fraudulent conveyance—Statute of Elizabeth—Husband and wife—Voluntary settlement. McGuire v. Ottawa Wine Vaults Co., xlviii., 44.*

See FRAUDULENT CONVEYANCES.

186. *Solicitor and client—Retainer—Subsequent proceedings—Habeas corpus. Duff v. Lane, xlviii., 508.*

See SOLICITOR.

187. *Onus of proof—Operation of railway—Excessive speed—Negligence. Bell v. G.T.R.R. Co., xlviii., 561.*

See RAILWAYS.

188. *Broker—Sale of land—Commission—General employment—Principal and agent—Introduction of purchaser—Interference by principal—Quantum meruit—Variation of written contract—(Alta.) 6 Educ. VII. c. 27, xlix, 1.*

See BROKER.

189. *Master and servant—Profit-sharing—Partnership—Statute—R.S.B.C., 1911, c. 3, s. 3; c. 175, s. 4—Wards and phrases—Partnership, xlix., 60.*

See PARTNERSHIP.

## EXCEPTION.

1. *Pleading—Acquiescence—Motion to quash—Practice.]—Where a respondent, on an appeal to the court below, has failed to set up the exception resulting from acquiescence in the trial court judgment, as provided by article 1220 of the Code of Civil Procedure, he cannot, afterwards, take advantage of the same objection by motion to quash a further appeal to the Supreme Court of Canada. Chamblly Mfg. Co. v. Willett, xxxiv., 502.*

AND see PRACTICE.

2. *Appeal—Jurisdiction—Declinatory reception—Interlocutory judgment—Review of judgment on exception—Practice, xxxvii., 535.*

See APPEAL.

## EXCHANGE.

1. *Vendor and purchaser—Sale of lands—Misrepresentation—Fraud—Error—Rescission of contract—Sale or exchange—Dation en paiement—Improvements on property given in exchange—Option of party aggrieved—Action to rescind—Actio quantum minaris—Latent defects—Damages—Warranty—Agreement in writing—Formal deed, xxxiv., 102.*

See VENDOR AND PURCHASER.

2. *Principal and agent—Broker selling on grain exchange—Contract in broker’s name—Liability of principal—“Futures”—“Margins”—“Options”—Board rules—Indemnity, xli., 618.*

See BROKER.

3. *Timber license—Crown lands in British Columbia—Real estate—Personalty—Contract—Sale—Consideration—Payment in joint stock shares—Vendor’s lien—Evidence—Onus of proof—Pleading and practice, xli., 458.*

See LIEN.

4. *Vendor and purchaser—Agreement to convey lands—Consideration—Price in money—Breach of contract—Recovery for “money had and received”—Sale or exchange—Damages, xlv., 296.*

See VENDOR AND PURCHASER.

5. *Contract—Sale of lands—Specific performance—Foreign lands—Jurisdiction of courts of equity—Mutuality of remedy—Relief in personam—Discretionary order—Appeal—Jurisdiction—“Final judgment.” Jones v. Tucker, liii., 431.*

See SPECIFIC PERFORMANCE.

## EXCHEQUER COURT.

1. *Appeal—Jurisdiction—Final judgment—Time for appealing—Exchequer Court Act, R. S. C. (1906) c. 140, s. 82—Exchequer Court rules.]—Notwithstanding that no appeal has been taken from the report of a referee within the fourteen days mentioned in sections 19 and 20 of the General Rules and Orders of the Exchequer Court of Canada (12th December, 1899), an appeal will lie to the Supreme Court of Canada from an order by the judge confirming the report, as required by the said sections, within the thirty days limited by section 82 of the Exchequer Court Act, R. S. C. (1906) c. 140. North Eastern Banking Co. v. The Royal Trust Co. In re Atlantic and Lake Superior Ry. Co., xli., 1.*

2. *Jurisdiction—Forfeiture of canal lands—Mis-user by Crown. Wright v. The Queen, Cout. Cas. 151.*

3. *Admiralty law—Jurisdiction of the Exchequer Court of Canada—Claim under mortgage on ship—Action in rem—Pleading—Abatement of contract price—Defects in construction—Damages*, xl., 418.

See SHIPS AND SHIPPING.

4. *Public work—Tort—Negligence of fellow servant—Liability of Crown—Right of action—Jurisdiction over claim for damages*, xl., 220.

See RAILWAYS.

5. *Appeal—Jurisdiction—Time for appealing—Exchequer Court Act, R. S. O. (1906) c. 140, s. 82—Exchequer Court rules*, xl., 455.

See APPEAL.

6. *Constitutional law—Indian lands—Extinguishment of Indian title—Payment by Dominion—Liability of province, s. 32—Dispute between Dominion and province*, xlii., 1.

See CONSTITUTIONAL LAW.

7. *Registration of trade mark—Rectification of register—Jurisdiction of court—Construction of statute. Re Vulcan Trade Mark*, li., 411.

See TRADE MARK.

8. *Appeal—Patent—Conflicting claims—Amount in controversy*, liv., 610.

See APPEAL.

### EXCISE.

*Habeas corpus—Criminal law—Jurisdiction of judge of Supreme Court of Canada—Issue of writ of jurisdiction of provincial courts—Concurrent jurisdiction—R. S. C. (1886) c. 135, s. 32—Construction of statute—Constitutional law—Powers of Parliament—“Inland Revenue Act”—“Selling and delivering a still and worm”—Cumulative charge—Summary conviction—Adjournment—Conviction in absence of accused*, Cout. Cas. 110.

See HABEAS CORPUS.

### EXECUTION.

1. *Execution for costs—Practice—Levy by sheriff of district.*]—Motions to have security approved and for leave to appeal were refused with costs.—Writs of *fi. fa.* were issued on 13th Nov., 1891, directed to the Sheriff of the District of Iberville, on præcipe filed by solicitors for the respondents. *Black v. Huot*, Cout. Cas. 106.

2. *Mining lease—Prospector's license—Testing machinery—Annexation to freehold—Trade fixtures—Fi. fa. de bonis—Sale under execution.*]—The licensees of a mining area in Nova Scotia erected a stamp mill on wild lands of the Crown, for the purpose of testing ores. All the various parts of the mill were placed in position, either resting by their own weight on the soil or steadied by bolts, and the whole installation could

be removed without injury to the freehold.—*Held*, that the mill was a chattel or, at any rate, a trade fixture removable by the licensees during the tenure of their lease or license and, consequently, it was subject to seizure and sale under an execution against goods. Judgment appealed from (36 N. S. Rep. 395) affirmed, but for different reasons. (Leave to appeal to Privy Council refused; May, 1905). *Liscombe Falls Gold Mining Co. v. Bishop*, xxxiv., 539.

3. *Practice—Appeal to Privy Council—Stay of execution—Security.*]—Where after judgment on appeal to the Supreme Court of Canada, the losing party proposes to appeal to the Judicial Committee of the Privy Council, the court will order proceedings on such judgment in the court of original jurisdiction to be stayed on satisfactory security being given for the debt, interest and costs. *Union Investment Co. v. Wells*; *Montreal Light, Heat & Power Co. v. Regan*; *B. N. White Co. v. Star Mining & Milling Co.*, xli., 244.

AND see SHERIFF'S SALE.

4. *“Practice—Stay of execution.”*]—On an application to the full court, stay of execution was granted to put in security to the satisfaction of the registrar for debt, interest and costs, the applicant undertaking that application for leave to appeal to the Privy Council would be made not later than 20th June following, up to which date stay to operate, if security given, in *Union Investment Co. v. Wells* (39 Can. S. C. R. 625), 5th May, 1908. Similar orders were made 20th Oct., 1908, by Duff, J., in chambers, in *Montreal Light, Heat and Power Co. v. Regan* (40 Can. S. C. R. 580), and, on 23rd March, 1909, by the Chief Justice in *B. N. White Co. v. The Star Mining and Milling Co.* Cf. *Durocher v. Durocher* (27 Can. S. C. R. 634). *Adams & Burns v. Bank of Montreal* (31 Can. S. C. R. 223); *Ex p. Jones* (35 N. B. Rep. 108; Cout. Dig. 1124).

5. *Conditional sale—Price payable before delivery—Execution against movables—Possession by judgment debtor—Ownership—Procedure by bailiff—Guardian to second seizure—Sole super non domino et non possedente—Adjudication upon invalid seizure—Title to goods—Rescission of sale—Action—Legal maxims.*]—The hull of a steamer sunk in a canal had been attached under judicial process and, while standing on the bank at a distance from which he could not see or touch the materials, a bailiff assumed to make a second seizure, gave no notice of his proceedings to those on board the hull, and appointed a guardian other than the one placed in charge of the hull at the time of the first seizure. The execution debtor, named in the second writ, had made a bargain for the purchase of the hull subject to the price being paid before delivery, but had not paid the price nor had the property been delivered into his possession. Subsequently, the bailiff adjudicated the hull to the appellant by judicial sale at auction.—*Held*, that there had been no valid seizure under the second writ; that the purchaser acquired no title to the property, by the adjudication, and the sale to him should be



rescinded; that, under the circumstances, there could be no application of the maxim "en fait de meubles possession vaut titre," and that the maxim "main de justice ne desaisit pas" must be taken subject to the qualification that a seizure under judicial process places the goods seized beyond the control of an execution debtor. *The Connecticut and Passumpsic Rivers Railroad Co. v. Morris* (14 Can. S. C. R. 319) distinguished, and the judgment appealed from (Q. R. 17 K. B. 193) affirmed. *Brook v. Booker*, xli., 331.

6. *Appeal — Jurisdiction—Petitory action—Borinage — Surveyor's report—Costs — Order as to location of boundary line—Execution of judgment*, xxxiv., 617.

See BOUNDARY.

7. *Attachment of debt—Sale by sheriff—Payment — Ratification — Principal and agent*, xxxv., 533.

See SHERIFF.

8. *Sheriff's sale of lands—Opposition a fin de charge—Discretionary order—Default in furnishing security — Res judicata—Estoppel by record—Frivolous and vexatious proceedings—Quashing appeal — Jurisdiction of Supreme Court of Canada—R. S. C. c. 135, ss. 27, 59—Arts. 651, 726 C. P. Q.*, xxxvi., 613.

See OPPOSITION.

9. *Assignment by mortgagor for benefit of creditors—Priorities—Assignment of claims of execution creditors—Redemption — Assignments and Preferences Act, s. 11 (Ont.)* xxxix., 229.

See MORTGAGE.

10. *Married women—Separate property—Liability for debts of husband—Registry law—"Real Property Act"—"Married Women's Act"—Conveyance during coverture*, xl., 384.

See MARRIED WOMEN.

11. *Appeal—Delay in approval of security—Jurisdiction — Extension of time—Stay of execution*, xl., 455.

See APPEAL.

12. *Sheriff—Cause of action—Execution of writ of attachment—Abandonment of seizure—Estoppel*, Cam. Cas. 78.

See ATTACHMENT.

13. *Set-off — Application of judgments—Equitable assignment — Practice—Stay of execution*, Cam. Cas. 99.

See SET-OFF.

14. *Chattel mortgage—Renewal—Time for filing—Identification of goods — Sufficiency of description—Proof of judgment and execution*, Cam. Cas. 436.

See CHATTEL MORTGAGE.

15. *Taxation of costs—Stay of execution—Setting-off costs in court below—Amending minutes of judgment—Practice*, Cout. Cas. 19.

See COSTS.

16. *Appeal — Jurisdiction — Commitment of judgment debtor—Final judgment—Manitoba King's Bench Rules 74S, 755 — "Matter or judicial proceeding"—Supreme Court Act, s. 2 (e)*. *Svensson v. Bateman*, xlii., 146.

See APPEAL.

17. *Appeal — Jurisdiction—Amount in controversy—Addition of interest—Amount of verdict—Stay of execution*. *Toronto R. R. C. v. Milligan*, xlii., 238.

See APPEAL.

18. *Contract—Sale of mining land—Substituted purchaser — Reservation of claim against original purchaser—Forfeiture of second contract—Sale to other parties—Effect on reserved claim*. *Vivian v. Olergue*, li., 527.

See SALE.

19. *Substitution — Registration—Sheriff's sale—Right of institute—Effect of sale under execution*. *Leroux v. McIntosh*, lii., 1.

See SUBSTITUTION.

## EXECUTIVE POWERS.

1. *Appeal — Jurisdiction — Discretion of Governor in Council—Stated case—Railway subsidies—Construction of statute—3 Edu. VII. c. 57—Condition of contract—Estimating cost of construction of line of railway—Rolling stock and equipment*, xxxviii., 137.

See RAILWAYS.

2. *Constitutional law — Construction of statute — "Crown Procedure Act" — R. S. B. C. c. 57—Duty of responsible minister of the Crown—Refusal to submit petition of right—Tort — Right of action—Damages*, xxxix., 202.

See ACTION.

AND see MINISTER OF THE CROWN.

## EXECUTORS AND ADMINISTRATORS.

1. *Action by executors—Evidence—Corroboration—R. S. O. [1897] c. 73, s. 10.*—In an action by executors to recover money due from C. to the testator it was proved that the latter when ill in a hospital had sold a farm to C. and \$1,000 of the purchase money was deposited in a bank to testator's credit; that subsequently C. withdrew this money on an order from testator who died some weeks after when none was found on his person nor any record of its having been received by him. C. admitted having drawn out the money but swore that he had paid it over to testator but no other evidence of any kind was given of such payment.—*Held*, reversing the judgment of the Court of Appeal, that a *prima facie* case having been made out against C. and his evidence not having been corroborated as required by R. S. O. [1897] c. 73, s. 10, the executors were entitled to judgment. *Thompson v. Coulter*, xxxiv., 261.

2. *Executor and trustee—Moneys of testator—Deposit in bank—Authority to draw against—Gift—Sale—Sale by executor—Under value—Jurisdiction of Probate Court.*—D. deposited money in bank in the joint names of himself and a daughter with power in either to draw against it. The daughter never exercised this power and when D. died she and her co-executor of his will, in applying for probate, included said money in their statement of the property of the testator.—*Held*, that the money in bank remained the property of D. and did not pass to the daughter on his death.—An executor sold property of the estate for \$800, his wife being the purchaser. On passing of the accounts the judge of probate found as a fact that the property was worth \$1,800 and ordered that the executor account for the difference.—*Held*, that the executor having really sold the property to himself secretly for an inadequate price he was properly held liable to account for its true value.—*Held*, also, that though the Probate Court could not set aside the sale it had jurisdiction to make such order.—Where by will money was bequeathed to the testator's daughter "to hold and be enjoyed by her while she remained unmarried" with a bequest over in case of her decease or marriage.—*Held*, that the daughter was only entitled to the income from said money and not to the possession and deposition thereof.—Remarks on the absence from the record of the decree of the court of the original jurisdiction. *Re Daly; Daly v. Brown*, xxxix., 122.

See WILLS.

3. *Suretyship—Simple contract—Discharge of one surety under seal—Confirmation of original guarantee—Death of surety—Powers of executors—Continuance of guarantee.*—C. and others, by writing not under seal, agreed to guarantee payment of advances by a bank to a company. Later, by writing under seal, all the sureties but one consented to discharge the latter from liability under the guarantee, the document providing that the parties did in every respect "ratify and confirm the said guarantee and consent to be bound thereby as if the said Ogle Carss had never been a party thereto."—*Held*, that the last mentioned instrument did not convert the original guarantee into a specialty and C. having died an action thereon by the bank against his executors instituted more than six years after his death was barred by the Statute of Limitations.—*Held*, per Davies, Idington and Duff, JJ., that the executors had no power to continue the guarantee terminated by C.'s death by consenting to an extension of time for payment of the amount then due notwithstanding the provision in the guarantee that it was to be continuing and that the doctrines of law and equity in favour of a surety should not apply thereto. *Union Bank of Canada v. Clark*, xliii., 299.

4. *Execution of will—Mismanagement of estate—Fraud against creditors of beneficiary.* *Union Bank of Canada v. Brigham*, Cout. Cas. 355.

5. *Construction of will—Power of appointment—Appeal—Jurisdiction—Matter in*

*controversy—Special leave.* *Bradley v. Saunders*, Cout. Cas. 380.

6. *Devise—Discretion of executors—Withholding income—Reasonable time—Failure of object of devise—Cy-press—Costs*, xxxv., 182.

See WILL.

7. *Executors—Probate of will—Promoter—Evidence—Subsequent conduct of testator—Residuary devise—Trust*, xxxvii., 404.

See WILL.

8. *Will—Powers of executors—Winding-up estate—Time limit—Legacy—Special legislation—Extension of time—3 Edw. VII. c. 136 (Que.)—Construction of statute*, xl., 489.

See WILL.

9. *Administration proceedings—Statute of Limitations—Champertous agreement—Practice*, Cam. Cas. 119.

See CHAMPERTY.

## EXEMPTIONS.

1. *Construction of statute—Assessment and taxes—Railways—Imposition of taxes—R. S. N. S. [1900] cc. 70, 73, xxxv., 96.*

See ASSESSMENT AND TAXES.

2. *Assessment and taxes—Constitutional law—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of the boundaries of Manitoba—Construction of statutes respecting the constitution of Canada, Manitoba and the North-West Territories—Construction of contract—Grant in presenti—Cause of action—Jurisdiction—Waiver*, xxxv., 550.

See ASSESSMENT AND TAXES.

3. *Homestead lands—"Land Titles Act," 6 Edw. VII. c. 24; 8 Edw. VII. c. 29 (Sask.)—Exemption from seizure—Registered incumbrance—"Exemptions Ordinance," N. W. T. Con. Ord. 1898, c. 27, xlii., 318.*

See TITLE TO LAND.

4. *Title to land—Conveyance in fraud of creditors—Husband and wife—Advancement—Trustee—Equitable relief—Restitution—Evidence—Statute of Frauds.* *Scheurman, etc.*, lii., 625.

See TITLE TO LAND.

## EXPERTISE.

1. *Boundary—Order for borning—Evidence—Existing posts and blazing—Expertise—Reference to surveyors—Reports and plans—Cases in action en bornage*, xxxix., 680.

See BOUNDARY.

2. *Assessment of damages—Case goods damaged by water—Flooding of cellar—Method of adjustment*, xl., 577.

See BUILDERS AND CONTRACTORS.

3. *Industrial improvements on streams—Raising height of dam—Nuisance—Damages—Expertise and arbitration—Right of action—Measure of damages—R. S. Q. 1888, arts. 5535, 5536, xlv., 305.*

See RIVERS AND STREAMS.

4. *Practice and procedure—Expertise—Appointment of single expert—Submission of irrelevant questions—Arts. 392-409 C. P. Q. Cie Pontbriand v. Cie de Navigation Chateauguay et Beauharnois, xlvi., 603.*

5. *Rivers and streams—Industrial improvements—Penning back waters—Permanent works—Damages—Measure of damages—Arbitration—Reparation—Loss of water-power—Future damages—Compensation once for all—Right of action—Practice—Statute—R. S. Q. 1909, arts. 7295, 7296, xlix., 344.*

See RIVERS AND STREAMS.

## EXPROPRIATION.

1. BY THE CROWN, 1-2.
2. BY MUNICIPAL AUTHORITY, 3-7.
3. FOR RAILWAYS, TRAMWAYS, ETC., 8-18.
4. OTHER CASES, 19-32.

### 1. BY THE CROWN.

1. *Expropriation of land—Payment—Market value—Potential value—Evidence.]—D. purchased at different times and in sixteen different parcels 623 acres of land, paying for the whole nearly \$7,000, or about \$11 per acre. The Crown on expropriating the land offered him \$20 per acre, which he refused, claiming \$22,000, which on a reference to ascertain the value was increased to \$45,000. The referee allowed \$38,000, which the Exchequer Court reduced to the sum first claimed.—Held, reversing the judgment of the Exchequer Court (10 Ex. C. R. 208), Girouard, J., dissenting, that there was no user of the land nor any special circumstances to make it worth more than the market value, which was established by the price for which it was sold shortly before expropriation.—D. claimed the larger price as potential value of the land for orchard purposes to which he had intended to devote it.—Held, that as he had not proved the land to be fit for such purposes, and the evidence tended to disprove it, he could not receive compensation on that ground.—By 2 Edw. VII. c. 9, s. 1, only five expert witnesses can be called by either side on the trial of a case without leave.—Quere.—If more are so called without objection by the opposite party is the testimony of the extra witness valid? Dodge v. The King, xxxviii., 149*

2. *R. S. C. 1906, c. 143, ss. 8, 23, 31—Abandonment of proceedings—Compensation—Allowance of interest—Construction of statute—Practice—Taxation of costs—Solicitor and client—Reimbursement of expenses—Interpretation of formal judgment—Reference to opinion of judge.]—While the owners still continued in possession of lands in respect of which expropriation pro-*

ceedings had been commenced under the "Expropriation Act," R. S. C. 1906, c. 143, and before the indemnity to be paid had been ascertained, the proceedings were abandoned, no special damages having been sustained.—Held, that in assessing the amount to be paid as compensation to the owners, under the provisions of the fourth sub-section of section 23 of the "Expropriation Act," there could be no allowance of interest either upon the estimated value of the lands or upon the amount tendered therefor by the Government.—The trial judge, by his written opinion, held that the owners were entitled to be fully indemnified for their costs as between solicitor and client and for all legitimate and reasonable charges and disbursements made, in consequence of the proceedings which had been taken. The formal judgment provided merely that costs should be taxed as between solicitor and client.—Per Davies, Idington, Anglin and Brodeur, JJ.—In the taxation of costs, the registrar should follow the directions given in the judge's opinion to interpret the formal judgment as framed. Duff, *contra.*—Per Duff, J.—The registrar, in taxing costs, is required by law to follow the terms of the formal judgment and it is not open to him to correct it in order to make it accord with his interpretation of the opinion judgment. The court appealed from, however, may correct the formal judgment in so far as it does not express the intention of the opinion judgment. *Quebec, Jacques-Cartier Electric Co. v. The King*, li., 594.

### 2. BY MUNICIPAL AUTHORITY.

3. *Expropriation of land—Statutory authority—Manufacturing site—Survey—Location—Trespass.]—The Town of Sydney was empowered by statute to expropriate as much land as would be necessary to furnish a location for the works of the Dominion Iron and Steel Co., a plan showing such location to be filed in the office for registry of deeds and, on the same being filed, the title to said lands to vest in the town. Engineers of the company were employed by the town to survey the lands required for the site and to make a plan which was filed as required by the statute. M. two years later, after the company had excavated a considerable part of the land, brought an action for trespass claiming that it included five chains belonging to him and, at the trial of such action, the main contention was as to the boundary of his holding. He obtained a verdict which was affirmed by the full court.—Held, reversing the judgment appealed from (36 N. S. Rep. 28) that the only question to be decided was whether or not the land claimed by M. was a part of that indicated on the plan filed; that the sole duty of the engineers was to lay out the land which the town intended to expropriate; and whether it was M.'s land or not was immaterial as the town could take it without regard to boundaries. *Dominion Iron & Steel Co. v. McLennan*, xxxiv., 394.*

4. *Water commission—Act of incorporation—Construction—Appropriation of water.]—The Act for construction of water-*

works in the City of London empowered the commissioners to enter upon any lands in the city or within fifteen miles thereof and set out the portion required for the works, and to divert and appropriate any river, pond, spring or stream therein: — *Held*, Sedgewick and Killam, JJ., dissenting, that the water to be appropriated was not confined to the area of the lands entered upon but the commissioners could appropriate the water of the River Thames by the erection of a dam and setting aside of a reservoir, and that such water could be used to create power for utilization of other waters and was not necessarily to be distributed in the city for drinking and other municipal purposes. (Reversed on appeal to Privy Council, ([1906] A. C. 110). *Water Commissioners of London v. Saunby*, xxxiv., 650.

5. *Practice — Pleading—B. C. Rule 168 —New points raised on appeal—Condition precedent — Construction of statute— 59 Vict. c. 62, ss. 9, 25 (B. C.)—Mineral claim —Expropriation — Watercourses—Trespass — Damages — Waiver — Injunction.*—Where a trespasser, by taking proper steps to that effect, would have the right to expropriate the lands in dispute, an injunction should be withheld in order to enable the necessary proceedings to be taken and compensation made. *Goodson v. Richardson* (9 Ch. App. 221), and *Coveper v. Laidler* ([1903] 2 Ch. 337) applied. But where there has been acquiescence equivalent to a fraud upon the defendant, the injunction ought not to be granted, even where the legal right of the plaintiff has been proved. *Gerrard v. O'Reilly* (3 Dr. & War. 414); *Wilmot v. Barber* (15 Ch. D. 96); *Johnson v. Wyatt* (2 De G. J. & S. 17); and *Smith v. Smith* (L. R. 20 Eq. 500), referred to.—By the defendants' charter [50 Vict. c. 62, ss. 9, 25. (B. C.)], it was provided that the powers to enter, survey, ascertain, set out and take, hold, appropriate and acquire lands should be subject to the making of compensation and that the powers, other than the powers "to enter, survey, set out and ascertain," should not be exercised or proceeded with until approval of the plans and sites by the Lieutenant-Governor in Council. The defendants entered upon lands of the plaintiffs, made surveys and constructed works thereon without making compensation or obtaining such approval. Some time after entry the defendants obtained the necessary order in council approving of the plans and sites of the land to be expropriated:—*Held*, that making of compensation was not a condition precedent to making the survey and taking possession of the land, and as the said order in council was not dealt with at the trial the rights of the parties could not properly be determined on the material presented; the injunction should, therefore, be refused and the parties left to take proceedings as they should respectively see fit.—*Per* Sedgewick and Killam, JJ.—That as approval of the plans had not been obtained till some time after the defendants had taken possession and appropriated the land, there was a trespass for which the plaintiffs were entitled to recover, but after the approval had been obtained the defendants remained rightfully in possession and could not be compelled by

a mandatory injunction to replace the land in its former position.—Judgment appealed from (10 B. C. Rep. 361) varied. *Sandon Water Works and Light Co. v. Byron N. White Co.*, xxxv., 309.

6. *Watercourses — Riparian rights—Trespass—Torts — Diversion of natural flow—Injurious affection — Damages—Execution of statutory powers — Arbitration—Injunction—Mandamus—Construction of statute— 59 Vict. c. 44 (N. S.)*.—A riparian proprietor whose property has been injuriously affected by the unlawful diversion of the natural flow of a watercourse may recover damages therefor and may also obtain relief by injunction restraining the continuation of the tortious acts so committed.—The powers conferred upon the town council of the Town of North Sydney, N.S., by the Nova Scotia statute, 59 Vict. c. 44, for the purpose of obtaining a water supply give them no rights in respect to the diversion of watercourses except subject to the provisions of the fourth section of the Act, and after arbitration proceedings taken to settle compensation for injurious affection to property resulting from the construction or operation of the waterworks. *Saunby v. The Water Commissioners of London* ([1906] A. C. 110) followed. (Leave to appeal to Privy Council was refused, 17th July, 1906). *Leahy v. Town of North Sydney*, xxxvii., 464.

7. *Municipal corporation — Statutory powers—Lands outside municipality — Appointment of arbitrators — Procedure — Award—"Towns Corporations Act," R. S. Q. 1888, arts. 4561-4569—Charter of Town of Fraserville, 3 Edw. VII. c. 69; 6 Edw. VII. c. 50—Quebec "Expropriation Act," 54 Vict. c. 38—Words and phrases—"Avoisinant"—"Adjoining."*—The statutes incorporating the Town of Fraserville (3 Edw. VII. c. 69, 6 Edw. VII. c. 50 (Que.)), by section 183, gave power to expropriate lands both within and outside the limits of the municipality, and section 193 substituted a new section to replace article 4561 of the Revised Statutes of Quebec, 1888, in regard to expropriations. In expropriating lands outside its limits for an electric lighting system the town proceeded under articles 4562 to 4569 of the "Towns Corporations Act," R. S. Q. 1888, incorporated as part of the charter by force of article 4178, R. S. Q. 1888, and obtained an order appointing an arbitrator on behalf of the owner from a judge of the Superior Court. Notwithstanding objection by the owner, an award was made and he brought action to set it aside on the ground that, by section 193, the application of articles 4562 to 4569 was confined, in the case of the Town of Fraserville, to expropriations within its limits and, as to expropriations beyond that area, nominations of arbitrators could be made only by the Attorney-General as provided by the "Expropriation Act," 54 Vict. c. 38.—*Held*, Anglin, J., dissenting.—That the sixth section of the Act, 6 Edw. VII. c. 50, by specifically authorizing the municipality to expropriate lands outside its limits enacted provisions incompatible with those of article 4561, R. S. Q. 1888, as so replaced by sec. 193, and it was, therefore, repealed as the

repugnant provisions of the later statute prevailed. *The King v. The Justices of Middlesex* (2 B. & Ad. 818), and *In re Canings and County Council of Middlesex* (1907), 1 K. B. 51, followed. Consequently, the procedure adopted for the appointment of arbitrators was proper and the award was valid.—The statute, 6 Edw. VII. c. 50, by s. 6, authorizing expropriations outside the town, in the French version made use of the phrase “dans ou en dehors de la ville et les municipalités avoisinantes,” while the English version used the term “adjoining municipalities.” The 297th section of the charter provided that in the event of discrepancy preference should be given to the French version.—*Held*, that the statute should be interpreted according to the meaning of the broader term “avoisinantes,” used in the French version and, consequently, in exercising such powers of expropriation, the municipality was not limited to taking lands in contiguous municipalities. — *Per Anglin, J.*—By section 193 of the charter, the application of the provisions of the “Towns Corporations Act,” arts. 4165 *et seq.* R. S. Q. 1888, is expressly confined to expropriations within the town; section 193 was not excluded from the charter nor impliedly repealed by the amendment of 1906 to section 183, and the appointment of arbitrators by the judge was an usurpation of the jurisdiction conferred by articles 5754d and 5754e, R. S. Q. 1888 (54 Vict. c. 38, s. 1), upon the Attorney-General of the province. *Pouliot v. Town of Fraserville*, liv., 310.

### 3. FOR RAILWAYS, TRAMWAYS, ETC.

8. *Municipal corporation—Railway aid—Construction of agreement—Description of lands—Reference to plans* — R. S. N. S. 1900, c. 99—3 Edw. VII. c. 97 (N. S.).]—A municipality passed a resolution by which it agreed to pay for lands required for the right of way, station grounds, sidings and other purposes of a railway as shewn upon a plan filed under the provisions of the general railway Act. At the time of the resolution there were four such plans filed, each shewing a portion of the land proposed to be taken for these purposes and including, in the aggregate, a greater area than could be expropriated for right of way and station grounds under the provisions of the Acts applicable to the undertaking of the railway company. The legislature passed an Act confirming such resolution. To an action by the owner of the land taken, on an award fixing the value of that in excess of what could be so expropriated, the corporation pleaded no liability on account of such excess and also, that there was no specific plan on file describing the land. — *Held*, affirming the judgment appealed from (38 N. S. Rep. 76) that the first defence failed because of the Act confirming the resolution and, as to the second, that the four plans should be read together and considered to be the plan referred to in such resolution. *County of Inverness v. McIsaac*, xxxvii., 75.

9. *Expropriation of land—Arbitration—Authority for submission—Trespass* — 2 Edw. VII. c. 104 (N.S.).]—By statute in

Nova Scotia if land is taken for railway purposes the compensation therefor, and for earth, gravel, etc., removed shall be fixed by arbitrators, one chosen by each party and the third, if required, by those two. A railway company intending to expropriate, their engineer wrote to M., who had acted for the company in other cases, instructing him to ascertain whether the owners had arranged their title so that the arbitration could proceed and, if so, to ask them to nominate their man who, with B., could appoint a third if they could not agree. The engineer added, “I will send an agreement of arbitration which each one can subscribe to or, if they have one already drafted, you can forward it here for approval.” No such agreement was sent by, or forwarded to, the engineer, but the three arbitrators were appointed and made an award on which the owners of the land brought an action.—*Held*, reversing the judgment appealed from (38 N. S. Rep. 80), that as the company had not taken the preliminary steps required by the statute which, therefore did not govern the arbitration proceedings, the award was void for want of a proper submission.—The company entered upon land and cut down trees and removed gravel therefrom without giving the owners the notice required by statute of their intention to take their property. The owners, by their action above mentioned, claimed damages for trespass as well as the amount of the award.—*Held*, that as the act of the company was not authorized by statute the owners could sue for trespass and as, at the trial, the action on this claim was dismissed on the ground that such action was prohibited there should be a new trial. *Inverness Railway and Coal Co. v. McIsaac*, xxxvii., 134.

10. *Railway Act—Appeal from award—Choice of forum—Curia designata.* —By. s. 168 of 3 Edw. VII. c. 58, amending the Railway Act, 1903 (R. S. C. (1906) c. 37, s. 209) if an award by arbitrators on expropriation of land by a railway company exceeds \$600, any dissatisfied party may appeal therefrom to a Superior Court which in Ontario means the High Court or the Court of Appeal (Interpretation Act, R. S. C. [1906] c. 1, s. 34, s-s. 26).—*Held*, that if an appeal from an award is taken to the High Court there can be no further appeal to the Supreme Court of Canada which cannot even give special leave. *James Bay Ry. Co. v. Armstrong*, xxxviii., 511.

11. *Water lots—Expectation of enhanced value—Crown grant—Statutory authority.*]—Land in Halifax, N.S., including a lot extending into the harbour, was expropriated for the purposes of the Intercolonial Railway. The title to the water lot was originally by grant from the Government of Nova Scotia, but no statutory authority for making such grant was produced. The lot could have been made much more valuable by the erection of wharves and piers for which, however, as they would constitute an obstruction to navigation, a license from the Dominion Government would have to be obtained; \$10,000 was tendered as the value of all the land expropriated and the owners, claiming much more, appealed from the

judgment of the Exchequer Court allowing that amount.—*Held*, Duff, J., dissenting, that the owners were not entitled to compensation based on the enhanced value that could be given to the water lot by the erection of wharves and piers and the expectation that a license would be granted therefor, and if they were the amount tendered was, in the circumstances, sufficient.—*Quære*.—Can a Crown grant of lands be made without statutory authority?—*Held*, per Duff, J., that there was such authority in this case.—Judgment of the Exchequer Court (12 Ex. C. R. 414) affirmed. *Cunard v. The King*, xliii., 88.

12. *Railways — Construction and operation — Location plans — Delaying notice to treat—Action to compel expropriation—Compensation in respect of lands not acquired—Mandamus—Use of highway—Crossing public lane—Nuisance.*—The approval and registration of plans, etc., of the located area of the right-of-way, under the provisions of the "Railway Act," and the subsequent construction and operation of a railway along such area, do not render the railway company liable to mandamus ordering the expropriation of a portion of the lands shown upon the plans which has not been physically occupied by the permanent way so constructed and operated.—Judgment appealed from reversed, the Chief Justice and Davies, J., dissenting. *Vancouver, Victoria & Eastern Ry. & Navigation Co. v. McDonald*, xlv., 65.

13. *Expropriation of land—Compensation—Transcontinental Railway Commission—Jurisdiction—"Railway Act" — "Exchequer Court Act," s. 2 (d)—3 Edw. VII. c. 71.*—*"The Transcontinental Railway Act,"* 3 Edw. VII. c. 71, does not expressly empower the commissioners to deal with compensation for land taken for the railway, and s. 15 giving them "the rights, powers, remedies and immunities conferred upon a company under the 'Railway Act'" does not confer such power.—The Transcontinental Railway is a public work within the meaning of s. 20, s-s. (d) of "The Exchequer Court Act," and proceedings respecting compensation for land taken for the railway may be taken by or against the Crown in the Exchequer Court.—Judgment of the Exchequer Court (13 Ex. C. R. 171) reversed. *The King v. Jones*, xlv., 495.

14. *Expropriation of lands — Estimating compensation — Prospective value — Evidence.*—In expropriations of lands for public purposes, under the 198th section of the "Railway Act," R. S. C. 1906, c. 37, as authorized by section 15 of the "National Transcontinental Railway Act," 3 Edw. VII. c. 71, the estimation of compensation to be awarded to the owners of the lands should be made according to the value of the lands to such owners at the date of expropriation. The prospective potentialities of the lands should be taken into account, but it is only the existing value of such advantages at the date of expropriation that falls to be determined. *In re Lucas and the Chesterfield Gas and Water Board* ((1909), 1 K. B. 16), and *Cedar Rapids Manufacturing and Power Co. v. Lacoste* (30 Times

L. R. 293), followed.—*Per* Duff, J.—The opinions of witnesses to the effect that certain values would be assigned to expropriated lands upon a comparison of those lands with other lands in the vicinity for which selling prices might be estimated in a vague way cannot be deemed evidence sufficient to establish values for the expropriated lands. (Leave to appeal to the Privy Council was refused, 20th May, 1914.) *The King v. Trudel*, xlix., 501.

15. *Railways—Materials for construction—Notice to treat—Statute—"Railway Act," R. S. C. 1906, c. 37, ss. 180, 191, 192, 193, 194, 196—Compensation—Date for ascertainment of value—Order for possession—Deposit of plans — Approval of Board of Railway Commissioners.*—With regard to obtaining materials for the construction of railways, the effect of sub-section 2 of section 180 of the "Railway Act," R. S. C. 1906, c. 37, merely requires the general provisions of the Act relating to the using and taking of lands to be observed in so far as they are appropriate to the expropriation of the lands and settling the compensation to be paid therefor; section 192 of the Act has no application to such a case.—Notices were given, in compliance with sections 180, 193 and 194 of the "Railway Act," and, before any change had taken place in respect to the value of the lands to be taken, the railway company obtained an order of a judge permitting it to do so and took possession of the lands in question.—*Held*, that the title of the company to the lands, when consummated, must be considered as relating back to the date when possession was taken and that the compensation payable therefor should be ascertained with reference to that time.—Judgment appealed from (6 Alta. L. R. 471) affirmed. *Saskatchewan Land Co. v. Calgary & Edmonton Railway Co.*

16. *Eminent domain — Public work — Abandonment — Revesting land taken — Compensation — Estimating damages — Construction of statute — Jurisdiction of Exchequer Court—"National Transcontinental Railway Act," 3 Edw. VII. c. 71—"Railway Act," R. S. C. 1906, c. 37, s. 207—"Exchequer Court Act," R. S. C. 1906, c. 140, s. 20—"Expropriation Act," R. S. C. 1906, c. 143—"Railways and Canals Act," R. S. C. 1906, c. 35, s. 7—Per curiam.*—The jurisdiction of the Exchequer Court of Canada is not, by the effect of the provisions of section 23 of the "Expropriation Act," limited to adjudication upon claims for compensation in consequence of expropriation proceedings in regard to which there had been only partial abandonment of the property taken, but extends as well to claims made in cases where the whole of the property has been abandoned. Decision appealed from (15 Ex. C. R. 157) affirmed.—Under the provisions of section 23 of the "Expropriation Act," the person from whom revested land has been taken is entitled to compensation for damages sustained in consequence of the expropriation proceedings in the event of abandonment of the whole parcel of land as well as in the case of the abandonment of a portion thereof only. *Ilington, J. dubitante.* — *Per* Fitzpatrick,

C.J., and Davies, Idington and Brodeur, JJ.—Section 23 of the "Expropriation Act" applies in matters of expropriation for the purposes of the National Transcontinental Railway under the provisions of the "National Transcontinental Railway Act":—*Per Anglin, J.*—It was so held in *The King v. Jones* (44 Can. S. C. R. 495); *Duff, J., contra.*—*Per Duff, J.*—The Minister of Railways and Canals has not, by virtue of the 23rd section of the "Expropriation Act," authority to abandon lands compulsorily taken for the Eastern Division of the National Transcontinental Railway which have become vested in the Crown by force of the 13th section of the "National Transcontinental Railway Act." Section 207 of the "Railway Act" is not incorporated in the "National Transcontinental Railway Act" by force of the 15th section of that statute.—On the merits of the appeal, Davies, Idington and Brodeur, JJ., considered that, in the circumstances, the amount of the award for damages made by the judgment appealed from (15 Ex. C. R. 157) was sufficient, and that the appeal should be dismissed. The Chief Justice and Anglin, J., held that the appeal should be allowed and the case remitted to the Exchequer Court for the purpose of estimating damages on the basis of allowing suppliants the value of the land at the date of expropriation less its value at the time of the abandonment. *Duff, J.*, was of opinion that the suppliants were entitled to the full compensation tendered by the Crown for the land taken, but, having accepted the property as returned and agreed to credit its diminished value in part satisfaction of their claim, the appeal should be allowed and damages awarded estimated according to the difference between the admitted value of the land to them when taken and its value at the date of the abandonment. Consequently, on equal division of opinion among the judges of the Supreme Court of Canada, the judgment appealed from (15 Ex. C. R. 157) stood affirmed, no costs being allowed. *Gibb v. The King*, lli., 402.

17. *Business premises — Special value—Mode of estimating compensation.*—Where property expropriated is, owing to its location and adaptability for business, worth more to the owner than its intrinsic value, he is not entitled to have the capital amount representing the excess added to the market value of the property. His proper compensation is the amount which a prudent man in the position of the owner would be willing to pay. *Brodeur, J.*, dissenting. Judgment appealed against (34 Ont. L. R. 328) varied. *Lake Erie & Northern Railway Co. v. Schooley*, liii., 416.

18. *Railways — Date for valuation of lands—Deposit of plan—Notice—Benefit to lands not taken—Set-off—Excessive compensation — Appeal — 6 Edw. VII. c. 30 (Ont.) — 3 & 4 Geo. V. c. 36 (Ont.).*—Where the expropriation of land is governed by the provisions of the Ontario "Railway Act" of 1906, the date for valuation is that of the notice required by sec. 68 (1). The effect is the same under the Act of 1913 if the land has not been acquired by the railway company within one year from

the date of filing the plan, etc.—The compensation for the land expropriated should not be diminished by an allowance for benefit by reason of the railway to the lands not taken, the Ontario "Railway Acts" making no provision therefor. — On appeal in a matter of expropriation the award should be treated as the judgment of a subordinate court subject to re-hearing. The amount awarded should not be interfered with unless the appeal court is satisfied that it is clearly wrong, that it does not represent the honest opinion of the arbitrators, or that their basis of valuation was erroneous. — Where the land expropriated is an important and useful part of one holding, and is so connected with the remainder that the owner is hampered in the use or disposal thereof by the severance he is entitled to compensation for the consequential injury to the part not taken:—*Holditch v. Canadian Northern Railway Co.* (50 Can. S. C. R. 265; [1916] 1 A. C. 536) distinguished. —To estimate the compensation for lands expropriated, the arbitrators are justified in basing it on a sub-division of the property if its situation and the evidence respecting it shew that the same is probable. —*Held, per Fitzpatrick, C.J. and Anglin, J.*, that to prove the value of the lands expropriated evidence of sales between the date of filing the plans and that of the notice to the owner is admissible, and also of sales subsequent to the latter date if it is proved that no material change has taken place in the interval.—*Brodeur, J.*, dissenting, held that the damages should be reduced; that the arbitrators should have considered only the market value of the lands established by evidence of recent sales in the vicinity. *Toronto Suburban Railway Co. v. Everson*, liv., 395.

#### 4. OTHER CASES.

19. *Canal lands—Condition subsequent—Forfeiture—Mis-user.* *Wright v. The Queen*, *Cout. Cas.* 151.

20. *Expropriation of lands — Compensation—Damages.* *Warburton v. Attorney-General for Canada*, *Cout. Cas.* 307.

21. *Appeal — Order extending time—Jurisdiction—R. S. C. (1886) c. 135, s. 42—Practice—Possession — Evidence—Expropriation—Railways*, xxxviii., 230.

See APPEAL.

See TRESPASS.

22. *Title to land — Dedication — Public highway—Presumption — User*, *Cam. Cas.* 53.

See HIGHWAY.

23. *Government railway—Injury to property—Crossing at embankment and cutting—Riparian rights—Access to shore—Assessment of damages*, *Cam. Cas.* 344.

See RAILWAYS.

24. *Title to land—Lease for years—Possession by sub-tenant—Purchase at sheriff's sale — Adverse occupation — Evidence —*

*Conveyance of rights acquired — Compromise—Waiver — Estoppel, Cout. Cas. 158.*

See TITLE TO LAND.

25. *Municipal corporation — Reservation for highway — Opening by-road—Damages, Cout. Cas. 210.*

See HIGHWAY.

26. *Municipal corporation — Reservation for highway — Opening first front road—Appropriation — Indemnity — Award — Procès-verbal — Description of lands and owners — Formal defects — Quebec Municipal Code, arts. 16, 903, 906, 914, 918, xli., 585.*

See MUNICIPAL CORPORATION.

27. *Street railway—Assumption by municipality—Principle of valuation—Operation in two municipalities — Compulsory taking, Berlin v. Berlin & Waterloo St. R. R., xlii., 581.*

See TRAMWAY.

28. *Lessor and lessee—Covenant to renew — Severance of term—Consent of lessor—Enforcement of covenant—Expropriation—Persons interested, Alex. Brown Milling Co. v. C. P. R., xlii., 600.*

See LEASE.

29. *Board of Railway Commissioners — Jurisdiction — Private siding — Construction of statute—"Railway Act" R. S. C. (1906) c. 37, ss. 222, 226, 317—Branch of railway—Res inter alios—Estoppel, xlii., 9.*

See RAILWAYS.

30. *Agreement to fix compensation—Arbitration or valuation—Powers of referees—Majority decision, l., 409.*

See ARBITRATION.

31. *Railways—Arbitration — Appeal — Jurisdiction of court on appeal—Reference back to arbitrators—Proceedings by arbitrators—Receiving opinion testimony—Number of witnesses examined—"Alberta Evidence Act," 1910 — Alberta "Arbitration Act," 1909—Alberta "Railway Act," 1907—Setting aside award—Evidence—Admission in prior affidavit—Ascertaining value of lands, liii., 519.*

See RAILWAYS.

32. *Municipal corporation — Statutory powers — Appointment of arbitrators — "Towns Corporation Act"—"Expropriation Act," 54 V. c. 28 (Que.)—Town charter—3 Edw. VII. c. 69; 6 Edw. VII. c. 50. Poultier v. Fraserville, liv., 310.*

See MUNICIPAL CORPORATION.

## EXTRADITION.

*Prohibition — Appeal — Jurisdiction — Supreme Court Act, s. 24 (g) —54 & 55 Vict. c. 25, s. 2—Construction of statute—Public policy — Criminal proceedings.]—A motion for a writ of prohibition to restrain an extradition commissioner from investigating a charge of a criminal nature upon which an application for extradition has*

*been made in a proceeding arising out of a criminal charge within the meaning of section 24 (g) of the Supreme Court Act, as amended by 54 & 55 Vict. ch. 25 sec. 2, and, in such a case, no appeal lies to the Supreme Court of Canada. In re Woodhall (20 Q. B. D. 832) and Hunt v. The United States (16 U. S. R. 424) referred to. (A petition for leave to appeal to Privy Council was abandoned and dismissed, 25th July, 1905.) Gaynor and Greene v. United States of America, xxxvi., 247.*

## FACTOR.

*Sale of goods—Suspensive condition — Term of credit — Delivery — Pledge — Shipping bills — Bills of lading — Indorsement of bills—Notice—Fraudulent transfer — Insolvency — Banking — Bailee receipt — Brokers and factors—Principal and agent — Resiliation of contract—Revendication — Damages — Practice — Pleading, xxxvi., 406.*

See SALE.

## FALSE ARREST.

*Malicious prosecution — Reasonable and probable cause — Bond fide belief in guilt—Burden of proof—Right of action — Damages — Art. 1053 C. C.—Pleading and practice, xl., 128.*

See MALICIOUS PROSECUTION.

## FARM CROSSINGS.

*Railways—Jurisdiction of the Board of Railway Commissioners for Canada—Statutory contract—Railway Clauses Act, 1851 —Grand Trunk Railway Act, 1852 —"Railway Act, 1888"—"Railway Act, 1903"—Appeal to Supreme Court of Canada—Jurisdiction—Controversy involved, xxxvi., 671.*

See RAILWAYS.

## FAULT.

See NEGLIGENCE.

## FEE.

*Appeal—Jurisdiction—Supreme Court Act —Duty or fee—Interest in land—Future rights, xli., 35.*

See APPEAL.

## FELLOW SERVANT.

*Negligence of fellow servant—Operation of railway—Defective switch—Public work — Tort—Liability of Crown—Right of action—Eschequer Court Act, s. 16 (c)—"Lord Campbell's Act"—Art. 1056 C. C., xl., 229.*

See NEGLIGENCE.

See MASTER AND SERVANT.



**FEMALE LABOUR.**

*Constitutional law—Criminal law—Legislation respecting orientals—Chinese places of business—Employment of white females—Statute—2 Geo. V., c. 17 (Sask.)—“B.N.A. Act, 1867,” ss. 91, 92—Local and private matters—Property and civil rights—Naturalized British subject—Conviction under provincial statute, xlix., 440.*

See CONSTITUTIONAL LAW.

**FENCES.**

1. *Railway crossing—Speed of train—Fencing track, xxxiv., 81.*

See RAILWAYS.

2. *Title to land—Trespass—Possession—Right of action—Enclosure by fencing, xxxv., 185.*

See TITLE TO LAND.

3. *Negligence—Railway tracks—Fencing crossings—Running of trains—Evidence—Reasonable inferences—Cattle guards—Protection for public, xxxvi., 180.*

See RAILWAYS.

4. *Operation of railway—Straying animals—Negligence—Duty as regards trespassers on railway—Herding stock—Evidence—Inferences as to facts, xxxvi., 641.*

See NEGLIGENCE.

5. *Negligence—Railway Act, 1903—3 Edw. VII. c. 58, s. 237—Animals at large—Construction of statute—Words and terms—“At large upon the highway or otherwise”—Fencing of railway—Trespass from lands not belonging to owner of animals, xxxix., 251.*

See NEGLIGENCE.

**FERAE NATURAE.**

*Sea-coast and inland fisheries—Canadian waters—Local waters—Navigable waters—Open sea—“Railway belt”—Foreshore—Ferae naturae—Legislative jurisdiction—Confirmation of Statute, xlviii., 493.*

See FISHERIES.

**FERRIES.**

1. *Constitutional law—Interprovincial and international ferries—Establishment or creation of ferries—License—Franchise—Exclusive rights—Powers of Parliament—R. S. C. c. 97—51 Vict. c. 23 (D.)—Acts by Governor in Council.]—Chapter 97 R. S. C., “An Act respecting Ferries,” as amended by 51 Vict. ch. 23, is *intra vires* of the Parliament of Canada.—The Parliament of Canada has authority to, or to authorize the Governor-General in Council to establish or create ferries between a province and any British or foreign country or between two provinces.—The Governor-General in Council, if authorized by Parliament, may con-*

*fer, by license or otherwise, an exclusive right to any such ferry. In re International and Interprovincial Ferries, xxxvi., 206.*

2. *Negligence—Ferryboat wharf—Dangerous way—Precautions for preventing accidents—Evidence—Findings of jury—Non-suit, xxxv., 693.*

See NEGLIGENCE.

**FINAL JUDGMENT.**

*Hillman v. Imp. Elevator re Gt. Northern Con. Bateman v. Scott. St. John Lumber Co. v. Roy. Beauvais v. George. Montreal Tramways v. McGill. Jones v. Tucker, see liii.*

See APPEAL, JUDGMENT.

**FINDINGS OF FACT.**

1. *Negligence—Dangerous operations—Defective system—Concurrent findings—Common fault.]—The Supreme Court of Canada affirmed the unanimous judgments of the courts below, whereby it was held that defendant was liable in damages for injuries sustained by the plaintiff through an accident which occurred in consequence of a defective system of blasting rocks with dynamite permitted by his foreman on works where the plaintiff was engaged by him in a dangerous operation. The Montreal Rolling Mills Co. v. Corcoran (26 Can. S. C. R. 595), and Tooke v. Bergeron (27 Can. S. C. R. 567) distinguished.—The plaintiff had been guilty of contributory negligence and damages apportioned according to the practice in the Province of Quebec. Paquet v. Dufour, xxxix., 332.*

2. *Findings of jury—Questions of fact—Duty of appellate court.]—Where the question was one of fact, and the jury, on evidence properly submitted to them, accepted the evidence on one side and rejected that adduced upon the other, the Supreme Court of Canada refused to disturb their findings. (Q. R. 31 S. C. 370.) Windsor Hotel Co. v. Odell, xxxix., 336.*

See PRACTICE.

3. *Inferences by jury—Determining cause of accident—Evidence to support verdict—Practice.]—Where the jury, drawing inferences, adopted one of several theories respecting the determining cause of the accident through which the plaintiff's injuries were sustained, and there was evidence to support their finding, the court refused to disturb the verdict. Winnipeg Electric Ry. Co. v. Schwartz, xlix., 80.*

4. *Principal and agent—Evidence—Disclosure.]—The Supreme Court of Canada refused to review the finding of the courts below that the defendants, while agents for the sale of the property in question, when purchasing it themselves under the contract for re-sale, had discharged their duty towards the plaintiff in regard to disclosure of material facts relating to the value of the*

property. *Frith v. Alliance Investment Co.*, xlix., 384.

AND see SPECIFIC PERFORMANCE.

5. *Mines and mining—Dangerous ways, etc.—Inspection of pit—Employer and employee—Negligence—Evidence—Presumptions—Reversal on findings of fact*, xxxvi., 13.

See NEGLIGENCE.

6. *Negligence—Railway crossing—Findings of jury—"Look and listen."* xxxviii., 94.

See NEGLIGENCE.

7. *Customs Act—Importation of cattle—Smuggling—Olandestinely introducing cattle into Canada—Claim for return of deposit made to secure release of cattle seized—Evidence*, xxxix., 12.

See CUSTOMS.

8. *Negligence—Employer and employee—Dangerous machinery—Want of proper protection—Voluntary exposure—Findings of jury—Charge of judge—Assignment of facts—Practice—Assessment of damages*, xxxix., 365.

See NEGLIGENCE.

9. *Charge by judge—Finding of jury—New trial—Practice—New evidence on appeal*, xxxix., 390.

See PRACTICE.

10. *Promissory note—Illegal consideration—Smuggling transaction—Burden of proof—Findings of trial judge*, xxxix., 675.

See BILLS AND NOTES.

11. *Employer and employee—Improper appliances—Negligence—Proximate cause—Finding of jury—Evidence*, xl., 396.

See NEGLIGENCE.

12. *Life insurance—Warranty—Misstatements—Concealments of material facts—Pleading—Questions at issue—Amendment—Practice—Successful party moving against findings*, Cam Cas. 463.

See INSURANCE, LIFE.

13. *Operation of railway—Level-crossing—Negligence—Statutory signals—Findings against weight of evidence—New trial—Practice*, S Can, Ry. Cas. 61.

See NEGLIGENCE.

AND see APPEAL; PRACTICE.

14. *Construction of contract—Findings of trial judge—Appreciation of evidence—Reversal on appeal*, xli., 134.

See CONTRACT.

15. *Action—Timber on pre-empted lands—Rights of pre-emptor—B.C. "Land Act," R.S.B.C., 1911, c. 129, ss. 77 et seq. and 132—Issue on appeal—Practice—Negligence—Assessment of damages—Findings of trial judge*, xlix., 33.

See DAMAGES.

16. *Negligence—Employer's liability—Ship labour—Disregard of rules—"Accident*

*in course of employment"—Action—Claim by dependents—Findings of jury—Evidence—Art. 1054 C. C.*, xlix., 136.

See NEGLIGENCE.

17. *Fisheries—Seizure of foreign ship—Fishing within territorial waters—Evidence—Jurisdiction of Canadian court—Concurrent findings of fact*, xlix., 180.

See FISHERIES; PRACTICE; APPEAL.

## FIRE-ESCAPE.

*Title to land—Construction of deed—Easement appurtenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Trespass—Right of action*, xl., 188.

See DEED.

## FIRE-GUARDS.

*Railways—Constitutional law—Legislative jurisdiction—Application of statute—"The Prairie Fires Ordinance"—Con. Ord. N. W. T. (1898) c. 87, s. 2—N. W. T. Ord. 1903, (1st sess.) c. 25 and c. 30, (2nd sess.)—Works controlled by Parliament—Operation of Dominion railway*, xxxix., 476.

See RAILWAYS.

## FISHERIES.

1. *Illegal fishing—Seizure of vessel—Evidence of vessel's position.*—The American vessel "Kitty D." was seized by the Government cruiser "Petrel" for fishing on the Canadian side of Lake Erie. In proceedings by the Crown for forfeiture the evidence was conflicting as to the position of both vessels at the time of seizure and the local judge in admiralty held that the evidence did not establish that the vessel seized was in Canadian waters at the time. On appeal by the Crown: *Held*, Taschereau, C.J., dissenting, that as the "Petrel" was furnished with the most reliable log known to mariners for registering distances and her compass had been carefully tested and corrected for deviation on the morning of the seizure: as the "Kitty D." and the two tugs in her vicinity at the time whose captains gave evidence to shew that she was on the American side carried no log nor chart and kept no log-book; and as the local judge had misapprehended the facts as to the course sailed by the "Petrel," the evidence of the officers of the "Petrel" must be accepted and it established that the "Kitty D." had been fishing in Canadian waters and her seizure was lawful. *The King v. The "Kitty D."* xxxiv., 673.

2. *Canadian waters—Three-mile-zone—Fishing by foreign vessels—Legislative jurisdiction—Seizure on high seas—Pursuit beyond territorial limit—International law—Constitutional law—B. N. A. Act, 1867, s. 91, s.-s. 12—Sea-coast fisheries—R. S. C. 94, ss. 2, 3, 4.*—Under the provisions of the "British North America Act, 1867," s. 91, s.-s. 12, the Parliament of Canada has

exclusive jurisdiction to legislate with respect to fisheries within the three-mile-zone off the sea-coasts of Canada.—A foreign vessel found violating the fishery laws of Canada within three marine miles off the sea-coasts of the Dominion may be immediately pursued beyond the three-mile-zone and lawfully seized on the high seas. Girouard, J., dissenting. The judgment appealed from (11 B. C. Rep. 473) was affirmed. *The Ship "North" v. The King*, xxxvii., 385.

3. *Sea-coast and inland fisheries—Canadian waters—Tidal waters—Navigable waters—Open sea—B.C. "Railway Belt"—Foreshores—Fera natura—Legislative jurisdiction—Construction of statute—*7 V. c. 14, ss. 2-6 (B.C.).—In respect of waters within the "Railway Belt" of British Columbia which are tidal it is not competent to the Legislature of British Columbia to authorize the Government of the province to grant by way of lease, license or otherwise the exclusive right of taking fish which, as *fera natura*, are the property of nobody until caught. The public right to take such fish being subject to the exclusive control of the Dominion Parliament it is immaterial whether the beds of tidal waters passed or did not pass to the Dominion in virtue of the transfer of the "Railway Belt."—As to waters within the "Railway Belt," which although non-tidal are in fact navigable, the Legislature of British Columbia is likewise incompetent to make such grants.—It is not competent to the Legislature of British Columbia to authorize the Government of the Province to grant, in the open sea within a marine league of the coast of that province, by way of lease, license or otherwise the exclusive right of taking such fish (*fera natura*).—In so far as concerns the authority of the Legislature of British Columbia to authorize the Government of the province to grant by way of lease, license or otherwise the exclusive right to take such fish (*fera natura*), in tidal waters, there is no difference between the open sea within a marine league of the coast of the province and the gulfs, bays, channels, arms of the sea and estuaries of the rivers within the province or lying between the province and the United States of America.—*Per Fitzpatrick C.J.*, and Davies, Idington, Duff and Brodeur, J.J., (Anglin, J., expressing no opinion on the point).—The beneficial ownership of the beds of navigable non-tidal waters within the "Railway Belt" in British Columbia, which were vested in the Crown, in the right of that province, at the time of the transfer of the "Railway Belt lands" to the Dominion of Canada, passed to the Dominion in virtue of the transfer.—*In re British Columbia Fisheries*, xlvii., 493.

4. *Seizure of foreign ship—Fishing within territorial waters—Evidence—Jurisdiction of Canadian court—Concurrent findings of fact.*—Where the evidence as to the place of the seizure of a vessel for unlawful fishing within Canadian waters is unsatisfactory, and leaves it doubtful whether or not the vessel seized was, at the time of seizure, within the three-mile limit of the Canadian coast, it would be unsafe and unjust to condemn her.—*Per Fitzpatrick, C.J.*, and Anglin, J.—Where a charge of unlawful fishing within the territorial waters of Canada

involves the condemnation of a foreign ship, the evidence must establish with accuracy and certainty the fact that the offence was committed within such territorial waters.—*Per Duff, J.*—Where condemnation involves the forfeiture of a ship belonging to an alien friend, as well as the jurisdiction of the trial court to award the condemnation and of the legislature over the locus of the act complained of, the evidence must establish more than a probability barely sufficient to sustain a verdict in any ordinary civil action in which none of these exceptional elements are present.—The judgment appealed from was reversed, Idington and Brodeur, J.J., dissenting on the ground that the concurrent findings of both courts below ought not be disturbed on appeal. *Carlson v. The King*, xlix., 180.

5. *Rivers and streams—Navigable and floatable waters—Obstructions to navigation—Crown lands—Letters patent of grant—Evidence—Collateral circumstances leading to grant—Limitation of terms of grant—Title to land—Riparian rights—Arts. 400, 414, 503 C. C., xxxvii., 577.*

See RIVERS AND STREAMS.

6. *Construction of statute—Fishery and game leases—Personal servitude—Possession—Use and occupation—Right of action—Action en complainte—Renewed leases—Priority—Watercourses—Works to facilitate lumbering operations—Driving logs—Storage dams—Penning back waters out of track of transmission—Damages—Rights of lessees—Injury to preservers—Injunction—Demolition of works, xlv., 1.*

See GAME LAWS; RIVERS AND STREAMS.

## FIXTURES.

See TRADE FIXTURES.

## FLOATABLE STREAMS.

*Title to lands—Grant from Crown—Implicated reservations—Description—Inlet of navigable river—Crown domain—Public law—Construction of deed—Possession—Es-toppel—Evidence—Waiver, xxxiv., 603.*

See RIVERS AND STREAMS.

## FOOD.

*Construction of statute—"Quebec Public Health Act." R. S. Q., 1909, art. 3913—Inspection of food—Duty of health officers—Quality of food—Condemnation—Seizure—Notice—Effect of action by health officers—Controlling power of courts—Evidence—Injunction—Appeal—Jurisdiction—Question in controversy, xlvii., 514.*

See STATUTE.

## FORCE MAJEURE.

See VIS MAJOR.

**FORECLOSURE.**

1. *Title to land—Mortgage—Foreclosure—Equitable jurisdiction of court—Opening up foreclosure proceedings—Construction of statute—“Real Property Act.”* R. S. M. (1902), c. 148—5 & 6 Edw. VII, c. 75, s. 3, (Man.)—*Equity of redemption—Certificate of title.*]—Under the provisions of section 126/ of the Manitoba “Real Property Act.” R. S. M. (1902), ch. 148, as amended by section 3 of chapter 75 of the statute of Manitoba, 5 & 6 Edw. VII., the court has jurisdiction to open up foreclosure proceedings in respect of mortgages foreclosed under sections 113 and 114 of the Act, notwithstanding the issue of a certificate of title, in the same manner and upon the same grounds as in the case of ordinary mortgages, at all events where rights of a third party holding the status of a *bonâ fide* purchaser for value have not intervened.—Judgment appealed from (19 Man. R. 560) reversed.—Leave to appeal to Privy Council refused, 11th July, 1911. *Williams v. Box*, xlv., 1.

2. *Appeal—Jurisdiction—Discretionary order—Stay of proceedings—Final judgment—Controversy involved—R. S. C. c. 129, s. 76—R. S. C. c. 135, s. 28, xxxvii., 173.*

See APPEAL.

3. *Assignment by mortgagor for benefit of creditors—Priorities—Assignment of claims of execution creditors—Redemption—Assignments and Preferences Act. s. 11 (Ont.), xxxix., 229.*

See MORTGAGE.

4. *Powers of company—Sale of shares—Security by mortgage—Subsequent creditor—Status—Jurisdiction. Hughes v. Nor. Elec. & Mfg. Co., 1., 626.*

See PRACTICE.

**FOREIGN CORPORATIONS.**

*Company law—Conflict of laws—Incorporation by Dominion authority—Powers—B.C. “Companies Act”—Unlicensed extra-provincial companies—“Carrying on business”—Contract—Transactions beyond limits of province—Promissory notes—Right of action—Juristic disability—Construction of statute—(B.C.) 10 Edw. VII., c. 7, ss. 139, 166, 168. John Deere Plow Co. v. Agnew, xlvi., 208.*

See COMPANY LAW.

**FOREIGN RELATIONS.**

*Fisheries—Seizure of foreign ship—Fishing within territorial waters—Evidence—Jurisdiction of Canadian court—Concurrent findings of fact, xlix., 180.*

See FISHERIES.

**FOREIGN VESSELS.**

*Canadian waters—Three-mile-zone—Fishing by foreign vessels—Legislative jurisdic-*

*tion—Seizure on high seas—Pursuit beyond territorial limit—International law—Constitutional limit—Construction of statute—B. N. A. Act, 1867, s. 91, s. s. 12—R. S. C. c. 94, ss. 2, 3, 4—Sea-coast fisheries, xxvii., 385.*

See CONSTITUTIONAL LAW.

**FOREMAN.**

1. *Negligence—Employer and employee—Disobedience of orders—Dangerous way, works and appliances, xxxv., 202.*

See EMPLOYER AND EMPLOYEE.

2. *Mines and mining—Dangerous ways, works, etc.—Inspection of pit—Employer and employee—Evidence—Presumption—Reversal on findings of fact, xxxvi., 13.*

See NEGLIGENCE.

3. *Dangerous operations—Defective system—Findings of fact—Common fault—Apportionment of damages, xxxix., 332.*

See NEGLIGENCE.

4. *Evidence—Provincial laws in Canada—Judicial notice—Conflict of laws—Negligence—Common employment—Construction of statute—“Longshoreman”—“Workman,” xxxix., 311.*

See EVIDENCE; NEGLIGENCE.

**FORESHORE.**

1. *Title to land—Title by possession—Nature of possession—Disclaimer—Evidence of title—Nullum tempus Act.]—In proceedings by the Dominion Government for expropriation of land on the Miramichi River the owner, T., claimed compensation for the part of the adjoining foreshore of which he had no documentary title. It was proved that in 1818 the original grantee had leased a part of the land and the privilege of erecting a boom for securing timber on the river in front of it; that his successors in title had, by leasing and devising it, dealt with the foreshore as owners; that for over forty years from about 1840 the boom in front of it was maintained and used by the owners of the land; and that at low tide the logs in the boom would rest on the solum.—Held, reversing the judgment of the Exchequer Court (15 Ex. C. R. 177), Davies and Idington, JJ., dissenting, that there was sufficient evidence of adverse possession of the foreshore by the owners of the adjoining land for more than sixty years to give the present holder title thereto.—Per Anglin, J.—From a continuous user for more than forty years, which is proved, a prior like user may be inferred. Moreover, from the evidence of assertion of ownership and possession since 1818 a lost grant might, if necessary, be presumed.—Per Davies and Idington, JJ.—The placing and use of the boom was only incidental to the lumber business carried on at this place and the consent of the riparian owner thereto cannot be regarded as a claim of adverse possession. The presumption of lost grant was not placed and cannot be relied on; moreover, a lost grant*

could not be presumed in the circumstances.—On application by the Minister of Justice for a disclaimer of damages for the taking of the foreshore the Government of New Brunswick passed an order in council stating that the owner of the adjoining land taken claimed title to said foreshore; that it had been used by the owners for booming purposes and otherwise for more than sixty years; that the Attorney-General was of opinion that whatever rights the province may have had were extinguished and that no claim should be made by it to said foreshore.—*Held, per Duff, J.*—This is an admission touching the title to the foreshore by the only authority competent to make it and is evidence against the Dominion Government in the expropriation proceedings; that it is *prima facie* evidence of title by possession in T.; and that there is nothing in the record to impair the strength of this *prima facie* case. *Tweedie v. The King*, lii., 197.

2. *Sea-coast and inland fisheries—Canadian waters—Tidal waters—Navigable waters—Open sea—B.C. "Railway Belt"—Fere natura—Legislative jurisdiction—Construction of statute*, xvii., 493.

See FISHERIES.

3. *Canadian waters—Sea coasts—Property in foreshores—Harbours—Havens—Roadsteads—Ownership in beds—Construction of statute—"B. N. A. Act, 1867" ss. 108, 109. Attorney Gen. v. Ritchie*, lii., 78.

See CONSTITUTIONAL LAW.

4. *Title by possession—Nature of possession—Evidence. Tweedie v. The King*, lii., 197.

See TITLE TO LAND.

### FORFEITURE.

1. *Mis-user of canal lands—Condition subsequent. Wright v. The Queen*, Cout. Cas. 151.

2. *Title to land—Conveyance upon conditions—Public park—Trust—Forfeiture—Assignment of interest—Decree in favour of assignee—Champerous agreement*, xxxv., 121.

See TITLE TO LAND.

3. *Vendor and purchaser—Sale of land—Payment by instalments—Specified dates—Time of essence—Penalty—Payment delayed to be deposit*, xlix., 360.

See VENDOR AND PURCHASER.

### FORGERY.

1. *Bills and notes—Material alterations—Partnership—Mandate—Assent of parties—Liability of indorser—Construction of statute—"Bills of Exchange Act."—R. induced H. to become a party to and indorser of a demand note for the purpose of raising funds and agreed to give warehouse receipts as security to the bank on discounting the note. It was arranged that the goods covered by the warehouse receipts were to be held and sold on joint account, each sharing*

equally in the profits or losses on the transaction. Subsequently R. altered the note, without the knowledge or consent of H., by adding thereto the words "*avec intérêt à sept par cent par an*," and falsely represented to the bank that H. held the warehouse receipts as collateral security for his indorsement. A couple of months later H., for the first time, became aware that the goods had never been purchased or placed in warehouse, that no warehouse receipt had been assigned to the bank, and did not, until some months later, know that the alteration had been made in the note. There was some evidence that H. had asked for time to make a settlement of the amount due to the bank upon the note after he had become aware of the fraud and the alteration so made.—*Held, by Idington, Maclellan and Duff, JJ.*, that the instrument was a forgery and could not be ratified by an *ex post facto* assent. *The Merchants Bank v. Lucas* (18 Can. S. C. R. 704; Cam. Cas. 275), and *Brook v. Hook* (L. R. 6 Ex. 89), followed.—*Per Idington, J.*—The circumstances of the case did not shew that there had been any assent to the alteration within the meaning of section 145 of the "Bills of Exchange Act."—*Per Maclellan, J.*—The assent required to bring an altered bill within the exception provided by section 145 of the "Bills of Exchange Act," R. S. C. (1906), ch. 119, must be given by the party sought to be bound at the time of or before the making of the alteration.—*Held, also, the Chief Justice and Davies, J., contra*, that, in the special circumstances of the case, there was no partnership relation between the parties to the note for the purposes of the transaction in question and there could be no implied authorization for the making of the alteration in the note.—*Per Fitzpatrick, C.J.*—The transaction in question was a joint venture or particular partnership for the enterprise in contemplation of the parties and, consequently, R. had a mandate to make whatever agreement was necessary with the bank to obtain the funds and to provide for the payment of interest on the advances required to carry out the business.—Judgment appealed from (Q. R. 16 K. B. 191) reversed, the Chief Justice and Davies, J., dissenting. *Hébert v. La Banque Nationale*, xl., 458.

2. *Estoppel—Discount by bank—Notice—Duty to notify holder*, xxxv., 133.

See BANKS AND BANKING.

3. *Crown—Banks and banking—Forged cheque—Payment—Representation by drawee—Implied guarantee—Estoppel—Acknowledgment of bank statement—Liability of indorsers—Mistake—Action—Money had and received*, xxxviii., 258.

See BANKS AND BANKING.

4. *Banks and banking—Forged cheque—Negligence—Responsibility of drawee—Payment—Mistake—Indorsement—Implied warranty—Principal and agent—Action—Money had and received—Change in position—Laches*, xl., 366.

See BANKS AND BANKING.

5. *Bill of exchange—Ratification—Estoppel*, Cam. Cas. 275.

See BILLS AND NOTES.

## FRANCHISE.

1. *Construction of statute—Toll-bridge—Franchise—Exclusive limits—Measurement of distance—Encroachment*— 58 Geo. III. c. 20 (L. C.)—The Act. 58 Geo. III. ch. 20 (L. C.) authorized the erection of a toll-bridge across the River Etchemin, in the Parish of Ste. Claire, "opposite the road leading to Ste. Thérèse, or as near thereto, as may be, in the County of Dorchester," and by section 6, it was provided that no other bridge should be erected or any ferry used "for hire across the said River Etchemin, within half a league above the said bridge and below the said bridge."—*Held*, Nesbitt and Idington, J.J., dissenting, that the statute should be construed as intending that the privileged limit defined should be measured up-stream and down-stream from the site of the bridge as constructed.—*Per* Nesbitt and Idington, J.J., that there was not any expression in the statute showing a contrary intention, and, consequently, that the distance should be measured from a straight line on the horizontal plane; but, *per* Idington, J., in this case, as the location of the bridge was to be "opposite the road leading to Ste. Thérèse," and there was no proof that the new bridge complained of was within half a league of that road, the plaintiff's action should not be maintained. *Rouleau v. Pouliot*, xxxvi., 224.

2. *Construction of railway—Injunction—Interested party—Public corporations—Franchises in public interest—Lapse of charter powers—"Railway" or "Tramway"—Agreement as to local territory—Invalid contract—Public policy—Dominion Railway Act—Work for general advantage of Canada—Quebec Railway Act—Municipal Code—Limitation of powers*, xxxv., 48.

See RAILWAYS.

3. *Constitutional law—Inter-provincial and international ferries—Establishment or creation of ferries—License—Exclusive rights—Powers of Parliament—Orders in Council—Dominion Acts in relation of ferries*, xxxvi., 206.

See FERRIES.

4. *Abuse of powers—Operation of machinery—Continuing nuisance—Damages*, xxxvi., 329.

See NUISANCE.

5. *Waterworks—Statutory contract—Exclusive franchise—Condition of defeasance—Forfeiture of monopoly—Demurrer—Right of action by municipality—Rescission—Art. 1065 C. C.—40 Vict. c. 68 (Que.)*, xl., 629.

See ACTION.

6. *By-law—Renewal—Approval by rate-payers. Ricard v. Ville de Grand 'Mère*, l., 122.

See CONTRACT.

## FRAUD.

1. *Insolvent lessor—Fraudulent contrivance—Purchase of leased property—Sheriff's*

*sale—Debtor and creditor.*—Even if a lessee is aware that his lessor was embarrassed at the time he took the lease, and subsequently when he purchased the leased property at sheriff's sale, that would not make the transaction fraudulent as against the lessor's creditors.—A creditor who was a party to the action against the lessor in which the property was sold in execution subject to the lease and who did not oppose such sale can not, afterwards, contest payment of the amount on the ground of fraud. *Langelet v. Charlebois*, xxxiv., 1.

AND see LEASE.

2. *Vendor and purchaser—Misrepresentation—Fraud—Error—Rescission of contract—Option of party aggrieved—Action to rescind—Actio quantum minoris—Latent defects—Damages—Warranty.*—An action will lie against the vendor to set aside the sale of real estate and to recover the purchase price on the ground of error and of latent defects, even in the absence of fraud. In such a case, the purchaser alone has the option of returning the property and recovering the price or of retaining the property and recovering a portion of the price paid; he cannot be forced to content himself with the action *quantum minoris* and damages merely, upon the pretext that the property might serve some of his purposes notwithstanding the latent defects.—When the vendor has sold, with warranty, a building constructed by himself he must be presumed to have been aware of latent defects and, in that respect, to have acted in bad faith and fraudulently in making the sale.—The vendor, defendant, in the agreement for sale, represented that a block of buildings which he was selling to the plaintiff, had been constructed by him of solid stone and brick and so described them in formal deeds subsequently executed relating to the sale. The walls subsequently began to crack and it was discovered that a portion of the buildings had been improperly built of framed lumber filled in and cased with stone and brick in a manner to deceive the purchaser.—*Held*, that the contract was vitiated on account of error and fraud and should be set aside, and that, as the vendor knew of the faulty construction, he was liable not only for the return of the price, but also for damages.—*Held*, further, that the action *quantum minoris* and for damages does not apply to cases where contracts are voidable on the grounds of error or fraud, but only to cases of warranty against latent defects if the purchaser so elects; the only recourse in cases of error and fraud being by rescission under art. 1,000 of the Civil Code. *Pagnuelo v. Choquette*, xxxiv., 102.

3. *Constructive or equitable frauds—Title to land—Transfer by registered owner—"Land Titles Act, 1894"—Caveat—Litigious rights—Pleading—Construction of statute.*—The exception as to fraud referred to in the 126th section of the "Land Titles Act, 1894," means actual fraudulent transactions in which the purchaser has participated and does not include constructive or equitable frauds. *Syndicat Lyonnais du Klondyke v. McGrade*, xxxvi., 251.

AND see YUKON TERRITORY.

4. *Mines and mining — Vendor and purchaser—Sale of mining locations—Consideration in lump sum—Separate valuations — Misrepresentation—Deceit and fraud—Measure of damages.* — Upon representations made by the vendor the plaintiffs purchased several mining locations, the consideration therefor being stated in a lump sum. In an action of fraud and deceit brought by the purchaser against the vendor the trial judge, in discussing the total consideration for the properties purchased, found that there was evidence to shew the values placed by the parties upon each of two of these properties as to which false and fraudulent representations had been made, and which had turned out worthless or nearly so—*Held*, reversing the judgment appealed from, the Chief Justice and Idington, J., dissenting, that the finding of the trial judge as to the consideration ought not to be disturbed upon appeal and that the proper measure of damages, in such a case, was the actual loss sustained by the purchaser by acting upon the misrepresentations of the vendor in respect of the two mining locations in question irrespectively of the results of values yielded by the other locations purchased at the same time and as to which no false representations had been made. *Peek v. Derry* (37 Ch. D. 541) followed. (Appeal to Privy Council, allowed, 9th May, 1907.) *Syndicat Lyonnais du Klondyke v. Barrett*, xxxvi., 279.

5. *Revocation of will — Testamentary capacity—Findings of fact—Practice—Improper suggestion—Undue influence—Captation—Bounty taken by promoter—Fraudulent representations—Evidence — Onus of proof.*—While the testator was suffering from a wasting disease of which he died shortly afterwards, the defendant, his brother, took advantage of his weakness of mind and secretly obtained the execution of a will, in which he was made the principal beneficiary, by fraudulently suggesting and causing the testator to believe that his malady was caused and aggravated by the carelessness and want of skill of his wife in the preparation of his food. The testator and his wife had lived together in harmony for a number of years, and, shortly after their marriage, had made wills by which each of them, respectively, had constituted the other universal residuary legatee and the testator's former will, so made, was revoked by the will propounded by the defendant.—*Held*, that, as the promoter of the will, by which he took a bounty, had failed to discharge the onus of proof cast upon him to shew that the testator had acted freely and without undue influence in the revocation of the former will, the second will was invalid and should be set aside. *Mayrand v. Dussault*, xxxviii., 460.

AND see WILL.

6. *Trade-mark—Infringement — Inventive term — Coined-word — Exclusive use — Colourable imitation—Common idea — Description of goods — Deceit and fraud — Passing-off goods.*—The hyphenated coined words "shur-on" and "staz-on" are not purely inventive terms but are merely corruptions of words descriptive of the goods (in this case, eye-glass frames) to which they were

applied, intending them to be so described, and, therefore, they cannot properly be the subject of exclusive use as trade-marks. A trader using the term "sta-zou" as descriptive of such goods, is not guilty of infringement of any rights to the use of the term "shur-on" by another trader as his trade-mark, nor of fraudulently counterfeiting similar goods described by the latter term; nor is such a use of the former term a colourable imitation of the latter term calculated to deceive purchasers, as the terms are neither phonetically nor visually alike.—The judgment appealed from (13 Ont. L. R. 144), was affirmed. *Kirstein Sons & Co. v. Cohen Bros.*, xxxix., 286.

7. *Company — Sale of shares—Misrepresentation — Fraud—Action for deceit — Accord and satisfaction.*—G., a director in an industrial company, transferred 200 shares of the capital stock to the president to be sold for him. The president instructed an agent to sell said shares along with some of his own belonging to the company. The agent sold 25 shares of G.'s stock to J. G. representing, and believing, that it was treasury stock and getting a note for the price in favour of the company. The note was indorsed over to G. Later J. G. discovered that the stock he had bought was not treasury stock and had some correspondence with the secretary of the company in which he complained of having been deceived by the agent. Eventually he gave a four months' note in renewal of that given for the price of the stock but when it fell due refused to pay it, the company having in the meantime become insolvent. In an action on the renewal note he filed a counterclaim for damages based on the misrepresentation and deceit. Judgment was given against him on the note and for him on the counterclaim.—*Held*, that G. was responsible for the fraud practised on the purchaser of his shares by the misrepresentations of the agent who sold them.—*Held*, also, Girouard and Davies, JJ., dissenting, that the settlement of the claim for the price of the shares by giving the renewal note and thus obtaining further time for payment was not a release of the purchaser's right of action for deceit. *Goold v. Gillies*, xl., 437.

8. *Contract — Supply of material—Payment — Certificate of engineer — Condition precedent — Improper interference — Fraud—Hindering performance of condition — Monthly estimate—Final decision. Temiskaming and Northern Ontario Ry. Comm. v. Wallace*, xxxvii., 696.

9. *Contract — Deceit and fraud—Rescission — Evidence — Concurrent findings of lower courts — Duty of second appellate court*, xxxiv., 145.

See CONTRACT.

10. *Mutual life insurance—Natural premium system—Level premium — Mortuary calls—Rate of assessment—Rating at attained age—Puffing statements—Warranty—Misrepresentation—Acquiescence — Mistake — Rescission of contract — Estoppel*, xxxv., 330.

See INSURANCE. LIFE.

11. *New trial*—*Contradictory evidence*—*Wilful trespass*—*Rule in assessing damages*—*Practice*—*Adding party*—*Reversal on appeal*, xxxvi., 152.

See DAMAGES.

12. *Indorsement of shipping bills*—*Bills of lading*—*Notice*—*Banking*—*Brokers and factors*—*Principal and agent*—*Sale of goods*—*Resiliation of contract*—*Revendication*—*Damage*—*Practice*—*Pleading*—*Pledge to bank*—*Insolvency*—*Bailee receipt*, xxxvi., 406.

See BILL OF LADING.

13. *Incorporation of company*—*Secret agreement*—*Illegal consideration for shares*—*Breach of trust*, xxxvii., 324.

See COMPANY.

14. *Suretyship*—*Collateral deposit*—*Earmarked fund*—*Appropriation of proceeds*—*Set-off*—*Release of principal debtor*—*Constructive fraud*—*Discharge of surety*—*Right of action*—*Common counts*—*Equitable recourse*, xxxvii., 351.

See PRINCIPAL AND SURETY.

15. *Crown*—*Banks and banking*—*Forged cheque*—*Payment*—*Representation by dravcee*—*Implied guarantee*—*Estoppel*—*Acknowledgment of bank statement*—*Liability of indorsers*—*Mistake*—*Action*—*Money had and received*, xxxviii., 258.

See BANKS AND BANKING.

16. *Placer mining*—*Disputed title*—*Trespass pending litigation*—*Colour of right*—*Invasion of claim*—*Adverse acts*—*Sinister intention*—*Conversion*—*Blending materials*—*Accounts*—*Assessment of damages*—*Mitigating circumstances*—*Compensation for necessary expenses*—*Estoppel*—*Standing-by*—*Acquiescence*, xxxviii., 516.

See MINES AND MINING.

17. *Mortgage*—*Money advanced to construct buildings*—*Lien for materials supplied*—*Payment to contractor*—*Transactions in fraud of mortgagor's rights*—*Redemption*—*Costs*, xxxviii., 557.

See MORTGAGE.

18. *Vendor and purchaser*—*Sale of land*—*Formation of contract*—*Conditions*—*Acceptance of title*—*New term*—*Statute of Frauds*—*Principal and agent*—*Secret commission*—*Avoidance of contract*—*Specific performance*, xxxviii., 588.

See CONTRACT.

19. *Breach of contract*—*Conspiracy*—*Fraud*—*Assessment of damages*, xxxix., 160.

See CONTRACT.

20. *Insolvency*—*Preferential transfer of cheque*—*Deposit in private bank*—*Application of funds to debt due banker*—*Sinister intention*—*Payment to creditor*—*R. S. O. (1897) c. 147, s. 3 (1)*, xxxix., 281.

See ASSIGNMENTS.

21. *Promissory note*—*Fraud in procuring*—*Discount*—*Good faith*—*Evidence*—*Onus of proof*, xxxix., 541.

See BILLS AND NOTES.

22. *Ships and shipping*—*Material used in construction*—*Sale of goods*—*Contract*—*Principal and agent*—*Misrepresentations*—*Mistake*—*Conversion*—*Trover*—*Evidence*—*Misdirection*—*New trial*—*Ship's husband*—*Pledging credit of owners*—*Necessary outfitting at home port*, *Cout. Cas.* 131.

See SHIPS AND SHIPPING.

23. "*Land Titles Act*"—*Cancellation of certificate of title*, 573.

See TITLE TO LAND.

24. *Vendor and purchaser*—*Sale of land*—*Condition*—*Approval of assignments*—*Equitable estate or interest*—*Priority between transferees*—*Principal and agent*—*Fraudulent and criminal practices*—*Notice of previous transfer*—*Implied knowledge*. *Macleod v. Sawyer-Massey Co.*, xlvi., 622.

25. *Covenant in mortgage*—*Married woman*—*Signature procured by*—*Pleading*—*Non est factum*—*Estoppel*.]—*M.*, intending to apply for shares in the respondent loan company, pursuant to the proposal, made through her husband, of one L. (the agent of the company for obtaining such applications) was induced through the fraud of L. to sign, without reading it, a document which she believed to be an application for shares, but which, in fact, was a mortgage for securing a supposed loan to her and contained a covenant to repay the amount of the loan. *M.* was an intelligent woman capable of reading and understanding the document.—*Held*, reversing the judgment appealed from (17 B. C. Rep. 366), the Chief Justice and *Davies, J.*, dissenting, that as *M.* was under no duty to exercise care to protect the company against the possible frauds of their agent, *L.*, she was not guilty of negligence estopping her from setting up the plea of *non est factum* which, in the circumstances, was a good defence to the company's action on the covenant. *Morgan v. Dominion Permanent Loan Co.*, l., 485.

26. *Company*—*Subscription for treasury stock*—*Contract*—*Principal and agent*—*Misrepresentation*—*Transfer of shares*—*Rescission*—*Return of payments*—*Want of consideration*. *International Casualty Co. v. Thompson*, xlvi., 167.

27. *Sale of goods*—*Designated quality*—*Fraud on purchaser*—*Damages*—*Loss of market*. *Bigelow v. Graham*, xlvi., 512.

See SALE.

28. *Company*—*Subscription for treasury stock*—*Contract*—*Principal and agent*—*Misrepresentation*—*Transfer of shares*—*Rescission*—*Return of payments*—*Want of consideration*, xlvi., 167.

See COMPANY.

29. *Vendor and purchaser*—*Agreement for sale*—*Agent to procure purchaser*—*Agent joining in purchase*—*Non-disclosure to co-purchaser*—*Payment of commission*—*Rescission of contract*, xlv., 403.

See VENDOR AND PURCHASER.



30. *Practice — Action by dependents — B. C. "Familiacs Compensation Act" — Release by deceased — Defence to action — Repudiation — Setting aside release — Personal representative — Right of action — Return of money paid — Limitation of actions — General statutory provision — Carriers — Private Act — B. C. "Consolidated Railway Company's Act" — Statute — R. S. B. C. 1911, c. 82 — "Lord Campbell's Act" — (B.C.) 59 V. c. 55, s. 60. xlix., 470.*

See RELEASE.

## FRAUDULENT CONVEYANCE.

1. *Execution of will — Mismanagement of estate — Fraud against creditors of beneficiary. Union Bank of Canada v. Brigham* Cout. Cas. 355.

2. *Constitutional law — Imperial Acts in force in Yukon Territory — Title to land — "Torrens System" — Transfer by registered owner — Litigious rights — Notice of lis pendens — Irregular registration — Indorsement upon certificate of title — Construction of statute — Pleading — Objections taken on appeal — Yukon Territorial Court Rules — Yukon Ordinances, 1902, c. 17 — Rules 113, 115, 117 — Waiver — Estoppel, xxxvi., 251.*

See TITLE TO LAND.

3. *Assignment — Insolvency — Right of action — Misdirection — New trial — Accounts — Practice, Cam. Cas. 245.*

See NEW TRIAL.

4. *Chattel mortgage — 13 Eliz. c. 5 — Pleading — Practice — Approbating and reprobatng transaction — Right to redeem — Oral evidence to vary deed — Sheriff's sale — Equity of redemption — Execution, Cam. Cas. 251.*

See PLEADING.

5. *Appeal — Actio Pauliana — Controversy involved — Title to land — Supreme Court Act, s. 46, xli., 80.*

See APPEAL.

6. *Statute of Elizabeth — Husband and wife — Voluntary settlement — Evidence, xlviii., 44.*

See HUSBAND AND WIFE.

7. *Title to land — Conveyance in fraud of creditors — Husband and wife — Advancement — Trustee — Equitable relief — Restitution — Evidence — Statute of Frauds. Scheurman, etc., lii., 625.*

See TITLE TO LAND.

## FRAUDULENT PREFERENCES.

1. *Insolvency — Security to creditor — Knowledge of insolvency — R. S. O. [1897] c. 147, s. 2, s.-s. 2 and 3.] — G. had assisted S. with loans and also guaranteed his credit at the Dominion Bank to the extent of*

\$3,000. His own cheque at the bank having been refused payment until the indebtedness of S. of \$1,900 was settled the latter promised to arrange it within a month which he did by transferring to G. goods pledged to the Imperial Bank, G. paying what was due to both banks. Shortly after S. sold out his stock in trade and absconded owing large sums to foreign creditors and being insolvent. On the trial of a creditor's action to set aside the transfer to G. as a fraudulent preference, the manager of the Dominion Bank testified that G.'s cheque was not refused from any doubt of S.'s solvency, but because he had heard that S. was dealing with another bank and he wished to close the account. — *Held*, Idington, and Duff, JJ., dissenting, that under the evidence produced G. had no reason to suppose, when the goods were transferred, that S. was insolvent and he had satisfied the onus placed upon him by the provincial statute of shewing that he had not intended to hinder, delay or defraud the creditors of S. *Baldocchi v. Spada*, xxxviii., 577.

2. *Payment by insolvent — Preference — Recovery back by curator — Gaming transaction — Illegal contract — Right of action — Arts. 1031, 1032, 1036, 1927 C. O. — Arts. 853 et seq., C. P. Q.] — Owing to suspicions aroused by the exposure of the insolvent's methods of business, a creditor who had deposited money with him for investment in anticipation of obtaining large profits through his operations on the stock market by urgent demands secured repayment of the sums so deposited together with a large amount of alleged profits on the day preceding that on which the insolvent absconded. — *Held*, that, as the creditor must be deemed to have had knowledge of the insolvent circumstances of the debtor at the time of the payment, the curator to the abandoned estate of the insolvent was entitled to recover back the amount so paid, under the provisions of article 1036 of the Civil Code of Lower Canada. — The judgment appealed from (Q. R. 22 K. B. 97) in its result affirming the judgment at the trial (Q. R. 41 S. C. 155) was reversed. *Wiens v. Matthews*, xlix., 91.*

AND see INSOLVENCY.

3. *Bill of sale — Transfer between near relatives — Preferential assignment — Suspicious circumstances — Corroborative evidence — Bona fides — Practice — Evidence.] — Where a bill of sale made between near relatives is impeached as being in fraud of creditors and the circumstances attending its execution are such as to arouse suspicion the court may, as a matter of prudence exact corroborative evidence in support of the reality of the consideration and the bona fides of the transaction. — Judgment appealed from (7 West. W. R. 416) reversed. *Koop v. Smith*, li., 554.*

4. *Insolvency — Preferential transfer of cheque — Deposit in private bank — Application of funds to debt due banker — Sinister intention — Payment to creditor — R. S. O. (1897) c. 147, s. 3 (1), xxxix., 281.*

See ASSIGNMENTS.

5. *Interpleader issue—Chattel mortgage—Hire receipt—Equitable doctrine*, Cam. Cas. 30.

See CHATTEL MORTGAGE.

6. *Sale of goods—Insolvency—Bonâ fides—Interpleader—Res judicata—Estoppel—Pleading—Bar to action*, Cam. Cas. 306.

See SALE.

### FREIGHT.

*Chartered ship—Suitability for cargo—Duty of owner—Dead freight—Demurrage. Likely v. Duckett*, lili., 471.

See SHIPS AND SHIPPING.

### FROST.

*Insurance—Sprinkler system—Damage from leakage or discharge—Injury from frost—Application—Interim receipt*, xxxix., 558.

See INSURANCE, ACCIDENT.

### FUNERAL EXPENSES.

*Action for negligence—Practice—Assessment of damages—Funeral expenses.*]—In an action by the father of a person whose death was occasioned by the negligence of the defendants, it was held that the plaintiff could not recover funeral and other expenses incurred, as damages in the action. *Toronto Ry. Co. v. Mulvaney*, xxviii., 327.

AND see ACTION.

### FUTURE RIGHTS.

1. *Appeal—Jurisdiction—Supreme Court Act—Duty or fee—Interest in land*, xli., 35.

See APPEAL.

2. *Appeal—Jurisdiction—Matter in controversy—Municipal franchise—Demolition of waterworks—Title to land—Future rights. La Cie de'Aqueduc Lorette v. Verrett*, xlii., 156.

See APPEAL.

### "FUTURES."

*Principal and agent—Broker selling on Grain Exchange—Contract in broker's name—Liability of principal—Board rules—Indemnity*, xli., 618.

See BROKER.

### GAME LAWS.

*Construction of statute—Fishery and game leases—Personal servitude—Possession—Use and occupation—Right of action—*

*Action en complainte—Renewed leases—Priority—Watercourses—Works to facilitate lumbering operations—Driving logs—Storage dams—Penning back waters out of track of transmission—Damages—Rights of lessees—Injury to preserves—Injunction—Demolition of works.*]—The lumber company are holders of timber limits in the townships of Ixworth, Chapais and Lafontaine, in the counties of L'Islet and Kamouraska, and, assuming to act under the authority of certain statutes of the Province of Quebec (now consolidated in articles 7295 to 7300, R. S. Q. (1909)) erected dams at the outlet of the Lakes Ste. Anne into the River Ouelle to form a reservoir, by penning back the waters of these lakes, for the purpose of augmenting the natural flow of the River Ouelle during seasons when its waters had abated to facilitate the transmission of timber cut on their limits below that point and delivering it at their saw-mill further down stream. They were owners of the lands on both sides of the stream at the place where the dams were erected. The fish and game club were lessees of fishery and hunting privileges under a lease issued in virtue of the "Quebec Fisheries Act," and the "Quebec Game Laws" which had been in force for a number of years prior to the erection of the dams but which was surrendered subsequent to their construction and a new lease granted to the club in its stead by the Crown. The leases cover the territory included in the above mentioned townships and the timber limits therein held by the lumber company. The action was brought by the club to recover damages for injuries occasioned to their rights as lessees of the fishery and hunting rights in consequence of the manner in which the dams were used and lumbering operations carried on in the river by the lumber company.—*Held* (Fitzpatrick, C.J., dissenting).—That the plaintiffs have a status to maintain an action for injuries to their rights as fishing and hunting licensees, and that the judgment at the trial (Q. R. 36 S. C. 486) for such damages should be restored.—*Per* Fitzpatrick, C.J., and Girouard and Anglin, J.J.—The respondents had the right to construct and maintain the dam in question and to use it to facilitate the flotation of logs, etc., in the lower reaches of the River Ouelle.—*Per* Idington, J. (Davies, J., *dubitante*).—This right exists only in respect of the streams or portions of them down which logs, etc., are actually driven by the timber licensees and does not extend to storage dams upon upper reaches and tributary waters not themselves used for the flotation of timber.—*Per* Duff, J.—The powers conferred by the statute must be exercised reasonably. In this case, the impounding of the stream's sources, miles beyond any part of it on which any timber could be expected to pass, is not within the contemplation of the statute and would not be a reasonable exercise of the powers intended to be conferred.—*Per* Fitzpatrick, C.J., and Girouard and Duff, J.J. (agreeing with the court below (Q. R. 19 K. B. 178)).—The right to aid the user of floatable streams by artificial means authorized by article 7299 of the Revised Statutes of Quebec (1909) may be exercised at all seasons of the year.—*Per* Davies, Idington and Ang-

lin, J.J.—Articles 7298 and 7299 of the Revised Statutes of Quebec (1909) must be read together and, while the right to use floatable streams in their natural state for the flotation of timber exists at all times and in all seasons, the right to aid such user by the artificial means authorized by article 7299 may be exercised only during the periods mentioned in article 7298, viz., during the spring, summer and autumn freshets. — *Per curiam*, Fitzpatrick, C.J., *contra*.—This right, whatever its extent or duration, is exercisable only subject to the condition that the person enjoying it shall make compensation to others holding rights such as the appellants enjoy; and, having regard to the circumstances of this case and the legislation governing it, the question of priority in the acquisition of the respective rights of the parties is of no consequence.—Leave to appeal to the Privy Council was refused, 15th May, 1911. *Le Club de Chasse et de Peche Ste. Anne v. Riviere-Ouelle Pulp and Lumber Co.*, xlv., 1.

### GAMING.

1. *Principal and agent* — *Gambling in stocks* — *Advances by agent*—*Brokerage*—*Criminal Code, 1892, s. 201, xxxv., 380.*

See BROKER.

2. *Criminal law*—*Disorderly house*—*Common betting house*—*Place for betting*—*Betting booth*—*Race-course of incorporated association*—*Criminal Code, 1892, ss. 197, 204*—*Criminal Code, 1906, ss. 227, 235*—*Construction of statute* — *Interpretation of terms, xxxviii., 382.*

See CRIMINAL LAW.

3. *Illegal contract*—*Insolvency* — *Preference*—*Recovery by curator*—*Right of action.*]—An action by the curator of an abandoned estate to recover back moneys paid by an insolvent to one creditor to the prejudice of the others, on the eve of insolvency, is not barred by the provisions of article 1927 of the Civil Code of Lower Canada denying a right of action in respect of gaming contracts. Judgment appealed from (*Q. R. 22 K. B. 97*) reversed. *Wicks v. Mattheu*, xlix., 91.

AND see INSOLVENCY.

### GAS MAINS.

*Taxation of electric and gas installations on streets*—*Construction of statute*—*Words and phrases* — “*Terrain*”—“*Lot*”—*Immovable property*—*Charter of Town of Westmount*—56 V. c. 54, s. 100, xli., 364.

See ASSESSMENT AND TAXATION.

### GENERAL SESSIONS OF THE PEACE.

See COURTS.

### GIFT.

1. *Married woman* — *Separate property* — *Liability for debts of husband*—*Registry law*—“*Real Property Act*”—“*Married Women's Act*”—*Conveyance during coverture*. xl., 384.

See MARRIED WOMAN.

AND see DONATION.

2. *Money received*—*Pleading* — *Evidence* — *Presumption* — *Proceeds of prostitution* — *Conversion* — *Lien. Johnston v. Desautniers*, xli., 620.

### GOODWILL.

*Partnership* — *Dissolution* — *Death of partner*—*Survivor's right to purchase share* — *Annual balance sheet*, liii.

See PARTNERSHIP.

### GOVERNMENT RAILWAYS.

*Construction and maintenance* — *Level crossings*—*Regulations by Governor in Council* — *Construction of statute* — “*Government Railways Act*,” R. S. C. 1906, c. 86, ss. 16, 49, 54—*Negligence*—*Act of third person*—*Liability of Crown for damages*, liv., 265.

See CROWN.

### GOVERNOR IN COUNCIL.

1. *Appeal* — *Jurisdiction*—*Discretion of Governor in Council*—*Stated case*—*Railway subsidies*—*Construction of statute*—3 *Edw. VII. c. 57*—*Conditions of contract*—*Estimating costs of constructing line of railway*—*Rolling stock and equipment*, xxxviii., 137.

See RAILWAYS.

2. *Public work* — *Contract* — *Change in plans and specifications*—*Waiver by order in council*—*Powers of executive*—*Construction of statute*—*Directory and imperative clauses*—*Words and phrases* — “*Stipulations*” — *Exchequer Court Act, s. 33*—*Extra works* — *Engineer's certificate*—*Instructions in writing* — *Schedule of prices*—*Compensation at increased rate*—*Damages*—*Right of action*—*Quantum meruit*, xxxviii., 501.

See CONTRACT.

AND see ORDER IN COUNCIL.

3. *References* — *Opinions* — *Advice. In re References by the Gov.-Gen. in Council*, xliii., 536.

See APPEAL.

### GRAMMAR SCHOOL FUND, UPPER CANADA.

See CONSTITUTIONAL LAW.

**GRAND JURY.**

*Inquiry on indictment—Complainant on panel—Bias—Prejudice—Criminal Code, s. 899. Veronneau v. The King, liv., 7.*

See CRIMINAL LAW.

**GRAND TRUNK RAILWAY.**

1. *Passenger tolls—Third class fares—Construction of statutes—Repeal—16 Vict. c. 37, s. 3 (Can.)—Amendments by subsequent railway legislation.*—The legislation by the late Province of Canada and the Parliament of Canada since the enactment of section 3 of the statute of Canada, 16 Vict. c. 37, in 1852, has not expressly or by implication repealed the provisions of that section requiring third-class passenger carriages to be run every day upon the line of the Grand Trunk Railway of Canada, between Toronto and Montreal, on which the fare or charge for each third-class passenger shall not exceed one penny currency for each mile travelled. (Appeal to Privy Council; 50 Can. Caz. 541; dismissed with costs. 17th Feb., 1909.) *Grand Trunk Ry. Co. v. Robertson*, xxxix., 506.

2. *Joint operation of railway—Master and servant—Negligence—Responsibility for act of joint employee—Traffic agreement—62 & 63 Vict. c. 5 (D.), xxxvi., 655.*

See RAILWAYS.

3. *Government railway—Operation over other lines—Agreement for running rights—Construction of statute—"Government Railways Act"—R. S. C. 1906, c. 36, s. 80—Extension and branches—"Public work"—"Eschequer Court Act"—R. S. C. 1906, c. 140 s. 20 (c), xl., 431.*

See RAILWAYS.

**GUARANTEE.**

1. *Sale of goods—Payment of draft—Guarantee by bank—Bill of lading—Goods at disposal of consignor.*—M. of Toronto, ordered two cars of oranges from a purchasing agent in California, and the Pioneer Bank cashed a draft on M. for the cost on receipt of the following telegram from the Bank of Commerce: "We guarantee payment of drafts on J. J. M. with bills lading attached . . . covering two cars oranges, etc." The goods were shipped and consigned by the bills of lading to "Mutual Orange Distributors (shippers) notify J. J. M." A note was printed on it to deliver without B/L on written order of shippers. When the goods arrived, M. refused to accept them, and an action was brought on the bank's guarantee. — *Held*, affirming the judgment of the Appellate Division (34 Ont. L. R. 531), Idington, J., dissenting, that the Bs/L were not in a form to protect the defendant bank; that they left the goods under the entire control of the shippers and the guarantor was deprived of its security on the responsibility of its customer or the carrier; and that, though an action against

M. for the price of the goods might have succeeded, that on the guarantee must fail. *Pioneer Bank v. Canadian Bank of Commerce*, liii., 570.

2. *Suretyship—Simple contract—Discharge of one surety under seal—Confirmation or original guarantee—Death of surety—Powers of executors—Continuance of guarantee. Union Bank of Can. v. Clarke, xliii., 299.*

See SURETYSHIP.

3. *Company law—Trading company—Powers—Contract of suretyship—R. S. O. 1897, c. 191. Union Bank v. McKillop; Arnprior v. U. S. Fidelity, etc., li., 518.*

See COMPANY.

AND see INSURANCE, GUARANTEE.

4. *Insurance—Fidelity bond—Untrue representations—Materiality—R. S. O. [1897] c. 203, s. 141, s.-s. 2, li., 94.*

See INSURANCE.

**GUARANTY.**

1. *Crown—Banks and banking—Forged cheques—Payment—Representation by drawee—Implied guarantee—Estoppel—Acknowledgment of bank statements—Liability of indorsers—Mistake—Action—Money had and received, xxxviii., 258.*

See BANKS AND BANKING.

2. *Breach of contract—Measure of damages—Notice of special circumstances—Collateral enterprises—Loss of primary and secondary profits—Discretionary order as to costs, xxxix., 575.*

See CONTRACT.

3. *Contract—Conditional sale—Rescission—Mortgagor and mortgagee—Power of sale—Creditor retaking possession—Continuing liability—Appropriation of money received by creditor—Release of debtor—Discharge of surety, Cout. Cas. 217.*

See CHATTEL MORTGAGE.

**GUARDIAN.**

*Parent and child—Guardianship—Family arrangement—Public policy, xl., 115.*

See PARENT AND CHILD.

**HABEAS CORPUS.**

1. *Canada Temperance Act—Conviction—"Criminal case"—R. S. C. c. 135, s. 32—Habeas corpus—Penalty—"Not less than \$50"—Conviction for \$200.*—A commitment on conviction for an offence against Part II. of the Canada Temperance Act is a commitment in a criminal case under sec. 32 of R. S. C. ch. 135 (R. S. C. 1906, ch. 139, s. 62) which gives a judge of the Supreme Court of Canada power to issue a writ of habeas corpus.—On application to a judge for a writ of habeas corpus he may

refer the same to the court, which has jurisdiction to hear and dispose of it. *Idington and MacLennan, J.*, dissenting. *In re Richard*, xxxviii., 394.

AND see "CANADA TEMPERANCE ACT."

2. *Criminal law—Certiorari—Conviction—Keeping a house of "ill-fame"—Reviewing evidence—Construction of statute—29 & 30 Vict. c. 45, ss. 1, 5 (Can.)—R. S. O. (1877), c. 70, ss. 1, 8—Liberty of the subject.]—Under the provisions of the Act, 29 & 30 Vict. ch. 45 (Can.), (R. S. O. 1877, ch. 70), it is the duty of the judge of a superior court in Ontario, before whom writs of habeas corpus *ad subjiciendum* and certiorari are returned, to review and consider the evidence upon which the prisoner has been convicted, and to decide as to its sufficiency.—In the absence of proof that the person occupying a house knowingly kept therein persons of bad reputation or guilty of lewd conduct, general evidence that the keeper of the house was of evil reputation, or guilty of lewd conduct, is insufficient to support a conviction for keeping a house of "ill-fame" under the Act 32 & 33 Vict. ch. 28 (D.), and its amendments.—*The Queen v. Mosier* (4 Ont. P. R. 64), and *The Queen v. Leveque* (30 U. C. Q. B. 509), referred to.—(NOTE.—*Cf. R. S. O.* (1887) ch. 70, ss. 1, 5, and R. S. O. (1897) ch. 83, ss. 1, 5. The Act of 1866, 29 & 30 Vict. ch. 45 (Can.), as not consolidated in the Rev. Stats of Can. 1886. See Sch. B. at p. 2302. See also R. S. L. C. c. 95, ss. 22-26. *Re Trepanier* (12 Can. S. C. R. 111); *Ex p. Macdonald* (27 Can. S. C. R. 683), per Girouard, J., at pp. 686-7, and *Re Richard* (38 Can. S. C. R. 394); *Re Arabin* (Cout. Cas. 95), and *Re Tellier* (Cout. Cas. 100). *Re Hamilton*, Cout. Cas. 35.*

3. *Criminal law—Summary convictions and orders—Procedure by magistrates—Delay in issuing commitment—Term of imprisonment—Commencement of sentence—32 & 33 Vict. c. 29—"Canada Temperance Act, 1878"—32 & 33 Vict. c. 31.]—The Chief Justice of Prince Edward Island had refused to discharge the prisoner from custody on the ground that he had been arrested and was confined under a commitment issued after the expiration of two months' imprisonment. A subsequent application, by summons, in the Supreme Court of Canada, to shew cause why a writ of habeas corpus should not issue and the prisoner be discharged, which was supported on similar grounds, was refused.—(*Cf. Ex parte Smitheman* (35 Can. S. C. R. 189), *Re Curley*, Cout. Cas. 71.*

4. *Criminal law—Jurisdiction of judge of Supreme Court of Canada—Issue of writ out of jurisdiction of provincial courts—Concurrent jurisdiction—R. S. C. c. 135, s. 32—Construction of statute—Constitutional law—Powers of Parliament—"Inland Revenue Act." R. S. C. c. 34, s. 159 (c)—"Selling and delivering a still and worm"—Cumulative charge—Summary conviction—Adjournment—Conviction in absence of accused.]—On an application for a writ of habeas corpus *ad subjiciendum* on a commitment, under a conviction in a criminal matter, to a term of imprisonment in the com-*

mon gaol of the County of Richelieu, in Quebec, made in chambers at the City of Ottawa, in Ontario. *Patterson, J.*, considered that, under these circumstances, he had no jurisdiction to issue the writ there, as the concurrent jurisdiction given by the statute in such matters was limited to that of a judge of the Superior Court of the Province of Quebec.—[NOTE.—The views above expressed by His Lordship are not in accord with the course of decisions of the court. *Cf. In re Trepanier* (12 Can. S. C. R. 111); *In re Sproule* (12 Can. S. C. R. 140); *In re Boucher* (Cout. Dig. 635); *Ex p. Macdonald* (27 Can. S. C. R. 683); *In re Richard* (38 Can. S. C. R. 394). See also *In re Hamilton* (Cout. Cas. 35); and *In re Arabin* (Cout. Cas. 95).]—A charge that the person accused "sold and delivered a still and worm" without the necessary license under the "Inland Revenue Act," R. S. C. ch. 34, constitutes only one offence under section 159 (c) of that Act.—Irregularities in procedure by a magistrate under the "Summary Convictions Act" are not properly open to review by a judge of the Supreme Court of Canada on an application for a writ of habeas corpus *ad subjiciendum*.—*Semble*, that the jurisdiction given by the Act was intended to be limited to cases of emergency, or those in which, for some reason, there might be an obstacle in the way of effective resort to provincial courts.—*Quære*,—Has the Parliament of Canada power to confer such original jurisdiction upon judges of the Supreme Court of Canada? *Re Tellier*, Cout. Cas. 110.

5. *Criminal law—Common law offences—Construction of statute—"Supreme Court Act," R. S. C., 1906, c. 139, s. 62—Jurisdiction of Supreme Court judges.]—The jurisdiction of judges of the Supreme Court of Canada in respect of habeas corpus *ad subjiciendum* extends only to cases of commitment on charges of offences which are criminal by virtue of statutes enacted by the Parliament of Canada; it does not extend to cases of commitment for offences at common law or under statutes enacted prior to Confederation which are still in force. *Re Sproule* (12 Can. S. C. R. 140) referred to.—The offence of housebreaking as described in the Imperial statute, 7 & 8 Geo. IV., ch. 29, sec. 15, became part of the criminal law of British Columbia on the introduction of the criminal law of England into that colony by the Ordinance of 19th November, 1858, continued to be so until the Union of the province with Canada, and since then by virtue of sec. 11 of the "Criminal Code," and it is not an offence to which sec. 62 of the "Supreme Court Act," R. S. C., 1906, ch. 139, has application. *Re Charles Dean*, xlvi., 235.*

6. *Certiorari—Jurisdiction of judges of Supreme Court of Canada—Reviewing evidence—Construction of statute—29 & 30 Vict. c. 45 (Can.)—R. S. C. c. 135, ss. 32, 36.]—In re Trepanier* (12 Can. S. C. R. 111), and *In re Mosier* (4 Ont. P. R. 64), referred to. *In re Arabin alias Ireda*, Cout. Cas. 95.

7. *Criminal appeals—Grand jurors—Selection of talesman—Jurisdiction. Re Menard*, Cout. Cas. 313.

8. "*Supreme Court Act*," s. 39, o.—*Criminal charge—Prosecution under provincial Act—Application for writ—Judge's order*, xvii., 259.

See APPEAL.

### HANSARD DEBATES.

*Construction of statute—Evidence*, xxxvi., 42.

See RAILWAYS.

### HARBOURS.

1. *Constitutional law—Canadian waters—Sea coasts—Property in foreshores—Havens—Roadsteads—Ownership of beds—Construction of statute—"B. N. A. Act, 1867," ss. 108, 109.*—The terms "public harbours" in item 2 of the third schedule of the "British North America Act, 1867," is not intended to describe or include portions of the sea coast of Canada having merely a natural conformation which may render them susceptible of use as harbours for shipping; such potential harbours or havens of refuge are not property of the class transferred to the Dominion of Canada by section 108 of the "British North America Act, 1867." The term used refers only to public harbours existing as such at the time when the provinces became part of the Dominion of Canada.—*Per Davies, Idington, Anglin and Brodeur, JJ.*—As that part of Burrard Inlet, on the coast of British Columbia, known as "English Bay," was not in use as a harbour at the time of the admission of British Columbia into the Dominion of Canada, in 1871, it did not become the property of the Dominion as a "public harbour" within the meaning of section 108 and the third schedule of the "British North America Act, 1867"; consequently the Province of British Columbia retained the property in the bed and foreshore thereof and could validly grant the right of removing sand therefrom.—*Per Davies, Idington and Anglin, JJ.*—Inasmuch as the proclamation, by the Dominion Government, on the 3rd of December, 1912, and the Dominion statute, chapter 54 of 3 & 4 Geo. V., deal merely with the establishment of the port and the incorporation of the Vancouver Harbour Commissioners, they had not the effect of transferring English Bay from the control of the Provincial Government to that of the Dominion Government nor of giving to the Dominion Government any right of property in the bed or foreshore of that bay.—*Per Duff, J.*—The transfer effected by section 108 of the "British North America Act, 1867," of the subjects described in the third schedule of that Act was a transfer of property operative upon the passing of the Act and such subjects were necessarily ascertainable at the passing of the Act by the application of the descriptions to the facts then existing, and, consequently, the question of "public harbour" or no "public harbour" must be determined according to the circumstances as they were at the date of the Union.—*Per Duff, J.*—The term "public harbour" implies public user as a harbour for

commercial purposes as distinguished from purposes of navigation simply, or some recognition, formal or otherwise, of the locality in dispute by the proper public authority as a harbour for such purposes, but the question of "public harbour" or no "public harbour" within the meaning of item pending largely upon the particular circumstances.—*Per Duff, J.*—If the question of "public harbour" or no "public harbour" were to be decided according to the circumstances existing when the dispute arose, English Bay must be held to be now a "public harbour" within the meaning of item 2 of the third schedule of the "British North America Act, 1867."—Judgment appealed from (20 B.C. Rep. 333) affirmed. *Attorney-Gen. v. Ritchie*, lii., 78.

2. *Canadian waters—Sea coasts—Property in foreshores—Havens—Roadsteads—Ownership in beds—Construction of statute—"B. N. A. Act, 1867," ss. 108, 109.* *Attorney-Gen. v. Ritchie*, lii., 78.

See CONSTITUTIONAL LAW.

See NAVIGATION; PUBLIC HARBOUR.

### HAVENS.

*Canadian waters—Sea coasts—Property in foreshores—Harbours—Roadsteads—Ownership in beds—Construction of statute—"B. N. A. Act, 1867," ss. 108, 109.* *Attorney-Gen. v. Ritchie*, lii., 78.

See CONSTITUTIONAL LAW.

See NAVIGATION; PUBLIC HARBOUR.

### HEALTH LAWS.

*Construction of statute—"Quebec Public Health Act," R. S. Q., 1909, art. 3913—Inspection of food—Duty of health officers—Quality of food—Condemnation—Seizure—Notice—Effect of action by health officers—Controlling power of courts—Evidence—Injunction—Appeal—Jurisdiction—Question in controversy*, xvii., 514.

See STATUTE.

### HEIRS.

See DEVOLUTION OF ESTATES; WILL.

### HERD LAWS.

*Operation of railway—Straying animals—Negligence—Duty as regards trespassers on railway—Herding stock—Evidence—Inferences as to facts*, xxxvi., 641.

See NEGLIGENCE.

### HIGHWAYS.

1. *Railway crossing—Negligence—Rate of speed—Crowded districts—Fencing—51 Vict. c. 29, ss. 197, 259 (D.)—55 & 56 Vict. c. 27, ss. 6 and 8 (D.)*—In passing through

a thickly peopled portion of a city, town or village, a railway train is not limited to the maximum speed of six miles an hour prescribed by 55 & 56 Vict. ch. 27, sec. 8, so long as the railway fences on both sides of the track are maintained and turned into the cattle guards at highway crossings as provided by sec. 6 of said Act. Judgment of the Court of Appeal (5 Ont. L. R. 313) reversed, Girouard, J., dissenting. *Grand Trunk Railway Co. v. McKay*, xxxiv., 81.

2. *Highway — Road allowance — Reservations in township survey — General instructions — Model plan — Evidence.* — Where the Crown surveyor returned the plan of original survey of a township without indicating reservations for road allowances upon the boundaries of the township and his field notes appeared to the court to support the view that no such allowance had been made by him: *Held*, that the general instructions and model plan for similar surveys did not afford a presumption sufficiently strong for the inference that there was an intention upon the part of the Crown to establish such road allowance. Judgment appealed from reversed. *Tanner v. Bissell* (21 U. C. Q. B. 553), and *Boker v. McLean* (41 U. C. Q. B. 260) approved. (Privy Council refused leave to appeal.) *Township of East Hawkesbury v. Township of Lochiel*, xxxiv., 513.

3. *Public work — Land injuriously affected — Closing highway — Inconvenient substitute — Right of action.* — The owner of land is not entitled to compensation where, by construction of a public work, he is deprived of a mode of reaching an adjoining district and obliged to use a substantial route which is less convenient. The fact that the substituted route subjects the owner at times to delay does not give him a claim to be compensated as it arises from the subsequent use of the work and not its construction and is an inconvenience common to the public generally. — The general depreciation of property because of the vicinage of a public work does not give rise to a claim by any particular owner. — Where there is a remedy by indictment mere inconvenience to an individual or loss of trade or business is not the subject of compensation. — Judgment appealed from (8 Ex. C. R. 245) reversed. *The King v. MacArthur*, xxxiv., 570.

4. *Dedication — Acceptance by public — User.* — An action was brought by the City of Toronto against the G. T. Ry. Co., to determine whether or not a street crossed by the railway was a public highway prior to 1857, when the company obtained its right of way. It appeared on the hearing that, in 1850, the Trustees of the General Hospital conveyed land adjoining the street describing it in the deed as the western boundary of allowance for road, and in another conveyance made in 1853, they mention in the description a street running south along said lot. Subsequent conveyances of the said land prior to 1857 also recognized the allowance for a road. — *Held*, Idington, J., dissenting, that the said conveyances were acts of dedication of the street as a public highway. — The first deed executed by the Hospital Trustees, and a plan produced at

the hearing, showed that the street extended across the railway track and down to the River Don, but at the time the portion between the track and the river was a marsh. Evidence was given of use by the public of the street down to the edge of the marsh. — *Held*, Idington, J., dissenting, that the use of such portion was applicable to the whole dedicated road down to the river, and the evidence of user was sufficient to show an acceptance by the public of the highway. *Grand Trunk Ry. Co. v. City of Toronto*, xxxvii., 210.

5. *Title to land — Dedication — Public highway — Expropriation — Presumption — User.* — K. brought an action against D. and R. for trespass to her land in laying pipes to carry water to a public institution. The land had been used as a public highway for many years, and there was an old statute authorizing its expropriation for public purposes, but the records of the municipality which would contain the proceedings on such expropriation, if any had been taken, were lost. — *Held*, reversing the judgment of the Supreme Court of Nova Scotia (20 N. S. Rep. 95), that in the absence of any evidence of dedication of the road it must be presumed that the proceedings under the statute were rightly taken and K. could not recover. — *Held*, per Strong, J., long occupation and enjoyment unexplained will raise a presumption of a grant not only of an easement, but of the land itself; and not only of a grant, but of acts of legislation and matters of record. *Dickson v. Kearney*, Cam. Cas. 53.

6. *Municipal corporation — Reservation for highway — Opening by-road — Damages.* — The action was to recover a strip of land taken along the side of W.'s property, for opening a by-road, and for damages by removal of fences. Questions were raised as to the right of the corporation, without paying indemnity, to take possession of this land as part of the reservation for road allowance established by law. — The judgment appealed from, in reversing the Superior Court, maintained the action, granted \$20 damages, and ordered that W. should be reinstated in possession of a strip of land. — This judgment was reformed by striking out the damages, and adding, after the direction that the plaintiff should be reinstated in possession, the words, "si mieux n'aime la dite corporation de payer au dit demandeur la somme de \$200, comme prix du dit terrain, le tout avec dépens, dans l'une ou l'autre alternative, contre la dite corporation dans toutes les cours." *Township of Arundel v. Wilson*, Cout. Cas. 210.

7. *Municipal corporation — Highway — Snow cleaning — Care of streets — Bad repair — Loss of profits to omnibus line — Negligence — Right of claim — Damages.* — W. was the proprietor of an omnibus line plying in certain streets of the City of Halifax during the winter of 1881-2, under a license from the city. About the 10th January the snow fell very heavily, and, by about the 20th, owing to the snow being thrown from the sidewalks into the street, the roadway became filled with pitch holes, some of which were four feet deep. Other severe snow storms

through the winter aggravated the condition of the road. The plaintiff alleged that, by reason of this bad repair of the highway he had suffered damages to a large amount by the wrecking of his carriages, straining of his horses, breaking of harness, etc., and loss of profits through the diminution in traffic on his bus line. Plaintiff complained to the city authorities, asking that men be put to work to level the snow between the sidewalks, but his request was refused. The action was tried before McDonald, C.J., and a jury, when a verdict for the plaintiff for \$600 damages was found. The defendants obtained a rule to set aside the verdict, and for a new trial, which, after argument, was discharged by the Supreme Court of Nova Scotia (16 N. S. Rep. 371). On appeal to the Supreme Court of Canada:—*Held*, the Chief Justice and Gwynne, J., dissenting, that the judgment of the court below should be affirmed and the case dismissed with costs.—*Per* Strong, J.—Under the Act incorporating the defendants and subsequent Acts amending the same, not only were the defendants liable to indictment for breach of their public duties in respect of the matters complained of, but the plaintiff could also maintain an action as a person especially injured thereby.—The evidence was amply sufficient to warrant the trial judge in leaving the case to the jury, and, the condition of the street being one which might have been remedied by levelling the hillocks which had been formed, and which caused the damage the respondent complained of, the verdict should be upheld.—The loss of profits claimed was not too remote, but was quite as much an immediate and natural cause of the injury as was the loss of custom in *Lancashire & Yorkshire Ry. Co. v. Gidlow* (L. R. 7 H. L. 517).—*Per* Henry J.—The City of Halifax was liable for the negligence of the street commissioners, although they were appointed by the city council and not by the Court of General Sessions, as provided by R. S. N. S. (4 ser.) c. 49. *City of Halifax v. Walker* (Cout. Dig. 994, 978, Cam. Cas. 569).

8. *Dedication of highway—Conditions in Crown grant—Access to beach—Plan of subdivision—Destination by owner—Limitation of user—Long usage by public—Acquisitive prescription—Recitals in deeds—Cadastral plans, references and notices—Evidence—Presumptions.*—A strip of land, extending from a public road to the River St. Lawrence, formed part of a beach lot granted by the Crown, in 1854, on condition that, in case of subdivision into building lots, "a sufficient number of cross-streets shall be left open so as to afford easy communication between the public highroad, in rear of the said beach lot, and low water mark in front thereof." Prior to 1865 the lot was sub-divided and, on the plan of sub-division, the strip of land was shewn as a lane or passage. Reference to this lane or passage was made in a deed of sale executed by the owner, in 1865, and the cadastral plan of the municipality, made in 1879, for registration purposes, shewed it as a public road. In 1881, in connection with the registration of charges on the land, the owner made a statutory declaration and gave a notice to the registrar of deeds, as required by the

"Cadastral Act," describing the strip of land in question as "a road 20 feet wide." It was also shewn that, during more than thirty years prior to the action, the strip of land had been used as a lane or passage by the general public.—*Held*, affirming the judgment appealed from (Q. R. 17 K. B. 60), Idington, J., dissenting, that these circumstances constituted complete, clear and unequivocal evidence of the intention of the owners of the beach lot to dedicate the strip of land in question for the purposes of a public highway, that no formal acceptance of such dedication by the corporation of the municipality was necessary to render such dedication effective in favour of the general public, and that, even if there had originally been any limitation reserved as to the use thereof by a special class of persons only, it had become a public highway by reason of long user as such.—Although no right of ownership can be affected by cadastral plans, they must, in view of their publicity, be considered as having some probative effect in respect to persons having interests in the lands described therein. *Rhodes v. Perusse*, xli., 264.

9. *Municipal corporation—Reservation for highway—Opening first front road—Appropriation—Indemnity—Award—Procès-verbal—Description of lands and owners—Formal defects—Quebec Municipal Code, arts. 16, 903, 906, 914, 918.*—In proceedings for the opening of first front roads for which reservations have been made in the grants of land by the Crown, the provisions of the Quebec Municipal Code requiring a description of the lands appropriated for the highway and the owners thereof are imperative and not merely matters of form which may be cured by the provisions of article 16 of that Code, and failure to comply with these requirements nullifies the proceedings.—Judgment appealed from (Q. R. 17 K. B. 566) reversed, Davies and Idington, JJ., dissenting. *King's Asbestos Mines v. Mun. of South Thetford*, xli., 585.

10. *Statute—Construction—Crossing bridges by engines—Condition precedent—R. S. O. (1897) c. 242—3 Edw. VII. c. 7, s. 43—4 Edw. VII. c. 10, s. 60.*—R. S. O. (1897) ch. 242, as amended by 3 Edw. VII. ch. 7, sec. 43, and 4 Edw. VII. c. 10, sec. 60, provides as follows:—"10. (1) Before it shall be lawful to run such engine over any highway whereon no tolls are levied, it shall be the duty of the person or persons proposing to run the same to strengthen, at his or their own expense, all bridges and culverts to be crossed by such engines, and to keep the same in repair so long as the highway is so used.—(2) The costs of such repairs shall be borne by the owners of different engines in proportion to the number of engines run over such bridges or culverts. R. S. O. 1887, ch. 200, sec. 10.—(3) The two preceding sub-sections shall not apply to engines used for threshing purposes or for machinery in construction of roadways of less than eight tons in weight. Provided, however, that before crossing any such bridge or culvert it shall be the duty of the person or persons proposing to run any engine or machinery mentioned in any of the sub-sections of this section to lay



down on such bridge or culvert planks of such sufficient width and thickness as may be necessary to fully protect the flooring or surface of such bridge or culvert from any injury that might otherwise result thereto from the contact of the wheels of such engine or machinery; and in default thereof the person in charge and his employer, if any, shall be liable to the municipality for all damage resulting to the flooring or surface of such bridge or culvert as aforesaid. 3 Edw. VII. ch. 7, sec. 43; 4 Edw. VII. ch. 10, sec. 60.—*Held*, affirming the judgment of the Court of Appeal (19 Ont. L. R. 188), Fitzpatrick, C.J., and Girouard, J., dissenting, that the strengthening of a bridge or laying of planks over it is a condition precedent to the right to run an engine over the same, and any engine crossing without observing such condition is unlawfully on the bridge and liable for injury resulting therefrom.—*Held*, also, Fitzpatrick, C.J., and Girouard, J., dissenting, that planks required by sub-sec. 3 over a bridge or culvert were not intended merely to protect the surface from injury by contact with the wheels of the engine or machinery passing over it, but was also to guard against the danger of the flooring giving way. *Goodison Thresher Co. v. Township of McNab*, xlv., 187.

11. *Municipal corporation — Nuisance — Repair of sidewalks—Statutory duty—Negligence — Nonfeasance — Personal injury—Civil liability—Right of action—Construction of statute—“Vancouver City Charter” —64 V. c. 54, s. 219 (B.C.).*—Where a municipal corporation is guilty of negligent default by non-feasance of the statutory duty imposed upon it to keep its highways in good repair, and adequate means have been provided by statute for the purpose of enabling it to perform its obligations in that respect (*v.g.*, 64 Vict. ch. 54 [B.C.]), persons suffering injuries in consequence of such omission, may maintain civil actions against the corporation to recover compensation in damages, although no such right of action has been expressly provided for by statute, unless something in the statute itself or in the circumstances in which it was enacted justifies the inference that no such right of action was to be conferred.—*Coe v. Wise* (5 B. & S. 440; L. R. 1 Q. B. 711) and *Mersey Docks Trustees v. Gibbs* (L. R. 1 H. L. 93) applied. *Municipality of Pictou v. Geldert* ([1893] A. C. 524); *Municipal Council of Sydney v. Bourke* ([1895] A. C. 433); *Sanitary Commissioners of Gibraltar v. Orfila* (15 App. Cas. 400); *Cowley v. Newmarket Local Board* ([1892] A. C. 345); *Campbell v. City of Saint John* (26 Can. S. C. R. 1); and *City of Montreal v. Mulcair* (28 Can. S. C. R. 458) distinguished.—Judgment appealed from (15 B. C. Rep. 367) affirmed.—*Per* Fitzpatrick, C.J., and Duff, J.—The common law obligation under which the inhabitants of parishes, in England, through which highways passed were responsible for their repair has no application in the Province of British Columbia. *City of Vancouver v. McPhalen*, xlv., 194.

12. *Trespass — Easement — Public way — Dedication — User — Prescription*

—*Estoppel — “Law and Transfer of Property Act,” R. S. O. 1897, c. 119.*] — S. brought action against P. for trespass on a strip of land called “Ancroft Place,” which he claimed as his property, and asked for damages and an injunction. “Ancroft Place” was a *cul-de-sac* running east from Sherbourne Street, and the defence to the action was that it was a public street or, if not, that P. had a right of way over it either by grant or user. On the trial it was shewn that the original owners had conveyed the lots to the east and south of “Ancroft Place” to different parties, each deed describing it as a street and giving a right of way over it to the grantee. The deeds to P.’s predecessors in title did not give him a similar right of way, but some of these conveyances described it as a street. The deed to one of the predecessors in title of S. had a plan annexed shewing “Ancroft Place” as a street fifty feet wide and the grantee was given the right to register said plan. The evidence also established that for 22 years before the action “Ancroft Place” had been entered in the assessment rolls as a public street and had not been assessed for taxes and that the city had placed a gas lamp on the end; also, that for over twenty years it had been used by the owners of the lots to the south and east, and from time to time by the owner on the north side, as a means of access to, and egress from, their respective properties. In 1909 the fee in the land in dispute was conveyed to S. who had become owner of the lots to the east and south.—*Held*, Idington, J., dissenting, Duff, J., expressing no opinion, that the evidence was not sufficient to establish that the land had been dedicated to the public, and accepted by the municipality as a street.—*Held*, further, Idington and Duff, J., dissenting, that the land was not a “way, easement or appurtenance” to the lot to the north “held, used, occupied and enjoyed, or taken or known, as part and parcel thereof” within the meaning of sec. 12 of “The Law and Transfer of Property Act,” R. S. O. [1897] c. 119.—*Held*, also, that P. had not acquired a right-of-way by a grant implied from the terms of the deeds of the adjoining lots, Duff, J., dissenting; nor by prescription, Duff, J., expressing no opinion.—*Per* Duff, J.—The facts established justify the inference that the original owners (Mr. and Mrs. Patrick) always entertained the design that the strip of land in question should be a street affording access to the adjoining parts of lot 22; that, accordingly, it had been surveyed and laid out as a street, on the ground, in 1884; that the sale to McCully, in 1887, proceeded on the footing that the land purchased by him was bounded to the south by a street and this was one of the elements of value determining the price he paid; that, thereafter, in accordance with the same design, Mrs. P. permitted the successive occupants of the lot bought by McC. to use this strip of land as of right for all the purposes of a street; that these occupants, acting as she intended they should and as the situation, created by her, naturally encouraged them to act, purchased and dealt with it upon the same footing as that upon which the sale to McC. took place: Consequently, the respondent is, on the principle of *Pig-*

*gott v. Stratton* (1 DeG. F. & J. 33), as explained in *Spicer v. Martin* (14 App. Cas. 12), and of *Cairncross v. Lorimer* (3 Macq. 829); *Oliver v. King* (8 DeG. M. & G. 110); and *Russell v. Waits* (10 App. Cas. 590), precluded from disputing the right of the appellant to use "Ancroft Place" as a street.—*Per Duff, J.*—At the time of the sale to McC. the vendor was precluded from using Rachel Street for any purpose inconsistent with its character as a street and its sole value for her as a "street" or "way" was because of the means of access it afforded to the property sold. Its character as a way laid off for the accommodation, *inter alia*, of that property was palpable to everybody: as a way, therefore, it was as regards the vendor's interest in it a "way . . . known or taken to be" an adjunct of the property sold and, as such, passed to the purchaser under the provisions of the "Law and Transfer of Property Act." *Peters v. Sinclair*, xlviii., 57.

13. *Old trails of Rupert's Land—Survey—Width of highway—Construction of statute—60 & 61 V. c. 28, s. 19—"North-West Territories Act," s. 108—Transfer of highway—Plans—Registration—Dedication—Estoppel—Expenditure of public funds.*—The plaintiff's lands, held under Crown grant of 1887, were bounded on the south by the middle line of Rat Creek (now in the City of Edmonton) and were traversed by one of the "old trails" of Rupert's Land, known as the "Edmonton and Fort Saskatchewan Trail." Upon instructions, under section 108 of the "North-West Territories Act," as enacted by 60 & 61 Vict. ch. 28, sec. 19, that portion of the trail was surveyed and laid out on the ground by a Dominion land surveyor shewing its southern boundary approximately as Rat Creek and thus giving it a width upon the plaintiff's lands in excess of the sixty-six feet limited by this section. The plan of this survey was not shewn to have been approved by the Surveyor-General nor was it filed in the land titles office as required by the statutes in force at the time.—*Held*, reversing the judgment appealed from (28 West L. R. 920), that the statute gave the surveyor no power to increase the width of the highway authorized to be laid out by him: that the approval of the Surveyor-General and the filing of the plan in the land titles office were necessary conditions to the transfer of the trail as a public highway and, consequently, the land comprised in the augmentation of the highway remained vested in the plaintiff.—*Plaintiff* sold part of his lands, described as bounded by the northerly limit of the surveyed trail, and, subsequently, the purchasers, and persons holding lands south of Rat Creek, filed plans of subdivision shewing the surveyed trail as of the full width given by the surveyor. The city also claimed to have expended moneys in improving the roadway at the locality in question.—*Held*, that the registration of the plans of subdivision, made without privity on the part of the plaintiff, was not binding upon him, and that there was not such evidence of expenditure of public moneys or of conduct by the plaintiff—by recognizing the plans as filed—as could preclude him from claiming the lands encroached upon or com-

pensation therefor. *Rowland v. City of Edmonton*, 1., 520.

14. *Municipal corporation—Altering streets—Partial closing of highway—Exchange for adjacent land—Validity of by-law—Assent of rate-payers—R. S. B. C., 1911, c. 170, s. 53, s.-ss. 176, 193.*—Under the provisions of sub-sections 176 and 193 of section 53 of the British Columbia "Municipal Act," R. S. B. C., 1911 ch. 170, empowering municipal corporations to alter, divert or stop up public thoroughfares and to exchange them for adjacent land, a municipal corporation has power by by-law to close up a portion of a highway and dispose of the strip so taken from its width in exchange for adjacent or contiguous lands to be used in lieu thereof, although the effect may be to cause the narrowing of the highway. *Davies, J.*, dissented.—*Per Idington and Brodeur, JJ.*—Such a by-law is valid although passed without the assent of the ratepayers previously obtained. *British Columbia Railway Co. v. Stewart* ((1913) A. C. 816) and *United Buildings Corporation v. City of Vancouver* ((1915) A. C. 345) applied.—The decision of the Court of Appeal for British Columbia on a previous appeal in the same proceedings (21 B.C. Rep. 401) was approved. *West Vancouver v. Ramsay*, liii., 459.

15. *Government railways—Construction and maintenance—Level crossings—Regulations by Governor in Council—Construction of statute—"Government Railways Act," R. S. C., 1906, c. 36, ss. 16, 49, 54—Negligence—Act of third person—Liability of Crown for damages.*—The right to construct Government railways across highways conferred by section 16 of the "Government Railways Act," R. S. C., 1906, ch. 36, is subject to the continuing duty imposed upon the Government railway authorities that, in regard to the relative levels of the railway tracks and the highways, so long as any such crossings are maintained on the level of the roads the railway tracks shall not rise or sink more than one inch above or below the surface of the highways.—Regulations made by the Governor in Council under the provisions of section 49 and falling within section 54 of the "Government Railways Act," R. S. C., 1906, ch. 36, must not conflict with specific enactments of the statute: a regulation which may be the cause of conditions existing which are inconsistent with explicit requirements of the statute must be construed as subordinate to an implied proviso that nothing therein shall sanction a departure from any special requirement of the statute: *Institute of Patent Agents v. Lockwood* ((1894) A. C. 347) and *Booth v. The King* (51 Can. S. C. R. 20) referred to.—A level crossing of the Intercolonial Railway had planking between the rails which raised the roadbed so that the tracks did not rise more than an inch above the surface of the highway. Under a regulation for the guidance of trackmasters and trackmen, made by the railway authorities, the planks were removed during the winter season to permit safe operation of snowploughs and flangers, during this season the space occupied by the planking being filled by snow and ice. In April, before the use of snowploughs and

flangers had been discontinued, the ice and snow melted and left the tracks about six inches above the roadbed. After the usual inspection by the trackmen, some unknown person placed a fence-rail against one of the tracks to assist sleighs over the obstruction and, later in the day, suppliant in driving his sleigh along the highway had his foot crushed between the fence-rail and the track and sought damages from the Crown for the injuries sustained:—*Held*, that the condition of the crossing constituted negligence of officers and servants of the Crown while acting within the scope of their duties and employment in the construction and maintenance of the railway in consequence of which the Crown was liable in damages notwithstanding that the resulting injury might not have occurred but for the intervening act of some unknown third person: *Latham v. R. Johnson & Nephew* (1913), 1 K. B. 398, referred to. *Belanger v. The King*, *liv.*, 265.

16. *Municipal corporation—Maintenance of highways—Improper use of sidewalk—Damage by trespasser—Notice of disrepair—Nuisance—Negligence—Injury to pedestrian—Liability for damages.*—The municipal corporation was obliged, and given power, to maintain its highways in a reasonable state of repair, having regard to the character of the streets and the locality in which they were situated, and regulations had been enacted to prohibit vehicular traffic over the sidewalks except at crossings specially constructed in a manner to sustain such traffic. At a place where no such crossing had been provided vehicles had been, for over a year, habitually driven across a wooden sidewalk and no action to prevent such trespasses had been taken by the municipal authorities. During the afternoon of the day before the accident, a plank was broken by a heavy vehicle crossing the sidewalk and it continued in this condition until the evening of the following day when a pedestrian tripped in the hole and sustained injuries for which he brought action to recover damages.—*Held*, reversing the judgment appealed from (9 West. W. R. 1287; 33 West. L. R. 851), *Davies, J.*, dissenting, that, in these circumstances, the municipal corporation was charged with notice of the condition of disrepair of its public sidewalk and, having failed to remedy the nuisance within a reasonable time it was guilty of negligence involving liability in damages.—*Per Duff, J.*—Section 507 of the charter of the City of Edmonton does not impose upon the municipality an absolute responsibility for harm suffered by individuals in consequence of a street being in a state of disrepair constituting a dangerous nuisance; but the municipality is responsible for the consequences of such a state of disrepair if, through the observance of proper precautions, it could have prevented the nuisance coming into existence: *Hammond v. Vestry of St. Pancras* (L. R. 9 C. P. 316), and *Bateman v. Poplar District Board of Works* (37 Ch. D. 272), applied. Proof of the existence of such a nuisance and resulting damage is, in itself sufficient to create a *prima facie* cause of action against the municipality under section 507 of the charter. *Jamieson v. City of Edmonton*, *liv.*, 443.

17. *Electric lighting—Terms of franchise—Use of highway—Poles and wires. Consumers Electric Co. v. Ottawa Electric Co.*, *Cout. Cas.* 311.

18. *Negligence—Railway tracks—Fencing crossings—Running of trains—Evidence—Reasonable inferences—Cattle guards—Protection for public*, xxxvi., 180.

See RAILWAYS.

19. *Construction of statute—Toll-bridge—Franchise—Exclusive limits—Measurement of distance—Encroachment—58 Geo. III. c. 20 (L. C.)*, xxxvi., 224.

See STATUTE.

20. "Railway Act, 1903," ss. 23, 184—*Construction, etc., of street railways and tramways—Use of highways in cities and towns—Consent by municipal authority—Approved by by-law—Quebec Municipal Code, arts. 404, 481*, xxxvi., 369.

See RAILWAYS.

21. *Title to land—Servitude—Construction of deed—Reservations—"Representatives"—Owners par indivis—Common lanes—Right of passage—Private wall—Windows and openings on line of lane—Arts. 533-538 C. C.*, xxxvi., 618.

See SERVITUDE.

22. *Appeal—Jurisdiction—Annulment of procès verbal—Injunction—Matter in controversy—Art. 560 C. C.—Servitude*, xxxvii., 321.

See APPEAL.

23. "Railway Act, 1903," ss. 47, 186—*Board of Railway Commissioners—Jurisdiction—Construction of subway—Apportionment of cost—Person interested or affected—Street railway—Agreement with municipality*, xxvii., 354.

See RAILWAYS.

24. *Operation of tramway—Construction and location of lines—Use of highways—Car service—Time-tables—Municipal control—Territory annexed after contract—Abandonment of monopoly—55 Vict. c. 99 (Ont.)*, xxxvii., 430.

See TRAMWAYS.

25. *Negligence—Electric lighting—Wires on public highway—Proximity to bridge—Injury to child—Dedication*, xxxviii., 27.

See NEGLIGENCE.

26. *Negligence—Railway crossing—Findings of jury—"Look and listen"*, xxxviii., 94.

See NEGLIGENCE.

27. *Municipal corporation—Agreement with electric street railway company—Use of streets—Payment for privilege—Percentage of receipts—Traffic beyond city—Validity of agreement*, xxxviii., 106.

See TRAMWAYS.

28. *Negligence—Railway Act, 1903—§ Edw. VII. c. 58, s. 237—Animals at large—Construction of statute—Words and terms—"At large upon the highway or*

otherwise"—Fencing of railway—Trespass from lands not belonging to owner of animals, xxxix., 251.

See NEGLIGENCE.

29. Title to land—Construction of deed—Easement appurtenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Trespass—Right of action, xl., 188.

See DEED.

30. Negligence—Operation of tramway—Approaching cross-street—Rules of company—Charge of judge—Contributory negligence—Findings of jury, xl., 540.

See NEGLIGENCE.

31. Municipal corporation—Raising level of streets—Injury to owners—Nuisance—Liability for damages, Cam. Cas. 537.

See MUNICIPAL CORPORATION.

32. Municipal corporation—Boundary roads—Rivers and streams—Bridges—Deviation of highway—Liability of adjoining counties for repairs, Cam. Cas. 608.

See MUNICIPAL CORPORATION.

33. Operation of tramway—Repair of streets—Dangerous way, Cout. Cas. 284.

See NEGLIGENCE.

34. Tramway—Use of streets—Right of way, Cout. Cas. 309.

See TRAMWAYS.

35. Board of Railway Commissioners—Jurisdiction—Location of railway—Consent of municipality—Crossing—Leave of board—Discretion, xl., 620.

See BOARD OF RAILWAY COMMISSIONERS.

36. Operation of railway—Level crossing—Negligence—Statutory signals—Findings against weight of evidence—Leave of Board—Findings against weight of evidence—New trial—Practice, 8 Can. Ry. Cas. 561.

See NEGLIGENCE.

37. Railways—Jurisdiction of Board of Railway Commissioners—Deviation of tracks—Separation of grades—Dedication—User—Public way or means of communication—Access to harbour—Navigable waters—Construction of statute—"Special Act"—R. S. C., 1906, c. 37, ss. 2 (11) (28), 3, 237, 238, 241; 56 Vict. c. 48 (D.), xlii., 613.

See RAILWAYS.

38. Board of Railway Commissioners—Jurisdiction—Municipal streets—Railway upon or along highway—Leave to construct—Approval of location—Condition imposed—Payment of damages to abutting landowners—Construction of statute—R. S. C. 1906, c. 37, ss. 47, 155, 159, 235, 237. G. T. P. Ry. Co. v. Fort William, xliii., 412.

See RAILWAYS.

39. Board of Railway Commissioners—Jurisdiction—Municipal streets—Railway upon or along highway—Leave to construct—Approval of location—Condition imposed

—Payment of damages to abutting landowners—Construction of statute R. S. C. 1906, c. 37, ss. 47, 155, 159, 235, 237, xliii., 412.

See RAILWAYS.

40. Railways—Construction and operation—Location plans—Delay in notice to trial—Action to compel expropriation—Compensation in respect of lands not acquired—Mandamus—Use of highway—Crossing public lane—Nuisance, xliiv., 65.

See RAILWAYS.

41. Taxation of electric and gas installations on streets—Construction of statute—Words and phrases—"Terrain"—"Lot"—Immovable property—Charter of Town of Westmount—56 V. c. 54, s. 100, xliiv., 364.

See ASSESSMENT AND TAXATION.

42. Municipal corporation—Closing streets—"Passage of by-law"—Coming into force—Time for appealing—"Winnipeg City Charter"—Construction of statute, xlv., 271.

See MUNICIPAL CORPORATIONS.

43. Municipal corporation—Repair of highways—Statutory duty—"Unfenced trap" in sidewalk—Misfeasance—Actionable negligence—Notice—Knowledge—Personal injuries—Liability of corporation—Evidence—Findings of jury—"Res ipsa loquitur," xlvii., 457.

See MUNICIPAL CORPORATIONS.

44. Constitutional law—Provincial tramway—Jurisdiction of Board of Railway Commissioners—Overhead crossings—Apportionment of cost—Legislative jurisdiction—Ancillary powers—Construction of statute—"Railway Act," R. S. C., 1906, ss. 3, 59, 237, 238—(B.C.) 8 & 9 Edw. VII. c. 32—B. N. A. Act, 1867, s. 92, item 10. B. C. Electric R. Co. v. V. V. & E. R. & Nav. Co., etc., xlviii., 98.

See RAILWAYS.

45. Negligence—Operation of tramway—Carelessness of person injured—Reckless conduct of motorman. City of Calgary v. Harnovis, xlviii., 494.

See NEGLIGENCE.

46. Constitutional law—Provincial tramway—Jurisdiction of Board of Railway Commissioners—Overhead crossings—Apportionment of cost—Legislative jurisdiction—Ancillary powers—"Interested parties"—Construction of statute—"Railway Act," R. S. C., 1906, c. 37, ss. 8, 57, 237, 238—(B.C.) 8 & 9 Edw. VII., c. 32—"B. N. A. Act, 1867," s. 92, item 10, xlviii., 98.

See CONSTITUTIONAL LAW.

47. Dedication of lands for highway—Opening of street—Construction of agreement, xlix., 621.

See MUNICIPAL CORPORATION.

48. Negligence—Obstruction of highway—Street railway—Trolley poles between tracks—Statutory authority—Protection by light. Hamilton St. R. R. v. Weir, li., 506.

See RAILWAYS.

49. *Maintenance—Sidewalk—Damage by trespasser—Nuisance. Jamieson v. City of Edmonton*, liv., 443.

See MUNICIPAL CORPORATION.

### HIRE RECEIPT.

*Interpleader issue—Chattel mortgage—Hire receipt—Equitable doctrine, Cam. Cas. 30.*

See CHATTEL MORTGAGE.

### HIRING.

*Master and servant—Contract of service—Termination by notice—Incapacity of servant—Permanent disability—Findings of jury—Weight of evidence.*—Where a contract for service provided that it could be terminated by either party giving the other a month's notice therefor or by the employer paying or the employee forfeiting a month's wages: *Held*, reversing the judgment appealed from (36 N. S. Rep. 158) that illness of the employee by which he is permanently incapacitated from performing his service would itself terminate the contract.—*Held*, Killam, J., dissenting, that an illness terminating in an employee's death and during the whole period of which he is incapacitated for service is a permanent illness though both the employee and his physician believed that it was only temporary.—By a rule of the employer an employee was only to be paid for time he was actually on duty. One of the employees had accepted and signed a receipt for a month's wages from which the pay for two days on which he was absent from duty was deducted and his conversation with other employees shewed that he was aware of the rule, but no formal notice of the same was ever given him. Having died after a long illness, his executrix brought an action for his wages during such period and the jury found on the trial that he did not continue in the employ after notice of the rule and acquiescence in his employment under the terms thereof.—*Held*, that such finding was against evidence and must be set aside. *Dartmouth Ferry Commission v. Marks*, xxxiv., 366.

### HOMESTEADS.

*Homestead lands—"Land Titles Act," 6 Edw. VII., c. 24; 8 Edw. VII., c. 29 (Sask.)—Exemption from seizure—Registered incumbrance—"Exemptions Ordinance," N. W. T. Con. Ord., 1898, c. 27, xlv., 318.*

See TITLE TO LAND.

### HORSE RACES.

See RACE-COURSE.

### HOUSE OF ASSEMBLY.

*Constitutional law—Legislative Assembly—Powers of Speaker—Precincts of House of Assembly—Expulsion, xxxiv., 400.*

See CONSTITUTIONAL LAW.

### HOUSEBREAKING.

*Criminal law—Habeas corpus—Common law offences—Construction of statute—"Supreme Court Act," R. S. C., 1906, c. 139, s. 62. In re Dean, xlviii., 235.*

See CRIMINAL LAW.

### HUSBAND AND WIFE.

1. *Contract—Separate estate—Security for husband's debt—Independent advice—Stare decisis.*—The confidential relations between husband and wife are such that where the latter conveys or encumbers her separate property for her husband's benefit she is entitled to the protection of independent advice; without that her action does not bind her. *Cox v. Adams* (35 Can. S. C. R. 393) followed, *Idington, J.*, dissenting.—Only in very exceptional circumstances should the Supreme Court refuse to follow its own decisions.—Judgment of the Court of Appeal (17 Ont. L. R. 436) reversed. *Stuart v. Bank of Montreal*, xli, 516.

2. *Fraudulent conveyance—Statute of Elizabeth—Voluntary settlement—Evidence.*—In August, 1908, M. and his brother bought a hotel business in Ottawa for \$8,000, paying \$6,000 down and securing the balance by notes which were afterwards retired. In November, 1908, M. conveyed a hotel property in Madoc to his wife subject to a mortgage which she assumed. M. and his brother carried on the Ottawa business until March, 1910, when they assigned for benefit of creditors who brought suit to set aside the conveyance to M.'s wife. On the trial it was shewn that for some time before November, 1908, M.'s wife had been urging him to transfer to her the Madoc property, which she had helped him to acquire, as a provision for herself and their children; that she had joined in a conveyance of a property in Toronto in which they both believed she had a right of dower, and the proceeds of the sale of which were applied in the purchase of the Ottawa business; and that all of M.'s liabilities at the time of said conveyance had been discharged. M. ascribed his failure in Ottawa to the action of the License Commissioners in compelling him to move his bar to the rear of the premises whereby his receipts fell off and he lost rents that he had theretofore received, and had to make expensive alterations; and to a fire on the premises early in 1910. The trial judge set aside the conveyance to M.'s wife; his judgment was reversed by a Divisional Court (24 Ont. L. R. 591), but restored by the Court of Appeal.—*Held*, affirming the judgment of the Court of Appeal (27 Ont. L. R. 319), *Davies, J.*, dissenting, that the conveyance by M. to his wife was voluntary; that it

denuded him of the greater part of his available assets and was made to protect the property conveyed against his future creditors and is, therefore, void as against them. *McGuire v. Ottawa Wine Vaults Co.*, xlviii, 44.

3. *Quebec marriage laws—Community of property—Dissolution by death—Failure to make inventory—Insolvent estate—Continuation of community—Estoppel—Renunciation—Married woman.*]—Where the matrimonial community was in insolvent circumstances at the time of the wife's death, in 1877, the failure of the husband to make an inventory of the common property did not have the effect of causing continuation of community under the provisions of articles 1323 *et seq.* of the Civil Code as then in force. *King v. McHendry* (30 Can. S. C. R. 450) followed. Fitzpatrick, C.J., and Duff, J., dissented.—The judgment appealed from (Q. R. 24 K. B. 138) was affirmed.—*Per Duff, J.*, (dissenting).—The failure of the husband to cause an inventory to be made within three months after the death of the wife had the effect of concluding him finally, as against the minor children, from asserting that continuation of community did not take place; the heirs, claiming through him, are in the same position. As the right to the benefit of continuation of community is not a personal right, but is one given to the minor children in substitution of their right to an account, as at the expiration of the time for making an inventory, it is a claim that may be made at any time unless it could be said that the failure to make the demand during the lifetime of the surviving consort operated as a renunciation. *Laroche v. Laroche*, lii., 662.

4. *Practice—Pleading—Amendment ordered by court—Married woman—Legal community—Right of action—Reprise d'instance—Arts. 78, 174, 176 C. P. Q.—R. S. C. c. 135, ss. 63, 64.* *North Shore Power Co. v. Duguay*, xxxvii., 624.

5. *Contract—Promissory note—Security for debt—Parent and child—Pressure*, xxxv., 393.

See CONTRACT.

6. *Construction of will—Description of legatee—Devise "to my wife"—Bigamous marriage—Evidence—Burden of proof*, xl., 210.

See MARRIAGE.

7. *Married woman—Separate property—Liability for debts of husband—Registry law—"Real Property Act"—"Married Women's Act"—Conveyance during coverture*, xl., 384.

See MARRIED WOMAN.

8. *Institution of action by divorced wife—Judicial authorization—Arts. 176, 178 O. C.—Art. 14 O. C. P.—Divorce—Decree by foreign tribunal—Jurisdiction—Effect in Quebec—Comity of nations*, Cam, Cas. 392.

See DIVORCE.

AND see MARRIED WOMAN.

9. *Donatio inter vivos—Ante-nuptial contract—Gift to wife—Payment at death of*

*husband—Institution contractuelle—Onerous gift*, xlv., 197.

See DONATION.

10. *McGuire v. Ottawa Wine Vaults Co.*, xlviii., 44.

See MARRIED WOMAN.

11. *Title to land—Conveyance in fraud of creditor—Advancement—Trustee—Equitable relief—Restitution—Evidence—Statute of Frauds*, lii., 625.

See PUBLIC POLICY.

12. *Title to land—Conveyance in fraud of creditors—Advancement—Trustee—Equitable relief—Restitution—Evidence—Statute of frauds. Scheuerman, etc.*, lii., 625.

See TITLE TO LAND.

## HYDRAULIC CONCESSION.

See MINES AND MINING.

## HYDRAULIC MINING.

See MINES AND MINING.

## HYPOTHEC.

1. *Broker—Stock—Purchaser on margin—Pledge of stock by broker—Possession for delivery to purchaser*, xxxviii., 601.

See BROKER.

2. *Liquidation of insolvent corporation—Distribution and collocation—Privileged claim—Expenses for preservation of estate—Fire insurance premiums—Notice—Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2006 C. O.*, xxxix., 318.

See COMPANY.

AND see MORTGAGE; RENT CHARGE.

3. See LIEN; PRIVILEGES AND HYPOTHECS.

4. *Municipal corporation—Statutory powers—Electric light and power—Waterworks—Immovable outside boundaries—Purchase on credit—Promissory notes—By-law—Loans—Approval of ratepayers—Special rate—Sinking-fund—Construction of statute—(Que.) 8 Edw. VII., c. 95—R. S. Q. 1909, tit. XI.—"Cities and Towns Act," xlv., 585.*

See MUNICIPAL CORPORATION.

## IMMORAL CONTRACT.

*Fire insurance—Bawdy house—Legal maxim—"Ea turpi causâ non oritur actio"—Cancellation of policy—Statutory condi-*

*tion—Notice to insured—Return of premium—Principal and agent.*—On application by plaintiff through an insurance broker, the company insured her house and furniture against loss by fire, the premises being described as a "sporting house" (a house of ill-fame), and, soon afterwards, the local general agent of the company received notification from the head-office that the policy had been cancelled. On being notified the broker wrote to plaintiff informing her of the cancellation but his letter was not delivered and was returned through the mails. In an action on the policy,—*Held*, reversing the judgment appealed from (9 Alta. L. R. 47), Idington and Duff, JJ., dissenting, that on the face of the policy of insurance it appeared that the effect of the contract was to facilitate the carrying on of an illegal or immoral purpose and, therefore, it would not be enforced in a court of justice. *Pearce v. Brooks* (L. R. 1 Ex. 213), applied; *Clark v. Hagar* (22 Can. S. C. R. 510), *Johnson v. Union Marine Fire Insurance Co.* (97 Mass. 288), and *Bruneau v. Laliberté* (Q. R. 19 S. C. 425), referred to.—*Per Davies, J.*—In the circumstances of the cases the broker through whom the plaintiff effected the insurance became her agent for all purposes in connection therewith and he was also constituted the agent of the company for the purpose of giving notice of the cancellation of the policy.—*Per Idington and Duff, JJ.*, (dissenting).—The mere description of the premises insured as a hawdy house is not sufficient evidence to justify the inference that the contract had the effect of promoting illegal or immoral purposes. *Clark v. Hagar* (22 Can. S. C. R. 510); *Lloyd v. Johnston* (1 Bos. & P. 340); *Bowry v. Bennett* (1 Camp. 348); *Hamilton v. Grainger* (5 H. & N. 40), and *Pearce v. Brooks* (L. R. 1 Ex. 213), referred to. *Bruneau v. Laliberté* (Q. R. 19 S. C. 425), discussed.—*Per Idington and Duff, JJ.*—The broker, who was handed the policy for delivery to insured and collection of the premium, became the agent of the company for those purposes. He, however, had no authority from the insured to receive notice of cancellation of the policy on her behalf nor to waive the requirements of statutory condition 19 of the "Northwest Territories Ordinance," ch. 16 (1st sess.), 1903, as to notice of cancellation of policies of insurance and return of premiums paid. *Dominion Fire Insurance Co. v. Nokata*, lii., 294.

## IMMOVABLES.

1. *Fixtures—Lessor and lessee—Buildings placed on leased land—Evidence—Onus of proof.* *Bing Kee v. Yick Chong*, xliiii., 334.  
See LEASE.

2. *Taxation of electric and gas installations on streets—Construction of statute—Words and phrases—"Terrain"—"Lot"—Immovable property—Charter of Town of Westmount—56 V. c. 54, s. 100, xlv., 364.*

See ASSESSMENT AND TAXATION.

See CHATELS; MINES AND MINING; TRADE FIXTURES.

## IMPROVEMENT FUND, UPPER CANADA.

See CONSTITUTIONAL LAW.

## INDIAN LANDS.

1. *Constitutional law—Extinction of Indian title—Payment by Dominion—Liability of Province—Exchequer Court Act, s. 32—Dispute between Dominion and Province.*—Where a dispute between the Dominion and a Province of Canada, or between two Provinces comes before the Exchequer Court as provided by sec. 32 of R. S. C. [1906] ch. 140, it should be decided on a rule or principle of law and not merely on what the judge of the court considers fair and just between the parties.—In 1873 a treaty was entered into between the Government of Canada and the Salteaux tribe of Ojibway Indians inhabiting land acquired by the former from the Hudson Bay Co. By said treaty the Salteaux agreed to surrender to the government all their right, title and interest in and to said lands and the government agreed to provide reserves, maintain schools and prohibit the sale of liquor therein and allow the Indians to hunt and fish, to make a present of \$12 for each man, woman and child in the bands and pay each Indian \$5 per year and salaries and clothing to each chief and sub-chief; also to furnish farming implements and stock to those cultivating land. At the time the treaty was made the boundary between Ontario and Manitoba had not been defined. When it was finally determined in 1884, it was found that 30,500 square miles of the territory affected by it was in Ontario and in 1903 the Dominion Government brought before the Exchequer Court a claim to be reimbursed for a proportionate part of the outlay incurred in extinguishing the Indian title. The Province disputed liability and, by counterclaim, asked for an account of the revenues received, by the Dominion while administering the lands in the Province under a provisional agreement pending the adjustment of the boundary.—*Held*, reversing the judgment of the Exchequer Court (10 Ex. C. R. 445) Girouard and Davies, JJ., dissenting, that the Province was not liable; that the treaty was not made for the benefit of Ontario, but in pursuance of the general policy of the Dominion in dealing with Indians and with a view to the maintenance of peace, order and good government in the territory affected; and that no rule or principle of law made the Province responsible for expenses incurred in carrying out an agreement with the Indians to which it was not a party and for which it gave no mandate. *Province of Ontario v. Dominion of Canada*, xliii., 1.

2. *Crown lands—Lands vesting in Crown—Constitutional law—"B. N. A. Act, 1867," ss. 91 (24) 109-117—Title to—Surrender—Sale by Commissioner—Property of Canada and provinces—Construction of statute—"Indian Act," 39 V. c. 18—R. S. C. 1886, c. 43, s. 42—Words and phrases—"Reserve"—"Person"—"Located Indian"*

— Evidence — Public document — Legal maxim, liii., 172.

See CROWN LANDS.

### INDICTMENT.

1. Criminal law — Crown case reserved — Form of charge — Theft — Taking "fraudulently and without colour of right" — Criminal Code, 1892, secs. 305 and 611; Form F.F.] — The prisoner was charged before the County Court Judges' Criminal Court with unlawfully stealing goods, but the charge did not allege that the offence was committed fraudulently and without colour of right. — Held, affirming the decision appealed from, that the offence of which the prisoner was accused was sufficiently stated in the charge. *George v. The King*, xxxv., 376.

AND see CRIMINAL LAW.

2. Criminal law — Venue — Indictment — Commitment to penitentiary — Warrant — Criminal Code, 1892, ss. 609, 754 — R. S. C. c. 182, s. 42.] — The venue mentioned in section 609 of the Criminal Code, 1892, means the place where the crime is charged to have been committed and, in cases where local description is not required, there is an implied allegation that the offence was committed at the place mentioned in the venue in the margin of the record. It is of no consequence whether or not the trial court should be considered an inferior court. *Smitheman v. The King*, xxxv., 490.

AND see CRIMINAL LAW.

3. Criminal law — Criminal Code, 1892, ss. 241, 242 — Wounding with intent — Verdict — Conviction — Crown case reserved, xxxv., 607.

See CRIMINAL LAW.

4. Habeas corpus — Criminal law — Jurisdiction of judge of Supreme Court of Canada — Issue of writ out of jurisdiction of provincial courts — Concurrent jurisdiction — R. S. C. (1886) c. 135, s. 32 — Construction of statute — Constitutional law — Powers of Parliament — "Inland Revenue Act" — "Selling and delivering a still and worm" — Cumulative charge — Summary conviction — Adjournment — Conviction in absence of accused, Cout. Cas. 110.

See HABEAS CORPUS.

5. *In re Criminal Code*, xliii., 434.

See CRIMINAL LAW.

6. Proceedings before grand jury — Complainant on panel — Criminal Code, s. 899. *Veronneau v. The King*, liv., 7.

See CRIMINAL LAW.

### INDUSTRIAL IMPROVEMENTS.

See RIVERS AND STREAMS.

### INFANT.

1. Contract — Promissory note — Security for debt — Husband and wife — Parent and child — Pressure, xxxv., 393.

See CONTRACT — PARENT AND CHILD.

2. Operation of tramway — Injury to child of tender age — Recklessness of motorman. *Sydney & Glace Bay R. R. v. Lott*, xlii., 220.

See NEGLIGENCE.

### INJUNCTION.

1. Construction of railway — Injunction — Interested party — Public corporations — Franchises in public interest — Lapse of chartered powers — "Railway" or "tramway" — Agreement as to local territory — Invalid contract — Public policy — Dominion Railway Act — Work for general advantage of Canada — Quebec Railway Act — Quebec Municipal Code — Limitation of powers.] — An agreement by a corporation to abstain from exercising franchises granted for the promotion of the convenience of the public is invalid as being contrary to public policy and cannot be enforced by the courts. — *Per Sedgewick and Killam, JJ.* — A company having power to construct a railway within the limits of the municipality has not such an interest in the municipal highways as would entitle it to an injunction prohibiting another railway company from constructing a tramway upon such highways with the permission of the municipality under the provisions of article 479 of the Quebec Municipal Code. The municipality has power, under the provisions of the Municipal Code, to authorize the construction of a tramway by an existing corporation notwithstanding that such corporation has allowed its powers as to the construction of new lines to lapse by non-user within the time limited in its charter. — *Per Girouard and Davies, JJ.* — A railway company which has allowed its powers as to construction to lapse by non-user within the time limited in its charter and which does not own a railway line within the limits of a municipality where such powers were granted has no interest sufficient to maintain an injunction prohibiting the construction therein of another railway or tramway. Where a company subject to the Dominion Railway Act, with powers to construct railways and tramways, has allowed its powers as to the construction of new lines to lapse by non-user within the time limited, it is not competent for it to enter into an agreement with a municipality for the construction of a tramway within the municipal limits under the provisions of article 479 of the Quebec Municipal Code. *Montreal Park and Island Railway v. Chateauguay and Northern Railway Co.*, xxxv., 48.

### INDORSER.

See BILLS AND NOTES.



2. *Practice — Pleading — Expropriation — Trespass — Waiver.*—Where a trespasser, by taking proper steps to that effect, would have the right to expropriate the lands in dispute, an injunction should be withheld in order to enable the necessary proceedings to be taken and compensation made. *Goodson v. Richardson* (9 Ch. App. 221), and *Couper v. Laidler* ([1903] 2 Ch. 337) applied. But where there has been acquiescence equivalent to a fraud upon the defendant the injunction ought not to be granted, even where the legal right of the plaintiff has been proved. *Gerrard v. O'Reilly* (3 Dr. & War. 414); *Wilmot v. Barber* (15 Ch. D. 96); *Johnson v. Wyatt* (2 De G. J. & S. 17); and *Smith v. Smith* (L. R. 20 Eq. 500), referred to. *The Sandon Water Works and Light Co. v. Byron N. White Co.*, xxxv., 309.

3. *Court of equity—Title to land—Declaratory decree—Cloud on title.*—A court of equity will not grant a decree confirming the title to land claimed by possession under the statute of limitations nor restrain by injunction to a person from selling land of another.—The Chief Justice took no part in the judgment on the merits and Sedgewick, J., dissented from the judgment of the majority of the court. *Miller v. Robertson*, xxxv., 80.

AND see PRACTICE.

4. *Tramway — Contract with municipality — Limited tickets — Specific performance—Injunction — Right of action—Parties.*—An injunction granted by the judgment of Street, J. (8 Ont. L. R. 642) affirmed by the Court of Appeal for Ontario (10 Ont. L. R. 594) was affirmed by the Supreme Court of Canada for the reasons given in the courts below. The order of Street, J., restrained the company from operating tram-cars in which they did not provide "workmen's tickets" good for passenger fares during certain fixed hours of each day in virtue of an agreement with the City. The Court of Appeal held that the agreement was *intra vires*, that the company were obliged to provide such tickets, that it was not necessary to make the Attorney-General a party to the action and that specific performance could be enforced by injunction. *Hamilton Street Rway. Co. v. City of Hamilton*, xxxix., 673.

5. *Lease — Water lots — Status of lessee — Riparian owner—Access to lot—Injunction.*—S. is a lessee under lease from the City of St. John of a water lot in the harbour, the F. K. Co. are lessees of the next lot to the south, and there are other lots to the south between that of S. and the foreshore of the harbour. By his lease S. has a right of access to and from his lot on the east and west sides.—*Held*, that S. was not a riparian owner and had no rights in respect of the water lot other than those given him by his lease. Hence, he could not restrain the F. K. Co. from erecting a wharf on the adjoining lot which would prevent access to his from the south, a right of access not provided for in his lease.—Judgment appealed from (40 N. B. Rep.

8) reversed. *Idington, J.*, dissenting. *Francis Kerr Co. v. Seely*, xlv., 629.

6. *Title to land — Boundary—Riparian rights — Prescription. City of Hull v. Scott*, Cout. Cas. 264.

7. *Water commission — Construction of statute — Damages to existing works—Appropriation of water*, xxxiv., 650.

See WATERWORKS.

8. *Appeal — Jurisdiction — Annulment of procès-verbal — Matter in controversy—Art. 560 C. C.—Servitude*, xxxvii., 321.

See APPEAL.

9. *Watercourses — Riparian rights — Expropriation — Trespass — Torts — Diversion of natural flow—Injurious affection — Damages — Execution of statutory powers — Arbitration — Construction of statute — 59 Vict. c. 44 (N.S.)*, xxxvii., 464.

See RIVERS AND STREAMS.

10. *Dominion mining regulations — Hydraulic mining—Placer mining—Lease — Water grant — Conditions of grant—User of flowing waters—Diversion of watercourse — Dams and flumes—Construction of deed — Riparian rights — Priority of right*, xxxviii., 79.

See MINES AND MINING.

11. *Appeal—Action for declaration and injunction—60 & 61 Vict. c. 34, s. 1 (D.)—Municipal corporation—Water rates—Discrimination*, xxxviii., 239.

MUNICIPAL CORPORATION.

12. *Time limit for appeal to King's Bench — Opposite party appealing to Court of Review—Arts. 927, 1203, 1209 C. P. Q.—Practice — Discretionary order — Reversal on appeal—Question of costs only*, xxxix., 81.

See APPEAL—PRACTICE.

13. *Rights appurtenant to dominant tenement—Construction of ice-house—Change in natural conditions—Flooding of servient tenement—Aggravation of servitude—Damages—Abatement of nuisance — Arts. 406, 501, 549 C. C.*, xxxix., 103.

See NUISANCE.

14. *Municipal corporation — Drainage—Construction of sewers — Nuisance—Damages—Right of action—Practice*, Cout. Cas. 162.

See APPEAL.

15. *Appeal — Jurisdiction — Rivers and streams — Floating logs — Servitude — Faculty or license — Possessory action—Injunction — Matter in controversy—Practice — Costs. Price v. Tanguay*, xlii., 133.

See APPEAL.

16. *Appeal — Jurisdiction — Matter in controversy — Stare decisis — Municipal by-law — Contract — Collateral effect of*

judgment—Construction of statute—"Supreme Court Act," R. S. C. (1906) c. 139, ss. 36, 39 (e), 46, xliii., 650.

See APPEAL.

17. Appeal — Jurisdiction — Matter in controversy — Stare decisis — Municipal by-law—Contract—Collateral effect of judgment—Construction of statute—"Supreme Court Act," R. S. C. (1906), c. 139, ss. 36, 39 (c), 46. *Shawinigan Hydro-Electric v. Shawinigan Water, etc.*, xliii., 650.

18. Appeal — Jurisdiction — Interim injunction—Interlocutory order, xlvii., 394.

See APPEAL.

19. Construction of statute — "Quebec Public Health Act" — Inspection of food — Duty of health officers—Quality of food—Condemnation — Seizure — Notice — Effect of action by health officers — Controlling power of courts—Evidence—Appeal—Jurisdiction — Question in controversy, xlvii., 514.

See STATUTE.

## INLAND WATERS.

Maritime law—Collision — Rules of navigation—Narrow channel—Boston Harbour, xxxv., 616.

See ADMIRALTY LAW.

## INQUEST OF OFFICE.

Crown lands—Adverse possession—Grant during—Information for intrusion—21 Jac. I. c. 14 (Imp.), xxxiv., 533.

See CROWN LANDS.

## INSOLVENCY.

1. Composition and discharge—Construction of deed—Novation—Reservation of collateral security—Delivering up evidences of debt.]—By deed of composition and discharge the bank agreed to accept composition notes in discharge of its claim against the plaintiff at a rate in the dollar, special reserve being made as to the securities it then held for the debt due by the plaintiff. The original debt was to revive in full on default in payment of any of the composition notes. Upon receiving the composition notes the bank surrendered the notes representing the full amount of its claim.—*Held*, reversing the judgment appealed from (Q. R. 13 K. B. 417) that the effect of the agreement coupled with the reservation made was that the debtor was to be discharged merely from personal liability on payment of the composition notes, but that the securities were to be still held by the bank for the purpose of reimbursing itself, if possible, to the extent of the balance of the original debt. — *Held*, also, that the surrender of the original notes by the bank did not extinguish the debt they represented and, under the circumstances, there was no

novation. *Banque l'Hochelaga v. Beauchamp*, xxxvi., 18.

2. Preferential assignment — Debtor and creditor — Pressure — Knowledge of insolvency.—Yukon Con. Ord. 1902, c. 38, ss. 1 & 2.]—The effect of the second section of the Yukon Ordinance, chapter 38, Consolidated Ordinances, 1902, is to remove the doctrine of pressure in respect to preferential assignments, and consequently, all assignments made by persons in insolvent circumstances come within the terms of the ordinance.—In order to render such an assignment void there must be knowledge of the insolvency on the part of both parties and concurrence of intention to obtain an unlawful preference over the other creditors. *Molsons Bank v. Halter* (18 Can. S. C. R. 88); *Stephens v. McArthur* (19 Can. S. C. R. 446); and *Gibbons v. McDonald* (20 Can. S. C. R. 587) referred to. *Bennalack v. Bank of British North America*, xxxvi., 120.

3. Fraudulent preference — Security to creditor — Knowledge of insolvency—R. S. O. [1897] c. 147, s. 2, s.-s. 2 & 3.]—G. had assisted S. with loans and also guaranteed his credit at the Dominion Bank to the extent of \$3,000. His own cheque at the bank having been refused payment until the indebtedness of S. of \$1,900 was settled the latter promised to arrange it within a month which he did by transferring to G. goods pledged to the Imperial Bank, G. paying what was due to both banks. Shortly after, S. sold out his stock in trade and absconded owing large sums to foreign creditors and being insolvent. On the trial of a creditor's action to set aside the transfer to G. as a fraudulent preference the manager of the Dominion Bank testified that G.'s cheque was not refused from any doubt of S.'s solvency but because he had heard that S. was dealing with another bank and he wished to close the account.—*Held*, Idington and Duff, JJ., dissenting, that under the evidence produced G. had no reason to suppose, when the goods were transferred, that S. was insolvent and he had satisfied the onus placed upon him by the provincial statute of shewing that he had not intended to hinder, delay or defraud the creditors of S. *Baldocchi v. Spada*, xxxviii., 577.

4. Payment by insolvent — Preference — Recovery back by curator—Gaming transaction—Illegal contract—Right of action—Arts. 1031, 1032, 1036, 1927 C. C.—Arts. 853 et seq. C. P. Q.]—An action by the curator of an abandoned estate to recover back moneys paid by an insolvent to one creditor to the prejudice of the others, on the eve of insolvency is not barred by the provisions of article 1927 of the Civil Code of Lower Canada denying a right of action in respect of gaming contracts. Judgment appealed from (Q. K. 22 K. B. 97) reversed. Owing to suspicions aroused by the exposure of the insolvent's methods of business, a creditor who had deposited money with him for investment in anticipation of obtaining large profits through his operations on the stock market by urgent demands secured re-payment of the sums so deposited together with a large amount of alleged pro-

fits on the day preceding that on which the insolvent absconded.—*Held*, that, as the creditor must be deemed to have had knowledge of the insolvent circumstances of the debtor at the time of the payment, the curator to the abandoned estate of the insolvent was entitled to recover back the amount so paid, under the provisions of article 1036 of the Civil Code of Lower Canada.—The judgment appealed from (Q. R. 22 K. B. 97) in its result affirming the judgment at the trial (Q. R. 41 S. C. 155) was reversed. *Wilks v. Matthews*, xlix., 91.

5. Sale of goods — Suspensive condition — Term of credit — Delivery — Pledge — Shipping — Bills of lading — Indorsement of bills — Notice — Fraudulent transfer — Banking — Bailee receipt — Brokers and factors — Principal and agent — Resiliation of contract — Revendication — Damages — Practice — Pleading, xxxvi., 406.

See SALE.

6. Preferential transfer of cheque — Deposit in private bank — Application of funds to debt due banker — Sinister intention — Payment to creditor — R. S. O. (1897) c. 147, s. 3 (1), xxxix., 281.

See ASSIGNMENTS.

7. Liquidation of insolvent corporation — Distribution and collocation — Privileged claim — Expenses for preservation of estate — Fire insurance premiums — Practice — Ex parte inscription — Notice — Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2006, C. C., xxxix., 318.

See COMPANY.

8. Assignment — Fraud — Right of action — Misdirection — New trial — Accounts — Practice, Cam. Cas. 245.

See NEW TRIAL.

9. Appeal — Actio Pauliana — Controversy involved — Title to land — Supreme Court Act, s. 46, xli., 80.

See APPEAL.

10. Insolvent company — Sale of assets by liquidator — Sale "free from incumbrances" — Conversion — Breach of contract. *Dominion Linen Co. v. Langley*, xli., 633.

11. Assignment — Preference — Trust — Statute of Frauds, xlvii., 392.

See ASSIGNMENT.

12. Construction of statute — Alberta "Assignments Act" — Assignment for benefit of creditors — Occupation of leased premises — Liability of official assignee. *North-west Theatre v. MacKinnon*, lii., 588.

See ASSIGNMENT.

13. Quebec marriage laws — Community of property — Dissolution by death — Failure to make inventory — Insolvent estate — Continuation of community — Estoppel — Renunciation. *Laroche v. Laroche*, lii., 662.

See MARRIAGE LAWS.

## INSTITUTION CONTRACTUELLE.

*Donatio inter vivos* — *Ante-nuptial contract* — *Gift to wife* — *Payment at death of husband* — *Institution contractuelle* — *Onerous gift*, xlv., 197.

See DONATION.

## INSURANCE.

1. Constitutional law — Foreign company doing business in Canada — Dominion license — 9 & 10 Edw. VII. c. 32, ss. 4 and 70. — *Held*, per Fitzpatrick, C.J., and Davies, J., that sections 4 and 70 of The Act 9 & 10 Edw. VII. c. 32 (the "Insurance Act, 1910") are not *ultra vires* of the Parliament of Canada. *Idington, Duff, Anglin and Brodeur, J.J., contra.* — *Held*, per Fitzpatrick, C.J., and Davies, J., that section 4 of said Act operates to prohibit an insurance company incorporated by a foreign state from carrying on its business within Canada if it does not hold a license from the Minister under the said Act and if such carrying on of the business is confined to a single province. — *Per Idington, J.* — Section 4 does so prohibit if, and so far as it may be possible to give any operative effect to a clause bearing upon the alien foreign companies as well as others within the terms of which is embraced so much that is clearly *ultra vires*. — *Per Duff, Anglin and Brodeur, J.J.* — The section would effect such prohibition if it were *intra vires*. *Insurance Reference*, xlviii., 260.

2. Constitutional law — Incorporation of companies — "Provincial objects" — Limitation — Doing business beyond the province — Insurance company — "Insurance Act, 1910; 9 & 10 Edw. VII. c. 32, s. 3, s.s. 3" — Enlargement of company's powers — Federal company — Provincial license — Trading companies, xlviii., 331.

See CONSTITUTIONAL LAW.

3. Constitutional law — Incorporation of companies — "Provincial objects" — Limitation — Doing business beyond the province — Insurance company — "Insurance Act, 1910," 9 & 10 Edw. VII. c. 32, s. 3, s.s. 3 — Enlargement of company's powers — Federal company — Provincial license — Trading companies. *In re Alberta R. R. Act*, xlviii., 331.

See CONSTITUTIONAL LAW.

## INSURANCE, ACCIDENT AND GUARANTEE.

1. Evidence — Verdict — New trial — Life insurance — Condition of contract — Misrepresentation — Non-disclosure — Accident policies — Warranties — Words and terms — Rule of interpretation. — On an application for life insurance, the applicant stated, in reply to questions as to insurances on his life then in force, that he carried policies in several life insurance companies named, but did not mention two policies which he

had in accident insurance companies insuring him against death or injury from accidents. The questions so answered did not specially refer to accident insurance, but the policy provided that the statements in the application should constitute warranties and form part of the contract.—*Held*, affirming the judgment appealed from, the Chief Justice dissenting, that "accident insurance is not insurance of the character embraced in the term "insurance on life" contained in the application and, consequently, that the questions had been sufficiently and truthfully answered according to the natural and ordinary meaning of the words used, and, even if the words used were capable of interpretation as having another or different meaning, then the language was ambiguous and the construction as to its meaning must be against the company by which the questions were framed. *Confederation Life Association v. Miller* (14 Can. S. C. R. 330) followed. *Mutual Reserve Life Insurance Co. v. Foster* (20 Times L. R. 715) referred to. *Metropolitan Life Insurance Co. v. Montreal Coal and Towing Co.*, xxxv., 266.

AND see NEW TRIAL.

2. *Insurance — Sprinkler system—Damage from leakage or discharge—Injury from frost—Application—Interim receipt.*—A policy of insurance covered loss by leakage or discharge from a sprinkler system for protection against fire, but provided that it would not cover injury resulting, *inter alia*, from freezing. The water in a pipe connected with the system froze and, the pipe having burst, damage was caused by the consequent escape of water.—*Held*, affirming judgment of the Court of Appeal (14 Ont. L. R. 166) *Davies, J.*, dissenting, that the damage did not result from freezing, and the insured could recover on the policy.—In the *Hawthorne* case, the majority of the court dismissed the appeal on the same grounds. The policy in that case was sent to the brokers who had applied for it on behalf of the assured shortly before, and the latter did not see it until the loss occurred.—*Held, per Davies, J.*, that the contract of insurance was not contained in the policy, which the assured had no opportunity to accept, but in what took place between the brokers and the agent of the insurers on applying for it and, as the latter informed the brokers that damage by frost was insured against, the insured could recover. *Canadian Casualty and Boiler Ins. Co. v. Boulter, Davies & Co. v. Hawthorne & Co.*, xxxix., 558.

3. *Condition of policy—Notice—Tender before action—Waiver.*—The condition of a policy insuring H. against death by accident required that notice of death should be given to the company within ten days thereafter, and it was provided that if the insured met his death while under the influence of intoxicating liquor the company should be liable only for one-tenth of the amount of the insurance. The insured disappeared on the 21st of November, 1908. When last seen on the evening of that day he was apparently under the influence of intoxicants, and, on 3rd April, 1909, his dead body was found in the river in an advanced

state of decomposition, death having been, in all probability, caused by drowning. After the finding of the body the plaintiff gave notice of death to the company and furnished proofs as required. The company refused payment and, before action, tendered to the plaintiff one-tenth of the amount of the insurance payable under the policy as full settlement therefor. The company pleaded this tender in their defence to the action and made proof thereof at the trial.—*Held*, that the tender made by the company was a waiver of the condition requiring notice within ten days of death and also an admission of liability by the company; and, *Anglin, J.*, dissenting, that, as the company had failed to shew that the deceased came to his death while under the influence of intoxicating liquor, the plaintiff was entitled to recover the full amount of the insurance. Judgment appealed from (20 Man. R. 96) affirmed. *Canadian Ryay. Accident Ins. Co. v. Haines*, xlv., 386.

4. *Construction of policy — Special conditions—Increased and diminished indemnity—Injuries from fits causing death.*—In an accident policy an insurance company agreed to pay the insured the principal sum in case of death or specified injuries, double that sum if such death or injuries occurred under certain conditions, and one-tenth for "injuries happening from . . . fits causing death." . . . W., holder of the policy, went at night with a lantern to an outbuilding of the fishing club which he was visiting. Shortly after the outbuilding was seen to be on fire. The fire was extinguished and W. brought out badly burned, from the effects of which he died the next day. In an action on the policy the trial judge found as a fact that W. had been seized with a fit and in that condition caused the fire. This finding was concurred in by the two provincial appellate courts. The trial judge held that the company was liable for one-tenth only of the insurance. The Divisional Court reversed this ruling (26 Ont. L. R. 55, 3 D. L. R. 668), but it was restored by the Appellate Division (26 Ont. L. R. 537, 13 D. L. R. 113).—*Held*, affirming the judgment of the Appellate Division, *Duff* and *Anglin, JJ.*, dissenting, that the injuries causing the death of W. happened from a fit within the meaning of the clause in the policy diminishing the indemnity to be paid. *Winspear v. Accident Ins. Co.* (6 Q. B. D. 42), and *Lawrence v. Accidental Ins. Co.* (7 Q.B.D. 216), distinguished.—*Held, per Fitzpatrick, C.J.*—The clause diminishing the indemnity payable is not an exempting clause but one of the three separate contracts between the insurers and insured as to amount of liability.—*Per Anglin, J.*—It does not create a new liability, but is a clause of limitation in favour of the company and to be strictly construed. (Leave to appeal to the Privy Council was refused, 15th July, 1914.) *Wadsworth v. Canadian Railway Accident Ins. Co.*, xlix., 115.

5. *Guarantee — Fidelity bond — Untrue representations — Materiality — R. S. O. [1897] c. 203, s. 141, s.-s. 2—Suretyship.*—The tax collector of a town applied to a guarantee company for a bond to secure the

corporation against loss by his dishonesty. The company submitted to the Mayor a number of questions which he answered in writing, one being, "what means will you use to ascertain whether his accounts are correct?" His answer was, "Auditors examine rolls and his vouchers from treasurer yearly." The auditors never examined the rolls during the time the security continued.—*Held, per Fitzpatrick, C.J., and Idington and Anglin, J.J.,* affirming the judgment of the Appellate Division (30 Ont. L. R. 618), *Davies, J.,* dissenting, that this was an untrue representation which avoided the security.—*Held, per Duff, J.*—That the judgment of the court below could be supported on the ground that material representations made upon the application for the contract of renewal upon which the action was brought were untrue and that the effect of sub-section (a) is that such misrepresentations avoid the contract *ab initio.* — *Per Davies, J.*—That the answer meant only that the "Municipality Act" required a yearly audit, which would be complied with, and that it was not the Mayor's duty to check such audit and see that it was properly performed. — The bond was renewed without fresh submission of the questions to the Mayor.—*Held,* that as the renewal referred to the Mayor's answers as incorporated therein, and as the latter had signed an agreement that they should form the basis of the bond or any renewal or continuation of the same the answers and representations made thereby applied to such renewal.—*Held, further,* that sub-section 2 of section 141 of the Ontario "Insurance Act" (R. S. O. [1897] c. 203) does not require the policy to state that any particular representation is material to the contract, its effect being only that no misrepresentation shall avoid the policy unless it is material. — *Jordan v. Provincial Provident Institution* (28 Can. S. C. R. 554) followed. *Town of Arnprior v. United States Fidelity & Guaranty Co., li., 96.*

6. *Stallion—Accident or disease—Conditions—Attachment of risk.*—S. applied for insurance on a stallion "for the season." the application in a marginal note stating "term 3 mos." and, in the body of the document, that the insurers would not be liable until the premium was paid and the policy delivered. The policy as issued stated that the insurance would expire at noon on Sept. 7th, and insured against the death of the stallion, after premium paid and policy delivered, from accident or disease "occurring or contracted after the commencement of the company's liability." The policy was delivered and premium paid before four o'clock p.m. of 8th June; the horse had become sick early that morning and died before six o'clock p.m.—*Held,* affirming the judgment of the Appellate Division (37 Ont. L. R. 344), that the statement in the application "term 3 mos." coupled with that in the policy "date of expiry 7th Sept." did not override the express provision as to commencement of liability and make the risk attach from noon of June 7th; that the liability did not commence until the policy was delivered on June 8th; and as the horse died of an illness contracted before such delivery S. could not recover. *Sharkey v. Yorkshire Insurance Co., liv., 92.*

See INSURANCE.

7. *Constitutional law — Railway company — Negligence — Agreements for exemption from liability—Power of Parliament to prohibit, xxxvi., 136.*

See RAILWAYS.

8. *Policy — Countersignature — Evidence — Admission of agent, Cam. Cas. 154.*

See EVIDENCE.

9. *Railways — Negligence — Contributory negligence — Accident at crossing — Deduction of insurance from damages — Practice — Appeal — Equal division of opinion — Costs, Cam. Cas. 228.*

See NEGLIGENCE.

## INSURANCE, FIRE.

1. ACTS OF AGENTS AND OFFICERS, 1-2.
2. ASSIGNMENT OF POLICY, 3.
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### I. ACTS OF AGENTS AND OFFICERS.

1. *Removal of goods—Consent—Binder—Authority of agent.*—K. Bros. & Co., through the agents in New York of the respondent company, obtained insurance on a stock of tobacco in a certain building in Quincy, Flo. and afterwards obtained the consent of the company to its removal to another building. Later, again, they wished to return it to the original location and an insurance firm in New York was instructed to procure the necessary consent. This firm, on January 14th, 1909, prepared a "binder," a temporary document intended to license the removal until formally authorized by the company, and took it to the firm which had been agents of respondents when the policy issued, but had then ceased to be such, where it was initialed by one of their clerks on his own responsibility entirely. On March 19th, 1909, the stock was destroyed by fire in the original location and shortly after a formal consent to its removal back was indorsed on the policy, the respondents then not knowing of the loss. In an action to recover the insurance.—*Held,* affirming the judgment of the Court of Appeal (25 Ont. L. R. 534) that the "binder" was issued without authority; that even if the insurance firm by whose clerk it was initialed had been respondents' agents at the time they had, under the terms of the policy, no authority to execute it and authority would not be presumed in favour of the insured as it might be in case of an original application

for a policy; and that it was not ratified by the indorsement on the policy as the company could not ratify after the loss. *Kline Bros. & Co. v. Dominion Fire Ins. Co.*, xvii., 252.

2. *Blank application—General agent—Misrepresentation—Knowledge of company—Over-valuation—“Dwelling-house”—“Lodging-house.”*—F., the manager, for British Columbia, of a fire insurance company, with power to accept risks and issue policies without reference to the head-office of the company, received an application from M. for insurance for \$2,100 on merchandise, furniture and fixtures contained in a building described as a store and dwelling-house. The application was accepted and a policy issued by him apportioning the insurance upon the three classes of property separately. A loss having occurred payment was refused on the grounds that the stock was over-valued and the premises improperly described as a dwelling-house whereas, in fact, it was also used as a lodging-house. At the trial it appeared that a portion of the premises was fitted up for lodgers; the plaintiffs testified that F. inspected the premises before the policy was issued and that they had made no apportionment of the insurance, but left the matter altogether in the hands of F. F. testified that he sent an agent to have the application signed and the apportionment made and that he filled in the figures upon the blanks in the application from the agent's report. The jury found that F. inserted the description of the premises and apportioned the insurance.—*Held*, reversing the judgment appealed from (17 B. C. Rep. 517) that the company was affected by F.'s knowledge of the premises and of the property insured; that the questions as to who had made the apportionment was properly left to the jury; that the evidence justified the jury in finding that it had been made by F., and that the insured, therefore, had made no valuation as to the stock or the apportionment thereof and could not have misrepresented its value.—*Held*, per Fitzpatrick, C.J., and Davies and Duff, JJ.—That the evidence justified the jury in finding that F. had described the premises as a dwelling-house and that the company was bound by his act in doing so.—*Per* Davies and Duff, JJ.—A dwelling-house does not lose its character as such from the fact that it is occupied by one or more lodgers.—*Held*, per Duff, J.—As, under the conditions of the policy in question, notwithstanding an over-valuation, the company would still be liable for a certain proportion of the actual value of the property insured, the policy should not be avoided. *Mahomed v. Anchor Fire and Marine Insurance Co.*, xviii., 546.

## 2. ASSIGNMENT OF POLICY.

3. *Municipal corporation—General conflagration—Acts of municipal officials—Demolition of buildings—Statutory authority—R. S. Q., 1888, art. 4426—Indemnity—Subrogation—Tort—Transfer of rights to municipality—Liability of insurer.*—Article 4426, R. S. Q., 1888, empowers town corporations, subject to indemnity to the owners, to cause the demolition of buildings in

order to arrest the progress of fires; in the absence of a by-law to such effect power is given to the mayor to order the necessary demolition. In the Town of Chicoutimi, no such by-law having been enacted, the mayor gave orders for the demolition of a building for the purpose of arresting the progress of a general conflagration and, in carrying out his directions, an adjacent building was destroyed which was insured by respondents for \$4,700. The municipality settled with the owner by paying her \$5,500, as full indemnity for all damages sustained, and obtained a transfer of her rights under her policy of insurance. In an action on the policy so transferred:—*Held* (Duff, J., dissenting), that, as the destruction of the building insured was occasioned by an act justified by statutory authority and full indemnity had been paid, the municipality was entitled to subrogation in the rights of the owner and to maintain the action against the insurance company for reimbursement to the extent of the amount of the insurance upon the property.—*Per* Duff, J., dissenting.—Although the destruction of the building insured was occasioned by an act justified at common law, the rights of the municipal corporation were determined by the principle laid down in *Cité de Québec v. Mahoney* (Q. R. 10 K. B. 378), and the claim for reimbursement to the extent of the amount for which the property was insured should not be maintained. *Quebec Fire Insurance Co. v. St. Louis* (7 Moo. P. C. 286) applied. *Guardian Assurance Co. v. Chicoutimi*, li., 562.

## 3. CONDITION OF POLICY.

4. *Insurance on lumber—Conditions—Warranty—Railway on lot—Security to bank—Chattel mortgage.*—A policy insuring against loss by fire a quantity of sawn lumber in a specified location contained a warranty by the assured “that no railway passes through the lot on which said lumber is piled, or within 200 feet.”—*Held*, that a railway partly constructed and hauling freight through the said lot, though not authorized to run passenger cars and do general business, is a “railway” within the meaning of the warranty.—A condition of the policy was that “if the subject of insurance be personal property, and be or become encumbered by a chattel mortgage” it should be void.—*Held*, per Duff, J.—A security receipt under the “Bank Act” given to a bank for advances is not a chattel mortgage within the meaning of this condition. *Guimond v. Fidelity-Phenix Fire Ins. Co.*, xvii., 216.

## 4. CONDITION OF STATUTE.

5. *Policy—Conditions—Notice of loss—Imperfect proofs—Non-payment of premium—Waiver—Application of statute—Remedial clause—N. W. Ter. Ord., 1903 (1st sess.), c. 16, s. 2.*—The premium on a policy of fire insurance was not paid at the time the policy was delivered but, on request, credit was given for the amount and a draft for the same by the insurance company, accepted by the insured, remained due and unpaid

at the time the property insured was destroyed by fire—*Held*, that, in an action to recover the amount of the insurance, the non-payment of the premium was not available as a defence.—The policy was subject to the statutory condition requiring prompt notice of loss by the insured to the company; by another condition the insured was required, in making proofs of loss, to declare how the fire originated so far as he knew or believed. Upon the occurrence of the loss, the company's local agent gave notice thereof to the company, and informed the insured that he had done so and that the company had acknowledged receipt of his notice. The insured gave no further notice to the company. Forms were then supplied by the company for making proofs of loss and they were completed by an agent of the company and signed and sworn to by the insured, the origin of the fire being therein stated to be unknown. On examination for discovery the insured stated that, at the time he signed the declaration, he entertained an opinion as to the origin of the fire, and the company's adjuster reported a similar opinion as to its origin. An adjustment of the amount of the loss was then proceeded with by the several companies carrying insurances on the property in which the defendant company took part, but, after payment by the other companies of their proportionate shares according to the adjustment, the defendants repudiated liability on the grounds of want of notice as required by the statutory condition and non-disclosure of the opinion entertained by the insured as to the origin of the fire.—*Held*, reversing the judgment appealed from (3 Sask. L. R. 219), that, in respect of both conditions, the default was the result of mistake on the part of the insured and, in the circumstances of the case, the provisions of section 2 of "The Fire Insurance Policy Ordinance," N. W. Ter. Ord., 1903, (1st sess.), chapter 16, should be applied and the insurance held not to be forfeited by reason of default of notice or imperfect compliance with the condition as to proofs of loss. *Prairie City Oil Co. v. Standard Mutual Fire Ins. Co.* (44 Can. S. C. R. 40) followed. *Bell Bros. v. Hudson Bay Ins. Co.*, xliv., 419.

6. *Statutory conditions—Gasoline "stored or kept" on premises—Supply kept near building—Material circumstances—Non-disclosure.*—By a condition in a policy of insurance against fire the policy would be void if more than five gallons of gasoline were "kept or stored" at one time in the building containing the property insured.—*Held*, that keeping 15 or 16 feet from said building, under an adjacent platform a barrel of gasoline for supplying the quantity required for daily use was not a breach of such condition.—*Held* also, reversing the decision of the Supreme Court of Nova Scotia (48 N. S. Rep. 39), that as the company, when issuing the policy, knew that a gasoline engine had been installed in the building for use in manufacturing, and must be deemed to have known that a reasonable supply of gasoline for feeding it would be kept close at hand, the keeping of the barrel where it was placed was not a circumstance material to the risk, non-disclosure of which would avoid the policy. *Evangeline Fruit Co. v. Provincial Fire Insurance Co.*, li., 474.

7. *Fire—Statutory conditions—R. S. Q., 1909, arts. 7034, 7035, 7036—Notice—Conditions of application—Conditions indorsed on policy—Keeping and storing coal oil—Agent's knowledge—Waiver—Adjustment of claim—Offer of settlement by adjuster—Estoppel—Transaction—Principal and agent.*—As required by article 7034 of the Revised Statutes of Quebec, 1909, the statutory conditions were printed upon the policy of insurance. The application for the insurance did not refer to them but contained a condition that the insured should not use coal oil stoves on the premises insured. At the time the premises were destroyed by fire coal oil was kept and stored there in excess of the quantity permitted by clause 10 of the statutory conditions, without written permission of the insurance company. The company had given no written notice to the insured pointing out particulars wherein the policy might differ from the application as provided by the second clause of the conditions.—*Held*, Brodeur, J., dissenting, that the law did not require the statutory conditions to be referred to in applications for insurance; that all applications for insurance to which the Quebec legislation applies must be deemed to be made subject to those conditions, except as varied under articles 7035 and 7036, Revised Statutes of Quebec, 1909, and that there was no necessity for the insurance company to give notice, as mentioned in the second clause of the conditions, calling the attention of the insured to the conditions indorsed upon the policy of insurance.—*Per curiam.*—Knowledge by an agent soliciting insurance that coal oil, in large quantities, was kept and stored upon the premises to be insured does not constitute notice of that fact to the company insuring them, nor does notice that coal oil in such quantities was kept and stored upon the premises prior to the insurance involve knowledge that it would be kept there afterwards in violation of the conditions of the policy. Fitzpatrick, C.J., held that knowledge by the agent was knowledge of the company but was not equivalent to waiver of the condition of the policy respecting the keeping or storing of coal oil.—In the absence of proof that adjusting agents employed by the insurer had authority to dispose of the matter, the offer of settlement of the claim by the adjuster does not constitute waiver on the part of the insurer of objections which might be urged against the claim. *Laforest v. Factories Insurance Co.*, liii., 296.

## 5. CONTRACT OF INSURANCE.

8. *Insurance against fire—Statutory condition—R. S. O. [1897] c. 203, s. 163, s.-s. 10 (f)—Construction of statute—Gasoline "stored or kept."*—One of the conditions of the contract of insurance against fire imposed by the Ontario Insurance Act (R. S. O. [1897] ch. 203, sec. 168, sub-sec. 10 (f)), is that an insurance company is not liable for a loss occurring while gasoline, *inter alia*, is "stored or kept in the building insured . . . unless permission is given in writing by the company."—T. effected insurance on a building used as a drug and furniture shop having in his employ a quali-



fied chemist who occupied rooms in the upper part as tenant. This clerk had a gasoline stove which he used occasionally for domestic purposes and later on he brought it down to the shop and used it in making syrups, and while doing so the building took fire and was totally destroyed.—*Held*, that this was a "keeping" of gasoline on the insured premises within the meaning of the statutory condition, and the insurance company were not liable for the loss. *Mitchell v. City of London Assur. Co.* (15 Ont. App. R. 262) distinguished.—Judgment appealed from (17 Ont. L. R. 214) reversed, *Idington and Anglin, J.J.*, dissenting. *Equity Fire Ins. Co. v. Thompson; Standard Mutual Fire Ins. Co. v. Thompson*, xli., 491.

9. *Fire insurance—Policy—Statutory conditions—Gasoline on premises—Illuminating oils insured—Notice of loss—Remedial clause in Act—Discretion of court—Construction of statute—R. S. M. (1902) c. 87.*] — By the Manitoba "Fire Insurance Policy Act" (R. S. M. (1902) ch. 87. sch.), an insurance company insuring against loss by fire is not liable "for loss or damage occurring while . . . gasoline . . . is stored or kept in the building insured or containing the property insured unless permission is given in writing by the company." Insurance was effected "on stock consisting chiefly of illuminating and lubricating oils, etc., and all other goods kept by them for sale." A quantity of gasoline was in the building containing the stock when destroyed by fire.—*Held*, that gasoline, being an illuminating oil, was part of the stock insured and the above statutory condition could not be invoked to defeat the policy.—*Held, per Anglin, J.*, that if gasoline was not insured as an illuminating oil it was within the description of "all other goods kept for sale."—By section 2 of the Act "where, by reason of necessity, accident or mistake, the conditions of any contract of fire insurance on property in this province as to the proof to be given to the insurance company after the occurrence of a fire have not been strictly complied with . . . or where from any other reason the court or judge before whom a question relating to such insurance is tried or inquired into considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions," the company shall not be discharged from liability.—By statutory condition 13(a) in the schedule to the Act every person entitled to make a claim "is forthwith after loss to give notice in writing to the company."—*Held, Fitzpatrick, C.J.*, dissenting, that the above clause applies to said condition and under it, in the circumstances of this case, the insurance should be held not to be forfeited by reason of the failure to give such notice.—Judgment appealed from (19 Man. R. 720) reversed, *Fitzpatrick, C.J.*, dissenting. *Präirie City Oil Co. v. Standard Mutual Fire Insurance Co.*, xli., 40.

10. *Bawdy house—Immoral contract—Legal maxim—"Ex turpi causâ non oritur actio"—Cancellation of policy—Statutory condition—Notice to insured—Return of premium—Principal and agent.*]—On appli-

cation by plaintiff, through an insurance broker, the company insured her house and furniture against loss by fire, the premises being described as a "sporting house" (a house of ill-fame), and, soon afterwards, the local general agent of the company received notification from the head-office that the policy had been cancelled. On being notified the broker wrote to plaintiff informing her of the cancellation, but his letter was not delivered and was returned through the mails. In an action on the policy.—*Held*, reversing the judgment appealed from (9 Alta. L. R. 47), *Idington and Duff, J.J.*, dissenting, that on the face of the policy of insurance it appeared that the effect of the contract was to facilitate the carrying on of an illegal or immoral purpose and, therefore, it would not be enforced in a court of justice. *Pearce v. Brooks* (L. R. 1 Ex. 213), applied; *Clark v. Hagar* (22 Can. S. C. R. 510), *Johnston v. Union Marine Fire Insurance Co.* (97 Mass. 288), and *Bruneau v. Laliberté* (Q. R. 19 S. C. 425), referred to.—*Per Davies, J.*—In the circumstances of the case the broker through whom the plaintiff effected the insurance became her agent for all purposes in connection therewith and he was also constituted the agent of the company for the purpose of giving notice of the cancellation of the policy.—*Per Idington and Duff, J.J.*, (dissenting).—The mere description of the premises insured as a bawdy house is not sufficient evidence to justify the inference that the contract had the effect of promoting illegal or immoral purposes. *Clark v. Hagar* (22 Can. S. C. R. 510); *Lloyd v. Johnston* (1 Bos. & P. 340); *Bowry v. Bennett* (1 Camp. 348); *Hamilton v. Grainger* (5 H. & N. 40), and *Pearce v. Brooks* (L. R. 1 Ex. 213), referred to. *Bruneau v. Laliberté* (Q. R. 19 S. C. 425), discussed.—*Per Idington and Duff, J.J.*—The broker, who was handed the policy for delivery to insured and collection of the premium, became the agent of the company for those purposes. He, however, had no authority from the insured to receive notice of cancellation of the policy on her behalf nor to waive the requirements of statutory condition 19 of the "Northwest Territories Ordinance," ch. 16 (1st sess.), 1903, as to notice of cancellation of policies of insurance and return of premiums paid. *Dominion Fire Insurance Co. v. Nakata*, lii., 294.

## 6. INSURABLE INTEREST.

11. *Ownership—Lease—Sheriff's sale—Title to land—Insurable interest—Fire insurance—Trust—Beneficiary—Principal and agent.*]—The lessor of real estate insured the leased property "in trust" and notified the insurers that the lessee, his son, was the real beneficiary. The lessee paid all the premiums and the property having been seized in execution of a judgment against the lessor, the lessee purchased at the sheriff's sale and became owner in fee. He afterwards increased the insurance, the insurer acknowledging, in the second policy, the existence of the first in his favour. The property having been destroyed by fire payment of the amount of the first policy to the lessee was opposed by a judgment creditor



of the lessor and the money attached in the possession of the company.—*Held*, that the lessee having had an insurable interest when the first policy issued and being, when he acquired the fee and when the loss occurred, the only person having such interest, he was entitled to the payment of the amount of the policy insured upon the application of the lessor. *Langelier v. Charlebois*, xxxiv., 1.

AND see LEASE.

#### 7. LEGISLATIVE JURISDICTION.

12. *Constitutional law—Provincial companies' powers—Operations beyond province—Insurance against fire—Property insured—Standing timber—Return of premiums—B. N. A. Act, 1867, s. 92 (11).*—*Held*, per Idington, Macleannan and Duff, JJ., Fitzpatrick, C.J., and Davies, J., *contra*:—That a company incorporated under the authority of a provincial legislature to carry on the business of fire insurance is not inherently incapable of entering outside the boundaries of its province of origin into a valid contract of insurance relating to property also outside of those limits.—*Per* Fitzpatrick, C.J., and Davies, J.—Sub-sec. 11 of sec. 92; B. N. A. Act, 1867, empowering a legislature to incorporate companies for provincial objects, not only creates a limitation as to the objects of a company so incorporated but confines its operations within the geographical area of the province creating it. And the possession by the company of a license from the Dominion Government under 51 Vict. ch. 28 (R. S. C. 1906, ch. 34, sec. 4) authorizing it to do business throughout Canada is of no avail for the purpose.—Girouard, J., expressed no opinion on this question.—An insurance company incorporated under the laws of Ontario insured a railway company, a part of whose line ran through the State of Maine, "against loss or damage caused by locomotives to property located in the State of Maine not including that of the assured." By a statute in that state the railway company is made liable for injury so caused and is given an insurable interest in property along its line for which it is so responsible.—*Held*, affirming the judgment of the Court of Appeal (11 Ont. L. R. 465) which maintained the verdict at the trial (9 Ont. L. R. 493) that the policy did not cover standing timber along the line of railway which the charter of the insurance company did not permit it to insure.—*Held*, also, Fitzpatrick, C.J., and Davies, J., dissenting, that the policy was not on that account of no effect as there was other property covered by it in which the railway company had an insurable interest; therefore the latter was not entitled to recover back the premiums it had paid. *Canadian Pacific Ry. Co. v. Ottawa Fire Insurance Co.*, xxxix., 405.

#### 8. MORTGAGE CLAUSE.

13. *Insurance by mortgagee—Interest insured—Payment to mortgagee—Subrogation.*—Mortgagees of real estate insured the mortgaged property to the extent of their claim thereon under a clause in the mortgage

by which the mortgagor agreed to keep the property insured in a sum not less than the amount of the mortgage; and if he failed to do so that the mortgagees might insure it and add the premiums paid to their mortgage debt. The policy was issued in the name of the mortgagor who paid the premiums, and attached to it was a condition that whenever the company should pay the mortgagees for any loss thereunder, and should claim that as to the mortgagor no liability therefor existed, said company should be subrogated to all the rights of the mortgagees under all securities held collateral to the mortgage debt to the extent of such payment. A loss having occurred the company paid the mortgagees the sum insured, and the mortgagor claimed that his mortgage was discharged by such payment. The company disputed this, claiming that they had a valid defence against the mortgagor by reason of breaches of a number of the statutory conditions, and were subrogated to the rights of the mortgagees. The Court of Appeal (15 Ont. App. R. 421) and the Divisional Court (14 O. R. 322) held that, the insurance company having failed to establish its defence, the policy had been voided by the acts of the mortgagor, the latter was entitled to the benefit of the money paid by the insurance company to the mortgagees and to have his mortgage discharged.—*Held*, per Strong, Fournier, Taschereau, and Gwynne, JJ., that the judgment of the Court of Appeal for Ontario should be affirmed and the appeal dismissed with costs.—*Held*, per Taschereau and Gwynne, JJ., that the insurance effected by the mortgagees must be held to have been so effected for the benefit of the mortgagor under the policy, and the subrogation clause which was inserted in the policy without the knowledge and consent of the mortgagor could not have the effect of converting the policy into one insuring the interest of the mortgagees alone; that the interest of the mortgagees in the policy was the same as if they were assignees of a policy effected with the mortgagor; and that the payment of the mortgagees discharged the mortgage.—*Held*, per Taschereau and Gwynne, JJ., that the company were not justified in paying the mortgagees without first contesting their liability to him; not having done so they could not, in the present action, raise any questions which might have afforded them a defence in an action against them on the policy. *Imperial Fire Ins. Co. v. Bull* (xviii., 697); *Can. Cas. 1.*

#### 9. REPRESENTATIONS AND WARRANTIES.

14. *Condition of policy—Double insurance—Application—Representations and warranties—Substituted insurance—Condition precedent—Lapse of policy—Statutory conditions—Estoppel.*—B. desiring to abandon his insurance against fire with the Manitoba Assurance Co. and, in lieu thereof, to effect insurance on the same property with the Royal Insurance Co., wrote the local agent of the latter company stating his intention and asking to have a policy in the "Royal" in substitution for his existing insurance in the "Manitoba." On receiving an application and payment of the premium

the agent issued an interim receipt to B. insuring the property pending issue of a policy, and forwarding the application and the premium, with his report, to his company's head office in Montreal where the enclosures were received and retained. The interim receipt contained a condition for non-liability in case of prior insurance unless with the company's written assent, but it did not in any way refer to the existing insurance with the Manitoba Assurance Co. Before receipt of a policy from the "Royal" and while the interim receipt was still in force, the property insured was destroyed by fire. B. had not in the meantime formally abandoned his policy with the Manitoba Assurance Co. The later policy was conditional to become void in case of subsequent additional insurance without the consent of the company. B. filed claims with both companies which were resisted and he subsequently assigned his rights to the plaintiffs by whom actions were taken against both companies.—*Held*, reversing both judgments appealed from, (14 Man. L. R. 90) that, as the Royal Insurance Company had been informed, through their agent, of the prior insurance by B. when effecting the substituted insurance, they must be assumed to have undertaken the risk notwithstanding that such prior insurance had not been formally abandoned and that the Manitoba Assurance Co. were relieved from liability by reason of such substituted insurance being taken without their consent.—*Held*, further, that, under the circumstances, the fact that B. had made claims upon both the companies did not deprive him or his assignees of the right to recover against the company liable upon the risk.—The Chief Justice dissented from the opinion of the majority of the court which held the Royal Insurance Company liable and considered that, under the circumstances, B. could not recover against either company. *Manitoba Assurance Co. v. Whittle; Whittle v. Royal Insurance Co.*, xxxiv., 191.

15. *Application — Misrepresentation — Materiality—Statutory conditions — Variation.*—In an action on a policy insuring a stock of merchandise the company pleaded—That the stock on hand at the time of the fire was fraudulently over-valued. That the insured in his application concealed a material fact, namely, that he had previously suffered loss by fire in his business. That the action was barred by a condition in the policy requiring it to be brought within six months from the date of the fire. This was a variation from the statutory condition that it must be brought within twelve months.—*Held*, affirming the judgment of the Appellate Division (29 Ont. L. R. 356) that the evidence established the value of the stock at the time of the fire to be as represented by the insured; that the materiality to the risk of the non-disclosure of a former loss by fire was a question of fact for the judge at the trial who properly held it to be immaterial; and that the question whether or not the variation from the statutory conditions was just and reasonable depended on the circumstances of the case, and the courts below rightly held that it was not.—*Held*, per Davies, Anglin and Brodeur, JJ.—That the insured having supplied on demand, duplicate copies of the

invoices of goods purchased between the last stock-taking and the time of the fire as well as copies of the stock-taking itself, was not obliged to comply with a further demand for invoices of purchases prior to said stock-taking. *Anglo-American Fire Insurance Co. v. Hendry*, xlviii., 577.

#### 10. RE-INSURANCE.

16. *Contract of re-insurance—Trade custom — Conditions — "Rider" to policy—Limitation of actions — Commencement of prescription—Art. 2236 C. C.J.*—A contract of re-insurance consisted of a blank form of policy of fire insurance in ordinary use, with a "rider" attached setting forth the conditions of re-insurance. The policy contained a clause providing that no action should be maintainable thereon unless commenced within twelve months next after the fire. The "rider" provided that the re-insurance should be subject to the same risks, conditions, valuations, privileges, mode of settlement, etc., as the original policy and that loss, if any, should be payable ten days after presentation of proofs of payment by the company so re-insured.—*Held*, reversing the judgment appealed from, Girouard, and Nesbitt, JJ., dissenting, that there was no incongruity between the limitation of twelve months in the form of the main policy and the condition in the rider agreement as to claims for re-insurance and, consequently, that the action for recovery of the amount of the re-insurance was prescribed by the conventional limitation of twelve months from the date of the fire occasioning the loss. *Victoria-Montreal Fire Insurance Co. v. Home Insurance Co. of New York*, xxxv., 208.

#### 11. OTHER CASES.

17. *Good plans — Revendication—Mutilation by agent—Damages*, xxxvi., 7.

See EVIDENCE.

18. *Electrical installations—Cause of fire —Defective transformer —Improper installations—Onus of proof*, xxxvii., 676.

See NEGLIGENCE.

19. *Liquidation of insolvent corporation—Distribution and collocation — Privileged claim — Expenses for preservation of estate —Fire insurance premiums—Arts. 571, 573, 19, 1043-1046, 1201, 1994, 1996, 2001, 2009 C. C.*, xxxix., 318.

See COMPANY.

### INSURANCE, LIFE.

1. CONDITION OF POLICY, 1-2.
2. CONTRACT, 3.
3. FRIENDLY SOCIETIES, 4-5.
4. MISREPRESENTATION, 6-9.
5. PREMIUMS AND ASSESSMENTS, 10-11.
6. OTHER CASES, 12-18.

## 1. CONDITION OF POLICY.

1. *Delivery of policy — Condition — Instructions to agents.*] — D. applied to an insurance agent in St. John, N.B., for \$1,000 insurance on her life. The application was accepted, the premium paid, and the policy forwarded to the agent, with instructions to reconcile a discrepancy between the application and the doctor's return as to D.'s age before delivering it. The agent then ascertained that the age of 64 given in the application should have been 65, and obtained from D. the additional premium required for a \$1,000 policy at that age. A new policy was sent by the head office to the agent, who did not deliver it on hearing that D. was ill. She died a few days later. The beneficiary brought action for specific performance of the contract to deliver a policy for \$1,000 or for payment of that amount. A condition of the policy sent to the agent was that it should not take effect until delivered, the first premium paid, and the official receipt surrendered during the lifetime and continued good health of the assured.—*Held* affirming the judgment of the Supreme Court of New Brunswick (43 N. B. Rep. 580) and of the trial judge (43 N. B. Rep. 325), Davies and Brodeur, JJ., dissenting, that there was no completed contract of insurance between the company and D. at the time of the latter's death, as the condition as to delivery of the policy and surrender of the receipt during the lifetime and continued good health of the assured was not complied with. *North America Life Assur. Co. v. Elson* (33 Can. S. C. R. 383) distinguished. *Donovan v. Excelsior Life Insurance Co.*, liii., 539.

2. *War risk — Service in South Africa—Extra premium—Special condition — Consideration for premium.*]—Policies on the lives of members of the fourth contingent for the war in South Africa were issued and accepted on condition of payment in each case of an extra annual premium "whenever and as long as the occupation of the assured shall be that of soldier in army of Great Britain in time of war." Each policy also provided that the assured "has hereby consented to engage in military service in South Africa in the army of Great Britain any restriction in the policy contract to the contrary, notwithstanding." The restrictions were against engaging in naval or military service without a permit and travelling or residing in any part of the torrid zone. The contingent arrived in South Africa after hostilities ceased and an action was brought against the company for return of the extra premium on the ground that the insured had never been soldiers of the army of Great Britain in time of war.—*Held*, Girouard and Davies, JJ., dissenting, that the risk taken by the company of the war continuing for a long time and the insurance remaining in force so long as the annual premiums were paid was a sufficient consideration for the extra premium and it could not be recovered back.—*Held*, also, that the permission to engage in South Africa was a waiver of the restriction against travelling in the torrid zone. (Leave to appeal to Privy Council refused, July,

1904.) *Provident Savings Life Assurance Society of New York v. Ballew*, xxxv., 35.

## 2. CONTRACT.

3. *Life insurance—Wagering policy—Misrepresentation — Questions for jury—Arts. 424, 427 C. P. Q.—Charge to jury—New trial.*]—The assignments of facts for the jury were settled in conformity with arts. 424 and 427 C. P. Q., but were subsequently amended at the trial. Judgments were entered for the plaintiffs, on the answers by the jury (Q. R. 16 K. B. 178), and the appellant relied on misdirection and the irregularity of the amendment of the assignment of facts, and asked for a new trial. Without calling upon counsel for respondents, the appeal was dismissed. *Lamothe v. North America Life Assce. Co.*, xxxix., 323.

## 3. FRIENDLY SOCIETIES.

4. *Benefit association—By-laws and regulations—Transfers between lodges—Member in good standing—Regularity of affiliation—Payment of dues and assessments—Evidence — Presumption — Waiver.*] — Where the constitution of a benefit association provides that members shall not be transferred from one lodge to another unless all dues and assessments have been paid, up to and including those for the month in which the application for affiliation is made, the fact that, upon such an application, a member was transferred from one lodge to another involves the presumption as against the association that the transfer was regularly made when the member was in good standing and in accordance with the regulations. *Ancient Order of United Workmen of Quebec v. Turner*, xlv., 145.

5. *Benevolent society — Contract — Payment of assessments — Extension of time—Rules and regulations—Place of payment—Demand—Default — Suspension — Authority to waive conditions—Conduct of officials — Estoppel — Company law — Arts. 1152, 1164, C. C.*]—By the constitution and by-laws of a mutual benevolent society death indemnities were assured to members who, in order to maintain good standing and entitle their beneficiaries to the indemnity, were, thereby, required to make prompt payments of monthly assessments within thirty days from the dates when they became payable. In the subordinate lodge of which C. was a member it had for some time been the practice of its financier to receive such payments fifteen days later than the thirty days so limited and, if then paid, members were not reported as having been in default and, *ipso facto*, under suspension according to the regulations provided by the constitution and by-laws incorporated in the certificate whereby the indemnity was secured. For several years the financier of the subordinate lodge had habitually received these payments from C. at his residence, on or about the last day of this extended term. Seven days after the expiration of the thirty days for pay-

ment of the last assessment, and while it was still unpaid, C. died and, on the following day, the overdue assessment was paid to the local financier and a receipt therefor granted by him. The Grand Treasurer of the Society refused to accept this payment on the ground that C. was then under suspension and was not a member in good standing at the time of his death.—*Held*, affirming the judgment appealed from (Q. R. 21 K. B. 541), Duff, J., dissenting, that by the course of conduct in the subordinate lodge, of which the Grand Lodge was aware, the condition as to prompt payment had been waived, that C. remained in good standing until the time of his death and that the death indemnity was exigible by the beneficiaries. *Wing v. Harvey* (5 DeG. M. & G. 265; 43 Eng. R. 872); *Tattersall v. People's Life Ins. Co.* (9 Ont. L. R. 611); *Buckbee v. United States Annuity and Trust Co.* (18 Barb. 541); *Insurance Co. v. Wolf* (95 U. S. R. 326); and *Redmond v. Canadian Mutual Aid Association* (18 Ont. App. R. 335), referred to.—*Per* Fitzpatrick, C.J., and Brodeur, J.—As no place of payment had been indicated, according to the law of the Province of Quebec (art. 1152 C. C.), assessments were payable at the domicile of the assured; consequently, owing to the practice which had prevailed as to the receipt of payment at C.'s domicile and because no demand for payment had been made at such domicile, there had been no default on the part of C. and he had not become suspended at the time of his death.—*Per* Duff, J., dissenting.—Neither the Grand Lodge nor the subordinate lodge or their officials had power to waive the conditions as to payment prescribed by the constitution and by-laws and the certificate of membership of C.; these instruments constituted the contract of insurance and sufficiently designated the office of the financier of the subordinate lodge as the place where payment of the assessments was to be made; even if article 1152 C. C. applies, no notification was given or proof made conformably to article 1164 C. C., and consequently, failure to make payment of the assessment due within the thirty grace days, at the office of the subordinate lodge, worked a default and, *ipso facto*, the suspension of membership, and, therefore, C. was not in good standing at the time of his death so as to entitle the beneficiaries to the indemnity according to the regulations of the society.—*Held*, further, *per* Duff, J.—As the member must be presumed to know the limitations of the authority of the Grand Lodge, the subordinate lodges, and the officials of each of them, as determined by the constitution and by-laws, the ostensible authority of officials cannot, for any relevant purpose, be of wider scope than the actual authority which is defined specifically and exhaustively by the constitution. *Royal Guardians v. Clarke*, xlix., 229.

#### 4. MISREPRESENTATION.

6. *Warranty—Misstatement and concealment in application—Pleading—Questions at issue—Findings of fact—Amendment—Practice—Successful party moving against findings.*—The action was to recover in-

demnity payable under a bond issued by the defendants to W. The defence alleged that deceased warranted that he was confined to his house by sickness five years before the application when in fact he had been confined to the house by a severe attack of apoplexy within four years of the application. All the issues were found by the trial judge in favour of the plaintiffs except that as to the date of the attack of apoplexy, and, on the ground that there was misrepresentation as to this fact, he gave judgment for the defendants. On appeal to the full court this judgment was set aside and judgment directed to be entered for the plaintiffs. On appeal to the Supreme Court of Canada:—*Held*, Gwynne and Patterson, JJ., dissenting, affirming the judgment appealed from (20 N. S. Rep. 347), that there was no statement made by the deceased, although so found at the trial, that the attack of apoplexy occurred five years before the application, nor was that issue raised by the pleadings.—*Per* Strong, J., that, upon the evidence, the merits of the case were not such as to warrant the Supreme Court in allowing a new defence by way of amendment to be set up at this stage.—*Held*, *per* Patterson, J., that the defendants' pleading must be treated as asserting that the deceased untruly represented that he had not been confined to his house within five years, and to hold otherwise would be opposed to the spirit of the Judicature Act and would be exceeding the strictness which obtained in the days of special demurrers.—*Per* Patterson, J., the judgment at the trial being in their favour, the defendants could not have moved against it on the ground that the other issues ought to have been found in their favour. *Mutual Relief Society of Nova Scotia v. Webster* (xvi., 718); Cam. Cas. 463.

7. *Mutual life insurance—Natural premium system—Level premium—Mortuary calls—Rate of assessment—Rating at attained age—Fraud—Puffing statements—Warranty—Misrepresentation—Acquiescence—Mistake—Rescission of contract—Estoppel.*—A. took out a policy on his life in a mutual association relying on statements contained in circulars issued by the association stating that interest on the reserve fund would be sufficient to cover increases in the death rate and make the policy, after a certain period, self-sustaining. The rates having been increased, A. paid the assessments for some years under protest and then allowed his policy to lapse and sued for a return of the payments he had made with interest and for a decision that the contracts were void *ab initio*.—*Held*, Sedgewick and Nesbitt, JJ., dissenting, that the statements in the circulars only expressed the expectation of the managers of the association as to the future and did not prevent the rates being increased in the discretion of the directors. *The Mutual Reserve Fund Life Association v. Foster* (20 Times L. R. 715) distinguished. *The Provident Savings Life Assurance Society v. Mowat* (32 Can. S. C. R. 147) referred to.—*Per* Taschereau, C.J.—As the contracts of A. with the association were only voidable he was not entitled to be repaid the premiums for which he had

received value by being insured as long as the contracts were in force. *Bernardin v. La Réserve Mutuelle des Etats-Unis* (Cour. d'Appel, Paris, 10 fév. 1904; Gaz. des Trib. 26 fév. 1904), referred to. *Angers v. Mutual Reserve Fund Life Association*, xxxv., 330.

8. *Endowment policy — Surrender—Cash value—Action for rescission — Representation by agent—Inducement to insure.*—The life of S. was insured by a twenty year endowment policy which provided that at the end of the term he could exercise one of three options including that of surrender of the policy on receipt of a sum to be ascertained in a specified manner. About ten months before the policy expired he wrote to the company asking for the amount payable on surrender, which was promptly furnished, and more than a year later he brought action for a larger cash payment, and in the alternative for rescission of the contract for insurance and return of the premium paid with interest, alleging that when he applied for the insurance he was informed by the agent of the company that the cash value of the policies surrendered would be the larger amount claimed. The trial judge directed rescission and return of the premiums as prayed. His judgment was reversed by the Court of Appeal. — *Held*, affirming the judgment of the Court of Appeal (23 Ont. L. R. 559) that as S. did not swear nor the evidence he adduced establish that he was induced to enter into the contract by the representations of the agent as to the sum payable on surrender, and it might fairly be inferred that had he been given the true figures he would still have taken the policy, his action must fail. *Shaw v. Mutual Life Ins. Co.*, xli., 606.

9. *Fire insurance — Change of risk—Evidence—Use of gasoline.* *Anglo-American Fire Ins. Co. v. Morton*, xli., 653.

## 5. PREMIUMS AND ASSESSMENTS.

10. *Condition of policy—Premium note—Payment of premium.*—When the renewal premium on a policy of life assurance became due, the assured gave the local agent of the insurance company a note for the amount of the premium, with interest added, which the agent discounted, placing the proceeds to his own credit in his bank account. The renewal receipt was not countersigned nor delivered to the assured and the agent did not remit the amount of the premium to the company. When the note fell due it was not paid in full and a renewal note was given for the balance which remained unpaid at the time of the death of the assured. The conditions of the policy declared that if any note given for a premium was not paid when due the policy should cease to be in force. — *Held*, affirming the judgment appealed from (38 N. S. Rep. 15), Davies and MacLennan, J.J., dissenting, that the transactions that took place between the assured and the agent did not constitute a payment of the premium, and that the policy had lapsed on default to meet the note when it became due. *The Manufacturers Accident Ins. Co. v. Pudsey* (27 Can. S. C. R. 374)

distinguished; *London and Lancaster Life Assurance Co. v. Fleming* ([1897] A. C. 499) referred to. *Hutchings v. National Life Assurance Co.*, xxxvii., 124.

11. *Non-payment of premiums—Misrepresentation to insured — Estoppel.*—P., in payment of premiums on a life policy, gave his note for one instalment and an overdue balance of another. Shortly before it matured an official of the company, specially authorized to deal with the matter, informed P. that his policy had lapsed owing to the inclusion in the note of the overdue balance which was against the company rules. In consequence of this representation P. did not pay the note nor tender the amount of another instalment falling due before his death. In an action on the policy by the beneficiary no rule of the company was proved avoiding the policy as stated. — *Held*, affirming the judgment appealed against (48 N. S. Rep. 404), Fitzpatrick, C.J., and Davies, J., dissenting, that the company was estopped by conduct from claiming that the policy lapsed on non-payment of the note and subsequent instalment. — *Per* Davies, J., that the non-payment of the note could not be relied on as avoiding the policy, but the estoppel did not extend to the failure to pay the quarterly premium which afterwards became due. *Capital Life Assurance Co. v. Parker*, li., 462.

## 6. OTHER CASES.

12. *Construction of policy — Payment of premium—Time for payment—Forfeiture.* *Pense v. The Northern Life Assurance Co.*, xlii., 246.

13. *Payment of premiums — Thirty days' grace—Death of insured after premium due—Estoppel.* *People's Life Ins. Co. v. Tattersall*, xxxvii., 690.

14. *Misrepresentation — Findings of jury—Evidence of experts—Classes of opinions.* *Mutual Reserve Fund Life Association v. Dillon*, *Cout. Cas.* 339.

15. *Evidence — Verdict — New trial — Life insurance — Accident policy — Contract — Conditions — Misrepresentations—Non-disclosures — Warranty — Words and terms—Rule of interpretation*, xxxv., 266.  
See EVIDENCE; INSURANCE; ACCIDENT.

16. *Constitutional law — Railway company — Negligence — Agreements for exemption from liability—Power of Parliament to prohibit*, xxxvi., 136.  
See RAILWAYS.

17. *Policy — Countersignature—Evidence—Admission of agent*, *Cam. Cas.* 154.  
See EVIDENCE.

18. *Railways — Negligence — Contributory negligence — Accident at crossing — Deduction of insurance from damages — Practice — Appeal — Equal division of opinion—Costs*, *Cam. Cas.* 228.  
See NEGLIGENCE.

**INSURANCE. MARINE.**

1. *Loss of freight—Detention by ice—Perils insured against.*—A vessel on her way to Miramichi, N.B., was chartered for a voyage from Norfolk, Va., to Liverpool with cotton. She arrived at Miramichi on November 25th and sailed for Norfolk on the 29th. Owing to the lateness of the season, however, she could not get out of the bay and she remained frozen in the ice all winter and had to cancel her charter-party.—*Held*, reversing the judgment of the Supreme Court of New Brunswick (24 N. B. Rep. 421), Henry, J., dissenting, that the loss occasioned by the detention from the ice was not a loss by "perils of the seas" covered by an ordinary marine policy.—*Held*, per Henry, J.—Contracts of insurance on freight differ essentially in many respects from those on vessels or goods, and when chartered freight is insured and lost through any of the perils insured against it is not necessary to shew that the vessel was damaged; that the insured is entitled to recover if the vessel is detained by any of the perils insured against whereby the chartered freight is lost.—*Per* Henry, J.—When a contract of affreightment cannot be carried out by reason of stress of weather or other causes beyond control within the time contemplated by the parties, there being no fault on either side, both parties are discharged; and if under such circumstances the parties agree to cancel the contract, it cannot be treated as a voluntary cancellation that will disentitle the insured to recover upon his policy of insurance against loss of freight. *Great Western Ins. Co. v. Jordan* (xiv., 734); *Can. Cas.* 86.

2. *Mutual company—Cancellation of policy—Return of unearned premium—Cancellation by operation of law.*—A mutual insurance company incorporated under the laws of the State of Massachusetts issued marine policies in favour of parties in Nova Scotia who gave notes for the premiums. The policies provided for a return of premiums "for every thirty days of unexpired time if this policy be cancelled." Before any of the premium notes matured the policyholders were notified that the company had been put into liquidation at the instance of the Insurance Commissioner, the notice stating that the legal effect was "to cancel all outstanding policies." In an action by the receiver in the company's name to enforce payment on the notes:—*Held*, affirming the judgment appealed against (46 N. S. Rep. 7) that the decision of the case must be governed by the law of Massachusetts; that the holder of a policy in a mutual company being both insurer and insured the notes sued on were assets for distribution among the creditors; and the receiver was, therefore, entitled to recover the full amount.—*Held*, also, that a cancellation resulting from the action of the State was not a cancellation within the meaning of the above clause providing for return of premium. *Pickles v. China Mutual Ins. Co.*; *Smith v. China Mutual Ins. Co.*, xlvii., 429.

3. *Appeal—Court of Review—Appeal to Privy Council—Appealable amount—Amendment to statute—Application—No-*

*tice of appeal—No trial—Constructive total loss—Trial by jury—Misdirection, Sedgwick v. Montreal*, xli., 639.

4. *Abandonment—Repairs—Boston clause—Findings of jury—New trial—Practice—Evidence taken by commission—Judicial discretion. Ins. Co. of North America v. McLeod*, *Cout. Cas.* 214.

**INTERCOLONIAL RAILWAY.**

*Government railway—Operation over other lines—Agreement for running rights—Extensions and branches—"Public work"—Construction of statute—"Government Railways Act"—R. S. C. 1906, c. 36, s. 80—"Eschequer Court Act"—R. S. C. 1906, c. 140, s. 20 (c), xl., 431.*

See RAILWAYS.

**INTERDICTION.**

*Will—Testamentary capacity—Captation—Suggestion—Undue influence—Evidence—Onus of proof*, xli., 391.

See WILL.

**INTEREST.**

1. *Bills and notes—Installments of interest—Transfer after default to pay interest—"Overdue" bill—Notice—Holder in good faith—Bills of Exchange Act—Common law rule.*—Where interest is made payable periodically during the currency of a promissory note, payable at a certain time after date, the note does not become overdue within the meaning of sections 56 and 70 of the "Bills of Exchange Act," merely by default in the payment of an instalment of such interest.—The doctrine of constructive notice is not applicable to bills and notes transferred for value.—Judgment appealed from reversed, *Idington and MacLennan, JJs.*, dissenting. (Leave to appeal to Privy Council was refused, 18th July, 1908.) *Union Investment Co. v. Wells*, xxxix., 625.

2. *Constitutional law—Liabilities of province at confederation—Special funds—Rate of interest—Trust funds of debt—Award of 1870—B. N. A. Act, 1867, ss. 111 and 142, xxxix., 14.*

See CONSTITUTIONAL LAW.

3. *Appeal—Jurisdiction—Amount in controversy—Adding interest and costs. Cout. Cas.* 30.

See APPEAL.

4. *Controverted election—Abatement of appeal—Dissolution of Parliament—Return of deposit—Practice, Cout. Cas.* 314.

See ELECTION LAW.

5. *Breach of trust—Interest on bonds—Unlawful acts by Crown officers—Ultra vires—Withholding interest from Crown—*

*Necessity of impleading other interested parties—Practice, Cout. Cas. 316.*

See PRACTICE.

6. *Appeal—Jurisdiction—Amount in controversy—Adding interest to judgment—Construction of statute, Cout. Cas. 318.*

See APPEAL.

7. *Appeal—Amount in dispute—Costs—Collateral matter, xlii., 43.*

See APPEAL.

8. *Appeal—Jurisdiction—Amount in controversy—Addition of interest—Amount of verdict—Stay of execution. Toronto R. R. v. Milligan, xlii., 238.*

See APPEAL.

9. *Construction of statute—N. W. T. Con. Ord. 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—"Bank Act," R. S. C. 1906, c. 29, s. 91—Contract—Excessive interest—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages, xliiv., 473.*

See CHATTEL MORTGAGE.

10. *"Expropriation Act," R. S. C. 1906, c. 143, ss. 8, 23, 31—Abandonment of proceedings—Compensation—Allowance of interest—Construction of statute—Practice—Taxation of costs—Solicitor and client—Reimbursement of expenses—Interpretation of formal judgment—Reference to opinion of judge. Quebec Jacques Cartier v. The King, li., 594.*

See EXPROPRIATION.

## INTERNATIONAL LAW.

*Canadian waters—Three-mile-zone—Fishing by foreign vessels—Legislative jurisdiction—Seizure on high seas—Pursuit beyond territorial limit—Constitutional law—Construction of statute—B. N. A. Act, 1897, s. 91, s.-s. 12—R. S. C. c. 94, ss. 2, 3, 4—Sea-coast fisheries, xxxvii., 385.*

See CONSTITUTIONAL LAW.

## INTERPRETATION.

*Evidence—Verdict—New trial—Life insurance—Accident policy—Contract—Conditions—Misrepresentation—Non-disclosures—Warranty—Words and terms—Rules of interpretation, xxxv., 266.*

See EVIDENCE.

AND see STATUTE.

## INTERPRETATION OF TERMS

See WORDS AND PHRASES.

## INTERVENTION.

1. *Appeal—Jurisdiction—Intervention—Matter in controversy—Judicial proceeding—R. S. C. c. 135, s. 29.*—An intervention filed under the provisions of the Code of Civil Procedure of the Province of Quebec is a "judicial proceeding" within the meaning of section 29 of the Supreme and Exchequer Courts Act, and a final judgment thereon is appealable to the Supreme Court of Canada where the matter in controversy upon the intervention amounts to the sum or value of \$2,000 without reference to the amount demanded by the action in which such intervention has been filed. *Walcott v. Robinson* (11 L. C. Jur. 303); *Miller v. Déchène* (8 Q. L. R. 18); *Turcotte v. Dandereau* (26 Can. S. C. R. 578); and *King v. Dupuis* (28 Can. S. C. R. 388) followed. *The Atlantic and North-West Railway Co. v. Turcotte* (Q. R. 8 Q. B. 305); *Allan v. Pratt* (13 App. Cas. 780), and *Kinghorn v. Larue* (22 Can. S. C. R. 347) distinguished. —Girouard, J., dissented.—On an equal division of opinion among the judges, who heard the case on the merits of the appeal, the appeal stood dismissed without costs. *Côté v. The James Richardson Co.*, xxxviii., 41.

2. *Interlocutory proceeding—Final judgment, xxxv., 12.*

See APPEAL.

## INTRUSION.

1. *Crown lands—Adverse possession—Grant during—Information for intrusion—21 Jac. I. ch. 14 (Imp.), xxxiv., 533.*

See CROWN LAND.

2. *Constitutional law—Legislative jurisdiction—Crown lands—Terms of union (B.C.) Art. 11—Railway aid—Provincial grant to Dominion—Provincial legislation—Water-records within "Railway Belt"—Construction of statute—B. N. A. Act, 1867, ss. 91, 109, 117, 146—Imperial O. C. 16th May, 1871—"Water Clauses Consolidation Act, 1897," R. S. B. C. c. 190. *Burrard Power Co. v. The King*, xliiii. 27.*

See CONSTITUTIONAL LAW.

## INVENTION.

*Patent of invention—Anticipation.*]—Canadian patent No. 79392 for improvements in candy-pulling machines granted on Feb. 17th, 1903, declared void for want of invention having been anticipated by earlier inventions in the United States.—Judgment of the Exchequer Court (10 Ex. C. R. 378), reversed on this point. *Hildreth v. McCormick Manufacturing Co.*, xli., 246.

**INVOICE.**

*Sale of goods—Condition as to prices—Lost invoices—Secondary evidence—Waiver—Breach of contract—Contract—Damages, xvii., 289.*

See SALE.

**IRRIGATION.**

1. *Rivers and streams—B. C. "Land Act, 1884," and amendments—Pre-emption of agricultural lands—Water records—Appurtenances—Abandonment of pre-emption—Lapse of water record.*—Where holders of separate pre-emptions of agricultural lands, under the provisions of the "Land Act, 1884," 47 Vict. ch. 16 (B.C.), and the amendment thereof, 49 Vict. ch. 10 (B.C.), with the object of vesting their respective pre-emptions in themselves as partners, surrendered the separate pre-emptions to the Crown, and on the same day re-located the same areas as partners, obtaining a pre-emption record thereof in their joint names, the joint water record previously granted to them, as partners, in connection with their separate pre-emptions, cannot be considered to have been abandoned. The effect of the transaction caused the areas to become unoccupied lands of the Crown, within the meaning of the statute, and, upon their re-location, the water record in connection therewith continued to subsist as a right appurtenant to the joint pre-emption. Judgment appealed from (13 B. C. Rep. 77) reversed, the Chief Justice and Duff, J., dissenting. *Vaughan v. Eastern Townships Bank*, xli., 286.

2. *North-West Irrigation Act—Nuisance—Obstruction of highways—Duty to build and maintain bridges—Construction of statute—61 V. c. 35, ss. 11, 16, 37.*—By "The North-West Irrigation Act, 1898" (61 Vict. ch. 35), it is provided, (sec. 11b) that irrigation companies should submit their scheme of works to the Commissioner of Public Works of the North-West Territories and obtain from him permission to construct and operate the works across road allowances and surveyed public highways which might be affected by them; that (sec. 16) his approval and permission for construction across the road allowances and highways should be obtained prior to the authorization of the works by the Minister of the Interior of the Dominion, and, (sec. 37), that during the construction and operation of the works, they should "keep open for safe and convenient travel all public highways theretofore publicly travelled as such, when they are crossed by such works" and construct and maintain bridges over the works. The commissioner was the local officer in control of all matters affecting changes in or obstructions to road allowances and public highways vested in the territorial government "including the crossing of such allowances or public highways by irrigation ditches, canals or other works." The commissioner granted permission to the appellants to construct and maintain their works across the road allowances and public highways shewn in their application "subject to the provisions of section 37 of the said North-West Irrigation Act," without imposing other conditions.

— *Held*, reversing the judgment appealed from (3 Alta. L. R. 70), the Chief Justice and Idington, J., dissenting, that the absolute statutory duty in respect of the construction and maintenance of bridges imposed by section 37 of "The North-West Irrigation Act, 1898," relates solely to highways which were publicly travelled as such prior to the construction of the irrigation works, and that, as no further duty was imposed by the commissioner as a condition of the permission for the construction and maintenance of their works, the company was not obliged to erect bridges across their works at the points where they were intersected by road allowances or public highways which became publicly travelled as such after the construction of the works.—*Per* Davies and Duff, JJ.—In construing modern statutes conferring compulsory powers, including powers to interrupt the exercise of public rights, questions as to what conditions, obligations or liabilities are attached to, or arise out of the exercise of such powers, are primarily questions of the meaning of the language used or of the proper inferences respecting the legislative intention touching such conditions, obligations and liabilities to be drawn from a consideration of the subject-matter, the nature of the provisions as a whole, and the character of the objects of the legislation as disclosed thereby.—NOTE.—Leave to appeal to the Privy Council was granted, 20th July, 1911. *Alberta Railway v. The King*, xliv., 505.

3. *Municipal corporation—Assessment and taxation—Exemptions—Crown lands—Allotment for irrigation purposes—Ungranted concession—Construction of statute—Words and phrases—"Land"—"Owner"—"Occupant"—Constitutional law—"B. N. A. Act, 1867," s. 125—Alberta "Rural Municipality Act"—"Irrigation Act." Southern Alberta v. Rural Mun. McLean*, liii., 151.

See ASSESSMENT AND TAXATION.

4. *Canals and ditches—Nuisance—Obstruction of highways—Duty to build and maintain bridges—Construction of statute*, xliv., 505.

See STATUTE.

**JUDGE.**

1. *Judgments on appeals—1241 C. P. Q.—Quorum of judges—Judgment procured in absence of disqualified judge—Jurisdiction*, xxxv., 330.

See QUORUM.

2. *Breach of trust—Accounts—Evidence—Nova Scotia "Trusts Act"—2 Edw. VII. c. 13—Liability of trustee—N. S. Order XXXII., r. 3—Judicial discretion—Statute of Limitations*, xxxvii., 163.

See TRUSTS.

3. *Judicial sale of railways—Interested bidder—Disqualification as purchaser—Counsel and solicitors—Art. 1484 C. C.—Construction of statute—Review by appellate court—Discretionary order—4 & 5 Edw. VII. c. 158 (D.)—Public policy*, xxxvii., 303.

See RAILWAYS.



4. *New trial*—*Judgment in court below on motion*—*Equal division*—*Appeal*—*Jurisdiction*—*Charge to jury*—*Misdirection*—*Bias*, xxxvii., 532.

See APPEAL; NEW TRIAL.

5. *Cause of action*—*Limitation of actions*—*Contract*—*Foreign judgment*—*Yukon Ordinance*, c. 31 of 1890—*Statute of James*—*Statute of Anne*—*Lex fori*—*Lex loci contractus*—*Absence of debtor*, xxxvii., 546.

See LIMITATION OF ACTIONS.

6. *Criminal law*—*Practice*—*Charge to jury*—*Crown case reserved*—*Reserved questions*—*Dissent from affirmance of conviction*—*Appeal*—*Jurisdiction*—*Criminal Code*, 1892, ss. 742, 743, 744, 750—*R. S. O.* (1906) c. 146, ss. 1013, 1015, 1016, 1024—*Admission of evidence*—*Res gestæ*, xxxviii., 284.

See CRIMINAL LAW.

7. *Title to land*—*Plan of survey*—*Evidence*—*Onus of proof*—*Findings of jury*—*Error*—*New trial*, xxxviii., 336.

See NEW TRIAL.

8. *Appeal*—*Jurisdiction*—*"Supreme Court Act,"* ss. 36, 37, 46—*Judge in chambers*—*Originating petition*—*Arts.* 71, 72, 875, 876 *C. P. Q.*—*Liquor Laws*—*"Quebec License Law,"* *R. S. O.*, 1909, arts. 924 et seq.—*Property in license*—*Agreement*—*Ownership in persons other than holder*—*Invalidity of contract*—*Public policy*. *Turgeon v. St. Charles*, xlvi., 473.

See LIQUOR LAWS.

9. *Liquor laws*—*"Liquor License Ordinance,"* ss. 37, 57—*Cancellation of license*—*Jurisdiction of judge*—7 *Edw. VII.*, c. 9, s. 14 (*Alta.*), xlv., 321.

See LIQUOR LAWS.

## JUDGMENT.

1. APPEALABLE JUDGMENTS AND ORDERS, 1-2.
2. ESTOPPEL, 3.
3. FINAL JUDGMENT AND ORDERS, 4-12.
4. IMPEACHMENT OF JUDGMENTS, 13-20.
5. OTHER CASES, 21-55.

### 1. APPEALABLE JUDGMENTS AND ORDERS.

1. *Appeal per saltum*—*Time limit*—*Pro- nouncing or entry of judgment.*—To determine whether the sixty days, within which an appeal to the Supreme Court must be taken, runs from the pronouncing or entry of the judgment from which the appeal is taken no distinction should be made between common law and equity cases.—The time runs from the pronouncing of judgment in all cases except those in which there is an appeal from the registrar's settlement of the minutes or such settlement is delayed because a substantial question affecting the rights of the parties has not been clearly

disposed of by such judgment. *County of Elgin v. Robert*, xxxvi., 27.

2. *New trial*—*Decree of appellate court*—*Reasons for judgment.*—B., a passenger on a railway train, was thrice assaulted by a fellow-passenger during the passage. The conductor was informed of the first assault immediately after it occurred and also of the second but took no steps to protect B. In an action against the railway company B. recovered damages assessed generally for the injuries complained of. The verdict was maintained by the Court of Appeal but the Supreme Court of Canada ordered a new trial unless B. would consent to his damages being reduced (34 *Can. S. C. R.* 74). In the reasons given for the last-mentioned judgment, written by Mr. Justice Sedgewick for the court, it was held that damages could be recovered for the third assault only but the judgment as entered by the registrar stated that the court ordered the reversal of the judgment appealed from and a new trial unless the plaintiff accepted the reduced amount of damages. Such amount having been refused a new trial was had on which B. again obtained a verdict, the damages being apportioned between the second and third assaults. On appeal to the Supreme Court of Canada from the judgment of the Court of Appeal maintaining this verdict: *Held*, *Taschereau, C. J.*, and *Davies, J.*, dissenting, that, as the decree was in accordance with the judgment pronounced by the court when its decision was given, and as it left the whole case open on the second trial, the jury were free to give damages for the second assault, and their verdict should not be disturbed.—*Held*, per *Taschereau, C. J.*, that the decree of the court should have been framed with reference to the opinion giving the reasons for the judgment and, if necessary, could be amended so as to be read as the court intended. *Canadian Pacific Railway Co. v. Blain*, xxxvi., 159.

### 2. ESTOPPEL.

3. *Contract by municipal corporation*—*Powers*—*By-law or resolution*—*Right of action*—*Confession of judgment*—*Evidence*—*Admissions*—*Pleading*—*Estoppel by record*—*Art. 1245 C. C.*—A confession of judgment for a portion of the amount claimed is a judicial admission of the plaintiff's right of action and constitutes complete proof against the party making it. *The V. Hudson Cotton Co. v. The Canada Shipping Co.* (13 *Can. S. C. R.* 401) followed: *The Great North-West Central Railway Co. v. Charlebois et al.* ([1899] *A. C.* 114; 26 *Can. S. C. R.* 221) distinguished. *Citizens Light and Power Co. v. Town of St. Louis*, xxxiv., 495.

AND see EVIDENCE.

### 3. FINAL JUDGMENTS AND ORDERS.

4. *Appeal*—*Jurisdiction*—*Final judgment*—*Mandamus.*—The respondent applied for a peremptory writ of mandamus to

compel appellants to purchase lands for the site of a parish church, and obtained an order, as follows:—"Vu la requête ci-dessus, il est ordonné d'emaner un bref de mandamus tel que demandé."—An ordinary writ of summons issued, indorsed as a writ of mandamus, but the copy served did not contain any indorsement of the nature of the claim. An exception to the form was dismissed, and the Court of Queen's Bench quashed an appeal *de plano*.—"Parceque (1) Les appellants ont inscrit en appel le l'ordonnance du juge permettant l'émission du bref de mandamus en cette cause, sans au préalable obtenir la permission; (2) Parceque la dite ordonnance n'est pas un jugement final, mais une interlocutoire."—The registrar, considering that the order was not simply for the issue of a summons under art. 993 C. P. Q., but a peremptory order for the issue of a writ of mandamus, under art. 996 C. P. Q., held that the judgment was final in its nature and, therefore, appealable.—This decision was reversed, on appeal, and the application for approval of the security for costs was dismissed. *Syndics de St. Valier v. Catellier*, Cout. Cas. 202.

5. *Appeal — Jurisdiction — Interlocutory proceeding — Final judgment.*—There is no appeal to the Supreme Court of Canada from a judgment on a petition for leave to intervene in a cause, the proceeding being merely interlocutory in its nature. *Hamel v. Hamel* (26 Can. S. C. R. 17) followed. *Connolly v. Armstrong*, xxxv., 12.

6. *Appeal — Jurisdiction — Discretionary order — Stay of foreclosure proceedings — Final judgment—Controversy involved — R. S. C. c. 129, s. 76—R. S. C. c. 135, s. 28.*—Leave to appeal to the Supreme Court of Canada under the seventy-sixth section of the "Winding-up Act" can be granted only where the judgment from which the appeal is sought is a final judgment and the amount involved exceeds two thousand dollars. A judgment setting aside an order, made under the "Winding-up Act," for the postponement of foreclosure proceedings and directing that such proceedings should be continued is not a final judgment within the meaning of the Supreme Court Act, and does not involve any controversy as to a pecuniary amount. *Re Cushing Sulphite Fibre Co.*, xxxvii., 173.

7. *Appeal — Jurisdiction — Declinatory exception — Interlocutory judgment — Review of judgment on exception—Practice.*—The action was dismissed in the Superior Court upon declinatory exception. The Court of King's Bench reversed this decision and remitted the cause for trial on the merits. On motion to quash a further appeal to the Supreme Court of Canada: *Held*, that such motion should be granted on the ground that the objection as to the jurisdiction of the Superior Court might be raised on a subsequent appeal from a judgment on the merits. *Per Girouard, J.*—The judgment of the Court of King's Bench was not a final judgment, and, consequently, no appeal could lie to the Supreme Court of Canada. *Wilson v. Shawinigan Carbide Co.*, xxxvii., 535.

8. *Appeal — Demurrer — Final judgment — Jurisdiction.*—The declaration in an ac-

tion by a municipality claiming forfeiture of a franchise for non-fulfilment of the obligations imposed in respect thereof alleged in five counts as many different grounds for such forfeiture. The defendant demurred generally to the declaration and specifically to each count. The demurrer was sustained as to three counts and dismissed as to the other two. On appeal from the decision of the registrar refusing an order to affirm the jurisdiction of the Supreme Court to entertain an appeal from the judgment maintaining the demurrer: *Held*, that each count contained a distinct ground on which forfeiture could be granted and a judgment depriving the municipality of its right to rely on any such ground was a final judgment in respect thereof which could be appealed to the Supreme Court of Canada. *Ville de St. Jean v. Molleur*, xl., 139.

9. *Appeal from order for reference — Jurisdiction — Final judgment.*—In 1903, the U. L. Co. executed a contract for sale to D. of all its lumber lands and interests therein, the price to be payable in three instalments at fixed dates. By a contemporaneous agreement, the company undertook to get out logs for D. who was to make advances for the purpose. The agreement for sale was carried out and two instalments of the purchase money paid. At the time these contracts were executed the Union Bank of Halifax had advanced money to the company and, shortly after contract for sale was assigned to the bank as security for such and future advances. The company having assigned in insolvency, the bank brought action against D. for the last instalment of the purchase money to which he pleaded that he had paid in advances to the company and the bank more than the sum claimed. The trial judge held that the bank had no notice of the second agreement under which D. claimed to have advanced the money and gave judgment for the bank with a reference to ascertain the amount due. The full court set aside this judgment and ordered a reference to ascertain the amount due to the bank and, if anything was found to be due, to ascertain the amount due to D. from the company. The bank sought to appeal from the latter decision.—*Held*, that the judgment of the full court was not a final judgment from which an appeal would lie under the Supreme Court Act to the Supreme Court of Canada. *Union Bank of Halifax v. Dickie*, xli., 13.

10. *Appeal — Jurisdiction — Final judgment.*—In 1903 the United Lumber Co. executed a contract for sale to D. of all its lumber lands and interests therein, the price to be payable in three instalments at fixed dates. By a contemporaneous agreement the company undertook to get out logs for D. who was to make advances for the purpose. The agreement for sale was carried out and two instalments of the purchase money paid. At the time these contracts were executed the Union Bank had advanced money to the company and shortly after the contract for sale was assigned to the bank as security for such and for future advances. The company having assigned in insolvency the bank brought action against D. for the last instalment of the purchase money to which he pleaded that he had paid in advance to the

company and the bank more than the sum claimed. The trial judge held that the bank had no notice of the second agreement under which D. claimed to have advanced the money and gave judgment for the bank with a reference to ascertain the amount due. The full court set aside this judgment and ordered a reference to ascertain the amount due the bank and, if anything was found to be due, to ascertain the amount due to D. from the company. The bank sought to appeal from the latter decision.—*Held*, that the judgment of the full court was not a final judgment from which an appeal would lie under the Supreme Court Act to the Supreme Court of Canada. *Union Bank of Halifax v. Dickie*, xli., 13.

11. *Appeal—Jurisdiction—Stated case—Final judgment—Origin in Superior Court—Supreme Court Act, ss. 35 and 37.*—An information was laid before the police magistrate of St. John, N.B., charging the License Commissioners with a violation of the Liquor License Act by the issue of more licenses in Prince Ward than the Act authorized. The informant and the Commissioners agreed to a special case being stated for the opinion of the Supreme Court of New Brunswick on the construction of the Act and that court, after hearing counsel for both parties, ordered that "the Board of License Commissioners for the City of Saint John be, and they are hereby, advised that the said Board of License Commissioners can issue eleven tavern licenses for Prince Ward in the said City of Saint John and no more" (38 N. B. Rep. 508). On appeal by the Commissioners to the Supreme Court of Canada:—*Held*, that the proceedings did not originate in a superior court, and are not within the exceptions mentioned in sec. 37 of the Supreme Court Act; that they were *extra cursum curiæ*; and that the order of the court below was not a final judgment within the meaning of sec. 36; the appeal, therefore, did not lie and should be quashed. *Blaine v. Jamieson*, xli., 25.

12. *Appeal—Amount in controversy—Reference to assess damages—Final judgment.*—In 1905 L. and others purchased from W. his creameries on the faith of a statement purporting to be made up from the books and shewing an output for the years 1904-5 equal to or greater than that of 1903. Having discovered that this statement was untrue they brought action for rescission of the contract to purchase and damages for the loss operating during 1906. The judgment at the trial dismissing the action was affirmed by the Divisional Court. The Court of Appeal reversed the latter judgment, held that rescission could not be ordered but the only remedy was damages and ordered a reference to assess the amount. On appeal to the Supreme Court of Canada:—*Held*, Girouard, J., dissenting, that as it can not be ascertained from the record what the amount in controversy on the appeal was, or whether or not it is within the appealable limit, the appeal does not lie.—*Held*, per Idington, J.—The judgment appealed against is not a final judgment.—*Per* Girouard, J., dissenting.—It is established by the evidence at the trial, published on the record, and admitted by the respective counsel for the parties, that the amount

in dispute exceeds \$1,000. The court, therefore, has jurisdiction to hear the appeal. *Wenger v. Lamont*, xli., 603.

#### 4. IMPEACHMENT OF JUDGMENTS.

13. *Varying order for judgment—Settling terms more definitely.*—A stay of proceedings was ordered pending an appeal to the Privy Council, and, after the dismissal of that appeal the case was again inscribed, heard upon the merits, and allowed with costs, the majority of the court being of opinion that a sum of \$5,000 paid to the respondent on 10th June, 1895, should be included in the judgment entered against him, with costs in all the courts.—Subsequently the parties again applied to the courts for a more definite order, and by consent, judgment was ordered to be entered for \$8,739.24, with interest as given by the judgment of the Superior Court and costs.—(Cf. *The Queen v. Demers* ([1900] A. C. 103.) *Bank of Montreal v. Demers*, Cout. Cas. 196.

14. *Varying minutes of judgment—Costs of former trials—Issues on appeal—Practice.*—Motion to vary minutes, by adding a special direction as to costs of two former trials, refused on the ground that there had been no issue in question on the appeal touching the two previous trials. *Dunsmuir v. Lowenburg, Harris & Co.*, Cout. Cas. 270.

15. *Amending minutes of judgment—Correcting error—Suit against partnership—Special leave for motion to full court—Practice.*—Motion to vary minutes of judgment allowing the appeal was made (on special leave) by providing that appellant should recover the amount sued for with costs "against the said respondents," instead of "against H. Dallas Helmcken, the surviving defendant."—The action was against a partnership, and on the appeal by the plaintiff, they were represented by the surviving partner only. In allowing the appeal (37 Can. S. C. R. 315, at pages 319-320) the court inadvertently directed that judgment should be entered for the plaintiff against the surviving defendant only.—The Court ordered that the amendment should be allowed as applied for, without costs. *Jackson v. Drake, Jackson & Helmcken*, Cout. Cas. 384.

16. *Varying minutes of judgment.*—A motion to vary the minutes of judgment (37 Can. S. C. R. 464) as settled, to conform to the intention of the court, was allowed without costs. *Leahy v. Town of North Sydney*, Cout. Cas. 404.

17. *Election law—Amending minutes of judgment—Order as to further proceedings in election court—Commencement of trial—Cross-petitions.*—On motions to vary minutes of judgment as settled in *The Halifax Election Cases* (37 Can. S. C. R. 601), in so far as they directed that the election trials should be proceeded with in regard to the cross-petitions, and to vary them so that the parties should be sent back to the Controverted Elections Court in the same position as they were before the appeals, and

that the said court should be directed, simply, to take such further proceedings as to law and justice appertain, it was contended that such alterations were necessary because trial proceedings on the cross-petitions had never been actually commenced in the court below in so far as the issues thereon were concerned.—The court dismissed the motions with costs. *Roche v. Borden; Carney v. O'Mullin; Halifax Election Cases*, *Cout. Cas.* 421.

18. *Pleading—Acquiescence—Practice on appeal—Varying minutes—Costs.*—Where a respondent, on an appeal to the court below, has failed to set up the exception resulting from acquiescence in the trial court judgment, as provided by article 1220 of the Code of Civil Procedure, he cannot, afterwards, take advantage of the same objection by motion to quash a further appeal to the Supreme Court of Canada.—On an application to vary the minutes of judgment, as settled by the registrar, for reasons which had not been mentioned at the hearing of the appeal, the motion was granted, but without costs. *Chambly Mfg. Co. v. Willett*, xxxiv., 502.

AND see RIVERS AND STREAMS.

19. *Settling minutes—Practice—Amending judgment after entry.*—The minutes of judgment as settled by the registrar directed that the appellants' costs should be paid out of certain moneys in court, and in this form the judgment was duly entered and certified to the clerk of the court below. Subsequently it was made to appear that there were no moneys in court available to pay these costs, and upon the application of the appellants the court amended the judgment, directing that the costs of the appellants should be paid by the respondents forthwith after taxation. *Letourneau v. Carbonneau*, xxxv., 701.

20. *Practice—Recalling—Defect—Correction of omission—Amendment of pleadings—Jurisdiction—Costs—Settlement of minutes.*—Where by an accidental slip or oversight the formal judgment on an appeal failed to express the clear intention of the court that certain amendments in the pleadings should be allowed for the purpose of effective relief to the successful party the Supreme Court of Canada, on application subsequent to the transmission of the formal judgment to the court below, ordered that its judgment should be varied by inserting therein a direction that the judgment appealed from and the plaintiff's declaration should be varied so as to correct the inadequate description of certain lands therein mentioned. *Rattray v. Young* (*Cout. Dig.* 1123), and *Penrose v. Knight* (*Cout. Dig.* 1122), referred to. *Idington and Duff, J.J.*, dissented from this order.—*Per Duff, J.*—The judgment that the court in fact pronounced, and intended to pronounce, was simply that the appeal should be dismissed; such judgment does not involve any consequences whatever in respect of the amendment of the judgment or pleadings in the court of original jurisdiction. The power of the court to amend a judgment after it has become a record of the court is specially limited to making the record conform to the judgment pronounced or intended to be

pronounced; it does not authorize the recalling of the judgment in order to deal with a collateral matter not actually or constructively involved in the court's decision. The proper course was to apply to the court of original jurisdiction for an amendment of the record of that court.—The application was allowed only upon payment of costs thereof by the party moving, inasmuch as it had been his duty to have seen that the provision was inserted at the time of the settlement of the minutes of judgment. *Prevost v. Bedard*, li., 629.

## 5. OTHER CASES.

21. *Marine insurance—Abandonment—Repairs—Boston clause—Findings of jury—New trial—Practice—Evidence taken by commission—Judicial discretion.* *Ins. Co. of North America v. McLeod*, *Cout. Cas.* 214.

22. *Appeal—Jurisdiction—Action en bornage—Order for expertise—Final judgment.* *Johnson's Co. v. Wilson*, *Cout. Cas.* 356.

23. *Action for account—Partition of estate—Requête civile—Amendment of pleadings—Discretion—Supreme Court Act, s. 63—Order nunc pro tunc—Final or interlocutory judgment—Form of petition in revocation—Res judicata*, xxxiv., 13.

See REQUÊTE CIVILE.

24. *Appeal—Discretion of court below—Amendment of formal judgment—Mining regulations*, xxxiv., 279.

See APPEAL.

25. *Commissioner of mines—Appeal from decision—Quashing appeal—Final judgment—Estoppel—Mandamus—Appropriate remedy*, xxxiv., 328.

See APPEAL.

26. *Appeal—Jurisdiction—Petitory action—Bornage—Surveyor's report—Costs—Order as to location of boundary line—Execution of judgment*, xxxiv., 617.

See BOUNDARY.

27. *Opposition a fin de charge—Order for security—Interlocutory judgment—Res judicata—Subsequent final order—Revision of merits on appeal—Practice*, xxxv., 1.

See APPEAL; COSTS.

28. *Credit on account of demands—Retrait—Amount in controversy on appeal*, xxxv., 8.

See RETRAIT.

29. *Solicitor and client—Costs—Confession of judgment—Agreement with counsel—Overcharge*, xxxv., 168.

See SOLICITOR.

30. *Right of appeal—Interest of appellant—Parties to action—Art. 77 O. P. Q.—Arts. 252, 953a, 968 et seq. C. C.—Will—Sales of substituted lands—Prohibition against alienation—Res judicata*, xxxv., 193.

See APPEAL.

31. *Judgments on appeals*—Art. 1241 C. P. Q.—*Quorum of judges*—*Judgment pronounced in absence of disqualified judge*—*Jurisdiction*, xxxv., 330.

See QUORUM.

32. *Defective proceedings*—*Entry of formal order*—*Winding-up Act*, xxxvi., 494.

See APPEAL.

33. *Decision upon issues*—*Demurrer*—*Appeal from Eschequer Court*, xxxvi., 593.

See APPEAL.

34. *New trial*—*Judgment in court below on motion*—*Equal division*—*Appeal*—*Jurisdiction*—*Charge to jury*—*Misdirection*—*Bias*, xxxvii., 552.

See APPEAL; NEW TRIAL.

35. *Foreign judgment*—*Action on*—*Statute of Limitations*, xxxvii., 546.

See ACTION.

36. *Practice*—*Revising minutes of judgment*—*Mistake*—*Costs of abandoned defences*—*Reference to trial judge*, xxxviii., 103.

See PRACTICE.

37. *Vacating judgment*—*Appeal*—*Jurisdiction*—*Matter in controversy*—*Tierce opposition*—Arts. 1185-1188 C. P. Q.—R. S. C. (1886) c. 135, s. 29, xxxviii., 236.

See OPPOSITION.

38. *New trial*—*Final judgment*—*Alternative relief*, xl., 270.

See APPEAL.

39. *Husband and wife*—*Institution of action by divorced wife*—*Judicial authorization*—Arts. 176, 178 C. C.—Art. 14 C. C. P.—*Divorce*—*Decree by foreign tribunal*—*Jurisdiction*—*Effect in Quebec*—*Comity of nations*, Cam. Cas. 392.

See DIVORCE.

40. *Chattel mortgage*—*Renewal*—*Time for filing*—*Identification of goods*—*Sufficiency of description*—*Proof of judgment and execution*, Cam. Cas. 436.

See CHATTEL MORTGAGE.

41. *Appeal*—*Jurisdiction*—*Supreme Court Act*, 1875, §3 Vict. c. 11—*Demurrer*—*Final judgment*—*Costs*, Cout. Cas. 11.

See APPEAL.

42. *Taxation of costs*—*Stay of execution*—*Setting-off costs in court below*—*Amending minutes of judgment*—*Practice*, Cout. Cas. 19.

See COSTS.

43. *Judgment delivered out of court*—*Practice*, Cout. Cas. 66.

See PRACTICE.

44. *Varying minutes of judgment*—*Repayment of costs*—*Payment under threat of execution*—*Jurisdiction*, Cout. Cas. 306.

See PRACTICE.

45. *Appeal*—*Practice*—*Amendment of pleading*—*Discretionary order*—*Final judgment*, Cout. Cas. 386.

See APPEAL.

46. *Appeal*—*Jurisdiction*—*Commitment of judgment debtor*—*Final judgment*—*Manitoba King's Bench rules* 748, 755—*"Matter or judicial proceeding"*—*Supreme Court Act*, s. 2(e). *Svensson v. Bateman*, xlii., 146.

See APPEAL.

47. *Default judgment*—*Order setting aside*—*Appeal*. *Green v. George*, xlii., 219.

See APPEAL.

48. *Breach of contract*—*Place of performance*—*Foreign judgment*—*Action*. *Canada Wood v. Moritz*, xlii., 237.

See CONTRACT.

49. *Appeal*—*Jurisdiction*—*Matter in controversy*—*Instalment of municipal tax*—*Collateral effect of judgment*. *Town of Outremont v. Joyce*, xliii., 611.

See APPEAL.

50. *Appeal*—*Jurisdiction*—*Matter in controversy*—*Stare decisis*—*Municipal by-law*—*Injunction*—*Contract*—*Collateral effect of judgment*—*Construction of statute*—*"Supreme Court Act," R. S. C. (1906) c. 139, ss. 36, 39 (c), 46*. *Shawinigan Hy-Elec. Co. v. Shawinigan Water & Power Co.*, xliiii., 650.

See APPEAL.

51. *Appeal*—*Nature of action*—*Equitable relief*—*"Supreme Court Act," s. 33c*—*Appeal from referee*—*Final judgment*—*Assessment of damages*, xliiv., 284.

See APPEAL.

52. *Ownership of horses*—*Bill of sale*—*Foreign judgment*—*Interpleader*—*Secondary evidence*—*Parol testimony*. *Evans v. Evans*, l., 262.

See BILL OF SALE.

53. *Contract*—*Sale of mining land*—*Substituted purchaser*—*Reservation of claim against original purchaser*—*Forfeiture of second contract*—*Sale to other parties*—*Effect on reserved claim*. *Vivian v. Clergue*, li., 527.

See SALE.

54. *Vendor and purchaser*—*Contract*—*Sale of mining land*—*Substituted purchaser*—*Reservation of claim against original purchaser*—*Forfeiture of second contract*—*Sale of land to other parties*—*Effect on reserved claim*, li., 527.

See SALE OF LAND.

55. *"Expropriation Act," R. S. C. 1906, c. 143, ss. 8, 23, 31*—*Abandonment of proceedings*—*Compensation*—*Allowance of interest*—*Construction of statute*—*Practice*—*Taxation of costs*—*Solicitor and client*—*Reimbursement of expenses*—*Interpretation of formal judgment*—*Reference to opinion of judge*. *Quebec Jacques Cartier Elec. v. The King*, li., 594.

See EXPROPRIATION.

## JUDICIAL FUNCTION.

*Mining regulations — Hydraulic lease — Breach of conditions — Construction of deed — Forfeiture — Right of lessees — Procedure on inquiry — Judicial duties of arbiter, xl, 281, 294.*

See MINES AND MINING.

## JUDICIAL PROCEEDING.

*Appeal — Alberta Liquor License Ordinance — Cancellation of license — "Supreme Court Act." Finseth v. Ryley Hotel Co., xliii, 646.*

See APPEAL.

## JURISDICTION.

1. BOARD OF RAILWAY COMMISSIONERS, 1-5.
2. BRITISH COLUMBIA ARBITRATION ACT, 6.
- 2(a). RECORDERS' COURT, 7.
3. EXCHEQUER COURT, 8-9.
4. LIQUOR LICENSE ACT, ALBERTA, 10.
5. PARLIAMENT OF CANADA, 11.
6. OTHER CASES, 12-85.

### 1. BOARD OF RAILWAY COMMISSIONERS.

1. *Board of Railway Commissioners — Appeal to Supreme Court.*—The Board of Railway Commissioners granted an application of the James Bay Railway Co. for leave to carry their line under the track of the G. T. Ry. Co., but, at the request of the latter, imposed the condition that the masonry work of such under-crossing should be sufficient to allow of the construction of an additional track on the line of the G. T. Ry. Co. No evidence was given that the latter company intended to lay an additional track in the near future or at any time. The James Bay Co., by leave of a judge, appealed to the Supreme Court of Canada from the part of the order imposing such terms, contending that the same was beyond the jurisdiction of the Board.—*Held*, that the Board had jurisdiction to impose said terms.—*Held, per Sedgewick, Davies and MacLennan, JJ.*, that the question before the court was rather one of law than of jurisdiction and should have come up on appeal by leave of the Board or been carried before the Governor General in Council. *James Bay Ry. Co. v. Grand Trunk Ry. Co.*, xxxvii, 372.

2. *Board of Railway Commissioners — Jurisdiction — Traffic accommodation — Restoring connections — 3 Edw. VII. c. 58, ss. 176, 214, 253.*—On an application to the Board of Railway Commissioners for Canada, under the provisions of the "Railway Act, 1903," for a direction that a railway company should replace a siding, where traffic facilities had been formerly provided for the respondents with connections upon their lands, and for other appropriate relief for such purposes.—*Held*, that, under the circumstances, the Board had jurisdiction to

make an order directing the railway company to restore the spur-track facilities formerly enjoyed by the applicants for the carriage, despatch and receipt of freight in carloads over, to and from the line of railways. *Canadian Northern Ry. Co. v. Robinson*, xxxvii, 541.

3. *Board of Railway Commissioners — Construction of subway — Apportionment of cost — Person interested or affected — Street railway — Agreement with municipality.*—The power of the Board of Railway Commissioners, under section 186 of the Railway Act, 1903, to order a highway to be carried over or under a railway is not restricted to the case of opening up a new highway, but may be exercised in respect to one already in existence.—The application for such order may be made by the municipality as well as by the railway company. *Ottawa Electric Ry. Co. v. City of Ottawa and Canada Atlantic Ry. Co.*, xxxvii, 354.

AND see RAILWAYS.

4. *Board of Railway Commissioners — Location of railway — Consent of municipality — Crossing — Leave of Board — Discretion.*—On 12th Aug., 1905, the Township of Sandwich West passed a by-law, authorizing the W. E., etc., Ry. Co. to construct its line along a named highway in the municipality, but the powers and privileges conferred were not to take effect unless a formal acceptance thereof should be filed within thirty days from the passing of the by-law. Such acceptance was filed on 12th Sept., 1905. This was too late and on 20th July, 1907, the council of Sandwich West and that of Sandwich East respectively passed by-laws containing the necessary authority.—In April, 1906, the location of the line of the E. T. Ry. Co. was approved by the Board. In June, 1906, the Board made an order allowing the W. E., etc., Ry. Co. to cross the line of the C. P. Ry. In March, 1907, another order respecting said crossing was made and also an order approving the location of the W. E. Ry. Co., the municipal consent being obtained three months later.—The E. T. Ry. Co. applied to the Board to have the orders of June, 1906, and March, 1907, rescinded and for an order requiring the W. E. Ry. Co. to remove its track from the highway at the point where the application proposed to cross it, to discontinue its construction at such point or, in the alternative, for an order allowing it to cross the line of the W. E. Ry. Co. on said highway. The applicants claimed to be the senior road and that the W. E. Ry. Co. had never obtained the requisite authority for locating its line. On a case stated to the Supreme Court by the Board.—*Held*, that the Board had power to refuse to set aside the said orders; that the by-laws passed in July, 1907, were sufficient to legalize the construction of the W. E. Ry. Co.'s line on said highway; and that the Board can now lawfully authorize the latter company to maintain and operate its railway thereon.—*Held*, further, that leave of the Board is necessary to enable the E. T. Ry. Co. to lay its tracks across the railway of the W. E. Ry. Co. on said highway.—*Held*, also, that the Board, in exercise of its discretion, has power by order to authorize the mainten-

ance and operation of the W. E. Ry. Co. along said highway, and to give leave to the E. T. Ry. Co. to cross it and the line of the C. P. Ry. near the present crossing and to apportion the cost of maintaining such crossing equally between the two companies instead of imposing two-thirds thereof upon the E. T. Ry. Co. as was done by a former order not acted upon; and to order that if the E. T. Co. finds it necessary in its own interest to have the points of crossing differently placed it should bear the expense of removing the line of the W. E. Ry. Co. to the new point of crossing. *Essex Terminal Rwy. Co. v. Windsor & Essex & Lake Shore Rapid Rwy. Co.*, xl., 620.

5. *Board of Railway Commissioners — Jurisdiction — Railway crossing — Contribution to cost — Party interested — Municipality — Distance from work.*]—A municipality may be a "party interested" in works for the protection of a railway crossing over a highway though such works are neither within or immediately adjoining its bounds and the Board of Railway Commissioners has jurisdiction to order it to pay a portion of the cost of such work. *County of Carleton v. City of Ottawa*, xli., 552.

## 2. BRITISH COLUMBIA ARBITRATION ACT.

6. *Arbitration and award — British Columbia Arbitration Act — Setting aside award — Misconduct of arbitrator — Partiality — Jurisdiction of majority — Decision in absence of third arbitrator — Judicial discretion.*]—A reference under the British Columbia Arbitration Act authorized two out of three arbitrators to make the award. After notice of the final meeting the third arbitrator failed to attend, on account of personal inconvenience and private affairs, but both parties appeared at the time appointed and no objections were raised on account of the absence of the third arbitrator. The award was then made by the other two arbitrators present.—*Held*, reversing the judgment appealed from (10 B. C. Rep. 48), that under the circumstances there was cast upon the two arbitrators present the jurisdiction to decide whether or not, in the exercise of judicial discretion, the proceedings should be further delayed or the award made by them alone in the absence of the third arbitrator, and it was not inconsistent with natural justice that they should decide upon making the award themselves.—*Held*, further, that although the third arbitrator had previously suggested some further audit of certain accounts that had already been examined by the arbitrators, there was nothing in this circumstance to impugn the good faith of the other two arbitrators in deciding that further delay was unnecessary. *Doberer v. Megaw*, xxxiv., 125.

AND *see* ARBITRATION AND AWARD.

## 2(a) RECORDERS' COURT.

7. *Operation of tramway — Powers of municipal corporation — Legislative author-*

*ity — Use of streets — By-law — Conditions imposed — Penalty for breach of conditions — Repeal of by-law — Contractual obligation — Offence against by-law — Jurisdiction of Recorder's Court — Prohibition.*]—The city enacted a by-law granting the company permission to use its streets for the construction and operation of a tramway and, in conformity with the provisions and conditions of the by-law, the city and the company executed a deed of agreement respecting the same. A provision of the by-law was that "the cars shall follow each other at intervals of not more than five minutes, except from eight o'clock at night to midnight, during which space of time they shall follow each other at intervals of not more than ten minutes. The council may, by resolution, alter the time fixed for the circulation of the cars in the different sections." For neglect or contravention of any condition or obligation imposed by the by-law, a penalty of \$40 was imposed to be paid by the company for each day on which such default occurred, recoverable before the Recorder's Court, "like other fines and penalties." An amendment to the by-law, by a subsequent by-law, provided that "the present disposition shall be applicable only in such portion of the city where such increased circulation is required by the demands of the public."—*Held*, that default to conform to the conditions and obligations so imposed on the company was an offence against the provisions of the by-law, and that, under the statute, 29 & 30 Vict. ch. 57, sec. 50 (Can.), the exclusive jurisdiction to hear and decide in the matter of such offence was in the Recorder's Court of the city of Quebec. Judgment appealed from (*Q. R. 17 K. B. 256*) affirmed. *Quebec Ry., Light and Power Co. v. Recorder's Court and City of Quebec*, xli., 145.

## 3. EXCHEQUER COURT.

8. *Admiralty law — Foreign bottoms — Collision in foreign waters — Jurisdiction of Canadian Courts.*]—A foreign vessel passing through waters dividing Canada from the United States under a treaty allowing free passage to ships of both nations is not, even when on the Canadian side, within Canadian control so as to be subject to arrest on a warrant from the Admiralty Court.—A warrant to arrest a foreign ship cannot be issued until she is within the jurisdiction of the court.—*Quere*.—Have the Canadian Courts of Admiralty the same jurisdiction as those in England to try an action *in rem* by one foreign ship against another for damages caused by a collision in foreign waters?—Judgment of the Exchequer Court, Toronto Admiralty District (10 Ex. C. R. 1) reversed, Idington, J., dissenting. *The Ship "D. C. Whitney" v. St. Clair Navigation Co.*, xxxviii., 303.

9. *Admiralty law — Jurisdiction of the Exchequer Court of Canada — Claim under mortgage on ship — Action in rem — Pleading — Abatement of contract price — Defects in construction — Damages.*]—In an action *in rem* by the builders of a ship to enforce a mortgage thereon, given to them on account

of the contract price for its construction, the owners, for whom the ship was built, may plead as a defence *pro tanto* that the ship was not constructed according to specifications and claim an abatement of the price in consequence of such default and that the loss in value of the ship, at the time of delivery, attributable to such default, should be deducted from the claim under the mortgage. (Leave to appeal to Privy Council was granted by the Supreme Court of Canada; see p. 430.) *Bow McLachlan and Co. v. The Camosun*, xl., 418.

#### 4. LIQUOR LICENSE ACT, ALBERTA.

10. *Liquor laws*—"Liquor License Ordinance," ss. 37 and 57—"Cancellation of license—Jurisdiction of judge"—7 *Edw. VII. c. 9, s. 34 (Alta.)*.]—The provisions of section 57 of "The Liquor License Ordinance" (Con. Ord. 1898, c. 89), confer upon a judge of the Supreme Court of Alberta power to direct the cancellation of liquor licenses which have been obtained in violation of sub-section 3, of section 37, of that ordinance as amended by section 14 of "The Liquor License Amendment Act, 1907," 7 *Edw. VII. c. 9, of the Province of Alberta. Finseth v. Ryley Hotel Co.*, xlv., 321.

#### 5. PARLIAMENT OF CANADA.

11. *Canadian waters* — *Three-mile-zone—Fishing by foreign vessels—Legislative jurisdiction—Seizure on high seas—Pursuit beyond territorial limit—International law—Constitutional law—B. N. A. Act, 1867, s. 91, s.s. 12—Sea-coast fisheries—R. S. C. c. 94, s.s. 2, 3, 4.*]—Under the provisions of the "British North America Act, 1867," s. 91, s.s. 12, the Parliament of Canada has exclusive jurisdiction to legislate with respect to fisheries within the three-mile-zone off the sea-coasts of Canada.—A foreign vessel found violating the fishery laws of Canada within three marine miles off the sea-coasts of the Dominion may be immediately pursued beyond the three-mile-zone and lawfully seized on the high seas. The judgment appealed from (11 B. C. Rep. 473) was affirmed. *Girouard, J.*, dissenting. *The Ship "North" v. The King*, xxxvii., 385.

#### 6. OTHER CASES.

12. *Rideau canal lands—Mis-user—Forfeiture—Condition subsequent—Jurisdiction of Exchequer Court of Canada—Costs. Wright v. The Queen*, Cout. Cas. 151.

13. *Habeas corpus—Criminal appeals—Grand jurors—Selection of talesmen. Re Menard*, Cout. Cas. 313.

14. *Railway Act, 1903—Powers of Board of Railway Commissioners. Can. Northern Ry. Co. v. Robinson & Son*, Cout. Cas. 394.

15. *Railway Act, 1903—Powers of Board of Railway Commissioners—Construction of*

*statute. Grand Trunk Ry. Co. v. Canadian Pacific Ry. Co. and City of London*, Cout. Cas. 396.

16. *Constitutional law—Criminal courts—General Sessions of the Peace—Jurisdiction of magistrate—Summary trials—Criminal Code, s. 785, xxxiv., 621.*

See CRIMINAL LAW.

17. *Railway Act, 1903—Street railways—Removal of tracks—Authority of Board of Railway Commissioners for Canada—Highways in cities and towns—By-law—Quebec Municipal Code, arts. 464, 481, xxxvi., 369.*

See RAILWAYS.

18. *Railways—Farm crossing—Jurisdiction of the Board of Railway Commissioners for Canada—Statutory contract—Railway Clauses Act, 1851—Grand Trunk Railway Act, 1852—"Railway Act, 1888"—"Railway Act, 1903"—Appeal to Supreme Court of Canada—Jurisdiction—Controversy involved, xxxvi., 671.*

See BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

19. *Construction of statute—"Marsh Act," R. S. N. S. 1900, c. 66, ss. 22, 66—Jurisdiction of Marsh Commissioners—Assessment of lands—Certiorari—Limitation for granting writ—Practice—Expiration of time limit—Delays occasioned by judge—Legal maxim—Order nunc pro tunc, xxxvii., 79.*

See CERTIORARI.

20. *Constitutional law—British North America Act, 1867—Provincial legislative jurisdiction—"Alberta Act," 4 & 5 Edw. VII. c. 3 (D.)—Con. Ord. N. W. T. (1898) c. 52—6 Edw. VII. c. 28 (Alta.)—Medical profession—Practising without license—Criminal law—Practice—Special leave to appeal—R. S. C. (1906) c. 139, s. 37 (c), xxxviii., 620.*

See APPEAL; CONSTITUTIONAL LAW.

21. *Appeal—Stated case—Provincial legislation—Assessment tax—Foreign company—"Doing business in Halifax," xxxix., 174.*

See ASSESSMENT AND TAXES.

22. *Exchequer Court of Canada—Public work—Tort—Negligence of fellow servant—Liability of Crown—Right of action—Jurisdiction over claim for damages, xl., 229.*

See RAILWAYS.

23. *Petition of right—Negligence—Government railway—Operation over other lines—Agreement for running rights—Extensions and branches—"Public work"—Construction of statute—"Government Railways Act"—R. S. C. 1906, c. 36, s. 80—"Exchequer Court Act"—R. S. C. 1906, c. 140, s. 20 (c), xl., 431.*

See RAILWAYS.

24. *Mandamus—Driving timber—Order to *fiu tolle*—Past user of stream—Appeal—R. S. O. (1897) c. 142, s. 13, xl., 523.*

See MANDAMUS.



25. *Husband and wife—Institution of action by divorced wife—Judicial authorization—Arts. 176, 178 C. C.—Art. 14 C. C. P.—Divorce—Decree by foreign tribunal—Effect in Quebec—Comity of nations, Cam. Cas. 392.*

See DIVORCE.

26. *Legislative jurisdiction — Constitutional law — Education — Company—Private bills—Questions referred for opinions—Construction of statute, Cout. Cas. 1.*

See LEGISLATION.

27. *Constitutional law—Legislative jurisdiction—Incorporation of trading companies—Foreign corporations—Judicial opinions on references—Private rights — 45 Vict. c. 119 (D.), Cout. Cas. 43.*

See CONSTITUTIONAL LAW.

28. *Legislative jurisdiction — Constitutional law — Incorporation of companies—Private bill—Property and civil rights—Construction of statute, Cout. Cas. 48.*

See LEGISLATION.

29. *Habeas corpus — Criminal law—Jurisdiction of judge of Supreme Court of Canada—Issue of writ out of jurisdiction of provincial courts—Concurrent jurisdiction—R. S. C. (1886) c. 135, s. 32—Construction of statute—Constitutional law—Powers of Parliament—"Inland Revenue Act"—"Selling and delivering a still and worn"—Cumulative charge—Summary conviction—Adjournment—Conviction in absence of accused, Cout. Cas. 110.*

See HABEAS CORPUS.

30. *Mines and minerals—Trespass—Boundary—Hill-side claim—Appeal per saltum—Practice, Cout. Cas. 281.*

See MINES AND MINING.

31. *Varying minutes of judgment—Repayment of costs—Payment under threat of execution, Cout. Cas. 306.*

See PRACTICE.

32. *Appeal — Amount in controversy — Adding interest to judgment—Construction of statute, Cout. Cas. 318.*

See APPEAL.

AND see APPEAL; COURTS.

33. *Indictable offence — Summary trial—Jurisdiction of magistrate—Offence committed in another county, xli. 5.*

See CRIMINAL LAW.

34. *Appeal—Limitation of time—Jurisdiction of Board of Railway Commissioners—Leave by judge—Powers of Board—Completed railway—Order to provide station. G. T. R. v. Department of Agriculture of Ontario, xlii., 557.*

See BOARD OF RAILWAY COMMISSIONERS.

35. *Deviation of railway tracks — Highway—Dedication—User—"Public way or means of communication"—Access to har-*

*bour—Navigable waters. G. T. R. v. Toronto, xlii., 613.*

See HIGHWAY.

36. *Appeal per saltum—Jurisdiction over Indian reserves. Armour v. Town of Ononadaga, xlii., 218.*

See APPEAL.

37. *Railways—Fencing—Uninclosed lands—Jurisdiction of Board of Railway Commissioners—Construction of statute—The Railway Act, R. S. O. 1906, c. 37, ss. 30, 254. Re Canadian Northern, xlii., 443.*

See RAILWAYS.

38. *Constitutional law—Legislative jurisdiction—"Early closing by-law"—Municipal affairs—Property and civil rights—Local and private matters—Regulation of trade and commerce. Montreal v. Beauvais, xlii., 211.*

See CONSTITUTIONAL LAW.

39. *Service out of jurisdiction—Attachment—Manitoba King's Bench Rules 201, 202—Non-resident foreigner—Detention of goods pending suit—Substitutional service—Consolidating appeals to Supreme Court of Canada—Questions of practice, xlii., 226.*

See APPEAL.

40. *Appeal—Jurisdiction—Dismissing appeal, xlii., 219.*

See APPEAL.

41. *Appeal per saltum—Jurisdiction, xlii., 218.*

See APPEAL.

42. *Appeal—Amount in controversy—Addition of interest to amount of verdict—Stay of execution, xlii., 238.*

See APPEAL.

43. *Arbitration and award — Statutory arbitrators—Awards "from time to time"—Res judicata, xlii., 161.*

See ARBITRATION AND AWARD.

44. *Appeal — Matter in controversy — Municipal franchise—Demolition of water-works—Title to land—Future rights, xlii., 156.*

See APPEAL.

45. *Appeal — Commitment of judgment debtor—Final judgment — Manitoba King's Bench Rules 748, 755—"Matter or judicial proceeding"—Supreme Court Act, s. 2 (e), xlii., 146.*

See APPEAL.

46. *Appeal—Rivers and streams—Right of floating logs—Servitude—Faculty or license—Possessory action—Injunction—Matter in controversy—Practice—Costs—Action, xlii., 133.*

See APPEAL.

47. *Practice and procedure — Appeal to Privy Council—Stay of proceedings, xlii., 361.*

See PRACTICE AND PROCEDURE.

48. *Appeal — "Alberta Liquor License Act"—Cancellation of license—Persona*

*designata* — *Curia nominatim* — “Originating summons” — Court of superior jurisdiction, xlii, 264.

See APPEAL.

49. See APPEAL; BOARD OF RAILWAY COMMISSIONERS; STATUTE.

50. Appeal—Matter in controversy—*Stare decisis*—Municipal by-law — Injunction—Contract—Collateral effect of judgment—Construction of statute—“Supreme Court Act,” R. S. C. 1906, c. 139, ss. 36, 39 (e), 46, xliii., 650.

See APPEAL.

51. Appeal—Matter in controversy — Invalidation of municipal tax—Collateral effect of judgment, xliii., 611.

See APPEAL.

52. Appeal—Prohibition—Quebec appeals—R. S. C. 1906, c. 139, ss. 39, 46—Construction of statute, xliiii., 82.

See APPEAL.

53. Title to land—Mortgage—Foreclosure—Equitable jurisdiction of court—Opening up foreclosure proceedings—Construction of statute—“Real Property Act,” R. S. M., 1902, c. 148—5 & 6 Edw. VII. c. 75, s. 3 (Man.)—Equity of redemption—Certificate of title, xliiv., 1.

See TITLE TO LAND.

54. Board of Railway Commissioners — Private siding—Construction of statute — Railway Act,” R. S. C. (1906) c. 37, ss. 222, 226, 317—Branch of railway—*Res inter alios*—Estoppel, xliiv., 92.

See RAILWAYS.

55. Appeal—Leave by judge—Jurisdiction of Railway Board—Doubt as to decision of Board, xliiv., 298.

See APPEAL.

56. Construction of statute—Quebec “Sunday Act”—Prohibition of theatrical performances—Local, municipal and police regulations—Oriminal law — Legislative jurisdiction — Validation by federal legislation — “Lord’s Day Act,” xlii., 502.

See CONSTITUTIONAL LAW.

57. Construction of statute—“Quebec Public Health Act,” R. S. Q., 1909, art. 3913—Inspection of food—Duty of health officers — Quality of food—Condemnation—Seizure — Notice—Effect of action by health officers — Controlling power of courts—Evidence—Injunction—Jurisdiction — Question in controversy, xlvii., 514.

58. Appeal—Reserve of further directions — “Final judgment”—Construction of statute—“Supreme Court Act,” R. S. C., 1906, c. 139, s. 2 (e); 3 & 4 Geo. V., c. 41, s. 1, xlviii., 497.

See APPEAL.

59. Appeal—“Supreme Court Act,” ss. 36, 37, 46—Judge in chambers—Originating petition—Arts. 71, 72, 875, 876 C. P. Q.—Liquor laws—“Quebec License Law,” R. S. Q., 1909, arts. 924 et seq. — Property in

license — Agreement—Ownership in persons other than holder—Invalidity of contract—Public policy, xlviii., 473.

See APPEAL.

60. Criminal law—Habeas corpus—Common law offences—Construction of statute—“Supreme Court Act,” R. S. C., 1906, c. 139, s. 62—Jurisdiction of Supreme Court judges, xlviii., 235.

See CRIMINAL LAW.

61. Company law—Agreement by directors Onerous contract—Non-disclosure to shareholders—Breach of contract — Damages — Settlement of accounts—Appeal—Reference to master—Final judgment, xlviii., 318.

See COMPANY LAW.

62. Criminal law—Habeas corpus—Common law offences—Construction of statute—“Supreme Court Act,” R. S. C., 1906, c. 139, s. 62. *In re Dean. In re Alberta R. R. Act*, xlviii., 235.

See CRIMINAL LAW.

AND see LEGISLATION.

63. Fisheries—Seizure of foreign ship — Fishing within territorial waters—Evidence — Jurisdiction of Canadian court—Concurrent findings of fact, xlix., 180.

See FISHERIES; APPEAL.

64. Assessment and taxes — Lease of Crown lands—Interest of occupier—Constitutional law—Exemption from taxation — Construction of statute — “B. N. A. Act, 1867,” s. 125—(Sask.) 6 Edw. VII., c. 36, “Local Improvements Act”—(Sask.) 7 Edw. VII., c. 3, “Supplementary Revenue Act”—Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts, xlix., 563.

See CONSTITUTIONAL LAW.

65. Statute — “Colonial Courts of Admiralty Act, 1890,” (Imp.) 53 & 54 V. c. 27—“Public Authorities Protection Act, 1892,” (Imp.) 56 & 57 V. c. 61—Limitation of actions—Effect of statutes—Practice and procedure, xlix., 627.

See STATUTE.

66. Appeal—Case originating in Superior Court—Supreme Court Act, s. 37 (b)—Concurrent—“Mechanics’ Lien Act” (B.C.) — Action to enforce lien, l., 382.

See APPEAL.

67. Powers of company—Sale of shares—Security by mortgage—Subsequent creditor—Status—Foreclosure. *Hughes v. Nor. Elec. & Mfg. Co.*, l., 626.

See PRACTICE.

AND see APPEAL.

68. Practice—Appeal — Expropriation — Application to appoint arbitrator—Persons designata—Amount in controversy — “Railway Act,” R. S. C. 1906, c. 37, s. 196, l., 476.

See APPEAL.

69. Damages—Contract—Purchase of railway bonds—Consideration — Extension of

line—Breach of contract—Personal liability of president of company—Appeal, li., 283.

See CONTRACT.

70. Appeal—Judgment of Court of Review—Modification of trial judgment—Affirmance—"Supreme Court Act," R. S. C., 1906, c. 199, s. 40, li., 136.

See APPEAL.

71. Appeal—Injunction—Matter in controversy—Refusal of costs—Supreme Court Rule 4—"Supreme Court Act," s. 46, lii., 223.

See APPEAL.

72. Appeal—Probate Court—Surrogate Court—R. S. C. 1906, c. 139, s. 37(d), lii., 114.

See APPEAL.

73. Appeal of provincial tribunal—Consent of parties—Estoppel—Assessment—Railway bridge over navigable river—R. S. O. (1914) c. 195—R. S. O. (1914) c. 186, lii., 466.

See ASSESSMENT.

74. Appeal—Jurisdiction of provincial tribunal—Consent of parties—Estoppel—Assessment—Railway bridge over navigable river. Township of Cornwall v. Ottawa & N. Y. R. R., lii., 466.

See ASSESSMENT AND TAXES.

75. Final judgment—Supreme Court Act, s. 38 (c). Jones v. Tucker, liii., 431.

See APPEAL.

76. Appeal—Final judgment—Substantive right—"Supreme Court Act," s. 2e—3 & 4 Geo. V., c. 51—Procedure—Service out of jurisdiction—Costs—Practice, liii., 310.

See APPEAL.

77. Board of Railway Commissioners—Provincial crossing—Dominion railway—Change of grade—Elimination of level crossing—Substitution of subway—Public protection and safety—Power to order provincial railway to share in payment of cost—"Railway Act," ss. 8(a), 59 and 288. Railway, liii., 222.

See RAILWAY.

78. Appeal—Title to land—Fraudulent conveyance—Statute of Elizabeth—Practice, liii., 145.

See APPEAL.

79. Appeal—Winding-up proceedings—Time for appealing—Amount in controversy—Construction of statute—"Supreme Court Act," R. S. C., 1906, c. 139, ss. 46, 69, 71—"Winding-up Act," R. S. O., 1906, c. 144, ss. 104, 106—Practice—Affirming jurisdiction—Motion in court—Discretionary order by judge, liii., 138.

See APPEAL.

80. Appeal—Matter originating in inferior court—Transfer to superior court—Extension of time for appealing—Special leave—

"Supreme Court Act," R. S. C., 1906, c. 139, ss. 37c, 71—Practice, liii., 15.

See APPEAL.

81. Appeal—Court of Review—Arts. 68, 69 C. P. Q.—"Supreme Court Act," R. S. C., 1906, c. 139, s. 40—Practice, liii., 353.

See APPEAL.

82. Appeal from Court of Review—Amount in controversy—Addition of cost of exhibits—Practice, liii., 380.

See APPEAL.

83. Appeal—Action in county court—Concurrent jurisdiction with superior court—Construction of statute—R. S. C., 1906, c. 139, ss. 37b, 70, "Supreme Court Act"—R. S. B. C., 1911, c. 51, "Court of Appeal Act"—R. S. B. C., 1911, c. 53, "County Courts Act"—Motion for new trial—Re-hearing on appeal—Practice, liv., 76.

See APPEAL.

84. Appeal—Assessment and taxation—Adjudication authorized by provincial authority—"Supreme Court Act," R. S. C., 1906, c. 139, s. 41—Finality of provincial decision—"Court of last resort," liv., 1.

See APPEAL.

85. Appeal—Matter in controversy—"Supreme Court Act," s. 46 (b) and (c)—Action to remove cloud on title—Discharge of mortgage—Deferment of payment of accruing instalments—Title to land—Future rights, liv., 140.

See APPEAL.

## JURY.

1. Finding of jury—New trial—Principal and agent—Qualification of juror—Waiver of objection—Written contract—Collateral agreement by parol.—An agent employed to sell a mine for a commission failed to effect a sale but brought action based on a verbal collateral agreement by the owner to pay "expenses" or "expenses and compensation" in case of failure. The jury found in answer to a question by the judge that "we believe there was a promise of fair treatment in case of no sale."—Held, reversing the judgment in appeal (9 B. C. Rep. 303), Taschereau, C.J., and Killam, J., dissenting, that this finding did not establish the collateral agreement but was, if anything, opposed to it and the real issue not having been passed upon there must be a new trial.—If a juror on the trial of a cause is allowed without challenge to act as such on a subsequent trial, that is not *per se* a ground for setting aside the verdict on the latter. *Dunsmuir v. Lowenburg Harris & Co.*, xxxiv., 228.

2. Practice—Jury trial—Findings as to negligence—Questions as to special grounds—Judge's charge—Non-direction—Misdirection—Application of law to facts—New trial.—Upon a trial by jury, the judge in directing the jury as to the law is bound to call their attention to the manner in which the law should be applied by them according to their findings as to the facts, the

extent to which he should do so depending on the circumstances of the case he is trying, and where the form of the charge was defective in this respect and, consequently, left the jury in a confused state of mind as to the questions in issue, there should be a new trial. Judgment appealed from (10 B. C. Rep. 473) affirmed, Davies, J., dissenting.—*Held, per Nesbitt, J.*—In an action founded on negligence it is advisable that specific questions should be submitted to the jury to enable them to state the special grounds on which they find negligence or no negligence. *Spencer v. Alaska Packers Association*, xxxv., 362.

3. *Negligence — Employer and workman — Volenti non fit injuria — Finding of jury.*—In an action claiming compensation for personal injuries caused by negligence the defendant who invokes the doctrine of *volenti non fit injuria* must have a finding by the jury that the person injured voluntarily incurred the risk unless it so plainly appears by the plaintiff's evidence as to justify the trial judge in withdrawing it from the jury and dismissing the action. *Sedgewick and Nesbitt, J.J.*, dissenting. *Canada Foundry Co. v. Mitchell*, xxxv., 452.

4. *Title to land—Plan of survey—Evidence—Onus of proof—Findings of jury—New trial.*—Where it appeared that in directing the jury, at the trial, the judge attached undue importance to the effect of a plan of survey referred to in a junior grant as against a much older plan upon which the original grants of the lands in dispute depended and that the findings were not based upon evidence sufficient in law to shift the onus of proof from the plaintiff and were, likewise, insufficient for the taking of accounts in respect to trespass and conversion of minerals complained of: *Held*, affirming the order for a new trial made by the judgment appealed from (1 East. L. R. 293), that, in the absence of evidence of error therein, the older grants and plan must govern the right of the parties. *Bartlett v. Nova Scotia Steel Co.*, xxxviii., 336.

5. *Life insurance — Wagering policy — Misrepresentation — Questions for jury — Arts. 424, 427 C. P. Q.—Charge to jury—New trial.*—The assignments of facts for the jury were settled in conformity with arts. 424, 427 C. P. Q., but were subsequently amended at the trial. Judgments were entered for the plaintiffs, on the answers by the jury (Q. R. 16 K. B. 178), and the appellant relied on misdirection and the irregularity of the amendment of the assignment of facts, and asked for a new trial. Without calling upon counsel for respondents, the appeal was dismissed. *Lamothe v. North American Life Assce. Co.*, xxxix., 323.

6. *Operation of railway — Unnecessary combustibles left on right of way—"Railway Act, 1903," s. 118 (j) and 239—R. S. C. (1906) c. 37, ss. 151 (j) and 297—Damages by fire—Point of origin—Charge by judge—Finding by jury—New trial—Practice—New evidence on appeal — Supreme Court Act, ss. 51 and 73.*—The question for the jury was, whether or not the place of the origin of the fire which caused the dam-

ages was within the limits of the "right of way" which the defendants were, by the "Railway Act, 1903," obliged to keep free from unnecessary combustible matter, and their finding was that it did, but the charge of the judge was calculated to leave the impression that any space where trees had been cut, under the powers conferred by sec. 118 (j) of that Act, might be treated as included within the "right of way," and, in effect, made a direction on issues not raised by the pleadings or at the trial, as to negligent exercise of the privilege conferred by that section.—*Held*, that, in consequence of the want of more explicit directions to the jury on the question of law and the misdirection as to the issues, the defendants were entitled to a new trial.—The court refused an application by the respondents, on the hearing of the appeal, for leave to supplement the appeal case by the production of plans of the right of way which had not been produced at the trial, as being contrary to the established course of the court. (Leave to appeal to Privy Council granted, 24th February, 1908; 50 Can. Gaz. 544). *Red Mountain Ry. Co. v. Blue*, xxxix., 390.

7. *Negligence—Dangerous works—Protection of employes—Evidence—Questions for jury — Judge's charge—Findings of fact—Inferences.*—An experienced employe of the defendants was killed by an explosion of illuminating gas while discharging his duties in the meter-room at the defendants' gas works. It was shewn that there might possibly have been an escape of gas from the controllers or other fixtures in the room or in the blow-room adjoining it; that there had been no special precaution by the defendants to detect any such escape of gas that might occasionally happen, and that the meter-room had always been and, at the time of the accident, was lighted by means of open gas jets. There was no exact proof of any particular fault, attributable to the defendants, which could have been the whole cause of the explosion, and its origin and course were not explained. In an action for damages by the widow and representatives of deceased, the jury found that the explosion had resulted from the fault and imprudence of the defendants in lighting the meter-room by open gas jets, and contributory negligence on the part of deceased was negatived. *Held*, affirming the judgment appealed from (Q. R. 16 K. B. 246), Davies and MacLennan, J.J., dissenting, that, in the circumstances, the jury were justified in finding that there had been such negligence and imprudence on the part of the defendants, in such use of open gas jets, as would render them responsible for the injury complained of. *Montreal Light, Heat and Power Co. v. Regan*, xl., 580.

8. *Negligence — Operation of railways—Highway crossings—Inconsistent findings—Questions to jury — Practice—Mistrial.*—Where the findings of the jury were conflicting and inconsistent to such a degree as to satisfy the court that there had been a mistrial, a new trial was directed.—Judgment appealed from reversed, Idington, J., dissenting. *Grand Trunk Ry. Co. v. Moore*, Cout. Cas. 401.

9. *New trial—Misdirection—Questions for jury—Verdict on issues—Damages.*] — An order for a new trial should not be granted merely on account of error in the form of the questions submitted to the jury where no prejudice has been suffered in consequence of the manner in which the issues were presented by the charge of the judge at the trial and the jury has passed upon the questions of substance.—The judgment appealed from (18 Man. R. 134) was affirmed, the Chief Justice dissenting, and *Davies, J., hesitante*, as to the quantum of the damages awarded. *Winnipeg Electric Ry. Co. v. Ward*, xli., 639.

10. *Negligence—Operation of railway—Unsafe roadbed—Speed of trains—Disobedience to orders—Answers by jury—“Lord Campbell’s Act”—Injury sustained outside province—Right of action in Manitoba.*] — At a curve in the permanent way there was a sink-hole, over which the roadbed had been recently constructed, where the weight of passing trains caused the tracks to be depressed, but trains running slowly had been safely operated across the unsafe spot for several months. Orders had been given that no trains were to be run over this place at greater speed than 5 miles per hour. The husband of plaintiff was engine-driver of a train which was run over the dangerous spot at a rate exceeding that indicated in the order and was derailed, causing injuries which resulted in his death. The accident happened in the Province of Ontario and the action to recover damages was instituted in Manitoba. In answer to the question, “In what did such negligence consist?” the jury answered, “a defective roadbed, and not having provided a watchman for same.”—*Held*, affirming the judgment appealed from (24 Man. R. 807), *Idington and Brodeur, J.J.*, dissenting, that the answer returned by the jury was insufficient and vague; that there was no reasonable evidence to support a finding that, assuming the order regulating speed of trains to be observed, the permanent way at the place in question was so dangerous as to make it negligence on the part of the railway company, *vis-à-vis* deceased, to operate trains thereupon or that the cause of the accident was the state of the roadbed rather than the running of the train at excessive speed.—*Per Idington, Duff and Brodeur, J.J.*—A legal obligation *ex delicto*, arising in consequence of a fatal accident which happened beyond the territorial limits of the Province of Manitoba, may be enforced in the Manitoba courts where, according to the law in force in Manitoba, a similar right of action would have arisen if the accident had occurred within the province. *Philips v. Eyre* (L. R. 6 Q. B. 1) referred to. *Lewis v. Grand Trunk Pacific Railway Co.*, li., 227.

11. *Negligence—Electric shock—Action against two defendants—Findings of jury—Joint liability—Agreement between defendants—Right to indemnity.*]—In an action against two parties claiming from them jointly and severally compensation for the death of plaintiff’s son from electric shock caused by negligence, where there is no contributory negligence both defendants may be held liable if the negligence of each was a real cause of the accident. *Cf. Algoma Steel Corporation v. Dubé* (53 Can. S. C. R.

48).—By an agreement between the Interurban Electric Co. and the City of Toronto, operating the Hydro-Electric System, the former undertook to “save harmless and indemnify the said corporation . . . against all loss, damages . . . which the corporation may . . . have to pay . . . by reason of any act, default or omission of the company or otherwise howsoever.” An employee of the company was killed in course of his employment and in an action by his personal representative the jury found that the city and the company were each guilty of negligence which caused the accident.—*Held*, that the agreement did not apply to the case of damages which the city would have to pay as a consequence of its own negligence and neither relieved it from liability nor entitled it to indemnity.—Judgment of the Appellate Division (36 Ont. L. R. 269) affirmed. *Toronto v. Lambert*, liv., 200.

12. *Marine insurance—Abandonment—Repairs—Boston clause—Findings of jury—New trial—Practice—Evidence taken by commission—Judicial discretion.* *Ins. Co. of North America v. McLeod*, Cout. Cas. 214.

13. *Habeas corpus—Criminal appeals—Grand jurors—Selection of talesmen—Jurisdiction.* *Re Menard*, Cout. Cas. 313.

14. *Life insurance—Misrepresentation—Findings of jury—Evidence of experts—Classes of opinions. Mutual Reserve Fund Life Assn. v. Dillon*, Cout. Cas. 339.

15. *Procedure—Charge to jury—Report by trial judge—New trial—Review on appeal*, xxxiv., 265.

See PRACTICE.

16. *Master and servant—Contract of service—Termination by notice—Incapacity of servant—Permanent disability—Findings of jury—Weight of evidence*, xxxiv., 366.

See MASTER AND SERVANT.

17. *Negligence—Electric wires—Trespasser on electric company’s poles—Evidence—Remarks of counsel—Contributory negligence—Disagreement of jury—New trial*, xxxiv., 698.

See NEGLIGENCE.

18. *Dangerous way, works, etc.—Negligence—Master and servant—Workmen’s Compensation for Injuries Act—Findings of jury—Evidence*, xxxiv., 710.

See NEGLIGENCE.

19. *Railways—Negligence—Free pass—Consideration for transportation—Misdirection—Findings of jury—New trial—Excessive damages—Art. 503 C. P. Q.*, xxxv., 68.

See PRACTICE.

20. *Construction of contract—Implied covenant—Verdict—Damages—New trial*, xxxv., 186.

See CONTRACT.

21. *Evidence—Verdict—New trial—Contract—Conditions—Misrepresentation—Non-disclosure—Warranty*, xxxv., 266.

See EVIDENCE.

22. *Negligence — Proximate cause—New trial*, xxxv., 296.

See NEGLIGENCE.

23. *Criminal law — Criminal Code, 1892, ss. 241, 242—Wounding with intent—Verdict—Conviction — Crown case reserved*, xxxv., 607.

See CRIMINAL LAW.

24. *Negligence — Dangerous ways, works, etc.—Master and servant—Findings of jury—New trial*, xxxv., 625.

See NEGLIGENCE.

25. *Negligence—Ferryboat wharf — Dangerous way—Precautions for preventing accidents—Evidence—Findings of jury—Nonsuit*, xxxv., 693.

See NEGLIGENCE.

26. *Negligence—Findings by jury — New trial—Evidence — Practice—Operation of railway — “The Railway Act,” 51 Vict. c. 29*, xxxvii., 1.

See NEGLIGENCE.

27. *Negligence—Trial — Finding of jury — Exercise of statutory privilege*, xxxvii., 94.

See NEGLIGENCE.

28. *New trial—Judgment in court below on motion — Equal division — Appeal — Jurisdiction — Charge to jury — Misdirection—Bias*, xxxvii., 532.

See APPEAL; NEW TRIAL.

29. *Negligence — Railway crossing — Findings of jury — “Look and listen,” xxxviii., 94.*

See NEGLIGENCE.

30. *Jury trial — Judge’s charge — Practical withdrawal of case — Evidence—New trial*, xxxviii., 165.

See NEW TRIAL.

31. *Criminal law — Practice—Charge to jury—Crown case reserved—Reserved questions — Dissent from affirmation of conviction—Appeal—Jurisdiction—Criminal Code, 1892, ss. 742, 743, 744, 750—R. S. C. (1906) c. 146, ss. 1013, 1015, 1016, 1024—Admission of evidence—Res gestæ*, xxxviii., 284.

See CRIMINAL LAW.

32. *Withdrawal of case from jury—New trial—Costs*, xxxix., 202.

See ACTION.

33. *Findings of jury—Questions of fact—Duty of appellate court*, xxxix., 336.

See PRACTICE.

34. *Negligence — Employer and employee — Dangerous machinery—Want of proper protection — Voluntary exposure—Findings of jury — Charge of judge—Assignment of facts — Practice — Assessment of damages*, xxxix., 365.

See NEGLIGENCE.

35. *Operation of railway — Yard siding—Sloping platform — Private passage — Dangerous way — Negligence — Procedure at trial—Objections to charge to jury*, xl., 194.

See PRACTICE.

36. *Employer and employee — Improper appliances — Negligence—Proximate cause — Finding of jury—Evidence*, xl., 396.

See NEGLIGENCE.

37. *Negligence — Operation of tramway—Approaching cross-street — Rules of company — Charge of judge — Contributory negligence—Findings of jury*, xl., 540.

See NEW TRIAL.

38. *Unfair trial—Misdirection — Judge’s charge — Bias — Prejudice — Practice—New trial — Disposing of whole case*, Cam. Cas. 112.

See NEW TRIAL.

39. *Evidence—Improper admission — Un-corroborated testimony of plaintiff—Contradictory evidence — Verdict against weight of evidence — New trial—Practice*, Cam. Cas. 214.

See EVIDENCE.

40. *Railways—Station buildings — Dangerous way—Invitation or license — Breach of duty — Negligence—Questions for jury*, Cam. Cas. 262.

See NEGLIGENCE.

41. *Right of appeal—Special leave to appeal per saltum—Questions in controversy—Negligence — Workmen’s compensation for injuries—Damages — Amendment to pleadings — Rule 615—Nonsuit — Verdict — Procedure*, Cout. Cas. 326.

See APPEAL.

42. *Negligence — “Lord Campbell’s Act” — Findings of jury—Verdict — Damages*, Cout. Cas. 343.

See NEGLIGENCE.

43. *Operation of tramway—Negligence — Evidence — Findings of jury*, Cout. Cas. 349.

See PRACTICE.

44. *Practice—Evidence—Impeachment of testimony—Notice of imputations—Promissory note—Fraud—Suspicious circumstances — Transfer of negotiable instrument*, Peters v. Perras, xlii., 244.

45. *Damages—Negligence — Physical injuries—Mental shock — Severance of damages*, xliv., 263.

See DAMAGES.

46. *Negligence—Operation of railway — Fatal injuries—Statutory signals—Highway crossing—Evidence—Absence of eye-witness — Reasonable inference—Balance of probabilities—Findings of jury*, xlv., 380.

See VERDICT.

47. *Negligence—Railway — Findings of jury—Volens—Pleading. Grand Trunk Ry. Co. v. Brulot*, xlvi., 629.

48. *Company—Subscription for shares — Misrepresentation—Action for calls—Charge to jury—Misdirection—Objection—Pleading. Boeckh v. Gowganda Mines*, xlvi., 645.

49. *Municipal corporation — Repair of highways—Statutory duty—“Unfenced trap” in sidewalk—Misfeasance—Actionable negli-*

gence—Notice—Knowledge—Personal injuries—Liability of corporation—Evidence—Findings of jury—"Res ipsa loquitur," xlvii., 457.

See EVIDENCE.

50. Criminal law—Indictment for murder—Trial—Evidence—Criminal intent—Provocation—"Heat of passion"—Charge to jury—Misdirection—Reducing charge to manslaughter—New trial—"Substantial wrong"—Criminal Code ss. 261, 1019—Appeal—Questions to be reviewed, xlvii., 1.

See CRIMINAL LAW.

51. Malicious prosecution—Probable cause—Evidence—Onus—Honest belief—Practice—Questions for jury, xlvii., 393.

See MALICIOUS PROSECUTION.

52. Negligence—Operation of tramway—Passenger riding on platform—Dangerous arrangement of car—Evidence, xlvii., 395.

See NEGLIGENCE.

53. Trial—Charge to jury—Misdirection—Constructive murder—Natural consequence of act—New trial, xlvii., 568.

See CRIMINAL LAW.

54. Negligence—Tramway—Explosion—Defective controller—Inspection, xlvii., 612.

See TRAMWAYS.

55. Negligence—Common employment—Dangerous works—Safety of workmen—Defective system—Employers' liability—Sufficiency of answers—Practice—Discontinuance against co-defendant—Release of joint tortfeasor, xlviii., 609.

See NEGLIGENCE.

56. Negligence—Dangerous works—Defective system—Findings of jury—Sufficiency of answers—Practice—Discontinuance against co-defendant—Release of joint tortfeasor. Waugh-Milburn Construction Co. v. Slater, xlviii., 609.

See NEGLIGENCE.

57. Employer's liability—Negligence—Answers by jury—"Valenti non fit injuria"—Issue undecided—Practice—B. C. Supreme Court Rules, O. 58, s. 4—New trial, xlix., 43.

See NEW TRIAL.

58. Findings of fact—Inference by jury—Determining cause of accident—Evidence to support verdict—Practice, xlix., 80.

See PRACTICE AND PROCEDURE.

59. Negligence—Employer's liability—Ship labourer—Disregard of rules—"Accident in course of employment"—Action—Claim by dependents—Findings of jury—Evidence—Art. 1054 C. C., xlix., 136.

See NEGLIGENCE.

60. Construction contract—Sub-contract—Dangerous premises—Servant or agent—Building materials—Duty of principal contractor—Injury to invitee—Responsibility for damages—Evidence—Findings of jury, xlix., 632.

See NEGLIGENCE.

61. Railways—Operation—Transfer of cars—Innerswitching—Negligent coupling—Duty of train crew—Scope of employment—Employer's liability—Findings of fact—Evidence, l., 393.

See RAILWAYS.

62. Negligence—Dangerous works—Defective system—Careless management—Fault of fellow servant—Efficient superintendence—Employer's duty—Evidence—Action—Liability at common law—"B. C. Employers' Liability Act"—Pleading—Practice—Charge to jury—New trial. Bergklint v. West. Can. Power Co., l., 39.

See NEGLIGENCE.

63. Railways—Operation—Transfer of cars—Interswitching—Negligent coupling—Duty of train crew—Scope of employment—Employer's liability—Findings of fact—Evidence. G. T. P. R. R. Co. v. Pickering, l., 393.

See RAILWAYS.

64. Negligence—Defective system—Injury to employee—Evidence—Verdict—Practice—Exception to judge's charge—New points on appeal—New trial. Creveling v. Can. Bridge Co., li., 216.

See PRACTICE AND PROCEDURE.

65. Operation of railway—Equipment—Coupling apparatus—Duty to provide and maintain—Protection of employee—Inspection—"Inevitable accident"—Negligence—Findings of jury—Evidence—Common employment—Conflict of laws—"Railway Act," R. S. C., 1906, c. 37, s. 264—Construction of statute—Vis major. Phelan v. G. T. P. Ry. Co., li., 113.

See RAILWAYS.

66. Libel—Business reputation—Action by incorporated company—Truth of alleged facts—Fair comment—Justification—Public interest—Qualified privilege—Charge to jury—Misdirection—Misleading statements—Practice—Evidence—Special damages—New trial. Price v. Chicoutimi, li., 179.

See LIBEL.

67. Railways—Operation—Equipment—Coupling apparatus—Duty to provide and maintain—Protection of employees—Inspection—"Inevitable accident"—Negligence—Findings of jury—Evidence—Common employment—Conflict of laws—"Railway Act," R. S. C., 1906, c. 37, s. 264—Construction of statute—Vis major, li., 113.

See NEGLIGENCE.

68. Negligence—Defective system—Injury to employee—Evidence—Verdict—Practice—Exception to judge's charge—New points on appeal—New trial, li., 216.

See NEGLIGENCE.

69. Libel—Business reputation—Action by incorporated company—Truth of alleged facts—Fair comment—Justification—Public interest—Qualified privilege—Charge to jury—Misdirection—Misleading statements—Practice—Evidence—Special damages—New trial, li., 179.

See LIBEL.

70. *Practice and procedure—Trial by jury—Personal wrongs—Appeal—Taking new objection—Art. 1056 C. C.—Arts. 421 et seq. O. P. Q.—“Lord Campbell’s Act”—Charge to jury—Opinion on questions of fact, lii., 644.*

See PRACTICE.

71. *Damages—Verdict—Excessive award—Personal injuries—Complete reparation—Loss of prospective earnings—Pain and suffering—Evidence—Mortuary tables—Practice—New trial, liii., 349.*

See DAMAGES.

72. *Damages—Verdict—Excessive award—Personal injuries—Complete reparation—Loss of prospective earnings—Pain and suffering—Evidence—Mortuary tables—Practice—New trial. C. P. R. v. Jackson, liii., 281.*

See DAMAGES.

73. *Action by dependent—Injury sustained outside province—Right of action in Manitoba—Evidence—Answers by jury. Lewis v. G. T. P., lii., 227.*

See NEGLIGENCE.

74. *Railways—System of construction—Exposed switch-roads—Negligence—Dangerous contrivance—Verdict—Findings against evidence. Mallory v. W’p’g Joint Terminals, liiii., 325.*

See RAILWAYS.

## JUS PUBLICUM.

*Title to lands—Grant from Crown—Implied reservations—Description—Navigable waters—Floatable streams—Inlet of navigable river—Crown domain—Public law—Construction of deed—Possession—Estoppel—Evidence—Waiver, xxxiv., 603.*

See RIVERS AND STREAMS.

## JUSTICE OF THE PEACE.

1. *Criminal law—Indictable offence—Summary trial—Jurisdiction of magistrate—Offence committed in another county.]—If a person is brought before a justice of the peace charged with an offence committed within the province, but out of the limits of the jurisdiction of such justice, the latter, in his discretion, may either order the accused to be taken before some justice having jurisdiction in the place where the offence was committed (Cr. Code [1892] sec. 557; Cr. C. [1906] sec. 665) or may proceed as if it had been committed within his own jurisdiction.—S. was brought before the stipendiary magistrate of the City of Halifax charged with having committed burglary in Sydney, C.B.—Held, that the stipendiary magistrate could, with the consent of the accused, try him summarily under (Cr. C. [1892] sec. 785) as amended in 1900 (Cr. C. [1906] sec. 777). Re Seeley, xli., 5.*

2. *Criminal law—Indictable offence—Summary trial—Jurisdiction of magistrate—Offence committed in another county.]—If a*

person is brought before a justice of the peace charged with an offence committed within the Province, but out of the limits of the jurisdiction of such justice, the latter, in his discretion, may either order the accused to be taken before some justice having jurisdiction in the place where the offence was committed (Cr. Code [1892] sec. 557; Cr. C. [1906] sec. 665) or may proceed as if it had been committed within his own jurisdiction.—S. was brought before the stipendiary magistrate of the City of Halifax charged with having committed burglary in Sydney, C.B.—Held, that the stipendiary magistrate could, with the consent of the accused, try him summarily under Cr. C. [1892] sec. 785 as amended in 1900. (Cr. C. [1906] sec. 777). Re Seeley, xli., 5.

3. *Courts of general sessions of the peace—Criminal law—Jurisdiction of magistrate—Criminal Code, s. 785—Constitutional law—Constitution of criminal courts, xxxiv., 621.*

See CRIMINAL LAW.

4. *Criminal law—Summary convictions and orders—Procedure by magistrate—Delay in issuing commitment—Term of imprisonment—Commencement of sentence—“Canada Temperance Act, 1878,” Cout. Cas. 71.*

See HABEAS CORPUS.

5. *Habeas corpus—Criminal law—Jurisdiction of judge of Supreme Court of Canada—Issue of writ out of jurisdiction of provincial courts—Concurrent jurisdiction—R. S. O. (1886) c. 135, s. 52—Construction of statute—Constitutional law—Powers of Parliament—“Inland Revenue Act”—“Selling and delivering a still and worm”—Cumulative charge—Summary conviction—Adjournment—Conviction in absence of accused, Cout. Cas. 110.*

See HABEAS CORPUS.

## LACHES.

1. *Receiver—Management of business—Supervision and control—Neglect.]—The receiver of a partnership who is directed by the court to manage the business until it can be sold should exercise the same reasonable care, oversight and control over it as an ordinary business man would give to his own business and if he fails to do so he must make good any loss resulting from his negligence.—The fact that the receiver is the sheriff of the district does not absolve him from this obligation though the partners consented to his appointment knowing that he would not be able to manage the business in person.—The Chief Justice and MacLennan, J., dissented, taking a different view of the evidence. Plisson v. Duncan, xxxvi., 647.*

2. *Mandate—Principal and surety—Negligence—Release of surety—Mortgage—Construction of contract—Principal and agent, xxxv., 663.*

See PRINCIPAL AND SURETY.



3. Breach of contract—Breach of trust—Assessment of damages — Sale of mining rights—Promotion of company—Failure to deliver securities—Principal and agent—Account — Evidence — Salvage — Indemnity for necessary expenses — Laches—Estoppel, xxxviii., 198.

See TRUSTS.

4. Banks and banking—Forged cheque—Negligence—Responsibility of drawee—Payment—Mistake — Indorsement — Implied warranty—Principal and agent—Action—Money had and received—Change in position, xl., 366.

See BANKS AND BANKING.

5. Municipal corporation — Assessment and taxes — Meetings of council—Court of Revision — Transaction of business outside limits of municipality—Place of meeting—Revision of assessment rolls—By-laws—Sale for arrears of taxes — Construction of statute—Statutory relief — Estoppel—Acquiescence—Limitation of actions, xlv., 425.

See MUNICIPAL CORPORATION.

6. Sale of land—Contract—Defeasance—"Time to be of the essence of the contract"—Deferred payments—Notice after default — Abandonment — Specific performance, xlix., 14.

See SPECIFIC PERFORMANCE.

7. Lease of land — Option to purchase—Specific performance — Right of action. *St. Denis v. Quevillon*, li., 603.

See ACTION.

## LANDLORD AND TENANT.

1. ACTION, 1-2.
2. CONTRACT, 3-13.
3. DETERMINATION OF TENANCY, 14-15.
4. NEGLIGENCE, 16-17.
5. RENEWAL OF LEASE, 18.
6. OTHER CASES, 19-35.

### 1. ACTION.

1. *Ownership — Lease — Sheriff's sale — Title to land—Insurable interest—Fire insurance trust—Beneficiary — Principal and agent—Fraudulent contrivances—Estoppel.*—The lessor of real estate insured leased property "in trust," and notified the insurers that the lessee, his son, was the real beneficiary. The lessee paid all the premiums and, the property having been seized in execution of a judgment against the lessor, the lessee purchased at the sheriff's sale and became owner in fee. He afterwards increased the insurance, the insurer acknowledging, in the second policy, the existence of the first in his favour. The property having been destroyed by fire, payment of the amount of the first policy to the lessee was opposed by a judgment creditor of the lessor and the money attached in the pos-

session of the company.—*Held*, that the lessee having had an insurable interest when the first policy issued and being, when he acquired the fee and when the loss occurred, the only person having such interest, he was entitled to the payment of the amount of the policy insured upon the application of the lessor.—*Held*, also, that even if the lessee knew that his father was embarrassed at the time he took the lease and when he purchased the property at the sheriff's sale, that would not make the transaction fraudulent as against the father's creditors.—A creditor who was a party to the action against the lessor in which the property was sold in execution subject to the lease and who did not oppose such sale can not, afterwards, contest payments of the amount of the policy on the ground of fraud. *Langelier v. Charlebois*, xxxiv., 1.

2. *Tenant by sufferance—Use and occupation of lands—Art. 1608 C. C.—Promise of sale—Vendor and purchaser—Reddition de compte—Action ex vendito—Practice.*—The action for the value of the use and occupation of lands does not lie in a case where the occupation by sufferance was begun and continued under a promise of sale; in such a case the appropriate remedy would be by an action *ex vendito* or for *reddition de compte*. *Cantin v. Bérubé*, xxxvii., 627.

### 2. CONTRACT.

3. *Canal — Water-power—Improvements on canal—Temporary stoppage of power — Compensation — Total stoppage—Measure of damages—Loss of profits.*—A mill was operated by water-power taken from the surplus water of the Galops Canal under a lease from the Crown. The lease provided that in case of a temporary stoppage in the supply caused by repairs or alterations in the canal system the lessee would not be entitled to compensation unless the same continued for six months, and then only to an abatement of rent.—*Held*, *Idington, J.*, *dubitante*, that a stoppage of the supply for two whole seasons necessarily and *bonâ fide* caused by alterations in the system was a temporary stoppage under this provision.—The lease also provided that, in case the flow of surplus water should at any time be required for the use of the canal or any public purpose whatever, the Crown could, on giving notice to the lessee, cancel the lease, in which case the lessee should be entitled to be paid the value of all the buildings and fixtures thereon belonging to him with ten per cent. added thereto. The Crown unwatered the canal in order to execute works for its enlargement and improvement, contemplating at the time only a temporary stoppage of the supply of water to the lessee, but later changes were made in the proposed work which caused a total stoppage and the lessee, by petition of right, claimed damages.—*Held*, *Girouard, J.*, dissenting, that as the Crown had not given notice of its intention to cancel the lease the lessee was not entitled to the damages provided for in case of cancellation.—*Held* also, that the lessee was

not entitled to damages for loss of profits during the time his mill was idle owing to the water being out of the canal.—Judgment of the Exchequer Court (9 Ex. C. R. 287) affirmed, Girouard and Idington, JJ., dissenting. *Beach v. The King*, xxxvii., 259.

4. *Lessor and lessee—Covenant to renew—Sovereignty of term—Consent of lessor—Enforcement of covenant—Expropriation—Persons interested.*—The covenant for renewal of a lease for a term of years is indivisible and if the lessee assigns a part of the demised premises neither he nor his assignee can enforce the covenant for renewal as to his portion.—The assignment of part of the leasehold premises included an assignment of the right to renewal of the lease for such part and the lessor executed a consent thereto.—*Held*, that he did not thereby agree that his covenant for renewal would be exercised in respect to a part only of the demised premises.—In the case mentioned the lessee who has severed his term cannot, when the land demised is expropriated by a railway company, obtain compensation on the basis of his right to a renewal of his lease.—Judgment of the Court of Appeal (13 Ont. L. R. 85) affirmed. *Alexander Brown Milling Co. v. Canadian Pacific Railway Co.*, xlii., 600.

5. *Lease — Construction of covenant — Taxes — Partial exemption.*—A society owned a building worth about \$20,000 which, by the statute of the province, was exempt from municipal taxation so long as it was used exclusively for the purposes of the society. A portion of the building having been used at intervals for other purposes, it was assessed at a valuation of \$1,000 and the society paid the taxes thereon for some years. Such portion was eventually leased for a term of years to be used for other purposes than those of the society, and the valuation for assessment was increased to \$10,000. The lease contained this covenant:—"The said lessees . . . shall and will well and truly pay or cause to be paid any and all license fees, taxes or other rates or assessments which may be payable to the City of Halifax, or chargeable against the said premises by reason of the manner in which the same are used or occupied by the lessees hereafter, or which are chargeable or levied against any property belonging to the said lessees (the said lessor, however, hereby agreeing to continue to pay as heretofore all the regular and ordinary taxes, water rates and assessments levied upon or with respect to said premises, and the personal property thereon belonging to the lessor)." — The society was obliged to pay the taxes on such increased valuation and brought action to recover the amount so paid from the lessees.—*Held*, Fitzpatrick, C.J., and Anglin, J., dissenting, that the taxes so paid were "regular and ordinary taxes" which the lessors had agreed to pay as theretofore and the lessees were not liable therefor on their covenant. *Saint Mary's Young Men's Society v. Albee*, xliii., 288.

6. *Fixtures—Lessor and lessee—Buildings placed on leased land—Evidence—Onus of proof.*—In a dispute as to the degree and object of the annexation of buildings erected

upon leased land by the tenant in occupation under the lease, the onus of shewing that in the circumstances in which they were placed upon the land there was an intention that they should become part of the freehold lies upon the party who asserts that they have ceased to be chattels. *Holland v. Hodgson* (L. R. 7 C. P. 328) followed. *Bing Kee v. Yick Chong*, xliii., 334.

7. *Lease — Covenant for renewal—Construction.*—A lease for 21 years of mill-races and lands on the old Welland Canal contained the covenant that: "After the end of 21 years, as aforesaid, if the said (lessors) do not continue the lease of the said water and works" they would compensate the lessees for their improvements.—*Held*, Girouard and Duff, JJ., dissenting, that at the end of the 21 years the lessees were entitled to a renewal of the term but not to a new lease containing a similar covenant for renewal or compensation. They had a right to renewal or compensation but not to both.—After the original term expired the lessees remained in possession, paying the same rental as before, for a further term of 21 years, no formal lease therefor having been executed and none demanded or tendered for execution. Ten years after the expiration of this second term they were dispossessed and claimed compensation for improvements by petition of right.—*Held*, that the rights of the lessees were the same as if the original term of 21 years had been formally continued, or renewed, for a further like term.—*Held*, per Idington, J., Girouard, J., *contra*, that the lessees having obtained a renewal their right to compensation was gone.—*Per* Davies and Anglin, JJ.—The lease was probably not renewed within the meaning of the lessor's covenant, but there having been no proof of a demand for renewal and the lessees having remained in possession for the entire period for which they could have claimed a renewal, they can have no right to compensation for improvements. If they ever had such a right in default of obtaining a renewal it is barred by the Statute of Limitations. *The King v. St. Catharines Hydraulic Co.*, xliiii., 595.

8. *Lease—Water lots—Status of lessee—Riparian owner—Access to lot — Injunction.*—S. is a lessee under lease from the City of St. John of a water lot in the harbour; the F. K. Co. are lessees of the next lot to the south, and there are other lots to the south between that of S. and the foreshore of the harbour. By his lease, S. has a right of access to and from his lot on the east and west sides.—*Held*, that S. was not a riparian owner and had no rights in respect of the water lot other than those given him by his lease. Hence, he could not restrain the F. K. Co. from erecting a wharf on the adjoining lot which would prevent access to his from the south, a right of access not provided for in his lease.—Judgment appealed from (40 N. B. Rep. 8) reversed, Idington, J., dissenting. *Francis Kerr Co. v. Seely*, xliiv., 629.

9. *Covenant to pay for improvements—Buildings and erections—Foundation—Piling and filling in—Intention of lessee.*—The City of St. John leased certain mud

flats, the lease containing a covenant that if the lessees should "put up any buildings and erections for manufacturing purposes" thereon, the same, at the expiration of the term, should be appraised in the manner provided and the city should have the option of paying the appraised value or renewing the lease. On expiration of a term the city elected to pay.—*Held*, that the lessees were entitled to be paid the value of piling and filling in on said lots to form a foundation for buildings erected and in existence at the expiration of the lease, but not for such piling and filling in at a place where no buildings existed, but upon which buildings were intended to be erected for manufacturing purposes. *City of St. John v. Gordon*, xlvi., 101.

10. *Lessor and lessee—Lease of adjoining lots—Separate demises—Assignment to one person—Termination of lease—Valuation of improvements—Valuation as a whole—Consent of counsel.*—[Two leases of adjoining lots were, by assignment, vested in C. Each lease provided that if, on its expiration, the lessor refused to renew he should give notice thereof to the lessee and that valuers should be appointed to value the buildings on the land. Notice was given under each lease and valuers were appointed who, without objection by the lessor's counsel, valued the buildings on the two lots as a whole and fixed \$35,000 as the value of them all. In an action by the lessee to recover this amount. — *Held*, reversing the judgment of the Appellate Division (32 Ont. L. R. 48), Davies and Anglin, J.J., dissenting, that the valuation must be set aside, that the value of the buildings on the lots should have been ascertained separately.—*Held*, also, applying the principle of *Cameron v. Cuddy* ([1914] A. C. 651) that the action should not be dismissed, but that the same or other valuers should be appointed to ascertain the value in a proper manner. *Irwin v. Campbell*, li., 358.

11. *Lease of land — Special condition — Promise of sale—Option—Pacte de préférence—Unilateral contract — Real rights — Registry laws—Arts. 2082, 2085 C. C. — Specific performance—Damages—Right of action.*—[In a lease of lands for the term of five years, which was registered, the lessor agreed to sell the property to the lessee for a certain price at any time during the term of the lease. It was also stipulated that in the event of a proposed sale to any other person, for any price whatsoever, the lessor should notify the lessee thereof and give him the right, by preference, to exercise his option to purchase. After the expiration of about two years of the term, the lessor served written notice on the lessee requiring him to exercise his option forthwith and stating that, in default, he would sell to another person, without, however, mentioning the terms and conditions of the proposed sale and on request by the lessee, these particulars were refused. The lessee took no action on this notice and the lessor executed a deed of sale of the property to P. by conveyance in which the latter undertook that the registered lease would be maintained in force. Two years later the lessee brought suit against the lessor and P. for specific per-

formance of the agreement to sell and, alternatively, for damages against the lessor for breach of contract.—*Per curiam.*—The notice as given, without mentioning the terms and conditions of the proposed sale to P., was ineffectual to place the lessee in default in regard to exercising his option; the rights of the lessee under the deed of lease continued to subsist during the whole term of the lease.—*Per Idington and Brodeur, J.J.* (Duff and Anglin, J.J., *contra*).—The promise of sale and *pacte de préférence* were accessory to the contract of lease and created a real right in favour of the lessee which was capable of being registered against the leased lands.—The registration of the deed of lease and actual knowledge by the purchaser of the rights of the lessee thereunder placed P. in the position of a purchaser in bad faith and, consequently, he became bound by the obligations resting upon the lessor and specific performance should be decreed against him as well as against the lessor.—*Per Duff and Anglin, J.J.*—The promise of sale and *pacte de préférence*, being stipulations separate and distinct from the contract of lease, did not create real rights in the property leased which might be protected by registration under the registry laws of the Province of Quebec. Under the laws of that province (there being no evidence of bad faith on the part of the purchaser), the purchase of the leased property with knowledge of the owner's obligations, *in personam*, could not render such purchaser liable to a decree for specific performance thereof.—*Per Fitzpatrick, C.J., and Anglin, J.*—The plaintiff had the right to bring his action notwithstanding the expiration of the period of two years after the date of the sale; the wrongful act of the lessor, in violation of his obligations under the deed of lease, did not impose upon the lessee the duty of asserting his rights at a period earlier than that required in his option.—Judgment appealed from (Q. R. 23 K. B. 436) reversed. *Saint-Denis v. Quevillon*, li., 603.

12. *Lease—Licensed hotel — Accommodation required by regulations—Covenant by lessor—Repairs and improvements—Loss of liquor license—Determination of lease—Implied condition.*—[In a lease of property, upon which was situated a hotel licensed to sell liquors, the lessor covenanted to repair and improve the premises in compliance with municipal regulations which might be made from time to time in respect to hotels for which liquor licenses should be granted. During the term of the lease a regulation was made, requiring licensed hotel premises to be enlarged and improved in certain respects, with which the lessor did not comply and, in consequence, the renewal of the liquor license was refused at the end of the license year then current.—*Held*, that neither the circumstances in which the lease was entered into nor the lessor's covenant to make repairs and improvements gave rise to an implied condition to the effect that the obligation of the tenant to pay the rent reserved should terminate upon the hotel, through no fault attributable to the lessee, ceasing to be licensed premises. *Grimdiok v. Sweetman* ([1909] 2 K. B. 740) followed.—Judgment appealed

from (21 B. C. Rep. 19) affirmed. *Vancouver Breweries, Limited v. Dana*, lii., 134.

13. *Construction of statute—Alberta: "Assignments Act"—Assignment for benefit of creditors—Occupation of leased premises—Liability of official assignee.*—The Alberta "Assignments Act," as amended by the Alberta statutes, ch. 4, sec. 14 of 1909 and ch. 2, sec. 12 of 1912, provides that assignments for the general benefit of creditors must be made to an official assignee appointed under the Act and that the assignment shall vest in such assignee all the assignor's real and personal property, credits and effects which may be seized and sold under execution. The lessee of premises held under a lease from the plaintiffs made an assignment to the defendant who took possession thereof and, on threat of distress, agreed that he would guarantee the rent so long as he remained in occupation. After three months, the defendant quit the premises and notified the landlord that he would no longer be responsible for or pay the rent. In an action for breach of the covenants of the lease and to recover the rent accruing to the end of the term:—*Held*, reversing the judgment appealed from (8 Alta. L. R. 226), Idington and Brodeur, J.J., dissenting, that by the effect of the assignment and entry into possession the term of the lease passed to the official assignee who, thereupon, became liable for the whole of the rent accruing for the remainder of the term. *Northwest Theatre Co. v. MacKinnon*, lii., 588.

### 3. DETERMINATION OF TENANCY.

14. *Lessor and lessee—Covenant for renewal—Option of lessor—Second term—Possession by lessee after expiration of term—Construction of deed—Specific performance.*—A lease for a term of years provided that when the term expired any buildings or improvements erected by the lessees should be valued, and it should be optional with the lessors either to pay for the same or continue the lease for a further term of like duration. After the term expired, the lessees remained in possession for some years when a new indenture was executed which recited the provisions of the original lease and, after a declaration that the lessors had agreed to continue and extend the same for a further term of fourteen years from the end of the term granted thereby at the same rent and under the like covenants, conditions and agreements as were expressed and contained in the said recited indenture of lease and that the lessees had agreed to accept the same, it proceeded to grant the further term. The last mentioned indenture contained no independent covenant for renewal. After the second term expired the lessees continued in possession and paid rent for one year when they notified the lessors of their intention to abandon the premises. The lessors refused to accept the surrender and, after demand of further rent and tender for execution of an indenture granting a further term, they brought suit for specific performance of the agreement implied in the original lease for renewal of the second term at their option.

—*Held*, affirming the judgment of the court below (28 N. B. Rep. 1), Ritchie, C.J., and Taschereau, J. dissenting, that the lessees were not entitled to a decree for specific performance.—*Held*, per Gwynne, J., that the provision in the second indenture granting a renewal under the like covenants, conditions and agreements as were contained in the original lease, did not operate to incorporate in said indenture the clause for renewal in said lease which should have been expressed in an independent covenant.—*Per* Gwynne, J. (*Patterson, J., hesitante*), that assuming the renewal clause was incorporated in the second indenture, the lessees could not be compelled to accept a renewal at the option of the lessors, there being no mutual agreement therefor; if they could the clause would operate to make the lease perpetual at the will of the lessors.—*Per* Gwynne and Patterson, J.J., that the option of the lessors could only be exercised in case there were buildings to be valued erected during the term granted by the instrument containing such clause; and, if the second indenture was subject to renewal, the clause had no effect, as there were no buildings erected during the second term.—*Per* Gwynne, J.—The renewal clause was inoperative under the statute of frauds, which makes leases for three years and upwards, not in writing, have the effect of estates at will only and, consequently, there could be no second term of fourteen years granted except by a second lease executed and signed by the lessors.—*Per* Ritchie, C., and Taschereau, J., that the occupation by the lessees after the term expired must be held to have been under the lease and to signify an intention on the part of the lessees to accept a renewal for a further term as the lease provided. *Sears v. City of Saint John* (xviii., 702); *Cam. Cas.* 486.

15. *Lessor and lessee—Lease for years—Covenant to renew—Option of lessor—Ejectment—Equitable plea.*—A lease for years provided that on its termination the lessor, at his option, could renew or pay for improvements. When it expired the lessor notified the lessee that he would not renew and that he had appointed a valuator of the improvements requesting her to do the same, which she did. The valuation was made and the amount thereof tendered to the lessee which she refused on the ground that valuable improvements had not been appraised, and refusing to give up possession when demanded the lessor brought ejectment. By her plea to the action the lessee set up the invalid appraisal and claimed that as the lessor's option could not be exercised until a valid appraisal had been made he was not entitled to possession. By a plea on equitable grounds she again set up the invalid appraisal and asked that it be set aside and the lessor ordered to specifically perform the condition in the lease for renewal and for other and further relief.—*Held*, affirming the judgment appealed against (38 N. B. Rep 465), Idington, J. dissenting, that though the appraisal was a nullity that fact did not defeat the action of ejectment; that the acts of the lessor in giving notice of intention not to renew, demanding possession and bringing ejectment, constituted a valid exercise of

his option under the lease, and that the lessor was entitled to possession.—*Held*, also, Idington, J., dissenting, that sec. 289 of the "Supreme Court Act of New Brunswick" did not authorize that court to grant relief to the lessee under her equitable plea; that such a plea to an action of ejectment must state facts which would entitle the defendant to retain possession, which the plea in this did not do. *Porter v. Purdy*, xli., 471.

#### 4. NEGLIGENCE.

16. *Negligence — Trespasser — Licensee — Overhauling tenant — Master and servant.*—A trespasser or bare licensee injured through negligence may maintain an action.—The workmen of a contractor for tearing down portions of a building in order to make alterations turned on a water-tap in a room where they were working and neglected to turn it off, whereby goods in the storey below were damaged by water.—*Held*, Davies and Nesbitt, JJ., dissenting, that the act of the workmen was done in course of their employment; that it was negligent; and that the owner of the goods could recover damages though he was in possession merely as an overhauling tenant who had not been ejected. *Sievert v. Brookfield*, xxxv., 494.

17. *Negligence—Master and servant—Acts in course of employment — Alterations to plumbing—Damage by steam, etc. — Responsibility of contractors—Control of premises—Cross-appeal between respondents—Practice.*—In the lease of a shop, the landlord agreed to supply steam heating and, in order to improve the system, engaged a firm of plumbers to make alterations. Before this work was completed and during the absence of the tenant, the plumbers' men, who were at work in another part of the same building, with steam cut off for that purpose, at the request of the caretaker employed by the landlord, turned the steam on again which, passing through unfinished pipes connected with the shop, escaped through an open valve in a radiator and injured the tenant's goods.—*Held*, that the landlord was liable in damages for the negligent act of his caretaker in allowing steam to be turned on without ascertaining that the radiator was in proper condition to receive the pressure, and that the plumbing firm were also responsible for the negligence of their employees in turning on the steam, under such circumstances, as they were acting in the course of their employment in what they did although requested to do so by the caretaker.—The judgment appealed from (16 Man. R. 411) was affirmed with a variation declaring the plumbers jointly liable with the landlord.—The action was against the two defendants, jointly, and the plaintiff obtained a verdict, at the trial, against both. The Court of Appeal confirmed the verdict as to McN. and dismissed the action as to the other defendants. McN. appealed to the Supreme Court of Canada, making the other defendants respondents on his appeal.—*Held*, that the plaintiff, respondent, was entitled to cross-appeal against the said defendants, respondents, to have

the verdict against them at the trial restored. (Leave to appeal to Privy Council was refused, 12th March, (1908). *Mc Nichol v. Malcolm*, xxxix., 265.

#### 5. RENEWAL OF LEASE.

18. *Lease—Covenant not to assign—Assignment to co-partner—Right to renew—Notice.*—Where partners are lessees of a term for years and have covenanted not to assign or sub-let without the consent in writing of the lessor an assignment by one of his interest in the lease to his co-partner without such consent is a breach of such covenant. *Varley v. Coppard* (L. R. 7. C. P. 505) followed.—The lease provided that, having performed all their covenants and agreements contained in the lease the lessees on giving six months' notice in writing to the lessor before the expiration of the term that they required it, would be entitled to a renewal.—*Held*, that a breach (after the said notice was given) of their covenant in the lease not to assign without leave caused a forfeiture of the right to renewal.—Judgment appealed from (17 Ont. L. R. 254) affirmed. *Loveless v. Fitzgerald*, xlii., 254.

19. *Mining lease—Prospector's license — Testing machinery—Annexation to the freehold—Trade fixtures — Fi. fa. de. bonis — Sale under execution, xxxv., 539.*

See EXECUTION.

20. *Title to land—Conveyance in fee — Reservation of life estate — Possession — Ejectment, xxxvi., 231.*

See TITLE TO LAND.

21. *Equitable mortgage—Mines and minerals—Lease of mining lands—Sheriff's sale — Purchase by judgment creditor of mortgage — Registry laws — Priority—Actual notice—Lien for Crown dues paid as rent—C. S. N. B. (1903), c. 30, s. 139, xxxvii., 517.*

See MINES AND MINING.

22. *Tenant by sufferance—Use and occupation of lands—Art. 1608 C. C.—Promise of sale—Vendor and purchaser—Reddition de compte—Actio ex vendito—Practice, xxxviii., 627.*

See ACTION.

23. *Dominion mining regulations — Hydraulic mining—Placer mining—Water grant — Conditions of grant—User of flowing waters—Diversions of watercourse—Dams and flumes—Construction of deed — Riparian rights — Priority of right — Injunction, xxxviii., 79.*

See MINES AND MINING.

24. *Subaqueous mining—Crown grants — Dredging lease — Breach of contract—Subsequent issue of placer mining licenses — Damages — Pleading and practice — Statement of claim—Cause of action, xxxviii., 542.*

See MINES AND MINING.

25. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with watercourse—Agreement for user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages, xxxix., 81.*

See ACTION; PRACTICE.

26. *Landlord and tenant—Negligence—Master and servant—Acts in course of employment—Alterations in plumbing—Damage by steam, etc.—Responsibility of contractors—Control of premises—Cross-appeal between respondents—Practice, xxxix., 265.*

See LANDLORD AND TENANT.

27. *Patent law—Canadian Patent Act—R. S. C. (1906) c. 69, s. 38—Manufacture—sale—Lease or license, xxxix., 499.*

See PATENT OF INVENTION.

28. *Supply of electric light—Cancellation of contract—Condition for terminating service—Interest in premises ceasing—"Heirs"—"Assigns," xxxix., 567.*

See CONTRACT.

29. *Mining regulations—Hydraulic lease—Breach of conditions—Construction of deed—Forfeiture—Right of lessees—Procedure of inquiry—Judicial duties of arbiter, xl., 281, 394.*

See MINES AND MINING.

30. *Title to land—Lease for years—Possession by sub-tenant—Purchase at sheriff's sale—Adverse occupation—Evidence—Conveyance of rights acquired—Compromise—Waiver—Estoppel, Cout. Cas. 158.*

See TITLE TO LAND.

31. *Mechanics' lien—Construction of statute—"Alberta Mechanics' Lien Act"—6 Edw. VII., c. 21, ss. 4, 11—Building erected by lessee—Liability of "owner," xlv., 86.*

See LIEN.

32. *Title to land—Possession—Prescription—Interruptive acknowledgment—Evidence, xlv., 130.*

See TITLE TO LAND.

33. *Construction of statute—Fishery and game leases—Personal servitude—Possession—Use and occupation—Right of action—Action en complainte—Renewed leases—Priority—Watercourses—Works to facilitate lumbering operations—Driving logs—Storage dams—Penning back waters out of track of transmission—Damages—Rights of lessees—Injury to preserves—Injunction—Demolition of works, xlv., 1.*

See RIVERS AND STREAMS.

34. *Crown lands—Assessment and taxes—Interest of occupier—Constitutional law—Exemption from taxation—Construction of statute—Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts, xlix., 563.*

See CONSTITUTIONAL LAW.

35. *Crown—Dominion lands—Lease of mining areas—"Dominion Lands Act," s. 47—Statutory regulations—Conditions of lease*

*—Defeasance—Notice—Cancellation on default—Forfeiture of rights—Principal and agent—Solicitor, lii., 317.*

See CROWN.

## LAND TITLES ACT.

"Land Titles Act, 1894" — *Notice of lis pendens—Caveat—Litigious rights—Irregular registration—Indorsements on certificate of title—Construction of statute.* — Under the provisions of "The Land Titles Act, 1894," section 126, a *bond fide* purchaser from the registered owner of land subject to the operation of that statute is not bound or affected by notice of liti-pendence which has been improperly filed and noted upon the folio of the register containing the certificate of title as an incumbrance or charge upon the land. The exception as to fraud referred to in the 126th section of the Act means actual fraudulent transactions in which the purchaser has participated and does not include constructive or equitable frauds. *The Assets Company v. Mere Roihi* (21 Times L. R. 311) referred to and approved. *Syndicat Lyonnais Du Klondyke v. McGrade*, xxxvi., 251.

AND see CONSTITUTIONAL LAW; TITLE TO LAND; TORRENS SYSTEM; YUKON TERRITORY.

## LANES.

1. *Title to land—Servitude—Construction of deed—Reservations—"Representatives"—Owners par indivis—Common lanes—Right of passage—Private wall—Windows and openings on line of lane—Arts. 533-538 C. C., xxxvi., 618.*

See SERVITUDE.

2. *Title to land—Construction of deed—Easement appartenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Trespass—Right of action, xl., 188.*

See DEED.

3. *Title to land—Easement appartenant—User of lane—Prescription—Agreement for right of way—Construction of contract—Practice, Cam. Cas. 352.*

See EASEMENT.

## LEASE AND HIRE.

See HIRING.

## LEGACY.

1. *Construction of will—Description of legatee—Devise "to my wife"—Bigamous marriage—Evidence—Burden of proof, xl., 210.*

See WILL.

2. *Will—Powers of executors—Winding-up estate—Time limit—Special legislation—Extension of time—* § Edw. VII. c. 136 (Que.)—*Construction of statute*, xl., 489.

See WILL.

3. *Doweress—Title to land—Prescription—Statute of limitations—Heirs at law—Parol evidence—Will—Residuary devise*, Cam. Cas. 338.

See TITLE TO LAND.

AND see WILL.

4. *Will—Extension of powers of executors—Universal legatee—Special legacy—Appeal—Jurisdiction—Amount in controversy—Order to take accounts—Interlocutory judgment—Costs*, xlvii., 400.

See APPEAL.

### LEGAL MAXIMS.

1. "*Sic utere tuo at alienum non lædas*," xxxv., 255.

See NUISANCE.

2. "*Volenti non fit injuria*," xxxv., 452.

See NEGLIGENCE.

3. "*Actus curiæ neminem gravabit*," xxxvii., 79.

See CERTIORARI.

4. "*En fait de meubles possession vaut titre*."

See EXECUTION.

5. "*Main de justice ne dessaisit pas*."

See EXECUTION.

6. "*Res ipsa loquitur*." *Dominion Fish Co. v. Isbester*, xliii., 637.

See NEGLIGENCE.

7. "*Res ipsa loquitur*," xlv., 457.

See EVIDENCE.

8. "*Volenti non fit injuria*," xlvii., 403.

See RAILWAYS.

9. *Ex turpi causâ non oritur actio*, xlix., 271, 295.

10. *Nemo auditur propriam turpitudinem allegans*, xlix., 271, 277, 296.

11. *Prior est conditio defendentis*, xlix., 271, 296.

12. *Volenti non fit injuria*, xlix., 43.

13. *Fire insurance—Bawdy house—Immoral contract—Legal maxim—Ex turpi causâ non oritur actio*. *Dom. Fire Ins. v. Nakata*, lii., 294.

See INSURANCE, FIRE.

14. "*Omnia præsumuntur rite esse acta*." *Attorney-Gen. v. Giroux*, liii., 172.

See CROWN LANDS.

### LEGISLATION.

1. *Constitutional law—Sunday observance—Legislative jurisdiction*.]—Legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada. *Attorney-General for Ontario v. Hamilton Street Railway Co.* ([1903] A. C. 524) followed. (Leave to appeal to Privy Council refused, 26th July, 1905). *In re Legislation respecting Abstinence from Labour on Sunday*, xxxv., 581.

2. *Constitutional law—Inter-provincial and international ferries—Establishment or creation of ferries—License—Franchise—Exclusive rights—Powers of Parliament—R. S. C. c. 97—51 Vict. c. 23 (D.)—Acts by Governor in Council*.]—Chapter 97 R. S. C. "An Act respecting Ferries" as amended by 51 Vict. ch. 23, is *intra vires* of the Parliament of Canada.—The Parliament of Canada has authority to, or to authorize the Governor-General in Council to, establish or create ferries between a province and any British or foreign country or between two provinces.—The Governor-General in Council, if authorized by Parliament, may confer, by license or otherwise, an exclusive right to any such ferry. *In re International and Inter-provincial Ferries*, xxxvi., 206.

3. *Legislative jurisdiction—Constitutional law—Education—Companies—Private bills—Questions referred for opinions—Construction of statute—B. N. A. Act, 1867, ss. 92, 93—38 Vict. c. 11, s. 53 (D.)*.]—The incorporation of a society as a company of teachers for the Dominion of Canada is *ultra vires* of the Parliament of Canada.—*Per Ritchie, C.J.*—It is doubtful whether the judges of the Supreme Court of Canada should express opinions as to the constitutional right of Parliament to pass a private bill, in virtue of the provisions of section 53 of the Supreme and Exchequer Courts Act, 38 Vict. ch. 11 (D.).—NOTE.—*Cf. Ely, Renaud et al.* (14 N. B. Rep. 273; 3 Rev. Crit. 132); *Doutre on the Constitution of Canada*, pp. 325-329. Also R. S. C. (1906) ch. 139, sec. 61. *In re "The Brothers of the Christian Schools in Canada"*, Cout. Cas. 1.

4. *Constitutional law—Legislative jurisdiction—Incorporation of trading companies—Foreign corporations—Judicial opinions on references—Private rights—45 Vict. c. 119 (D.)*.]—It is inexpedient that opinions should be given upon matters referred for examination and report under the provisions of the Supreme and Exchequer Courts Act, where the questions may affect private rights that may come before the court judicially, and which ought not to be passed upon without a trial.—The objects for which the company in question was incorporated, by the statute 45 Vict. ch. 119, are within the jurisdiction of the Canadian Parliament, and are out of the exclusive jurisdiction of provincial legislatures, and consequently such a company may be incorporated by Parliament. *Re Quebec Timber Co.*, Cout. Cas. 43.

5. *Legislative jurisdiction—Constitutional law—Companies—Private bill—Property and civil rights—Construction of statute—B. N. A. Act, 1867, s. 92—45 Vict. c. 107.*—The objects of the Act to incorporate the "Canada Provident Association" (45 Vict. ch. 107 (D.)), for carrying on business as a mutual benefit society throughout the Dominion of Canada do not fall within the class of subjects allotted to the provincial legislatures under section 92 of the "British North America Act, 1867."—*Per* Ritchie, C.J., and Fournier, J.—There may be a doubt as to whether so much of the first section of the Act as enables the company to hold and deal in real estate beyond what may be required for their own use and accommodation, or so much of the second section as enacts that certain funds shall be exempt from execution for the debt of any member of the association, could be *intra vires* of the Parliament of Canada. *In re Canada Provident Association*, *Cout. Cas.* 48.

6. *Courts of general sessions of the peace—Criminal law—Jurisdiction of magistrate—Criminal Code, s. 785—Constitutional law—Constitution of criminal courts, xxxiv., 621.*

See CRIMINAL LAW.

7. *Construction of statute—Appeal—Jurisdiction—"Torrens System"—Land Titles Act—Registry laws—Confirmation of tax sale—Persona designata—Court of original jurisdiction—Interlocutory proceeding—Constitutional law—Conflict of laws—Legislative jurisdiction—Retrospective effect of statute—Redemption of land sold for taxes—Vesting of title—Interest in lands—Equitable estate, xxxv., 461.*

See CONSTITUTIONAL LAW.

8. *Constitutional law—Construction of statute—B. N. A. Act, 1867, s. 92, s.-s. 10 (c)—Legislative jurisdiction—Parliament of Canada—Local works and undertakings—Recital in preamble—Enacting clause—General advantage of Canada, etc.—Subject matter of legislation—Presumption as to legislation of Parliament being *intra vires*, xxxvi., 596.*

See CONSTITUTIONAL LAW.

9. *Canadian waters—Three-mile-zone—Fishing by foreign vessels—Legislative jurisdiction—Seizure on high seas—Pursuit beyond territorial limit—International law—Constitutional law—Sea-coast fisheries—Construction of statute—B. N. A. Act, 1867, s. 91, s.-s. 12—R. S. C. c. 94, ss. 2, 3, 4, xxxvii., 385.*

See CONSTITUTIONAL LAW.

10. *Constitutional law—British North America Act, 1867—Provincial legislative jurisdiction—"Alberta Act," 4 & 5 Edw. VII. c. 3 (D.)—Con. Ord. N. W. T. (1898) c. 52—6 Edw. VII. c. 28 (Alta.)—Medical profession—Practising without license—Criminal law—Practice—Special leave to appeal—R. S. C. (1906) c. 139, s. 37 (c), xxxviii., 620.*

See APPEAL; CONSTITUTIONAL LAW.

11. *Appeal—Stated case—Provincial legislation—Assessment—Municipal tax—Foreign company—"Doing business in Halifax," xxxix., 174.*

See ASSESSMENT AND TAXES.

12. *Mechanics' lien—Completion of contract—Time for filing claim—Construction of statute—R. S. M. (1902) c. 110, ss. 20, 36—Right of appeal, xxxix., 258.*

See LIEN.

13. *Evidence—Provincial laws in Canada—Judicial notice—Conflict of laws—Negligence—Common employment—Construction of statute—"Longshoreman"—"Workman," xxxix., 311.*

See EVIDENCE.

14. *Railways—Constitutional law—Legislative jurisdiction—Application of statute—"The Prairie Fires Ordinance"—Con. Ord. N. W. T. (1898) c. 87 c. 2—N. W. T. Ord. 1903, (1st sess.) c. 25 and c. 30, (2nd sess.)—Works controlled by Parliament—Operation of Dominion railway, xxxix., 476.*

See RAILWAYS.

15. *Municipal council—Illegal expenditure—Action by ratepayer—Intervention of Attorney-General—Validating Act—Right of action, xxxix., 657.*

See MUNICIPAL CORPORATION.

16. *Will—Powers of executors—Winding-up estate—Time limit—Legacy—Special legislation—Extension of time—3 Edw. VII. c. 136 (Que.)—Construction of statute, xl., 489.*

See WILL.

17. *Constitutional law—Municipal taxation—Official of Dominion Government—Taxation on income—B. N. A. Act, 1867, ss. 91, 92, xl., 597.*

See CONSTITUTIONAL LAW.

18. *Constitutional law—Penitentiaries—Imprisonment of criminals—Expense of maintenance—B. N. A. Act, 1867—Legislative jurisdiction of Parliament—Provincial legislation—Practice on references by Governor-General in Council, *Cout. Cas.* 24.*

See CONSTITUTIONAL LAW.

19. *Habeas corpus—Criminal law—Jurisdiction of judge of Supreme Court of Canada—Issue of writ out of jurisdiction of provincial courts—Concurrent jurisdiction—R. S. C. (1886) c. 135, 32—Construction of statute—Constitutional law—Powers of Parliament—"Inland Revenue Act"—"Selling and delivering a still and worm"—Cumulative charge—Summary conviction—Adjournment—Conviction in absence of accused, *Cout. Cas.* 110.*

See HABEAS CORPUS.

20. *Title to land—Railway aid—Land grant—Crown patents—Dominion Lands Regulations—Reservation of minerals—Construction of statute—53 Vict. c. 4 (D.)—R. S. C. (1886) c. 54—Free grants—Parliamentary contract, *Cout. Cas.* 271.*

See TITLE TO LAND.



21. *Municipal corporation — Aid to civil power — Pay of militia—Legislative jurisdiction — Civil rights and obligations—Constitutional law, Cout. Cas. 343.*

See CONSTITUTIONAL LAW.

See STATUTE.

22. *Construction of statute — "Alberta Local Improvement Act"—Assessment and taxation—Constitutional law—Railway aid —Land subsidy—Crown lands—Interests of private owner, xlv., 170.*

See STATUTE.

23. *Constitutional law—Construction of statute—Legislative jurisdiction — "Direct taxation within the province"—Succession duty—Extra-territorial movables—Decedent domiciled within province, xlv., 469.*

See CONSTITUTIONAL LAW.

24. See CONSTITUTIONAL LAW.

25. *Sea-coast and inland fisheries—Canadian waters — Tidal waters — Navigable waters—Open sea—B.C. "Railway Belt"—Foreshores—Fera naturæ—Legislative jurisdiction—Construction of statute, xvii., 493.*

See FISHERIES.

26. *Constitutional law—Provincial tramway — Jurisdiction of Board of Railway Commissioners. — Highways — Overhead crossings — Apportionment of cost—Legislative jurisdiction—Ancillary powers—Construction of statute—"Railway Act," R. S. C., 1906, ss. 8, 59, 237, 238—(B.C.) 8 & 9 Edw. VII., c. 32—"B. N. A. Act, 1867," S. 92, item 10. B. C. Electric R. R. Co. v. V. V. & E. R. R. & Nav. Co., etc., xlviii., 98.*

See RAILWAYS.

27. *Constitutional law—Criminal law — Legislation respecting orientals — Chinese places of business—Employment of white females—Statute—2 Gea. V., c. 17 (Sask.)—"B. N. A. Act, 1867," ss. 91, 92—Local and private matters—Property and civil rights—Naturalized British subject — Conviction under provincial statute, xlix., 440.*

See CONSTITUTIONAL LAW.

28. *Municipal by-law — Exemption from taxation—Validating legislation — School rates—"Public School Act," 55 V. c. 60, s. 4 (Ont.)—Special by-law. Can. Niagara Power Co. v. Township of Stamford, l., 168.*

See ASSESSMENT AND TAXES.

29. *Education—School boards — Assessment and taxes — Taxes payable by incorporated companies — Apportionment — Shares for public and separate school purposes—Notice — Construction of statute — Legislative jurisdiction—"B. N. A. Act," 1867, s. 92—"Saskatchewan Act," 4 & 5 Edw. VII. c. 42, s. 17—"School Assessment Act," R. S. Sask., 1909, c. 101, ss. 92, 93a. Regina Public School Dist. v. Grattan Separate School Dist., l., 589.*

See EDUCATION.

30. *Company — Dominion corporation — Provincial registration—Juristic disability—Right of action—Contract — Carrying on*

*business within province—Legislative jurisdiction—R. S. Sask. 1909, c. 73, ss. 3, 10—Non-compliance with S. C. Rules—Costs. Linde Refrig. Co. v. Sask. Creamery, ii., 400.*

See COMPANY.

31. *Assessment and taxation—Interest in land—Recitals in agreement—Validation by statute—Legislative declarations—Construction of statute. Re Heinze, Fleitman v. The King, lii., 15.*

See ASSESSMENT AND TAXES.

## LEGISLATURE.

*Constitutional law—Legislative Assembly — Powers of Speaker—Precincts of House—Expulsion.]—The public have access to the Legislative Chamber and precincts of the House of Assembly as a matter of privilege only, under license, either tacit or express, which can be revoked whenever necessary in the interest of order and decorum.—The power of the Speaker and officers of the House to preserve order may be exercised during the intervals of adjournment between sittings as well as when the House is in session.—A staircase leading from the street entrance up to the corridor of the House is a part of the precincts of the House and a member of the public who conducts himself thereon so as to interfere with the discharge by members of their public duties may lawfully be removed.—Judgment of the Supreme Court of Nova Scotia (36 N. S. Rep. 211) reversed and a new trial ordered. Payson v. Hubert, xxxiv., 400.*

## LESSOR AND LESSEE.

*Covenant for renewal of lease — Option of lessor — Second term — Possession by lessee after expiration of term—Construction of deed—Specific performance, Cam. Cas. 486.*

See LEASE.

AND see LANDLORD AND TENANT.

## LETTERS PATENT.

*Crown lands — Colonization — Location ticket—Transfer by locatee—Sale — Issue of letters patent—Title to land—Registry laws—Notice—Arts. 1487, 1488, 2082, 2085, 2098 C. C. Howard v. Stewart, l., 311.*

See CROWN LANDS.

## LIBEL.

1. *Privileged publications — Reports of judicial proceedings—Public policy—Pleadings filed in civil actions—Proceedings not in open court.]—The publication of the statements contained in a pleading filed in the course of a civil action, merely because such statements form part of such a pleading, is not a privileged publication within the rule which throws the protection of privilege about fair reports of judicial proceedings.—*

The judgment appealed from (Q. R. 17 K. B. 309), reversing the judgment of the Superior Court (Q. R. 31 S. C. 338), was affirmed, Girouard, J., dissenting. *Gazette Printing Co. v. Shallow*, xli., 339.

2. *Election contest—Withdrawal of candidate—Allegation of improper motives—Trial of action—Verdict for defendant—New trial.*—K. was a member of the House of Commons prior to the election in 1908 and in August of that year a letter was published in the *Sydney Post* which contained the following, which referred to him:—"The Doctor had a great deal to say of the elections in 1904. Well, I have some recollections of that contest myself, and I ask the Doctor: Why did you at that time withdraw your name from the Liberal convention? The majority of the delegates came there determined to see you nominated? Why did you not accede to their request? Doctor Kendall, what was your price? Did you get it? Take the good Liberals of this county into your confidence and tell them what happened in those two awful hours in a certain room in the Sydney Hotel that day?"—"The proceedings of the convention were held up for no reason that the delegates saw, but for reasons which are very well known to you and three or four others whom I might mention. One speaker after another killed time at the Alexandria Hall while you were in dread conflict with the machine. Finally the consideration was fixed and you took off your coat and shouted for Johnston. What was that consideration?"—On the trial of an action by K. against the proprietors of the *Post* the jury gave a verdict for the defendants.—*Held*, Davies and Duff, J.J., dissenting, that the publication could only be construed as charging K. with having withdrawn his name from the convention for personal profit, and was libellous. The verdict was therefore properly set aside by the court below and a new trial ordered, *Sydney Post Publishing Co. v. Kendall*, xliii., 461.

3. *Business reputation—Action by incorporated company—Truth of facts alleged—Fair comment—Justification—Public interest—Qualified privilege—Charge to jury—Misdirection—Misleading statements—Practice—Evidence of special damage—New trial.*—There being a dispute between the parties as to the ownership of certain lands, the plaintiffs, a commercial corporation, obtained special legislation vesting the lands in question in the company. On becoming aware of this legislation, the defendant published letters in several newspapers accusing the company of obtaining it by political influence and preventing him vindicating his title in the courts. In an action to recover damages for libel, the trial judge told the jury that the defendant's defence of justification would be established if they were satisfied that, although in fact untrue, the defamatory statements had been made in honest belief of their truth, and that, if the publications were an honest comment on the facts as stated, that, in itself, would be sufficient to establish the defence of fair comment. On the findings of the jury, judgment was entered for the defendant, but this judgment was set aside, on the ground of misdirection, by the judgment appealed

from and a new trial ordered.—*Held*, *per curiam*, that where a libel conveys imputations calculated to injure a trading corporation in respect of its business the corporation can maintain an action for damages.—*Per Duff, J.*—The publication complained of was capable of being read as charging the company with having used political influence for the purpose of procuring legislation giving it possession of property in derogation of what, to its knowledge, were the defendant's rights, and this was an imputation calculated to injure the commercial corporation in its business.—*Held*, *per Idington, Duff, Anglin and Brodeur, J.J., Davies, J.*, dissenting.—That the directions by the trial judge as to the defences of justification and fair comment were erroneous and misleading.—*Per Davies, J.*, dissenting.—Taken as a whole, the charge of the trial judge was clear and explicit and placed the material issues fairly before the jury, and, consequently, the judgment entered at the trial on the findings of the jury ought not to be disturbed.—*Per Anglin, J.*, dissenting.—That, as a judge could not properly rule or a jury reasonably find that the defendant's letters were calculated to injure the property of the plaintiffs or their business reputation, as a commercial corporation, they could not recover without proof of special damage.—Judgment appealed from (Q. R. 22 K. B. 393) affirmed, Davies and Anglin, J.J., dissenting. *Price v. Chicoutimi Pulp Co.*, li., 179.

4. *Defamation—Printing report of ghost haunting premises—Slander of title—Fair comment—Disparaging property—Special damages—Evidence—Presumption of malice—Right of action*, xxxix., 340.

See SLANDER OF TITLE.

5. *Evidence—Privilege—Notary—Jury trial—Practice—Charge to jury—Objections after verdict—New trial—Misdirection—Discretion. Barthe v. Huard*, xlii., 406.

See PRACTICE.

## LICENSE.

1. *Constitutional law—Inter-provincial and international ferries—Establishment or creation of ferries—Franchise—Exclusive rights—Powers of Parliament—Orders in Council—Dominion Acts in relation of ferries*, xxxvi., 206.

See FERRIES.

2. *Patent law—Canadian Patent Act—R. S. C. (1906) c. 69. s. 38—Manufacture—Sale—Lease or license*, xxxix., 499.

See PATENT OF INVENTION.

3. *Title to land—Room in building—Adverse possession—Statute of Limitations—Incidental rights—Implied grant—License or easement*, xl., 313.

See TITLE TO LAND.

4. *Crown lands—Holders of location ticket—Prior right to mining rights—Privilege reserved to "proprietor of the soil"—Con-*

struction of statute—*R. S. Q., (1888), ss. 1269, 1440, 1441; 55 & 56 Vict. c. 20 (Que.), xl., 647.*

See CROWN LANDS.

AND see LANDLORD AND TENANT; LEASE.

5. *Liquor laws*—“*Liquor License Ordinance*,” ss. 37, 57—*Cancellation of license—Jurisdiction of judge*—7 *Edw. VII., c. 9, s. 14 (Alta.)*, xlv., 321.

See LIQUOR LAWS.

6. See TIMBER LICENSE, xlv., 45.

7. *Constitutional law*—*Incorporation of companies*—“*Provincial objects*” — *Limitation—Doing business beyond the province—Insurance company*—“*Insurance Act, 1910*,” 9 & 10 *Edw. VII., c. 32, s. 3, s.-s. 3—Enlargement of company's powers—Federal company* — *Provincial license* — *Trading companies*, xlviii., 331.

See CONSTITUTIONAL LAW.

8. *Constitutional law*—*Insurance* — *Foreign company doing business in Canada—Dominion license*—9 & 10 *Edw. VII., c. 32, ss. 4, 70*, xlviii., 260.

See CONSTITUTIONAL LAW.

9. *License to cut timber—Indian lands*—*R. S. C. 1906, c. 43, ss. 43, 54—License for twelve months—Regulations—Renewal of license*. *Booth v. The King*, li., 20.

See INDIAN LANDS.

10. *License to cut timber* — *R. S. C. [1886] c. 43, ss. 54 and 55—License for twelve months—Regulations—Renewal of license*, li., 20.

See CROWN.

## LIEN.

1. *Mechanics' Lien—Machinery furnished*—*R. S. N. S. (1900) c. 171, ss. 6 and 8—Contract price.*] — Under the Mechanics' Lien Act of Nova Scotia, *R. S. N. S. (1900) ch. 171*, a lien for machinery for a mill does not attach until it is delivered and if the contractor for building the mill has then been fully paid there is nothing upon which the lien can operate, as by sec. 6 of the Act the owner cannot be liable for a sum greater than that due to the contractor.—*B.*, holder of more than half the stock of a pulp company, for which he had paid by cheque, and also a director, offered to sell to the company land, build a mill and furnish working capital on receipt of all the bond issue and cash on hand. The offer was accepted and all the stock, issued as fully paid up, was deposited with a trust company and the cash, his own cheque and the price of five shares, given to *B.* The stock was sold and, from the proceeds, the land was paid for, the working capital promised given to the company and the balance paid to *B.* from time to time, as the mill was constructed. The machinery was supplied by an American company but when it was delivered all the money had been paid out as above.—*Held*, affirming the judgment appealed from (36 *N. S. Rep.* 348), that as

all the money had been paid before delivery the company was not liable under the Mechanics' Lien Act to pay for the machinery.—*Held*, also, that sec. 8 of the Act which requires the owner to retain 15 per cent. of the contract price until the work is completed did not apply as no price for building the mill was specified but the price was associated with other considerations from which it could not be separated. *S. Morgan Smith Co. v. Stsiboo Pulp and Paper Co.*, xxxv., 93.

2. *Mechanics' lien—Completion of contract—Time for filing claim—Construction of statute*—*R. S. M. 1902, c. 110, ss. 20 and 36—Right of appeal.*]—The time limited for the registration of claims for liens by sec. 20 of “*The Mechanics' and Wage Earners' Lien Act*,” *R. S. M. 1902, ch. 110*, does not commence to run until there has been such performance of the contract as would entitle the contractor to maintain an action for the whole amount due thereunder.—The judgment appealed from (16 *Man. R.* 366) was reversed. *Davies and MacLennan, JJ.*, dissented on the ground that the evidence was too unsatisfactory to justify an extension of the time.—The court refused to quash the appeal on the ground that the right of appeal had been taken away by sec. 36 of the statute above referred to. (Appeal to Privy Council dismissed. ([1908] *A. C.* 504). *Day v. Crown Grain Co.*, xxxix., 258.

3. *Contract—Sale of machinery—Agreement for lien—Delivery.*]—The company sold *R.* an entire outfit of second-hand threshing machinery, for \$1,400, taking from him three so-called promissory notes for the entire price. Two days before giving the notes, *R.* had signed an agreement setting out the bargain in which the following provisions appeared—“*And for the purpose of further securing payment of the price of the said machinery and interest . . . the purchaser agrees to deliver to the vendor, at the time of the delivery of the said machinery as herein provided or upon demand, a mortgage on the said lands (i.e., lands described at the foot of the agreement), in the statutory form, containing also the special covenants and provisions in the mortgages usually taken by the vendors. And the purchaser hereby further agrees with the said vendors that the vendors shall have a charge and a specific lien for the amount of the purchase money and interest, or the said amount of the purchase price, less the amount realized, etc., should the vendors take and re-sell the said machinery . . . and any other land the purchaser now owns or shall hereafter own or be interested in, until the said purchase money and all costs, charges, damages and expenses, and any and all notes or renewals thereof, shall have been fully paid, and the said lands are hereby charged with the payment of the said purchase money, obligations, notes and all renewals thereof, and interest and all costs, charges, damages and expenses as herein provided, and, for the purpose of securing the same, the purchaser hereby grants to the vendors the said lands . . . And, on default, all moneys hereby secured shall at once become due, and all powers and other remedies hereby given shall be enforce-*

able." In an action to recover the amount of the notes past due and to have a decree for a lien and charge upon the lands therefor under the agreement:—*Held*, reversing the judgment appealed from, that the right of the company to enforce the lien depended upon the interpretation of the whole contract; that the provision as to the lien only became operative in the case of a complete delivery pursuant to the contract, and that the alterative words "or upon demand" must be taken as meaning upon a demand made after such complete delivery. *Rustin v. Fairchild Co.*, xxxix., 274.

4. *Liquidation of insolvent corporation—Distribution and collocation — Privileged claim—Expenses for preservation of estate—Fire insurance premiums—Practice—Ex parte inscription—Notice—Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2009 C. C.*—M. acquired the factory and plant of an insolvent company which had been sold under execution by the sheriff and, pending litigation during the winding-up of the company, operated and maintained the factory as a going concern. The sheriff's sale was set aside and M. then abandoned the property to the curator of the estate, and filed a claim, as a privileged creditor, for necessary and useful expenses incurred by him in preserving the property for the general benefit of the mass of the creditors, including therein charges for moneys paid as premiums on policies of fire insurance effected in his own name during the time he had held possession.—*Held*, that, in the absence of evidence to shew that such insurances had been so effected otherwise than for his own exclusive interest, he could not be collocated by special privilege, on the distribution of the proceeds of the estate, for the amount of the premiums. *McDougall v. Bonque d'Hochelaga*, xxxix., 318.

AND see COMPANY.

5. *Sale of railway ties—Delivery—Bank Act lien—Trade marks—Timber marks.*—The action was for the price of railway ties sold to the company and the question on the appeal was as to 20,000 of these ties claimed by T. & Co., as purchasers from the Union Bank, which claimed them under a Bank Act lien for advances to G., by whom they had been manufactured. The validity of the lien was contested for want of sufficient description as required in the Bank Act, and questions arose on the appeal as to whether timber brands are property marks or merely trade marks, and if they make *primâ facie* proof of ownership under the Timber Marks' Act passed in 1870.—Both courts below decided against the appellant on the ground of the insufficiency of the evidence, and a further appeal was dismissed for the reasons given in the Superior Court. *Magann v. Grand Trunk Ry. Co.*, Cout. Cas. 266.

6. *Privileges and hypothecs—Tramway—Operation on highway—Title to land—Immobilization by destination—Sale of tramway by sheriff as "going concern"—Unpaid vendor—Lien on price of cars—Pledge—Contract—Construction of statute, 3 Edw. VII. ch. 91 (Que.)—Priority of claim—Collocation and distribution—Arts. 379, 2000 C. C.—Art. 752 Mun. Code.*—A company

operating an electric tramway, by permission of the municipal corporation, on rails laid on public streets vested in the municipality, to secure the principal and interest of an issue of its debenture-bonds hypothecated its real property, tramway, cars, etc., used in connection therewith, to trustees for the debenture-holders, and transferred the movable property of the company and its present and future revenues to the trustees. By a provincial statute, 3 Edw. VII. ch. 91, sec. 1 (Que.), the deed was validated and ratified. On the sale, in execution, of the tramway, as a going concern:—*Held*, that whether, at the time of such sale, the cars in question were movable or immovable in character the effect of the deed and ratifying statute was to subordinate the rights of other creditors to those of the trustees, and, consequently, that unpaid vendors thereof were not entitled, under article 2000 of the Civil Code of Lower Canada, to priority of payment by privilege upon the distribution of the moneys realized on the sale in execution.—*Per* Girouard, J.—Duff, J., *contra*.—After the cars in question had been delivered to the tramway company and used by it in the operation of their tramway, they became immovable by destination.—In the result, the judgment appealed from (Q. R. 18 K. B. 82) was affirmed. *Ahearn & Soper v. New York Trust Co.*, xlii., 267.

7. *Mechanics' lien—Construction of statute—Alberta Mechanics' Lien Act—6 Edw. VII. c. 21, ss. 4 and 11—Building erected by lessee—Liability of "owner."*—Section 4 of the "Alberta Mechanics' Lien Act" (6 Edw. VII. ch. 21) gives to any contractor or materialman furnishing labour or materials for a building at the request of the owner of the land a lien on such land for the value of such labour or materials.—Subsection 4 of section 2 provides that the term "owner" shall extend to and include a person having any estate or interest "in the land upon or in respect of which the work is done or materials are placed or furnished at whose request and upon whose credit or on whose behalf or with whose privity or consent or for whose direct benefit any such work is done, etc." By section 11 "every building . . . mentioned in the fourth section of this Act, constructed upon any lands with the knowledge of the owner or of his authorized agent . . . shall be held to have been constructed at the request of such owner," unless the latter gives notice within three days after acquiring such knowledge that he will not be responsible.—The lessee of land, as permitted by his lease, had buildings thereon pulled down and proceeded to erect others in their place, but was obliged to abandon the work before it was finished. The owner of the land was aware of the work being done but gave no notice disclaiming responsibility therefor. Mechanics' liens having been filed under the Act:—*Held*, that the interest of the owner in the land was subject to such liens.—Judgment appealed from, varying that at the trial (2 Alta. L. R. 109) in favour of the lienholders, affirmed. *Limoges v. Scratch*, xlv., 86.

8. *Timber license—Crown lands in British Columbia—Real estate—Personalty—Contract—Sale—Exchange—Considera-*

*tion—Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof—Pleading and practice.*]—A sale of rights under licenses to cut timber on provincial Crown lands in British Columbia is a contract for the sale of interests in real estate, and the timber berths are subject to a vendor's lien for the unpaid purchase money.—The doctrine of vendor's lien for unpaid purchase-money is applicable to every sale of personal property over which a court of equity assumes jurisdiction. *In re Stucley* (1906) 1 Ch. 67 followed.—In order to protect himself against the enforcement of a vendor's lien, a defendant relying on the equitable defence of purchase for value without notice is bound to allege in his pleadings and to prove that he became purchaser of the property in question for valuable consideration and without notice of the lien. *In re Nisbett and Potts' Contract* ([1905] 1 Ch. 391; [1906] 1 Ch. 386), followed. *Whitehorn Brothers v. Davison* ([1911] 1 K. B. 463), distinguished.—(Leave to appeal to the Privy Council was refused on the 29th of July, 1911.) *Laidlaw v. Vaughan-Rhys*, xlv., 458.

9. *Mechanic's lien — Loan company — Agreement for sale—Advances for building —“Owner”—Request—Privy and consent —Mortgagee—R. S. O., [1914] c. 140, ss. 2 (1), 8 (3) and 14 (2)—“Mechanics' Lien Act.”*—The owners of four lots of land in Toronto executed an agreement to sell them to one I., who was to make a cash deposit and undertake to build four houses on the lots, the vendors to advance \$6,400 for building purposes. On completion of the houses and on receipt of the balance of price and amount of advances, the vendors to execute a deed of the lots. I. gave contracts for the building which was partly completed, and \$3,400 was advanced by the vendors when I. became insolvent and the vendors, under the terms of their agreement, gave notice of forfeiture and took possession of the property. Prior to this liens had been filed for labour and materials supplied and the lien-holders brought action for enforcement thereof against the vendors.—*Held*, affirming the judgment of the Appellate Division (35 Ont. L. R. 542), Davies and Brodeur, JJ., dissenting, that the vendors were not owners of the property according to the definition of the term “owner” in section 2 (c) of the “Mechanics' Lien Act” and, therefore, were not liable to pay for the labour and materials supplied for the building of the houses by I.—*Per* Anglin, J.—To make the vendors “owners” because the work was done with their privy and consent a direct dealing between them and the materialmen was requisite and of this there was no evidence.—By section 14 (2) of said Act, the vendors, under the agreement for sale, became mortgagees of the land sold with their rights as such postponed to those of the lien-holder in respect to any “increased value” given to the land by erection of the houses thereon.—*Held*, that though they had refused it at a former stage of the proceedings, the lien-holders should, if they wish, have a reference to permit of revision of their claims on the basis of the vendors being mortgagees, any amount found due to them on such reference to be set-off against

the costs payable by them in the Appellate Division and on this appeal, *Marshall Brick Co. v. York Farmers' Colonization Co.*, liv., 569.

10. *Equitable mortgage—Mines and minerals—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgagee—Registry laws—Priority—Actual notice—Lien for Crown dues paid as rent—C. S. N. B. (1903) c. 30, s. 139, xxxvii., 517.*  
See MINES AND MINING.

11. *Mortgage — Money advanced to construct buildings — Lien for materials supplied—Payment to contractor—Transactions in fraud of mortgagee's rights—Redemption —Costs, xxxviii., 557.*  
See MORTGAGE.

12. *Shipping—Material men—Supplies furnished for “last voyage”—Privilege of dernier equipage—Round voyage—Charter-party —Personal debts of hirers—Seizure of ship—Arts. 2283, 2391 C. C.—Art. 931 C. P. Q.—Construction of statute—Ordonnances de la Marine, 1681, xl., 45.*  
See SHIPS AND SHIPPING.

13. *Sale of goods — Delivery — Lien of unpaid vendor — Stoppage in transitu — Goods not separated from larger bulk — Estoppel, Cam. Cas. 511.*  
See SALE.

14. See PRIVILEGES AND HYPOTHECS, xli., 105.

15. *Title to lands—Homestead and exemption rights—Unpatented Dominion lands —“Transfer”—Incumbrance—Charge to secure debts—Sanction of minister—Absolute nullity—Construction of statute—Dominion Lands Act. American Abell Engine Co. v. McMillan, xliii., 377.*  
See TITLE TO LAND.

16. *Privileges and hypothecs — Tramway — Operation of highway — Title to land — Immobilization by destination — Sale of tramway by sheriff as a “going concern”—Unpaid vendor — Lien on price of cars — Pledge—Contract—Construction of statute, 3 Edw. VII. c. 91 (Que.)—Priority of claim—Collocation and distribution—Arts. 379, 2000 C. C.—Art. 752 Mun. Code. Ahearn & Soper v. N. Y. Trust, xliii., 267.*  
See PRIVILEGES AND HYPOTHECS.

17. 6 Edw. VII. c. 21 (Alta.)—*Contract —Overpayment to contractor—Liability of owner of land—Attaching of lien—Negotiation of note—Claim of lien-holder—Waiver —Estoppel. Travis v. Breckenridge-Lund Lumber and Coal Co., xliiii., 59.*

18. *Gift — Money received—Pleading — Evidence — Presumption — Proceeds of prostitution—Conversion. Johnston v. Desaulniers, xlvi., 620.*

19. *Construction of statute — “Creditors' Relief Act.” 9 Edw. VII. c. 48, s. 6, s.-s. 4 (Ont.)—Contesting creditor's lien — “Assignments and Preferences Act.” 10 Edw. VII. c. 64, s. 14 (Ont.), xlvi., 119.*  
See STATUTE.

20. *Appeal* — *Case originating in Superior Court* — “*Supreme Court Act*,” s. 37 (b)—*Concurrent jurisdiction*—“*Mechanics’ Lien Act*” (B.C.)—*Action to enforce lien*. *Champion v. World Bldg. Co.*, 1., 382.

See APPEAL.

21. *Builders and contractors* — *Materials supplied*—*Order for money payable under contract*—*Evidence*—*Estoppel* — *Enforcing equitable assignment*—*Practice*. *Ritchie v. Jeffrey*, lii., 243.

See BUILDERS AND CONTRACTORS.

## LIGHT.

*Title to land*—*Servitude*—*Construction of deed*—*Reservations* — “*Representatives*” — *Owners par indivis*—*Common lanes*—*Right of passage* — *Private wall*—*Windows and openings on line of lane*—*Arts. 533-538 C. C.*, xxxvi., 618.

See SERVITUDE.

## LIMITATIONS OF ACTIONS.

1. *Fire insurance* — *Contract of re-insurance*—*Trade custom* — *Conditions*—“*Rider*” to policy — *Limitation of actions*—*Commencement of prescription*—*Art. 2236 C. C.*]—A contract of re-insurance consisted of a blank form of policy of fire insurance in ordinary use with a “*riders*” attached setting forth the conditions of re-insurance. The policy contained a clause providing that no action should be maintainable thereon unless commenced within twelve months next after the fire. The “*riders*” provided that the re-insurance should be subject to the same risks, conditions, valuations, privileges, mode of settlement, etc., as the original policy, and that loss, if any, should be payable ten days after presentation of proofs of payment by the company so re-insured.—*Held*, reversing the judgment appealed from, Girouard and Nesbitt, J.J., dissenting, that there was no incongruity between the limitation of twelve months in the form of the main policy and the condition in the rider agreement as to claims for re-insurance and, consequently, that the action for recovery of the amount of the re-insurance was prescribed by the conventional limitation of twelve months from the date of the fire occasioning the loss. (Reversed by Privy Council ([1907] A. C. 59). *Victoria-Montreal Fire Ins. Co. v. Home Ins. Co. of New York*, xxxv., 208.

2. *Municipal corporation*—*Assessment and taxes*—*Contestation of roll*—*Interruption of prescription* — *Suspensive condition* — *Construction of statute*—52 *Vict. c. 79 (Q.)*—62 *Vict. c. 58, s. 408 (Q.)*—*Collection of taxes*—*Art. 2236 C. C.*]—The prescription of three years in respect of taxes provided by the Montreal City Charter, 52 *Vict. ch. 79 (Q.)*, runs from the date of the deposit of the assessment roll, as finally revised, in the treasurer’s office, when the taxes become due and exigible, and the prescription is not suspended or interrupted by a contestation of the assessment roll, even although the

contestation may have been filed by the proprietor of the lands assessed. Judgment appealed from affirmed, Girouard and Nesbitt, J.J., dissenting. (Appeal to Privy Council dismissed, ([1906] A. C. 241.) *City of Montreal v. Conlin*, xxxv., 223.

3. *Debtor and creditor* — *Assignment of debt*—*Sheriff’s sale* — *Equitable assignment*—*Statute of Limitations*—*Payment*—*Ratification*—*Principal and agent.*] — In Nova Scotia book debts cannot be sold under execution and the act of the judgment debtor in allowing such sale does not constitute an equitable assignment of such debts to the purchaser. — The purchaser received payment on account of a debt so sold which, in a subsequent action by the creditor and others, was relied on to prevent the operation of the Statute of Limitations.—*Held*, that though the creditor might be unable to deny the validity of the payment he could not adopt it so as to obtain a right of action thereon and the payment having been made to a third party who was not his agent did not interrupt the prescription. *Keighley, Macstead & Co. v. Durant* ([1901] A. C. 240) followed. *Moore v. Roper*, xxxv., 533.

4. *Title to land*—*Conveyance of fee*—*Reservation of life estate*—*Possession*—*Ejectment*—*Limitation of action.*]—Where it appeared that life tenants went into possession under the person to whom the lands had been conveyed in fee, the title to the latter could not be disputed and the statute would not begin to run until the life estate terminated. *Dods v. McDonald*, xxxvi., 231.

AND see TITLE TO LAND.

5. *Negligent operation of machinery*—*Vibration, smoke, noise, etc.*—*Series of torts*—*Continuing nuisance*—*Limitations of actions*—*Prescription of actions in tort*—*Arts. 877, 879, 880 and 2261 C. C.*]—Where injuries caused by the operation of machinery have resulted from the unskillful or negligent exercise of powers conferred by public authority and the nuisance thereby created gives rise to a continuous series of torts, the action accruing in consequence falls within the provisions of art. 2261 of the Civil Code of Lower Canada and is prescribed by the lapse of two years from the date of the occurrence of each successive tort. *Wordsworth v. Harley* (1 B. & Ad. 391); *Lord Oakley v. Kensington Canal Co.* (5 B. & Ad. 138); and *Whitehouse v. Fellows* (10 C. B. N. S. 765) referred to. *Montreal Street Railway Co. v. Boudreau*, xxxvi., 329.

AND see NUISANCE.

6. *Operation of statute* — *Unregistered deed*—*Subsequent registered mortgage*—*Possession* — *Right of entry.*]—R. T., in 1891, being about to marry W. T., and wishing to convey to him an interest in her land, executed a deed of the same to a solicitor, who then conveyed it to her and W. T. in fee. The solicitor registered the deed to himself but not the other, forging on the same a certificate of registry, and he, in 1895, mortgaged the land and the mortgage was duly registered. R. T. and W. T. were in possession of the land all the time from 1891, and only discovered the fraud practised against them in 1902. In 1903 the mort-

gage brought action to enforce his mortgage.—*Held*, affirming the judgment of the Court of Appeal (9 Ont. L. R. 105), Davies and Nesbitt, JJ., dissenting, that the legal title being in the solicitor from the time of the execution of the deed to him the Statute of Limitations began to run against him then and the right of action against the parties in possession was barred in 1901. (Reversed by Privy Council [1908] A. C. 60.) *McVity v. Tranouth*, xxxvi., 455.

7. *Cause of action—Contract—Foreign judgment—Yukon Ordinance, c. 31 of 1890—Statute of James—Statute of Anne—Lex fori—Lex loci contractus—Absence of debtor.*—Under the provisions of the Yukon Ordinance, ch. 31 of 1890, the right to recover simple contract debts in the Territorial Court of Yukon Territory is absolutely barred after the expiration of six years from the date when the cause of action arose notwithstanding that the debtor had not been for that period resident within the jurisdiction of the court. Judgment appealed from reversed, Girouard and Davies, JJ., dissenting. *Kullege v. United States Savings and Loan Co.*, xxxvii., 546.

8. *Title to land—Room in building—Adverse possession—Statute of Limitations—Incidental rights—Implied grant—License or easement.*—Possession of an upper room in a building supported entirely by portions of the story beneath may ripen into title thereto under the provisions of the Statute of Limitations.—I., one of several owners of land with a building thereon, sold his interest to a co-owner and afterwards occupied a room in said building as tenant for his business. The room was on the second story and inside the street door was a landing leading to a staircase by which it was reached. I. had the only key provided for this street door and always locked it when leaving at night. He paid rent for the room at first and then remained in possession without paying rent for twelve years. The annual tax bills for the whole premises were generally, during that period, left in the room he occupied and were sent by him to the managing owner who paid the amounts. In an action to restrain the owners from interfering with his possession of said room and its appurtenances:—*Held*, reversing the judgment of the Court of Appeal (15 Ont. L. R. 286), and restoring with a modification that of the trial judge (14 Ont. L. R. 17), Idington and MacLennan, JJ., dissenting, that I. had acquired a title under the Statute of Limitations to said room and to so much of the structure as rested on the soil to which he had acquired title.—*Held*, per Davies, J. He had also acquired a proprietary right to the staircase and the portions of the building supporting said room.—Per Fitzpatrick, C.J., and Duff, J.—The Statute of Limitations does not act against the party dispossessed annex to a title acquired by possession incidents resting on the implication of a grant. I. had, therefore, acquired no rights in the supports.—Per Idington and MacLennan, JJ.—The use of the landing and staircase was, at most, an easement and must continue for twenty years to produce the statutory title, and to give title to the supports there would have

to be actual possession which was not the case here. *Iredale v. London*, xl., 313.

9. *Chose in action—Sufficiency of assignment—Notice—Statute of Limitations—Acknowledgment of debt—Interest.*—Action brought by the plaintiff as assignee of one T. against the defendants, alleging indebtedness of the defendants' testator to T. on the common counts and alleging an assignment of the indebtedness from T. to the plaintiff and notice thereof to the defendants. The defendants denied the claim and alleged, first, that no sufficient notice under the statute was ever given of the assignment from T. to the plaintiff, and that the action was barred by the Statute of Limitations.—*Held*, affirming the judgment of the Supreme Court of Nova Scotia, that the notice of the assignment given was a sufficient compliance with the statute (R. S. N. S. 4th ser.), ch. 94, sec. 357), and that the letters written by the defendants' testator to the assignor of the plaintiff were a clear acknowledgment of the debt and sufficient to take it out of the provisions of the Statute of Limitations. *Grant v. Cameron* (xviii., 716); Cam. Cas. 239.

10. *Industrial improvements—Raising height of dam—Nuisance—Damages—Right of action—Prescription—Arts. 2242, 2261 C. C.*—Per Anglin, J.—An action, brought in 1908, for recovery of damages in respect of injuries occasioned by improvements executed in 1904, upon works constructed many years before that time, is not subject to the prescription of thirty years; nor can the prescription provided by article 2261 of the Civil Code be applied where the action has been commenced within two years from the time the injuries complained of were sustained. *Gale v. Bureau*, xlv., 305.

AND see RIVERS AND STREAMS.

11. *Possession by mortgagee—“Real Property Act,” R. S. M. 1902, c. 148, s. 75—“Real Property Limitation Act,” R. S. M. 1902, c. 100, s. 20—Construction of statute.*—Per Davies, Duff and Brodeur, JJ., affirming the judgment appealed from (20 Man. R. 522).—The equitable rights of mortgagees in lands subject to the operation of the “Real Property Act,” R. S. M. 1902, ch. 148, and of persons claiming through them, are protected by the provisions of the 75th section of that statute denying the acquisition of title adverse to or in derogation of that of the registered owner of such lands by length of possession only; the limitation provided by section 20 of the “Real Property Limitation Act,” R. S. M. 1902, ch. 100, in favour of mortgagees, has no application to lands after they have been brought under the “Real Property Act.” *Smith v. National Trust Co.*, xlv., 618.

AND see MORTGAGE.

12. *Negligence—Risk of employment—Dangerous works and materials—Warnings and instructions—Employers' liability—Damages—Personal injury—Limitation of action—“Railway Act,” R. S. C. 1906, c. 37, s. 306—“Construction and operation of railway.”*—The limitation of one year, in respect of actions to recover compensation for



injuries sustained by reason of the construction or operation" of railways, provided by section 306 of the "Railway Act" (R. S. C. 1906, ch. 37), relates only to injuries sustained in the actual construction or operation of a railway; it does not apply to cases where injuries have been sustained by employees engaged in works undertaken by a railway company for procuring or preparing materials which may be necessary for the construction of their railway. *Canadian Northern Rwy. Co. v. Robinson* (1911) A. C. 739 applied; judgment appealed from (21 Man. R. 121) affirmed. (Leave to appeal to Privy Council refused, 20th March, 1912). *Canadian Northern Rwy. Co. v. Anderson*, xlv., 355.

AND see NEGLIGENCE.

13. *Negligence—Railway—Prescription—Damage or injury "by reason of construction"—Contractor—Transcontinental Railway Commissioners—"Railway Act," s. 306.*—Section 15 of the "National Transcontinental Railway Act" provides that "The Commissioners shall have, in respect to the Eastern Division . . . all the rights, powers, remedies and immunities conferred upon a railway company under the 'Railway Act.'"—*Held*, Fitzpatrick, C.J., and Idington, J., dissenting, that the provision in sec. 306 of the "Railway Act" that "all actions or suits for indemnity for any damage or injury sustained by reason of the construction or operation of the railway shall be commenced within one year, etc.," applies to such an action against the Transcontinental Railway Commissioners, and also against a contractor for construction of any portion of the Eastern division.—*Held*, per Anglin, J., that it applies also to an action against a contractor for constructing a railway for a private railway company incorporated by Act of Parliament. *West v. Corbett*, xlvi., 596.

14. *Limitations of actions—General statutory provisions—Carriers—Private Act—B. C. Consolidated Railway Co.'s Act—Statute—R. S. B. C., 1911, c. 82—Lord Campbell's Act—(B.C.) 59 V. c. 55, s. 60.*—By section 60 of the "Consolidated Railway Company's Act" (B.C.), 59 Vict., ch. 55, actions for damage or injury sustained by reason of a tramway or railway, or the works or operations of the company, are subject to a limitation of six months.—*Held*, that the limitation thus provided for the protection of a private corporation had not the effect of altering the general limitation of twelve months provided by the fifth section of the "Families Compensation Act," R. S. B. C., 1911, ch. 82. *Green v. British Columbia Electric Rwy. Co.* (12 B.C. Rep. 199); *Canadian Northern Rwy. Co. v. Robinson* (43 Can. S. C. R. 387); *Zimmer v. Grand Trunk Rwy. Co.* (19 Ont. App. R. 693); *Markey v. Tolworth Joint Isolation Hospital District* (1900) 2 K. B. 454, and *Williams v. Mersey Dock and Harbour Board* (1905) 1 K. B. 804, referred to.—*Per* Duff, J.—Section 60 of the "Consolidated Railway Company's Act," (B.C.) 59 Vict. ch. 55, has no application to an action brought against the company for breach of duty as a carrier. *Sayers v. British Columbia Electric Rwy. Co.* (12 B. C. Rep. 102) referred to.—[NOTE.—*Cf. Gentile v. B. O.*

*Elec. Rwy. Co.*, (18 B. C. Rep. 307) affirmed by Privy Council, 16th June, 1914.] *British Columbia Electric Rwy. Co. v. Turner*, xlix., 470.

AND see PRACTICE AND PROCEDURE.

15. *Municipal corporation—Montreal city charter—Construction of statute—"Current year"—Assessment and taxes—Local improvements—Special tax, xxxix., 151.*

See MUNICIPAL CORPORATION.

16. *Administration proceedings—Statute of Limitations—Champertous agreement—Practice, Cam Cas. 119.*

See CHAMPERTY.

17. *Doweress—Title to land—Prescription—Statute of Limitations—Heirs-at-law—Parol evidence—Will—Residuary devise, Cam. Cas. 338.*

See TITLE TO LAND.

See PRESCRIPTION, xli., 264.

18. *Connolly v. Grenier, xlii., 242.*

See PRESCRIPTION.

19. *Construction of statute—Limitations of actions—Contract for supply of electric light—Negligence—Injury to person not privy to contract—"Consolidated Railway Company's Act, 1896," 59 V. c. 55 (B.C.) ss. 29, 50, 60, xliii., 1.*

See STATUTE.

20. *Suretyship—Simple contract—Discharge of one surety under seal—Confirmation of original guarantee—Death of surety—Powers of executors—Continuance of guarantee. Union Bank of Can. v. Clark, xliii., 299.*

See SURETYSHIP.

21. *Action—Damages—Denial of traffic facilities—Injury by reason of operation of railway—"Railway Act," 3 Edw. VII. c. 55, s. 242—Construction of statute, xliii., 387.*

See ACTION.

22. *Sale of lands for taxes—By-laws enacted without jurisdiction—Sessions of council outside municipal boundaries—Statutory relief—Estoppel—Acquiescence—Laches—Construction of statute.]—Per Duff and Anglin, JJ., Brodeur, J., contra.—The provisions of section 126 (3) of the British Columbia "Municipal Act, 1892" (R. S. B. C., 1897, ch. 144, sec. 86 (2),) have no application to invalidate by-laws enacted by municipal councils on occasions when they could not perform legislative functions. *Anderson v. Municipality of South Vancouver*, xlv., 425.*

AND see MUNICIPAL CORPORATION.

23. *Trespass—Railways—Occupation of lands—Side-tracks—Continuous trespass—Damages—R. S. C., 1906, c. 37, s. 306. O. P. R. v. Carr, xlvi., 514.*

See RAILWAYS.

See STATUTE.

24. *Railways—Right of way—Clearance of combustible matter—Burning worn-out ties—Injury from spread of fire—"Operation*



of the railway"—"Railway Act" (R. S. O. [1906] c. 37, ss. 297, 306), li., 338.

See RAILWAYS.

25. Railways — Negligence — Construction of statute—"Railway Act," R. S. O., 1906, c. 37, s. 306—Constitutional law — "Civil rights" — Jurisdiction of Dominion Parliament — Provincial legislation—"Employers' Liability Act," R. S. M., 1913, c. 61—Paramount authority—"Operation of railway"—Conflict of laws, liv., 36.

See RAILWAYS.

## LIQUIDATION.

"Winding-up Act"—Insolvent bank — Appointment of liquidators — Appointing another bank — Discretion of judge — Appeal, (xviii., 707); Cam. Cas. 209.

See "WINDING-UP ACT."

## LIQUOR LAWS.

1. Municipal Act—Vote on by-law—Local option—Division into wards—Single or multiple voting—3 Edw. VII. c. 19, s. 355.]—Section 355 of the Ontario Municipal Act, 3 Edw. VII. ch. 19, providing that "when a municipality is divided into wards each ratepayer shall be so entitled to vote in each ward in which he has the qualification necessary to enable him to vote on the by-law," does not apply to the vote on a local option by-law required by sec. 141 of the Liquor License Act (R. S. O. [1897] ch. 245.)—Judgment of the Court of Appeal (13 Ont. L. R. 447) affirming that of the Divisional Court, (12 Ont. L. R. 488) affirmed. *Sinclair v. Town of Owen Sound*, xxxix., 236.

2. "Liquor License Ordinance," ss. 37 and 57—Cancellation of license—Jurisdiction of judge—7 Edw. VII. c. 9, s. 14 (Alta.)].—The provisions of section 57 of "The Liquor License Ordinance" (Con. Ord. 1898, ch. 89), confer upon a judge of the Supreme Court of Alberta power to direct the cancellation of liquor licenses which have been obtained in violation of sub-section 3, of section 37, of that ordinance as amended by section 14 of "The Liquor License Amendment Act, 1907," 7 Edw. VII. ch. 9, of the Province of Alberta. *Finseth v. Ryley Hotel Co.*, xlv., 321.

3. Appeal—Jurisdiction—"Supreme Court Act," ss. 36, 37, 46—Judge in Chambers — Originating petition—Arts. 71, 72, 875, 876 C. P. Q.—"Quebec License Law," R. S. Q., 1909, arts. 924 et seq.—Property in license — Agreement — Ownership in persons other than holder—Invalidity of contract—Public policy.]—A cause, matter or judicial proceeding originating on petition to a judge in chambers, in virtue of articles 875 and 876 of the Quebec Code of Civil Procedure, is appealable to the Supreme Court of Canada where the subject of the controversy amounts to the sum or value of two thousand dollars.—It is inconsistent with the policy

of the "Quebec License Law" (R. S. O., 1909), that the ownership of a license to sell intoxicating liquors should be vested in one person while the license is held in the name of another. An agreement having that effect is void inasmuch as it establishes conditions contrary to the policy of the statute. Judgment appealed from (*Q. R. 22 K. B. 58*), reversed, *Brodeur, J.*, dissenting. *Turgeon v. St. Charles*, xlviii., 473.

4. Sale of goods—Contract by correspondence—Statute of Frauds—Delivery—Principal and agent—Statutory prohibition—Illicit sale of intoxicating liquors—Knowledge of seller—Validity of contract, xxxvii., 55.

See CONTRACT.

5. Canada Temperance Act—Conviction—"Criminal case"—R. S. C. (1886) c. 135, s. 32—Habeas corpus—Penalty—"Not less than \$50"—Conviction for \$200—Imposition of fine for first offence—Powers of Supreme Court judge—Reference of application to full court, xxviii., 394.

See "CANADA TEMPERANCE ACT."

AND see CANADA TEMPERANCE ACT; EXCISE.

6. Appeal—Jurisdiction — Stated case — Final judgment—Origin in Superior Court, xli., 25.

See APPEAL.

7. Appeal—Jurisdiction — Special leave — "Judicial proceeding"—Discretionary order — Matter of public interest—Alberta "Liquor License Ordinance" — "Originating summons." *Finseth v. Ryley Hotel Co.*, xliii., 646.

See APPEAL.

8. Habeas corpus—"Supreme Court Act," s. 39c—Criminal charge—Prosecution under provincial Act — Application for writ — Judge's order, xlvii., 259.

See APPEAL.

## LIS PENDENS.

1. Constitutional law — Imperial Acts in force in Yukon Territory—Title to land — "Torrens System"—Transfer by registered owner—Fraud—Litigious rights—Notice of lis pendens—Irregular registration—Indorsements upon certificate of title—Construction of statute—Pleading—Objections taken on appeal—Yukon Territorial Court Rules — Yukon Ordinances, 1902, c. 17 — Rules 113, 115, 117—Waiver—Estoppel, xxxvi., 251.

See REGISTRY LAWS.

2. Placer mining—Disputed title — Trespass pending litigation—Colour of right — Invasion of claim—Adverse acts—Sinister intention—Conversion — Blending materials — Accounts—Assessment of damages—Mitigating circumstances — Compensation for necessary expenses—Estoppel — Standing-by—Acquiescence, xxxviii., 516.

See MINES AND MINING.

**LITERARY PROPERTY.**

*Contract — Literary work — Publisher and author — Obligation to publish.*—In 1901. M. & Co., publishers of Toronto, and L., an author in Ottawa, signed an agreement, by which L. undertook to write the life of the Count de Frontenac for a work entitled "Makers of Canada," in course of publication by M. & Co.; the latter agreed to publish the work and pay L. \$500 on publication and a like sum when the second edition was issued. This contract was carried out and the publishers then proposed that L. should write on the same terms, the life of Sir John A. Macdonald, for which that of William Lyon Mackenzie was afterwards substituted. L. prepared the latter work and forwarded the manuscript to the publishers, who, although they had paid him in full for it in advance, refused to publish it, as being unsuitable to be included in "The Makers of Canada." L. then tendered to M. & Co. the amount paid him and demanded a return of the manuscript, which was refused, M. & Co., claiming it as their property. In an action by L. for possession of his manuscript,—*Held*, affirming the judgment of the Court of Appeal (20 Ont. L. R. 594), Idington and Anglin, JJ., dissenting, that he was entitled to its return.—*Held*, per Fitzpatrick, C.J., that the property in the manuscript (or what is termed literary property) has a special character, distinct from that of other articles of commerce; that the contract between the parties must be interpreted with regard to such special character of the subject-matter; that it implies an agreement to publish if accepted; and when rejected the author was entitled to treat the contract as rescinded and to a return of his property.—*Held*, per Davies and Duff, JJ., that there was an express contract for publication and an implied agreement that the manuscript was to be returned if publication should become impracticable for such reasons as those given by the publishers.—*Held*, per Duff, J., that the publishers, until publication, could be treated as having possession of the manuscript for that purpose and, that purpose failing, there was a resulting trust in favour of the author. *Morang & Co. v. Le Sueur*, xlv., 95.

See COPYRIGHT.

**LITIGIOUS RIGHTS.**

1 *Parties interested in litigation—Partition—Champerty — Maintenance — Pacte de quoti litis—Illegal consideration — Specific performance—Pleading.*—The defence of *retrait de droits litigieux* is an exception which can be set up only by the debtor of the litigious right in question. *Powell v. Watters* (28 Can. S. C. R. 133) referred to. (Leave to appeal to Privy Council refused.) *Meloche v. Déguire*, xxxiv., 24.

AND see CHAMPERTY; TITLE TO LAND.

2. *Foreclosure of mortgage—Redemption — Assignment pending suit — Procedure in court below—Costs*, xxxv., 181.

See PRACTICE.

3. *Title to land—Sale of mineral rights—Champerty*, xxxv., 327.

See CHAMPERTY.

4. *Constitutional law—Imperial Acts in force in Yukon Territory — Title to land—"Torrens System"—Transfer by registered owner—Fraud—Litigious rights — Notice of his pendens—Irregular registration—Indorsements upon certificate of title—Construction of statute—Pleading — Objection taken on appeal—Yukon Territorial Court Rules — Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117—Waiver—Estoppel*, xxxvi., 251.

See TITLE TO LAND.

AND see CHAMPERTY.

5. *Public work — Damage to adjacent lands — Negligence—Liability of Crown—"Eschequer Court Act," s. 20—Bar to action—"Rideau Canal Act," 3 Geo. IV. c. 1 (U.C.)—Limitation of actions. Olmstead v. The King*, liii., 450.

See CROWN.

**LOCAL OPTION.**

*Municipal Act—Vote on by-law—Ward divisions—Single or multiple voting—R. S. O. (1897) c. 215, s. 141—3 Edw. VII. c. 19, s. 355*, xxxix., 236.

See LIQUOR LAWS.

**LONGSHOREMAN.**

*Negligence—Common employment—Construction of statute—3 Edw. VII. c. 11, s. 2, s.-s. 3 (N.B.)—"Longshoreman"*—"Workman."—The plaintiff, a longshoreman, was engaged by the defendant, in Montreal, to act as foreman on his contracts as a stevedore at the port of St. John, N.B. While in the performance of his work, the plaintiff went into the hold to re-arrange a part of the cargo in a vessel, in the port of St. John, and, in assisting the labourers, stood under an open hatchway where he was injured by a heavy weight falling upon him on account of the negligence of the winchman in passing it across the upper deck. The winchman had attempted to remove the article which fell, without any order from his foreman, the plaintiff, and with improperly adjusted tackle. In an action for damages instituted in the Superior Court, at Montreal:—*Held*, that the plaintiff was entitled to recover either under the law of the province of Quebec or under the provisions of the New Brunswick Act, 3 Edw. VII. ch. 11, as he came within the class of persons therein mentioned to whom the law of the latter province relating to the doctrine of common employment does not apply. *Logan v. Lee*, xxxix., 311.

AND see NEGLIGENCE.

**LORD CAMPBELL'S ACT.**

1. *Railways—Negligence—Braking apparatus—Sand valves—Defects in machinery—Employer's liability—Provident society—Condition of indemnity—Right of action*, xxxiv., 45.

See NEGLIGENCE.

2. *Negligence—Railways—Breach of statutory duty—Common employment—Nova Scotia Railway Act, R. S. N. S. (1900) c. 99, s. 251—Employers' Liability Act—Fatal Injuries Act, xxxix., 593.*

See NEGLIGENCE.

3. *Negligence of fellow servant—Operation of railway—Defective switch—Indemnity and satisfaction—Public work—Tort—Liability of Crown—Right of action—Exchequer Court Act, s. 16 (c) — Art. 1056 C. U., xl., 229.*

See NEGLIGENCE.

4. *Negligence—Findings of jury—Verdict—Damages*, Cout. Cas. 343.

See NEGLIGENCE.

5. *Action by dependent—Injury sustained outside province—Right of action in Manitoba—Evidence—Answers by jury*. Lewis v. G. T. P. R. R., lii., 227.

See NEGLIGENCE.

**LORD'S DAY.**

1. *Constitutional law—Sunday observance—Legislative jurisdiction.*—Legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada. *Attorney-General for Ontario v. Hamilton Street Railway Co.* ([1903] A. C. 524) followed. (Leave to appeal to Privy Council refused, 26th July, 1905). *In re Legislation respecting Abstinence from Labour on Sunday*, xxxv., 581.

AND see CONSTITUTIONAL LAW.

2. *Criminal law—6 & 7 Edw. VII. c. 8—Procedure—Alberta and Saskatchewan—Indictable offence—Preliminary inquiry—Prefering charge—Consent of Attorney-General—Powers of deputy—“Lord's Day Act,” s. 17, xliii., 434.*

See CRIMINAL LAW.

3. *Criminal Code—6 & 7 Edw. VII. c. 8—Procedure—Alberta and Saskatchewan—Indictable offence—Preliminary inquiry—Prefering charge—Consent of Attorney-General—Powers of deputy—“Lord's Day Act,” s. 17. In re Criminal Code, xliii., 434.*

See CRIMINAL LAW.

**LOTTERY.**

1. *Illicit contract—Sale of land—Subsequent purchaser—Action pétitoire—Right of recovery—Ultra vires—Legal maxim—No-*

*tary.*—D. sold to an incorporated company for the purpose of assisting in carrying on a lottery scheme and, subsequently, conveyed the same lands to the plaintiff, who brought an action, *au pétitoire*, claiming the lands and to have the deed to the company set aside.—*Held, per Fitzpatrick, C.J., and Anglin and Brodeur, J.J.*, that the conveyance to the company was void for illegality and that the plaintiff had the right of action to be declared owner of the lands subsequently conveyed to him and to have the prior conveyance to the company set aside as having been granted for illicit consideration. *Lapointe v. Messier* (49 Can. S. C. R. 271) followed.—*Per Duff, J.*—In the circumstances of the case the pretended contract was *ultra vires* and void and no right of property passed to the company. *Ashbury Railway Carriage and Iron Co. v. Riche* (L. R. 7 H. L. 653) followed. And, further, as the notary before whom the deed in question was executed was, at the time of its execution, an official of the company assuming to purchase the lands, the deed was without validity as an authentic conveyance of the lands to the company.—*Per Idington, J.*, dissenting.—As the plaintiff obtained his conveyance in circumstances which placed him in the same position as the vendor, who had knowingly entered into the illicit contract with the company, and to whom the right of recovery was not open, there could be no relief given by the courts as prayed in the action.—*Judgment appealed from* (Q. R. 43 S. C. 50) affirmed, Idington, J., dissenting. *Prevost v. Bedard*, li., 149.

2. *Advances for—Interest—Illegal consideration*, xxxvii., 613.

See DEED.

3. *Illicit contract—Sale of land—Subsequent purchaser—Action pétitoire—Right of recovery—Ultra vires—Legal maxim—“Ex turpi causâ non oritur actio”—Notary—Official of purchasing company—Validity of deed*. *Prevost v. Bedard*, li., 149.

See CONTRACT.

**LUMBERING OPERATIONS.**

*Fishery and game leases—Personal servitude—Use and occupation—Right of action—Action en complainte—Renewed leases—Priority—Works to facilitate lumbering operations—Watercourses—Driving logs—Storage dams—Penning back waters out of tract of transmission—Injury to preserves—Damages—Injunction—Demolition of works*, xlv., 1.

See RIVERS AND STREAMS.

**MACHINERY.**

See CHATTELS; TRADE FIXTURES.

**MAGISTRATE.**

See JUSTICE OF THE PEACE; POLICE MAGISTRATE; STIPENDIARY MAGISTRATE.

**MAINTENANCE.**

1. *Conveyance of land* — "Quebec Act, 1774—Introduction of English criminal law—Affinity and consanguinity—Parties interested in litigation—Litigious rights—Pacte de quotâ litis—Illegal consideration—Specific performance — Retrait successoral — Pleading, xxxiv., 24.

See CHAMPERTY; TITLE TO LAND.

2. *ChamPERTY—Maintenance* — Malicious motive—Cause of action—Costs of unsuccessful defence—Damages, xxxix., 354.

See CHAMPERTY.

**MALICE.**

1. *Defamation* — Printing report of ghost haunting premises—Slander of title—Fair comment—Disparaging property — Special damages—Evidence—Presumption of malice—Right of action, xxxix., 340.

See SLANDER AND TITLE.

2. *ChamPERTY—Maintenance* — Malicious motive—Cause of action—Costs of unsuccessful defence—Damages, xxxix., 354.

See CHAMPERTY.

**MALICIOUS PROSECUTION.**

1. *Reasonable and probable cause—Bonâ fide belief in guilt—Burden of proof—Right of action for damages—Art. 1053 C. C.—Pleading and practice.*]—An action for damages for malicious prosecution will not lie where it appears that the circumstances under which the information was laid were such that the party prosecuting entertained a reasonable *bonâ fide* belief, based upon full conviction founded upon reasonable grounds, that the accused was guilty of the offence charged. *Abrath v. North Eastern Railway Co.* (11 App. Cas. 247), and *Coë v. English, Scottish and Australian Bank* (1905) A. C. 168) referred to.—*Semble*, that in such cases the rule as to the burden of proof in the Province of Quebec is the same as that under the law of England, and the plaintiff is obliged to allege and prove that the prosecutor acted with malicious intentions or, at least, with indiscretion or reprehensible want of consideration. *Sharpe v. Willis* (Q. R. 29 S. C. 14; 11 Rev. de Jur. 538) and *Durocher v. Bradford* (13 R. L. (N.S.) 73) disapproved.—Judgment appealed from (Q. R. 16 K. B. 333) affirmed. *Hétu v. Dixville Butter and Cheese Assoc'n*, xl., 128.

2. *Malicious prosecution—Probable cause—Evidence—Onus—Honest belief—Practice—Questions for jury.*]—On appeal from the judgment of the Court of Appeal for Manitoba (19 Man. R. 478), ordering that the judgment for the plaintiff, appellant, entered by Cameron, J., at the trial, upon the verdict of the jury, should be set aside and that a nonsuit should be entered, the Supreme Court of Canada, after hearing counsel on behalf of

both parties, dismissed the appeal, Idington, J., dissenting. [NOTE.—On the 15th of May, 1911, the Judicial Committee of the Privy Council refused leave for an appeal in *formâ pauperis*; 44 Can. S. C. R. ix.] *Ren-ton v. Gallagher*, xlvii., 393.

**MANDAMUS.**

1. *Commissioner of Mines—Appeal from decision—Quashing appeal—Final judgment—Estoppel—Remedy.*]—Where an appeal from a decision of the Commissioner of Mines for Nova Scotia on an application for a lease of mining land is quashed by the Supreme Court of the province on the ground that it was not a decision from which an appeal could be asserted, the judgment of the Supreme Court is final and binding on the applicant and also on the commissioner even if he is not a party to it.—The quashing of the appeal would not, necessarily, be a determination that the decision was not appealable if the grounds stated had not shewn it to be so.—In the present case the quashing of the appeal precluded the commissioner or his successor in office from afterwards claiming that the decision was appealable.—If the commissioner, after such appeal is quashed, refuses to decide upon the application for a lease the applicant may compel him to do so by writ of mandamus. (Judgment appealed from (36 N. S. Rep. 282) affirmed. *Drysdale v. Dominion Coal Co.*, xxxiv., 328.

2. *Mandamus—Driving timber—Order to *fac tolls*—Past user of stream—River improvements—Appeal—R. S. O. [1897] c. 142, s. 13.*]—By R. S. O. [1897] ch. 142, sec. 13, the owner of improvements in a river or stream used for floating down logs may obtain from a district judge an order fixing the tolls to be paid by other parties using such improvements. On application for a writ of mandamus to compel the judge to make such an order:—*Held*, affirming the judgment of the Court of Appeal, 16 Ont. L. R. 21), Davies, J., *dubitante*, and Idington, J., expressing no opinion, that such an order had effect only in case of logs floated down the river or stream after it was made. *Held per Idington, J.*—As sec. 15 gives the applicant for the order an appeal from the judge's refusal to make it mandamus will not lie. *Held, per Duff, J.*—The mandamus could issue if the judge had jurisdiction to make the order though he refused to do so in the belief that a prior decision of a Divisional Court was *res judicata* as to his power. *The C. Beck Manufacturing Co. v. Valin and The Ontario Lumber Co.*, xl., 523.

3. *Appeal—Jurisdiction—Final judgment—Mandamus.*]—The respondent applied for a peremptory writ of mandamus to compel appellants to purchase lauds for the site of a parish church, and obtained an order, as follows.—"Vu la requête ci-dessus, il est ordonné d'émaner un bref de mandamus tel que demandé." An ordinary writ of summons issued, indorsed as a writ of mandamus, but the copy served did not contain any indorsement of the nature of the claim. An exception to the form was dismissed, and

the Court of Queen's Bench quashed an appeal, *de plano*. "Parceque (1) Les appelants ont inscrit en appel de l'ordonnance du juge permettant l'émission du bref de mandamus en cette cause, sans au préalable obtenir la permission; (2) Parceque la dite ordonnance n'est pas un jugement final, mais une interlocutoire." The registrar, considering that the order was not simply for the issue of a summons under art. 993 C. P. Q., but a peremptory order for the issue of a writ of mandamus, under art. 996 C. P. Q., held that the judgment was final in its nature and, therefore, appealable. This decision was reversed, on appeal, and the application for approval of the security for costs was dismissed. *Syndics de St. Valier v. Catellier*, *Cout. Cas.* 202.

4. *Railways—Construction and operation—Location plans—Delaying notice to treat—Action to compel expropriation—Compensation in respect of lands not acquired—Use of highway — Crossing public lane—Nuisance.*] — The approval and registration of plans, etc., of the located area of the right-of-way, under the provisions of the "Railway Act," and the subsequent construction and operation of a railway along such area, do not render the railway company liable to mandamus ordering the expropriation of a portion of the lands shewn upon the plans which has not been physically occupied by the permanent way so constructed and operated.—Judgment appealed from reversed, the Chief Justice and Davies, J., dissenting. *Vancouver, Victoria & Eastern Ry. & Navigation Co. v. McDonald*, *xliv.*, 65.

5. *Municipal corporation—Statutory duty—County officers—Office accommodation—Discretion.*]—The courts should not interfere by mandamus with the reasonable exercise by a County Council of its discretion in selecting the place in the county at which an office shall be provided for the County Crown Attorney and Clerk of the Peace.—Judgment of the Court of Appeal (19 *Out. L. R.* 659) affirmed. *Rodd v. County of Essex*, *xliv.*, 137.

6. *Watercourses—Riparian rights—Expropriation—Trespass—Torts—Diversion of natural flow—Injurious affection—Damages—Execution of statutory powers—Arbitration—Construction of statute—59 Vict. c. 44 (N.S.), xxxvii.*, 464.

See RIVERS AND STREAMS.

7. *Special leave to appeal—Discretion—Matter in controversy*, *Cout. Cas.* 322.

See APPEAL.

8. *Appeal—Special leave—Public interest—Important question of law—Exemption from taxation—School rates—R. S. C. 1906, c. 139, s. 48, xlii.*, 691.

See APPEAL.

## MANDATE.

1. *Bills and notes—Material alteration—Forgery—Partnership—Assent of parties—Liability of indorser—Construction of statute—"Bills of Exchange Act," xl.*, 458.

See FORGERY; AND see PRINCIPAL AND AGENT.

2. *Laforest v. Factories Ins. Co.*, *liii.*, 296.

See PRINCIPAL AND AGENT.

## MANITOBA.

*Assessment and taxation—Constitutional law—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of boundaries of Manitoba—Construction of statutes in respect to the constitution of Canada, Manitoba and the North-West Territories—Construction of contract—Grant in presenti—Cause of action—Jurisdiction—Waiver*, xxxv., 550.

See ASSESSMENT AND TAXES.

## MANITOBA SWAMP LANDS.

*Crown lands—Settlement of Manitoba claims—48 & 49 Vict. c. 50 (D.)—49 Vict. c. 38 (Man.)—Construction of statute—Title to lands—Operation of grant—Transfer in presenti—Condition precedent—Ascertainment and identification of swamp lands—Revenues and emblements—Constitutional law.*]—The first section of the "Act for the Final Settlement of the Claims of the Province of Manitoba on the Dominion" (48 & 49 *Vict. ch.* 50) enacts that "all Crown Lands in Manitoba which may be shewn, to the satisfaction of the Dominion Government, to be swamp lands shall be transferred to the province and enure wholly to its benefit and uses."—*Held*, affirming the judgment appealed from (8 *Ex. C. R.* 337) Girouard and Killam, JJ., dissenting, that the operation of the statutory conveyance in favour of the Province of Manitoba was suspended until such time or times as the lands in question were ascertained and identified as swamp lands and transferred as such by order of the Governor-General in Council, and that, in the meantime, the Government of Canada remained entitled to their administration, and the revenues derived therefrom enured wholly to the benefit and use of the Dominion. *Atty-Gen. for Manitoba v. Atty-Gen. for Canada*, xxxiv., 287.

## "MARGINS."

*Principal and agent—Broker selling on Grain Exchange—Contract in broker's name—Liability of principal—Board rules—Indemnity*, xli., 618.

See BROKER.

**MARINE INSURANCE.**

See INSURANCE, MARINE.

**MARITIME LAW.**

1. *Collision—Inland waters — Narrow channel—Boston harbour.*]—Rule 25 of the United States "Inland rules to prevent Collision of Vessels" provides that "in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel."—*Held*, affirming the judgment appealed against (9 Ex. C. R. 160) that the inner harbour of Boston, Mass., is not a narrow channel within the meaning of said rule. *The "Calvin Austin" v. Lovitt*, xxxv., 616.

2. *Shipping—Material men — Supplies furnished for "last voyage"—Privilege of dernier equipieur—Round voyage—Seizure of ship—Arts. 2383, 2391 C. C.—Art. 931 C. P. Q.—Construction of statute—Ordonnances de la Marine, 1681, xl., 45.*

See SHIPS AND SHIPPING.

AND see ADMIRALTY LAW; NAVIGATION; SHIPPING.

3. *Collision—Negligence—Failure to hear signals—Evidence, xli., 54.*

See ADMIRALTY LAW.

**MARKSMAN.**

*Mortgage—Money advanced to construct buildings—Lien for materials supplied—Payment to contractor—Transactions in fraud of mortgagee's rights—Redemption—Costs, xxxviii., 557.*

See MORTGAGE.

**MARRIAGE.**

*Construction of will—Description of legatee—Devise "to my wife"—Bigamous marriage—Evidence—Burden of proof.*]—A devise made in a will "to my wife" was claimed by two women, with both of whom the testator had lived in the relationship of husband and wife.—*Held, per* Idington, J.—That, even if the first marriage was assumed to have been validly performed, all the surrounding circumstances shewed that, by the words "to my wife," the testator intended to indicate the woman with whom he was living, in that relationship, at the time of the execution of the will and thereafter up to the time of his death.—*Held, per* Duff, J.—That the woman who claimed to have been first married to the testator had not sufficiently proved that fact, and that the other woman, who was living with the testator as his wife at the time of the execution of the will and up to the time of his death, was entitled to the devise.—*Held, per* Davies and MacLennan, JJ., dissenting.—That the first marriage was sufficiently proved and, consequently, that the devise

went to the only person who was the legal wife of the testator.—*Fitzpatrick, C.J.*, was of opinion that the appeal should be dismissed.—Judgment appealed from (13 B.C. Rep. 161) affirmed, Davies and MacLennan, JJ., dissenting. *Marks v. Marks*, xl., 210.

**MARRIAGE CONTRACT.**

1. *Will—Testamentary capacity—Evidence—Art. 831 C. C.*]—An action to annul a marriage contract and set aside a will and codicil on grounds of insanity and duress was dismissed at the trial, and the appeal was against the judgment of the Court of Review, affirming that decision. The Supreme Court of Canada dismissed the appeal with costs, for the reasons given in the court below. (Q. R. 25 S. C. 275). *Hotte v. Birabin*, xxxv., 477.

2. *Donatio inter vivos—Ante-nuptial contract—Gift to wife—Payment at death of husband—Institution contractuelle — Onerous gift, xli., 197.*

See DONATION.

**MARRIAGE LAWS.**

1. *Constitutional law — "Marriage and Divorce" — "Solemnization of Marriage"—Jurisdiction of Parliament—Jurisdiction of legislature — Federal validating Act—Religious belief—Canonical decrees — Civil rights—"B. N. A. Act" (1867), ss. 91 and 92—Arts. 127 et seq. C. C.*]—The parliament of Canada has no authority to enact a bill in the following form:—1. The "Marriage Act," chapter 105 of the Revised Statutes, 1906, is amended by adding thereto the following section:—"3. Every ceremony or form of marriage heretofore or hereafter performed by any person authorized to perform any ceremony of marriage by the laws of the place where it is performed, and duly performed according to such laws, shall everywhere within Canada be deemed to be a valid marriage, notwithstanding any differences in the religious faith of the persons so married and without regard to the religion of the person performing the ceremony.—"(2) The rights and duties, as married people of the respective persons married as aforesaid, and of the children of such marriage, shall be absolute and complete, and no law or canonical decree or custom of or in any province of Canada shall have any force or effect to invalidate or qualify any such marriage or any of the rights of the said persons or their children in any manner whatsoever." (Affirmed by Privy Council, 29th July, 1912.) — *Per* Idington, J.—The retrospective part would be good as part of a scheme for concurrent legislation by Parliament and legislatures confirming past marriages which, probably, neither effectively can do. The prospective part, so far as possible to make it an effective prohibition of religious tests, may be good, but doubtful, and the probable purpose can be reached by a better bill.—*Per* Davies, Idington and Duff, JJ.—The law of the Province of Quebec does not render null and void, unless contracted before a Roman

Catholic priest, a marriage in such province between two Roman Catholics that would otherwise be binding. Anglin, J., *contra*. Fitzpatrick, C.J., expressing no opinion.—The law of Quebec does not render void, unless contracted before a Roman Catholic priest, a marriage otherwise valid where one party only is a Roman Catholic.—The Parliament of Canada has no authority to enact that a marriage between Roman Catholics, or a "mixed marriage," not contracted before a Roman Catholic priest and whether heretofore or hereafter solemnized shall be valid and binding (affirmed by Privy Council, 29th July, 1912).—*Per* Idington, J.—Parliament has power to declare valid such a marriage heretofore solemnized to be concurred in by the legislature of the province concerned, and the like power as to a marriage hereafter to be solemnized if and when the province fails to provide adequate means of solemnization. *In re Marriage Laws*, xlvii., 132.

2. *Appeal—Jurisdiction—Amount in controversy—Future rights*, xxxiv., 274.

See APPEAL.

### MARRIED WOMAN.

1. *Promissory note—Security for debt—Husband and wife—Parent and child.*—C., a man without means, and W., a rich money lender, were engaged together in stock speculations, W. advancing money to C. at a high rate of interest in the course of such business. C. being eventually heavily in the other's debt it was agreed between them that if he could procure the signatures of his wife and daughter, each of whom had property of her own, as security, W. would give him a further advance of \$1,000. Though unwilling at first the wife and daughter finally agreed to sign notes in favour of C. for sums aggregating over \$7,000, which were delivered to W. Neither of the makers had independent advice. *Held*, reversing the judgment appealed from, Taschereau, C.J., dissenting, that though the daughter was twenty-three years old she was still subject to the dominion and influence of her father and the contract made by her without independent advice was not binding.—*Held* also, Taschereau, C. J., and Killam, J., dissenting, that his wife was also subjected to influence by C. and entitled to independent advice and she was, therefore, not liable on the note she signed.—*Held, per* Sedgewick, J., that the evidence produced disclosed that the transaction was a conspiracy between C. and W. to procure the signatures of the notes and that the wife of C. was deceived as to his financial position and the purpose for which the notes were required, therefore, the plaintiff could not recover. *Cox v. Adams*, xxxv., 393.

2. *Separate property—Liability for debts of husband—Execution of judgment—Registry law—"Real Property Act"—"Married Women's Act."* R. S. M. (1891) ch. 95—*Conveyance during coverture.*—Where land was transferred, as a gift, to a married woman by her husband, during the time that the "Married Women's Act." R. S. M. (1891) ch. 95, was in force, the husband being then solvent, and a certificate of title

therefor issued in her name under the provisions of the Manitoba "Real Property Act," the beneficial as well as the legal interest in the land vested in her for her separate use, and neither the land nor its proceeds can be taken in execution for debts of the husband subsequently incurred, notwithstanding the provisions of the second section of the "Married Women's Act" respecting property received by a married woman from her husband during coverture. *Fraser v. Douglas*, xl., 384.

3. *Husband and wife—Contract—Separate estate—Security for husband's debt—Independent advice—Stare decisis.*—The confidential relations between husband and wife are such that where the latter conveys or encumbers her separate property for her husband's benefit she is entitled to the protection of independent advice; without that her action does not bind her. *Cox v. Adams* (35 Can. S. C. R. 393) followed, Idington, J., dissenting.—Only in very exceptional circumstances should the Supreme Court refuse to follow its own decisions.—Judgment of the Court of Appeal (17 Ont. L. R. 436) reversed. *Stuart v. Bank of Montreal*, xli., 516.

See HUSBAND AND WIFE.

4. *Practice—Pleading—Amendment ordered by court—Legal community—Right of action—Reprise d'instance—Arts. 78, 174, 176 C. P. Q.—R. S. C. c. 135, ss. 63, 64.* *North Shore Power Co. v. Duguay*, xxxvii., 624.

5. *Covenant in mortgage—Signature procured by fraud—Pleading—Non est factum—Estoppel.* *Morgan v. Dominion Permanent Loan*, l., 485.

See ESTOPPEL.

6. *Covenant in mortgage—Signature procured by fraud—Pleading—Non est factum—Estoppel*, l., 485.

See FRAUD.

7. *Quebec marriage laws—Community of property—Dissolution by death—Failure to make inventory—Insolvent estate—Continuation of community—Estoppel—Renunciation—Husband and wife*, lii, 662.

See HUSBAND AND WIFE.

### MASTER AND SERVANT.

1. EMPLOYER AND EMPLOYEE, 1-14.
2. ENGAGEMENT AND DISMISSAL, 15.
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#### 1. EMPLOYER AND EMPLOYEE.

1. *Landlord and tenant—Trespasser—Negligence of employee—Damages.*—The

workmen of a contractor for tearing down portions of a building in order to make alterations turned on a water-tap in a room where they were working and neglected to turn it off whereby goods in the story below were damaged by water.—*Held*, Davies and Nesbitt, JJ., dissenting, that the act of the workmen was done in course of their employment; that it was negligent; and that the owner of the goods could recover damages though he was in possession merely as an overholding tenant who had not been ejected. *Stevart v. Brookfield*, xxxv., 494.

2. *Contract of hiring—Manager or expert—Dismissal.*—The manager of a veneer company having heard of plaintiff as a man who could usefully be employed in the business wrote him a letter in which he stated that "what we want is a man who is a good veneer maker and who knows how to make all kinds of built up woods that are saleable, such as panels. . . . We want you to take full charge of the mill, that is, the manufacturing." In reply plaintiff said: "Would say I understand fully the making of the articles you speak of as well as numerous others with proper machines and proper men to run them." And in a subsequent letter he said: "I feel from all the experience I have had I have mastered the entire principle of it (the veneer business), knowing machines required for various work, what veneer has got to be when completed." Having been hired by the manager he was discharged six weeks later and brought an action for wrongful dismissal.—*Held*, reversing the judgment of the Supreme Court of New Brunswick (37 N. B. Rep. 332) that he was not hired as a business manager but as an expert in the veneer business and as the evidence established that he was not competent he was properly discharged and could not recover. *Allcroft v. Adams*, xxxviii., 365.

3. *Master and servant—Negligent driving—Horse owned by servant—Vehicle and harness owned by master—Duty of employee—Liability for damages.*—T., an employee of D., while in discharge of the duties of his employment, driving his own horse attached to a vehicle belonging to his employer, who also owned the harness, negligently caused injuries to C., which resulted in his death. In an action for damages by the widow and children of C.: *Held*, affirming the judgment appealed from (Q. R. 15 K. B. 472), that as the injury complained of was caused by the fault of the servant during the performance of duties in the course of his employment, the master and servant were jointly and severally responsible in damages. *Turcotte v. Ryan*, xxxix., 8.

4. *Landlord and tenant—Negligence—Master and servant—Acts in course of employment—Alterations to plumbing—Damage by steam, etc.—Responsibility of contractors—Control of premises.*—In the lease of a shop, the landlord agreed to supply steam heating and, in order to improve the system, engaged a firm of plumbers to make alterations. Before this work was completed and during the absence of the tenant, the plumbers' men, who were at work in another part of the same building, with

steam cut off for that purpose, at the request of the caretaker employed by the landlord, turned the steam on again which, passing through unfinished pipes connected with the shop, escaped through an open valve in a radiator and injured the tenant's goods.—*Held*, that the landlord was liable in damages for the negligent act of his caretaker in allowing steam to be turned on without ascertaining that the radiator was in proper condition to receive the pressure, and that the plumbing firm were also responsible for the negligence of their employees in turning on the steam, under such circumstances, as they were acting in the course of their employment in what they did although requested to do so by the caretaker.—The judgment appealed from (16 Man. R. 411) was affirmed with a variation declaring the plumbers jointly liable with the landlord. (Leave to appeal to Privy Council refused, 12th March, 1908.) *McNichol v. Malcolm*, xxxix., 265.

AND see LANDLORD AND TENANT.

5. *Profit-sharing—Partnership—Evidence—Statutes—R. S. B. C. 1911, c. 153, s. 3; c. 175, s. 4—Words and phrases—"Partnership."*—The "Master and Servant Act," R. S. B. C. 1911, ch. 153, by sec. 3, respecting profit-sharing by servants, declares that no agreement of that nature shall create any relationship in the nature of partnership. Section 4 of the "Partnership Act," R. S. B. C. 1911, ch. 175, provides rules for determining partnership and, by sub-secs. 2 and 3, declares that the sharing of gross profits does not, of itself, create a partnership, that the receipt of a share of the profits of a business is *primâ facie* evidence of a partnership, that the receipt of such share or of a payment varying with the profits does not, of itself, make the person receiving the same a partner, and that a contract to remunerate a servant by a share of the profits does not, of itself, make him a partner. The plaintiff, an employee of the defendant, by the terms of his engagement was to receive as remuneration for his services a one-half share of the profits of defendant's business and conversations took place regarding an arrangement whereby plaintiff might have a "share in the business," but no definite agreement was made. Plaintiff, claiming to have become a partner, wrote a letter to defendant asserting that he had an undivided interest in the business and asking to execute articles of partnership. Defendant replied to this letter in an evasive and temporizing manner and the business continued to be conducted without any change. Later on, the defendant served upon the plaintiff a notice of dissolution of partnership and, in the notice as well as in the correspondence, made use of the word "partnership" in referring to the relations between them.—*Held*, reversing the judgment appealed from (18 R.C. Rep. 230) that, under the statutes referred to, the onus was upon the plaintiff to shew that he had been admitted as a partner in the business in the strict legal sense and that the indefinite use of the term "partnership" in the correspondence and notice did not, in the circumstances, amount to evidence of an agreement that there should be a partnership. *Donkin v. Disher*, xlix., 60.



6. *Negligence—Use of motor car — Disobedience—Act in course of employment—Employer's liability.*—B. was owner of an automobile and hired a chauffeur to run it, giving him positive instructions that the car was not to be used except for purposes of the owner and his family, and that, when not in use for such purposes, it was to be kept in a certain garage. On the evening of the accident in question the chauffeur took his master's family to a theatre, in Winnipeg, and was directed by them to take the car to the garage and return for them after the close of the performance. The chauffeur took the car from the garage before the appointed time and proceeded with it for the purpose of visiting a friend in a distant part of the city. While so using the car, contrary to instructions, he negligently ran down the plaintiff, causing injuries for which an action was brought to recover damages against B.—*Held*, affirming the judgment appealed from (24 Man. R. 235), that, at the time of the accident, the chauffeur was not engaged in the performance of any act appertaining to the course of his employment as the servant of the owner of the car and, consequently, his master was not liable in damages. *Storey v. Ashton* (L. R. 4 Q. B. 476), followed. *Haiparin v. Bulling*, l., 471.

7. *Common employment — Defence by Crown — Workmen's Compensation Act*, xxxvi., 462.

See EMPLOYER AND EMPLOYEE.

8. *Joint operation of railway — Master and servant—Negligence—Responsibility for act of joint employee—Traffic agreement — 62 & 63 Vict. c. 5 (D.)*, xxxvi., 655.

See RAILWAYS.

9. *Negligence of fellow servant—Operation of railway—Defective switch — Public work — Tort — Liability of Crown—Right of action—Exchequer Court Act, s. 16 (c.) —“Lord Campbell's Act” —Art. 1056 C. C.*, xl., 229.

See NEGLIGENCE.

10. *Constitutional law—Railway company —Negligence — Agreements for exemption from liability—Power of Parliament to prohibit*, xxxvi., 136.

See RAILWAYS.

11. *Joint operation of railway — Negligence—Responsibility for act of joint employee—Traffic arrangement*, xxxvi., 655.

See RAILWAYS.

12. *Algama Steel v. Dube*, liii., 481

13. *Hire of machinery — Negligence of hirer—Negligence of owner*, liii., 481.

See NEGLIGENCE.

14. *Railways—Negligence—Ejecting trespasser from moving train — Imprudence — Liability for act of servant*, liii., 376.

See RAILWAYS.

## 2. ENGAGEMENT AND DISMISSAL.

15. *Master and servant—Contract of service—Termination by notice—Incapacity of servant—Permanent disability—Findings of jury—Weight of evidence.*—Where a contract for service provided that it could be terminated by either party giving the other a month's notice therefor or by the employer paying or the employee forfeiting a month's wages.—*Held*, reversing the judgment appealed from (36 N. S. Rep. 158) that illness of the employee by which he is permanently incapacitated from performing his service would itself terminate the contract.—*Held*, also, Killam, J., dissenting, that an illness terminating in the employee's death and during the whole period of which he is incapacitated for service is a permanent illness though both the employee and his physician believed that it was only temporary.—By a rule of the employer an employee was only to be paid for the time he was actually on duty. One of the employees had accepted and signed a receipt for a month's wages from which the pay for two days on which he was absent from duty was deducted and his conversation with the other employees shewed that he was aware of the rule, but no formal notice of the same was ever given him. Having died after a long illness his executrix brought an action for his wages during such period, and the jury found on the trial that he did not continue in the employ after notice of the rule and acquiescence in his employment under the terms thereof.—*Held*, that such finding was against evidence and must be set aside. *Dartmouth Ferry Commission v. Marks*, xxxiv., 366.

(a) For Cause Unknown.

16. *Negligence—Findings of jury—New trial.*—In constructing the bins for an elevator a staging had to be raised as the work progressed by ropes held by men standing on the top until it could be secured by dogs placed underneath. When secured, workmen stood on the staging and nailed planks to the sides of the bin. The planks were run along a tramway at the side of the bins by rollers and thrown off to the side of the bin farthest from the tramway. While two men on the top of the bin were holding up the staging until it could be secured a plank on top of the adjoining pile fell off. In falling it hit the men on top of the bin, and they were precipitated to the bottom, and one of them killed. In an action by his widow against the contractor for building the elevator, twenty-five questions were submitted to the jury, and on their answers a verdict was entered for the plaintiff.—*Held*, Idinton, J., dissenting, that while the falling of the plank caused the accident there was no finding that the same was due to the negligence of the defendant nor any that the death of deceased was due to negligence for which, under the evidence, defendant was responsible. Therefore, and because many of the questions submitted were irrelevant to the issue and may have confused the jury, there should be a new trial. *Jamieson v. Harris*, xxxv., 625.

17. *Negligence—Proximate cause—Finding of jury—Evidence.*—T., an engineer, was scalded by steam escaping when the front of a valve was blown out by the pressure on it. In an action for damages against his employers the jury found that the bursting was caused by strain on the valve, that the employers were guilty of negligence in allowing the engine to run on an improper bed and that they did not supply proper appliances and keep them in proper condition for the work to be done by T., the engine-bed and room all being in bad condition; they also found that the valve was not defective.—*Held*, that in the absence of a finding that the negligence imputed to the employers was the proximate cause of the injury to T., and of evidence to justify such a finding, the action must fail. *Thompson v. Ontario Sewer Pipe Co.*, xl., 396.

(b) *Common Employment.*

18. *Mining operations—Negligence of higher officials—Fellow workmen—Employers' Liability Act.*—The negligence of the superintendent of a mine would be negligence of a co-employee of a miner injured for which the employers would not be liable at common law, although there might be liability under the British Columbia "Employers' Liability Act" (R. S. B. C. c. 69, s. 3), for negligence on the part of the superintendent.—*Per* Taschereau, C.J. An employee who has left the service of the common master cannot be regarded as a fellow workman of servants engaged subsequently. *Hosking v. Le Roi No. 2*, xxxiv., 244.

AND see NEGLIGENCE.

19. *Negligence—Common employment—Defence by Crown—Workmen's Compensation Act.*—The Manitoba Workmen's Compensation Act does not apply to the Crown. Idington, J. dissenting.—In Manitoba the Crown as represented by the Government of Canada may in an action for damages for injuries to an employee rely on the defence of common employment. Idington J. dissenting. *Ryder v. The King*, xxxvi., 462.

20. *Negligence—Common employment—Construction of statute—3 Edw. VII. c. 11, s. 2, a-s. 3 (N.B.)—"Longshoreman"—"Workman."*—The plaintiff, a longshoreman, was engaged by the defendant, in Montreal, to act as foreman on his contracts as a stevedore at the port of St. John, N.B. While in the performance of his work, the plaintiff went into the hold to re-arrange a part of the cargo in a vessel, in the port of St. John, and, in assisting the labourers, stood under an open hatchway where he was injured by a heavy weight falling upon him on account of the negligence of the winchman in passing it across the upper deck. The winchman had attempted to remove the article which fell, without any order from his foreman, the plaintiff, and with improperly adjusted tackle. In an action for damages instituted in the Superior Court at Montreal:—*Held*, that plaintiff was entitled to recover either under the law of the Province of Quebec

or under the provisions of the New Brunswick Act, 3 Edw. VII. c. 11, as he came within the class of persons therein mentioned to whom the law of the latter province relating to the doctrine of common employment does not apply. *Logan v. Lee*, xxxix., 311.

AND see NEGLIGENCE.

21. *Negligence—Personal action—Common employment.*—The doctrine of common employment does not prevail in the Province of Quebec. *The King v. Desrosiers*, xli., 71.

AND see NEGLIGENCE.

22. *Negligence—Employer's liability—Competent superintendence—Common employment—Contributory negligence.*—B. was employed by the company as a labourer in preparing a site for a power house, and was working on a narrow ledge on a hillside preparing a place on which to erect a drilling machine. Stones or earth falling from above struck him and he fell off the ledge to the bottom of the excavation, sustaining severe injuries. In an action against the company for damages under the common law it was contended that failure to protect the workmen by a barrier above the ledge was negligence for which defendants were responsible.—*Held*, *per* Davies and Anglin, JJ., that such negligence was that of the company's superintendent, a fellow servant of B., and the company was not responsible.—*Per* Duff and Anglin, JJ., following *Wilson v. Merry* (L. R. 1 H. L. Sc. 326), that, as it was proved that the company had appointed a competent engineer to take charge of the work, invested him with the requisite authority and responsibility for protecting the workmen, and supplied him with the materials necessary for the purpose, they had discharged their duty towards their employees and were not responsible for the injury to B.—Judgment of the Court of Appeal (22 B. C. Rep. 241), reversed, Idington and Brodeur, JJ., dissenting. *Western Canada Power Co. v. Bergklint*, liv., 285.

23. *Negligence—Mining operations—Contract for special works—Engagement by contractor—Control and direction of mine—Defective machinery—Notice—Failure to remedy defect—Liability for injury to miner*, xxxiv., 177.

See NEGLIGENCE.

24. *Defence of common employment—Plea by Crown—Workmen's Compensation Act*, xxxvi., 462.

See EMPLOYER AND EMPLOYEE.

25. *Negligence—Railways—Breach of statutory duty—Common employment—Nova Scotia Railway Act, R. S. N. S. (1900) c. 99, s. 251—Employers' Liability Act—Fatal Injuries Act*, xxxix., 593.

See NEGLIGENCE.

26. *Negligence of fellow servant—Operation of railway—Defective switch—Public work—Tort—Liability of Crown—Right of action—Bachequer Court Act*, xl., 229.

See NEGLIGENCE.

27. *Negligence—Injury to workman—Liability of employer—Common fault. Dominion Bridge Co. v. Jodoin, xlv., 624.*

28. *Negligence — Answers by jury — “Volenti non fit injuria” — Issue undecided — Practice—B. C. Supreme Court Rules, O. 58, r. 4—New Trial, xlix., 43.*  
See NEW TRIAL.

29. *Negligence—Dangerous works — Electric transmission line—Independent contractor — Master and servant — Strengthening poles—Stringing wires—Injury to linesman — Risk of employment — Responsibility of owner, xlix., 423.*  
See NEGLIGENCE.

30. *Negligence—Dangerous works — Electric transmission line—Independent contractor—Strengthening poles—Stringing wires—Injury to linesman—Risk of employment—Responsibility of owner, xlix., 423.*  
See NEGLIGENCE.

31. *Railways—Operation — Transfer of cars—Interswitching—Negligent coupling — Duty of train crew—Scope of employment—Employer’s liability—Jury—Findings of fact — Evidence, 1., 393.*  
See RAILWAYS.

32. *Negligence—Operation of tramway—Employers’ liability—Accident in course of employment — “Workmen’s Compensation Act”—Right of action — Dependent relations—Construction of statute—(Que.) 9 Edw. VII., c. 66, ss. 3, 15—R. S. Q., 1909, arts. 7321, 7323, 7335—Incompatible enactment—Repeal—Art. 1056 C. C.—Practice—Charge to jury—Misdirection — Excessive damages—Modification of verdict — New trial—Art. 503 C. P. Q., 1., 423.*  
See NEGLIGENCE.

33. *Government railway regulations — Operation of trains—Negligent signaling — Fault of fellow servant—Common fault — Boarding moving train — Disobedience of employee—Voluntary exposure to danger—Cause of injury—R. S. C., 1906, c. 36, ss. 49, 54—Negligence—Railway, li., 588.*

(c) *Contributory Negligence.*

34. *Negligence—Employer and employee—Disobedience of orders — Dangerous way, works and appliances]—Where a foreman has given the necessary orders to ensure the safety of a workman engaged in dangerous work, an employee who disobeys such orders and in consequence, sustains injuries, cannot hold his employer responsible in damages on the ground that the foreman was bound to see that the orders were not disobeyed. Lamoureux v. Fournier dit Larose (33 Can. S. C. R. 675) discussed and distinguished. Royal Electric Co. v. Paquette, xxxv., 202.*

35. *Negligence—Injury to employee—Disobedience—Enforcing rules of factory—Verdict against weight of evidence—Misdirection—New trial—Costs.]—In an action for*

compensation for injuries sustained by K. while employed in a factory the jury found that the company was at fault for laxity in the enforcement of its regulations made to secure the safety of employees and that K. contributed to the accident which occasioned his injuries by disobedience to orders given to him in pursuance of those regulations. The jury estimated K.’s damages at \$3,500, and deducted \$2,000 on account of the fault attributed to him, and returned a verdict against the company for \$1,500, on which judgment was entered. It was contended that the jury had been misdirected by the trial judge and that the findings and verdict were against the weight of evidence. The judgment appealed from (Q. R. 36 S. C. 425) was set aside and a new trial directed, without costs. Canadian Rubber Co. v. Karavokirts, xlv., 303.

36. *Negligence—Electric plant—Defective appliances—Electric shock—Engagement of skilled manager — Contributory negligence, xxxiv., 215.*  
See NEGLIGENCE.

37. *Negligence—Finding of jury—Volenti non fit injuria, xxxv., 452.*  
See NEGLIGENCE.

38. *Negligence—Employer’s Liability Act — Defective ways, works, etc.—Care in moving cars — Contributory negligence, xxxv., 517.*  
See EMPLOYER AND EMPLOYEE.

39. *Employer and employee—Compensation for injury—Contributory negligence — Construction of statute—“Workmen’s Compensation Act”—2 Edw. VII. c. 74, s. 2—Remedial legislation—Refusal of damages—Right of appeal—Evidence, xlv., 106.*  
See WORKMEN’S COMPENSATION ACT.

40. *Negligence—Employer and employee—Dangerous work — Dangerous materials — Risk of employment — Warnings and instructions—Employer’s liability—Damages—Limitation of action — Construction of statute—“Railway Act,” R. S. C. 1906, c. 37, s. 306—“Construction and operation” of railway.]—Where instructions and warning are necessary to enable employees, in circumstances involving danger, to appreciate and protect themselves against the perils incident to the work in which they are engaged, it is the duty of the employer to take reasonable care to see that such instructions and warnings are given. The employer may delegate that duty to competent persons, but, where compensation is sought for injuries sustained by an employee owing to neglect to give such instructions and warning, the onus rests upon the employer to shew that the duty was delegated to a person qualified to discharge it or that other adequate provision was made to ensure protection against unnecessary risk to the employees. The failure of the employer to take reasonable care in the appointment of a properly qualified superintendent, to whom the duty of selecting persons to be employed is entrusted, amounts to negligence involving liability for damages sustained in con-*

sequence of the acts of incompetent servants. *Young v. Hoffman Manufacturing Co.* ((1907) 2 K. B. 646) applied; judgment appealed from (21 Man. R. 121) affirmed. In this case, as the risk incident to the employment of an incompetent foreman was not one of those which are assumed by an employee, the plaintiff was entitled to recover damages at common law. Judgment appealed from (21 Man. R. 121) reversed.—The limitation of one year, in respect of actions to recover compensation for injuries sustained "by reason of the construction or operation" of railways, provided by section 306 of the "Railway Act" (R. S. C. 1906, c. 37), relates only to injuries sustained in the actual construction or operation of a railway, it does not apply to cases where injuries have been sustained by employees engaged in works undertaken by a railway company for procuring or preparing materials which may be necessary for the construction of their railway. *Canadian Northern Railway Co. v. Robinson* ([1911] A. C. 739) applied, judgment appealed from (21 Man. R. 121) affirmed. (Leave to appeal to Privy Council refused, 20th March, 1912.) *Canadian Northern Railway Co. v. Anderson*, xlv., 355.

41. *Negligence—Mining operations—Contract for special works—Engagement by contractor—Control and direction of mine owner—Defective machinery—Notice—Failure to remedy defect—Liability for injury sustained by miner.*—The sinking of a winze in a mine belonging to the defendants was let to contractors who used the hoisting apparatus which the defendants maintained, and operated by their servants, in the excavation, raising and dumping of materials, in working the mine under the direction of their foreman. The winze was to be sunk according to directions from defendants' engineer and the contractors' employees were subject to the approval and direction of the defendants' superintendent, who also fixed the employees' wages and hours of labour. The plaintiff, a miner, was employed by the contractors under these conditions, and was paid by them through the defendants. While at his work in the winze the plaintiff was injured by the fall of a hoisting bucket which happened in consequence of a defect in the hoisting gear, which had been reported to the defendants' master-mechanic and had not been remedied.—*Held*, affirming the judgment appealed from (10 B. C. Rep. 9) Taschereau, C.J., dissenting, that the plaintiff was in common employ with the defendants' servants engaged in the operation of the mine and that even if there was a neglect of the duty imposed by statute, in respect to inspection of the machinery, as the accident occurred in consequence of the negligence of one of his fellow-servants the defendants were excused from liability on the ground of common employment. *Hastings v. Le Roi* No. 2, xxxiv., 177.

(d) *Dangerous Material, Plant, Way and Works.*

42. *Dangerous way, works, etc.—Negligence—Workmen's Compensation Act—Evidence.*—M. proprietor of iron works, had

built an engine in the course of business, and while it was standing on a railway track in the workshop a heavy dray standing near, owing to the horses attached being startled, was thrown against it whereby it was overturned and killed a workman at a bench three or four feet away. On the trial of an action by the administratrix of the workman's estate the jury found that the accident was due to the negligence of M. in not having the engine properly braced.—*Held*, that this finding was justified by the evidence, and M. was liable under the Workmen's Compensation for Injuries Act, R. S. O. [1897] c. 160.—*Held*, also, that the accident did not occur through a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of the employer. *Miller v. King*, xxxiv., 710.

43. *Negligence—Dangerous works—Knowledge of master—Employers' liability.*—T., an employee in a mill, entered the elevator on the second floor, to go down to the ground floor, and while in it the elevator fell to the bottom of the shaft and T. was injured. On the trial of an action for damages it was proved that the elevator was over twenty years old; that it had fallen before on the same day owing to the dropping out of the key of the pinion gear which had been replaced; and the jury found that the vibration and general dilapidation of the running gear caused the key again to fall out occasioning the accident. On appeal from the judgment of the Court of Appeal maintaining the verdict for the plaintiff:—*Held*, Nesbitt, J., dissenting, that the company was negligent for not exercising due care in order to have the elevator in a safe and proper condition for the necessary protection of its employees and was, therefore, liable at common law.—*Held*, per Nesbitt, J., that as the company had employed a competent person to attend to the working of the elevator it was not liable at common law for his negligence, although it was liable under the Employers' Liability Act. *Canada Woollen Mills v. Traplin*, xxxv., 424.

44. *Negligence—Employers' Liability Act—Defect in ways, works, etc.—Care in moving cars—Contributory negligence.*—O., a workman in the employ of the defendant company, was directed by a superior to cut sheet iron and to use the rails of the company's railway track for the purpose. The superior offered to assist, and the two sat on the track facing each other. O. had his back to two cars standing on the track to which, after they had been working for a time, an engine was attached which backed the cars towards them, and O. not hearing or seeing them in time was run over and had his leg cut off. *Held*, that O. did not use reasonable precautions for his own safety in what he knew to be a dangerous situation and could not recover damages for such injury.—*Held*, also, that the employees engaged in moving the cars were under no obligation to see that there was no person on the track before doing so.—*Held*, per Sedgewick, Nesbitt and Killam, JJ., that the want of a place specially provided for cutting the sheet iron was not a defect in

the ways, works, etc., of the company within the meaning of section 3 (a) of the Employers' Liability Act.—*Held, per Girouard and Davies, J.J.*, that if it was, such defect was not the cause of injury to *O. Dominion Iron and Steel Co. v. Oliver*, xxxv., 517.

45. *Negligence—Dangerous works—Ordinary precautions—Employer and employee—Knowledge of risk—Contributory negligence—Voluntary exposure to danger.*—An employer carrying on hazardous works is obliged to take all reasonable precautions, commensurate with the danger of the employment, for the protection of employees, and, where this duty has been neglected, the employer is responsible in damages for injuries sustained by an employee as the direct result of such omission. *Lepitre v. The Citizens' Light and Power Company* (29 Can. S. C. R. 1) referred to by Nesbitt, J.—In such a case it is not sufficient defence to shew that the person injured had knowledge of the risks of his employment, but there must be such knowledge shewn as, under the circumstances, leaves no doubt that the risk was voluntarily incurred and this must be found as a fact. *Montreal Park & Island Railway Co. v. McDougall*, xxxvi., 1.

46. *Mines and mining—Dangerous ways, works, etc.—Inspection of pit—Employer and employee—Negligence—Evidence—Presumption—Reversal of findings of fact.*—While at work in the pit of an asbestos mine the pit foreman was killed by loose rock falling upon him from the wall of the pit. Some time before the accident, after setting off a blast, the wall had been inspected by a competent person, under the personal direction of the pit foreman himself, and the particular spot from which the loose rock fell tested by sounding and prying with a crowbar and judged to be safe. In an action to recover damages the courts below inferred from the evidence that the wall of the pit had been allowed to remain in an unsafe condition, and held the defendants responsible on account of negligence in this respect. On appeal to the Supreme Court of Canada:—*Held*, reversing the judgment appealed from, Girouard, J., dissenting, that, as an inspection had been duly made by competent persons, using their best judgment in the honest discharge of their duty, who reported the wall to be secure, there could be no negligence imputed to the company in that respect, although it afterwards appeared that there had been error in judgment or in the manner in which the inspection was performed.—*Held*, also, Girouard, J., dissenting, that where there is evidence that makes it unnecessary to draw inferences or rely upon presumptions from facts proved, the findings of two courts below, which have acted upon such inferences or presumptions, should be reversed. *Canadian Asbestos Co. v. Girouard*, xxxvi., 13.

47. *Negligence—Dangerous machinery—Want of proper protection—Voluntary exposure—Findings of jury—Charge of judge—Assignment of facts—Practice—Assessment of damages.*—An experienced master mechanic, who was familiar with the

machinery in his charge and had instructions to take the necessary precautions for the protection of dangerous places, in attempting to perform some necessary work, lost his balance and fell upon an unprotected gearing which crushed him to death. In an action by his widow for damages, questions were submitted to the jury without objection by the parties and no objection was raised to the judge's charge, at the trial. The jury were not asked to specify the particular negligence which caused the injury and, by their answers, found that deceased was acting under the instruction and guidance of the company's officers, who were his superiors at the time of the accident; that he had control of the work to be done, but had not full charge, control and management of the machinery generally; that there was fault on the part of the company, and that he had not unnecessarily or negligently assumed any risk.—*Held*, affirming the judgment appealed from (Q. R. 31 S. C. 273), *Davies, J.*, dissenting, that as there was evidence from which the jury could reasonably draw inferences and come to these conclusions, as to the facts, and, as no objection was made to the questions put to them and to the charge of the judge, at the trial, their findings ought not to be interfered with on appeal. *Royal Paper Mills Co. v. Cameron*, xxxix., 365.

48. *Negligence—Dangerous works—Protection of employees—Evidence—Questions for jury—Judge's charge—Findings of fact—Inferences.*—An experienced employee of the defendants was killed by an explosion of illuminating gas while discharging his duties in the meter-room at the defendants' gas works. It was shewn that there might possibly have been an escape of gas from the controllers or other fixtures in the room or in the blow-room adjoining it; that there had been no special precautions by the defendants to detect any such escape of gas that might occasionally happen, and that the meter-room had always been and, at the time of the accident, was lighted by means of open gas jets. There was no exact proof of any particular fault, attributable to the defendants, which could have been the whole cause of the explosion, and its origin and course were not explained. In an action for damages by the widow and representatives of deceased, the jury found that the explosion had resulted from the fault and imprudence of the defendants in lighting the meter-room by open gas jets, and contributory negligence on the part of deceased was negatived.—*Held*, affirming the judgment appealed from (Q. R. 16 K. B. 246) *Davies and MacLennan, J.J.*, dissenting, that, in the circumstances, the jury were justified in finding that there had been such negligence and imprudence on the part of the defendants, in such use of open jets, as would render them responsible for the injury complained of. *Montreal Light, Heat and Power Co. v. Regan*, xl., 580.

49. *Negligence—Employers' Liability Act—Defective ways, works, etc.—Care in moving cars—Contributory negligence*, xxxv., 517.

See EMPLOYER AND EMPLOYEE.

50. *Negligence—Dangerous ways, works, etc.—Findings of jury—New trial, xxxv., 625.*

See EMPLOYER AND EMPLOYEE.

51. *Negligence—Railways—Breach of statutory duty—Common employment—Nova Scotia Railway Act—Employers' Liability Act—Fatal Injuries Act, xxxix., 593.*

See NEGLIGENCE.

52. *Negligence—Duty of employee—Insulation of electric wires—Onus of proof, xl., 181.*

See NEGLIGENCE.

(e) *Defective Construction, Machinery or System.*

53. *Railways—Negligence—Braking apparatus—Railway Act (1888) c. 243—Sand valves—Notice of defects in machinery—Liability of company—Provident society—Contract indemnifying employer—Indemnity and satisfaction—Lord Campbell's Act—Art. 1056 C. C.—Right of action.*—The "sander" and sand-valves of a railway locomotive, which may be used in connection with the brakes in stopping a train, do not constitute part of the "apparatus and arrangements" for applying the brakes to the wheels required by section 243 of the Railway Act of 1888.—Failure to remedy defects in the sand-valves upon notice thereof given at the repair shops, in conformity with the company's rules, is merely the negligence of an employee and not negligence attributable to the company itself; therefore, the company may validly contract with its employees so as to exonerate itself from liability for such negligence and such a contract is a good answer to an action under article 1056 of the Civil Code of Lower Canada. *The Queen v. Grenier* (30 Can. S. C. R. 42) followed.—Girouard, J., dissented, on the ground that the negligence found by the jury was negligence of both the company and its employees. (Reversed by Privy Council; [1906] A. C. 184). *Grand Trunk Railway Co. v. Miller*, xxxiv., 45.

54. *Negligence—Construction of building—Contract for construction—Collapse of wall—Building not completed—Vis major.*—*Held, per Davies and MacLennan, JJ.*—The owner of a building in course of construction owes to those whom he invites into or upon it the duty of using reasonable care and skill in order to have the property and appliances upon it intended for use in the work fit for the purposes they are to be put to. Such duty is not discharged by the employment of a competent architect to prepare plans for the building and a competent contractor to attend to the work of construction.—*Per Idington, J.*—The fact that the building is in an unfinished state may render the obligation of the owner towards a workman employed upon it less onerous in law than it would be in the case of a completed structure.—*Per Duff, J.*—Does the rule governing the duty of occupiers respecting the safe condition of the premises apply without qualification

where the structure is incomplete and the invitee is engaged in completing it or fitting it for its intended use?—*Per Davies and MacLennan, JJ.*—In the present case the failure to guard against the effect of a sudden storm of so violent and extraordinary a character that it could not have been expected was not negligence for which the owner was liable.—Judgment of the Court of Appeal (12 Ont. L. R. 4) and of the Divisional Court (9 Ont. L. R. 57) affirmed, *Idington, J., dubitante. Valiquette v. Fraser*, xxxix., 1.

55. *Negligence—Employer and employee—Duty of employer—Proper system—Common employment.*—An employer is under an obligation to provide safe and proper places in which his employees can do their work and cannot relieve himself of such obligation by delegating the duty to another.—It follows that if an employee is injured through failure of his employer to fulfil such obligation the latter cannot in an action against him for damages, invoke the doctrine of common employment. *Ainslie v. Mining & Railway Co.*, xlii., 420.

56. *Negligence—Dangerous works—Defective system—Liability of incorporated company—Fault of employee.*—An incorporated company carrying on dangerous operations is liable at common law for damages sustained by an employee in consequence of injuries occasioned by the use of a system which failed to provide a safe and proper place in which the employee could do his work; it is not relieved from this responsibility by the fact that the operations were superintended by a competent foreman. *Ainslie Mining and Railway Co. v. McDougall* (42 Can. S. C. R. 420) followed. Judgment appealed from (15 B. C. Rep. 461) affirmed. *Brooks, Scanlon, O'Brien Co. v. Fakkema*, xlv., 412.

57. *Negligence—Common employment—Dangerous works—Safety of workmen—Defective system—Employer's liability—Jury's findings—Sufficiency of answers—Practice—Discontinuance against co-defendant—Release of joint tortfeasor.*—The plaintiff's husband was a linesman employed, on piece-work, by the defendants with a gang of men setting posts in holes previously dug by the company with which they had contracted to erect the posts and prepare them to carry electric wires. A post set in one of these holes was insufficiently sunk or set in position without proper packing to hold it rigidly in the light soil of an embankment. Deceased was sent up the post to attach crossbars which were being hoisted to him by fellow-workmen by means of a block and tackle when, owing to the strain, the post fell causing injuries which resulted in his death. The postholes, as dug by the company, had been accepted by the defendants for the purpose of their contract, but they made no inspection as to their efficiency, nor did they give instructions in regard to necessary precautions to ensure the safety of their employees engaged in setting up the posts and preparing them for wiring.—*Held*, affirming the judgment appealed from (4 West. W. R. 1211; 13 D. L. R. 143; 25 West. L. R. 66): that the

failure to sink the postholes to sufficient depth and obtain proper filling to pack the post, and ensure the safety of the employee required to climb it, was personal negligence on the part of the defendants, the consequences of which they could not avoid by pleading that the accident occurred through the fault of a fellow-servant.—*Per Duff, J.*—In the circumstances of the case the answers by the jury that the defendants had failed to set the posts at sufficient depth and pack them with sufficiently rigid material involved a finding that there was negligence in these respects imputable to the defendants for which they were personally responsible in an action for damages. *Waugh-Milburn Construction Co. v. Slater*, xlviii., 609.

58. *Negligence—Power company—Accident to employee—Injury from supposed dead wire—Duty of employer—Proper system.*—A power company is not liable for injury to an employee from contact with an electric wire represented to be harmless, but which had in some way become charged, when it is shewn that every reasonable precaution had been taken for the safety of employees and there is nothing which proves or from which it can be inferred that the accident was due to the negligence of some person for which the company was responsible.—*Per Idington, J.*, dissenting. — The only reasonable inference from the evidence is that the accident was caused by negligence; therefore, as decided by *McArthur v. Dominion Cartridge Co.* ([1905] A. C. 72) and *Toronto Railway Co. v. Fleming* (47 Can. S. C. R. 612), it is not necessary to determine precisely how such negligence produced the injury complained of. There was also some evidence of a want of a proper system and of failure to employ competent persons to superintend the work.—Judgment of the Appellate Division (32 Ont. L. R. 612) reversed, *Fitzpatrick, C.J.*, and *Idington, J.*, dissenting. *Toronto Power Co. v. Raynor*, li., 490.

(f) *Other Cases.*

59. *Negligence—Dangerous operations—Defective system—Findings of fact—Common fault*, xxxix., 332.

See NEGLIGENCE.

60. *Negligence of fellow servant—Operation of railway—Defective switch—Public work—Tort—Liability of Crown—Right of action—Eschequer Court Act*, xl., 229.

See NEGLIGENCE.

61. *Negligence—Builders and contractors—Carelessness of workmen—Liability of employer—Dangerous appliances—Electric wires—Volunteer—New trial*, xlii., 224.

See NEGLIGENCE.

62. *Railway accident—Operating rules—Special instructions—Defective system—Common law negligence—Workmen's Compensation Act. Fralick v. G. T. Ry. Co.*, xliii., 494.

See NEGLIGENCE.

63. *Negligence—Carriers—Operation of railway—Defective system—Gratuitous passenger—Free pass—Limitation of liability—Fellow servant—Evidence—Onus of proof*, xlv, 263.

See NEGLIGENCE.

64. *Negligence—Accident in mine—Fall of rock—Covering of shaft—Fellow servant. Temiskaming Mining Co. v. Siven*, xlvi., 643.

65. *Negligence—Dangerous works—Defective system—Careless management—Fault of fellow servant—Efficient superintendence—Employer's duty—Evidence—Action—Liability at common law—"B.C. Employers' Liability Act"—Pleading—Practice—Charge to jury—New trial*, l., 39.

See NEGLIGENCE.

66. *Evidence—Negligence—Defective system—Injury to employee—Verdict—Practice—Exception to judge's charge—New points on appeal—New trial*, li., 39.

See NEGLIGENCE.

## MAXIMS.

See LEGAL MAXIMS.

## MECHANICS' LIEN.

*Completion of contract—Time for filing claim—Construction of statute—R. S. M. (1902) c. 110, ss. 20, 36—Right of appeal*, xxxix., 258. *Marshall Brick Co. v. York Farmers' Col. Co.*, liv., 569.

See LIEN.

## MEDICAL PROFESSION.

*Constitutional law—British North America Act, 1867—Provincial legislative jurisdiction—"Alberta Act," 4 & 5 Edw. VII. c. 3 (D.)—Con. Ord. N. W. T. (1898) c. 52—6 Edw. VII. c. 28 (Alta.)—Practising without license—Criminal law—Practice—Special leave to appeal—R. S. C. (1906) c. 139, s. 37, (c), xxxviii., 620.*

See APPEAL; CONSTITUTIONAL LAW.

## MERCHANT SHIPPING.

*Charter party—Time limited for loading—Ship loading at port—Custom—Obligation of charterer*, xxxiv., 578.

See SHIPS AND SHIPPING.

AND see ADMIRALTY LAW.

## METES AND BOUNDS.

*Construction of statute—Toll-bridge—Franchise—Exclusive limits—Measurement of distance—Encroachment—58 Geo. III. c. 20 (L.C.)*, xxxvi., 224.

See STATUTE.



### MILITIA.

1. *Municipal corporation — Aid to civil power—Pay of militia—Legislative jurisdiction—Civil rights and obligations.*—The Supreme Court dismissed an appeal taken on the grounds (1) that the Parliament of Canada had no constitutional rights, in the Militia Act, to impose civil obligations upon any provincial municipality for the payment of the troops called out in aid of the civil power for the suppression of riots, and (2) that as the riots were confined to the harbour of Montreal, controlled by Dominion commissioners and outside the corporation limits, the city was not liable, under the statute even should it be held constitutional. *City of Montreal v. Gordon*, *Cout. Cas.* 343.

2. *"Militia Act" — R. S. C. [1896] c. 41 — "Senior officer . . . present at any locality" — Military district — Right of action — 4 Edw. VII. c. 23, s. 86—Statute—Retrospective effect.*—By s. 16 of the "Militia Act" (R. S. C. [1896] c. 41), Canada is divided into military districts of which the Province of Nova Scotia is one. By section 34 "the senior officer present at any locality" may, on requisition from three justices of the peace, call out the troops in aid of the civil power wherever a riot or disturbance of the peace has occurred or is anticipated.—*Held*, Brodeur, J., dissenting, that the "senior officer present at any locality" is not necessarily the senior officer of a corps stationed at the place where the riot occurs or is likely to occur. The justices, in their discretion, may requisition the senior officer of any available force.—By s. 34, s-s. 6, of the above Act, the officer commanding the troops so called out may, in his own name, take action against the municipality in which the riot occurred to recover the amount of the expenses thereby incurred which are to be paid to His Majesty when recovered. By 4 Edw. VII. c. 23, s. 86, this right of action was vested in His Majesty.—*Held*, that the latter being a procedure Act is retrospective and an action was properly brought in the name of the Attorney-General of Canada to recover the expenses of calling out the troops on the occasion of an industrial strike in the City of Sydney, part of which expenses were incurred before, and part after, the last mentioned Act came into force.—*Judgment* appealed from (46 N. S. Rep. 527), reversed, Brodeur, J., dissenting. *Attorney-General of Canada v. City of Sydney*, *xlix.*, 148.

### MINES AND MINING.

1. *Title to land — Railway aid — Land grant—Crown patents — Dominion Lands Regulations—Reservation of minerals—53 Vict. c. 4—R. S. C. c. 54—Construction of statute—Free grants—Parliamentary contract.*—The Act, 53 Vict. c. 4 (D.), in 1890, granted, as a subsidy in aid of the construction of the railway, certain wild lands of the Crown in the North-West Territories of Canada. When the lands had been earned, by the construction of the railway, the Government of Canada refused to issue patents granting the lands to the rail-

way company or to the land company to which their rights had been assigned, except subject to the reservation of all mines and minerals and the right to work the same.—*Held*, per Taschereau, C.J., and Girouard, J.—That the Dominion Lands Regulations of 1889, paragraph 8, providing for reservations in land grants, did not apply to the lands given as subsidy, but exclusively to grants of land made, in ordinary course, under the general laws governing the sale, use, occupation, and settlement of Crown lands, which, in regard to this subsidy, had been overridden by the Parliamentary grant made in virtue of a contract between the Crown and the railway company; that the railway company's title was perfect without the issue of a patent, which could avail only as evidence of the allotment of particular lands, and there could be no express or implied derogation from the free grant under the statute.—(This view of the case was affirmed, on appeal, by the Privy Council, ([1904] A. C. 765).—*Held*, per Davies and Armour, JJ.—That it must be assumed that the lands to be given as subsidy were to be subject to the Dominion Lands Regulations of 1889, notwithstanding that the Act granting the subsidy declared that the lands to be earned by the railway company should be "free grants." — (Reversed by the Privy Council, *ubi sup.*).—The judges being thus equally divided in opinion, the appeal stood dismissed with costs, and the Exchequer Court judgment stood affirmed. *Calgary and Edmonton Ry. Co. and Calgary and Edmonton Land Co. v. The King*, *Cout. Cas.* 271.

2. *Trespass—Boundary—Hill-side claim—Jurisdiction — Appeal per saltum—Practice.*—The principal dispute was as to the location of a hill-side claim under the mining regulations of 1898. During the hearing, on suggestion by the court, and consent of parties, leave to appeal *per saltum* was granted, *nunc pro tunc*, without costs, as there was some doubt as to the jurisdiction to hear the appeal direct from the decision of the trial court. A cross-appeal by the plaintiffs was abandoned at the hearing.—The appeal was dismissed with costs, Armour, J., dissenting. *Trabold v. Miller*, *Cout. Cas.* 281.

3. *Mining plans and surveys—Negligence of higher officials—Duty of absent owners—Operation of metalliferous mines—Common law liability—Employers' Liability Act—R. S. B. C. c. 69, s. 3.*—The provisions of the third section of the "Inspection of Metalliferous Mines Act, 1897," of British Columbia, do not impose upon an absent mine-owner the absolute duty of ascertaining that the plans for the working of the mine are accurate and sufficient, and, unless the mine-owner is actually aware of inaccuracy or imperfections in such plans, he cannot be held responsible for the result of an accident occurring in consequence of the neglect of the proper officials to plat the plans up to date according to surveys.—The defendant company acquired a mine which had been previously worked by another company and provided a proper system of surveys and operation and employed competent superintendents and surveyors for the efficient carrying out of their system. An accident



occurred in consequence of neglect to plat the working plans according to surveys made up to date, the inaccurate plans misleading the superintendent so that he ordered works to be carried out without sufficient information as to the situation of openings made or taking the necessary precautions to secure the safety of the men in the working places. The engineers who had made the surveys and omitted platting the information on the plans had left the employ of the company prior to the engagement of the deceased who was killed in the accident.—*Held*, Taschereau, C.J., *contra*, that the employers not being charged with knowledge of the neglect of their officers to carry out the efficient system provided for the operation of their mine, could not be held responsible for the consequences of failure to provide complete and accurate plans of the mine. *Hosking v. Le Roi*, No. 2, xxxiv., 244.

AND *see* EMPLOYER AND EMPLOYEE.

4. *Mistake — Misrepresentation — Lay agreement—Mortgage — Execution of documents by illiterate persons—Evidence.*—The plaintiffs leased mining rights under lay agreement to the defendants providing for division of profits and payment of an existing debt and for advances to be made out of the clean-ups on dates therein mentioned, a mortgage to be given on the dumps to secure the advances. Owing to some inaccuracy in the lay agreement a new lay agreement was executed at the same time as the mortgage. The mortgage provided for payments at earlier dates than the lay agreement, and was not read over to the defendants, who were unable to read and had requested that it should be read over to them. In an action on the mortgage, evidence was given that a document signed on that date was represented to be in terms similar to the lay agreement as first drawn but it might, possibly, have been the new lay agreement that was thus spoken of, and it appeared that, although the defendants became aware of the difference in the terms of payment mentioned in the mortgage and complained of this to the plaintiffs' agent, they continued to work on the lay, assuming that the altered terms of payment would not be insisted upon. — *Held*, reversing the judgment appealed from, Sedgewick and Killam, JJ., dissenting, that there was not sufficient evidence of acquiescence in the altered terms of payment and that, as the evidence shewed that defendants were illiterate and the mortgage had not been read over to them on request, and they had been misled as to its contents, they could not be bound by its altered provisions as to the payments. *Le-tourneau v. Carboneau*, xxxv., 110.

5. *Location of claim—Planting of posts—Formalities required by statute—R. S. B. C. (1897) c. 135, s. 16—61 Vict. c. 33, s. 4 (B.C.)*—The action was on an adverse claim to determine the title to two overlapping locations. At the trial a judgment was entered for the defendant (10 B. C. Rep. 123) which was affirmed by the full court on appeal. The principal questions raised upon appeal to the Supreme Court of Canada were, first:—After "No. 1 post" has

been properly planted on a claim may "No. 2 post" be placed in ice or shifting ground, such as a glacier, and, secondly: Whether there was sufficient proof of the defendant's presence on the senior claim as located at the time of the overlocation by the plaintiff. The Supreme Court of Canada dismissed the appeal with costs. *Sanberg v. Ferguson*, xxxv., 476.

6. *Mining lease — Prospector's license — Testing machinery—Anneauation to freehold—Trade fixtures—Fi. fa. de bonis—Sale under execution.*—The licensees of a mining area in Nova Scotia, erected a stamp mill on wild lands of the Crown for the purpose of testing ores. All the various parts of the mill were placed in position, either resting by their own weight on the soil or steadied by bolts, and the whole installation could be removed without injury to the freehold.—*Held*, that the mill was a chattel or, at any rate, a trade fixture removable by the licensees during the tenure of their lease or license and, consequently, it was subject to seizure and sale under an execution against goods. Judgment appealed from (36 N. S. Rep. 395) affirmed, but for different reasons. (Leave to appeal to Privy Council refused, 17th May, 1905.) *Liscombe Falls Gold Mining Co. v. Bishop*, xxxv., 539.

7. *Mines and mining — Dangerous ways, works, etc.—Inspection of pit—Employer and employee — Negligence — Evidence — Presumptions—Reversal of findings of fact.*—While at work in the pit of an asbestos mine the pit foreman was killed by loose rock falling upon him from the wall of the pit. Some time before the accident, after setting off a blast, the wall had been inspected by a competent person, under the personal direction of the pit foreman himself, and the particular spot from which the loose rock fell tested by sounding and prying with a crowbar and judged to be safe. In an action to recover damages the courts below inferred from the evidence that the wall of the pit had been allowed to remain in an unsafe condition, and held the defendants responsible on account of negligence in this respect. On appeal to the Supreme Court of Canada: — *Held*, reversing the judgment appealed from, Girouard, J., dissenting, that, as an inspection had been duly made by competent persons, using their best judgment in the honest discharge of their duty, who reported the wall to be secure, there could be no negligence imputed to the company in that respect, although it afterwards appeared that there had been error in judgment or in the manner in which the inspection was performed. — *Held*, also, Girouard, J., dissenting, that where there is evidence that makes it unnecessary to draw inferences or rely upon presumptions from facts proved, the findings of two courts below, which have acted upon such inferences or presumptions, should be reversed. *Canadian Asbestos Co. v. Girard*, xxxvi., 13.

8. *New trial — Contradictory evidence — Wilful trespass—Rule in assessing damages —Practice—Adding party.*—In an action for entry upon a placer mining claim and

removing valuable gold-bearing gravel and dirt, the trial judge found the defendants guilty of gross carelessness in their work, held that they should be accounted wilful trespassers, and referred the cause to the clerk of the court to assess the damages. The referee adopted the severer rule applicable in cases of fraud in assessing the damages. The Territorial Court *in banco* reversed the trial judge in his findings of fact upon the evidence.—*Held*, reversing the judgment appealed from, that the trial judge's findings should be sustained with a slight variation, but that the referee had erred in adopting the severer rule against the defendants in assessing the damages, and that his report should be amended in view of such error.—*Seemle*, that the record and pleadings should be amended by adding the plaintiff's partner as co-plaintiff. (Leave for an appeal to the Privy Council refused, 4th Aug., 1905). *Kirkpatrick v. McNamee*, xxxvi., 152.

9. *Mining law — Staking claim — Initial post — Occupied ground — Curative provision*—*R. S. B. C. c. 135, s. 16—61 Vict. c. 33, s. 4 (B.C.)*.—In staking out a claim under the mineral Acts of British Columbia the fact that initial post No. 1 is placed on ground previously granted by the Crown under said Acts does not necessarily invalidate the claim, and s.-s. (g) of s. 4 of 61 Vict. c. 33 amending the "Mineral Act" (*R. S. B. C. c. 135*) may be relied on to cure the defect. *Madden v. Connell* (30 Can. S. C. R. 109) distinguished. Judgment appealed from (11 B. C. Rep. 37) affirmed, *Idington, J.*, dissenting. *Clark v. Dockstader*, xxxvi., 622.

10. *Equitable mortgage—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgagee — Registry laws — Priority—Actual notice — Lien for Crown dues paid as rent—C.S.N.B. c. 30, s. 139.*—The judgment appealed from (37 N. B. Rep. 140; 3 N. B. Eq. 28) held that mining leases of lands in the Province of New Brunswick and of the minerals therein, issued by the Crown to the appellant subsequent to a mortgage executed by it in the State of New York in favour of the respondent, a company incorporated under the laws of that state, which do not reserve the minerals to the state, were subject to the mortgage; that a judgment creditor of the mortgagor (who purchased the leases at a sheriff's sale in execution of his own judgment and afterwards obtained new leases in his own name from the Crown), took the new leases subject to the mortgage; that the mortgage, though not registered under the "General Mining Act," *C. S. N. B. (1903) c. 30, s. 139*, was not void as against a judgment creditor who had actual notice of the mortgage, and whose judgment was not registered under that section at the time of the commencement of the suit, and that the judgment creditor was not entitled to a prior lien for rent paid to the Crown on the licenses declared to be held in trust for the mortgagee. An appeal to the Supreme Court of Canada was dismissed, *MacLennan, J.*, dissenting. *Mineral Products Co. v. Continental Trust Co.*, xxxvii., 517.

11. *Dominion mining regulations — Hydraulic mining—Placer mining — Lease — Water-grant — Conditions of grant — User of flowing waters—Diversion of watercourse —Dams and flumes—Construction of deed—Riparian rights—Priority of right—Injunction.*—An hydraulic mining lease, granted in 1900, under the Dominion Mining Regulations, for a location extending along both banks of Hunker Creek, in the Yukon Territory, included a point at which, in 1904, the plaintiff acquired the right to divert a portion of the waters of the creek, subject to then existing rights, for working his placer mining claims adjacent thereto.—*Held*, that, under a proper construction of the tenth clause of the hydraulic mining regulations, waters flowing through or past the location were subject to be dealt with under the regulations of August, 1898; that the hydraulic grant conferred no prior privileges or paramount riparian rights upon the lessee, and that the grant to the plaintiff was of a substantial user of the waters which was not subject to the common law rights of riparian owners and entitled him, by all reasonable means necessary for the purpose of working his placer claims, to divert the portion of the flowing waters so acquired by him without interference on the part of the lessee of the hydraulic privileges. *Klondyke Government Concession v. McDonald*, xxxviii., 79.

12. *Placer mining — Disputed title—Trespass pending litigation—Colour of right—Invasion of claim — Adverse acts—Sinister intention—Conversion — Blending materials —Accounts—Assessment of damages—Mitigating circumstances — Compensation for necessary expenses — Estoppel—Standing-by—Acquiescence.*—After a favourable judgment by the Gold Commissioner in respect to the boundary between contiguous placer mining locations and while an appeal therefrom was pending, the defendants, with the knowledge of the plaintiffs, entered upon the location and removed a quantity of auriferous material from the disputed and undisputed portions thereof, intermixed the products without keeping any account of the quantities taken from these portions respectively and appropriated the gold recovered from the whole mass.—In an action for damages, taken subsequently, the plaintiffs recovered for the total value of the gold estimated to have been taken from the disputed portion of the claim, without deduction of the necessary expenses of workings and winning the gold. — *Held*, affirming the judgment appealed from, *Davies, J.*, dissenting, that a correct appreciation of the evidence disclosed a sinister intention on the part of the defendants, that they had deliberately blended the materials taken from both parts of the location, converted the whole mass to their own use and thereby destroyed the means of ascertaining the respective quantities so taken and the proportionate expense of recovering the precious metal therefrom, and that, consequently, they were liable in damages for the total value of so much of the intermixed products as were not strictly proved to have come from the undisputed portion of the location.—*Quere*.—Does the English rule governing the assessment of damages in respect of trespasses in coal

mines supply a method of assessment applicable in its entirety to placer mining locations? *Lamb v. Kincaid*, xxxviii., 516.

13. *Subaqueous mining—Crown grants—Dredging lease—Breach of contract—Subsequent issue of placer mining licenses—Damages—Pleading and practice—Statement of claim—Demurrer—Cause of action.*]—A statement of claim which alleges that the Crown, after granting a lease of areas for subaqueous mining and while that lease was in force, in derogation of the rights of the lessee to peaceable enjoyment thereof, interfered with the rights vested in him by transferring the leased area to placer miners who were put in possession of them by the Crown to his detriment, discloses a sufficient cause of action in support of a petition of right for the recovery of damages claimed in consequence of such subsequent grants.—Judgment appealed from (10 Ex. C. R. 390) reversed, *Davies and Idington, JJ.*, dissenting.—*Davies, J.*, dissented on the ground that there was no sufficient allegation in the petition either of interference with the submerged beds or bars of the stream, which alone were included in the dredging lease, or of such active interference by the Crown as would justify an action. (Appeal to Privy Council dismissed, 10th July, 1908.) *McLean v. The King*, xxxviii., 542.

14. *Location of mineral claims—Construction of contract—Fictitious signature—Unauthorized use of a firm name—Transfer by bare trustee—Statute of Frauds—R. S. B. C. (1897), c. 135, ss. 50, 130.*]—Where B., acting as principal and for himself only, signed a document containing the following provision: "We hereby agree to give F. one-half ( $\frac{1}{2}$ ) non-assessable interest in the following claims" (describing three located mineral claims), in the name of "J. B. & Sons," without authority from the locatees of two of the claims which had been staked in the names of other persons, and without their knowledge or consent:—*Held*, affirming the judgment appealed from (13 B. C. Rep. 20) that, although no such firm existed and notwithstanding that two of the claims had been located in the names of the other persons, who, while disclaiming any interest therein, had afterwards transferred them to B., the latter was personally bound by the agreement in respect to all three claims and F. was entitled to the half interest therein.—A subsequent agreement for the reduction of the interest of F. from one-half to one-fifth, which had been drawn up in writing, but was not signed by F., was held void under the Statute of Frauds. *McMeakin v. Furry*, xxxix., 378.

15. *Title to land—Trust—Interest in mining areas—Sale by trustee—Recovery of proceeds of sale—Agreement in writing—Statute of Frauds—R. S. N. S. (1900), c. 141, ss. 4 and 7—Part performance—Acts referable to contract—Evidence—Pleading.*]—M. transferred to C. a portion of an interest in mining areas which he claimed was held in trust for him by the defendant. In an action by C. claiming a share in the proceeds of the sale thereof, no deed or note in writing of the assignment was produced as required by the fourth section of the Nova

Scotia Statute of Frauds, and there was no evidence that, prior to the assignment, there had been such a conversion of the interest as would take away its character as real estate.—*Held*, that the subject of the alleged assignment was an interest in lands within the meaning of the Statute of Frauds and not merely an interest in the proceeds of the sale as distinguished from an interest in the areas themselves, and, consequently, that the plaintiff could not recover on account of failure to comply with that statute.—It was shown that, on settling with interested parties, the defendant had given M. a bond for \$500, as his share of what he had received on the sale of the areas.—*Held*, that, as this Act was not unequivocally and in its own nature referable to some dealing with the mining areas alleged to have been the subject of the agreement, it could not have the effect of taking the case out of the operation of the Statute of Frauds. *Maddison v. Alderson* (8 App. Cas. 467) referred to.—Judgment appealed from (41 N. S. Rep. 110) reversed. *McNeil v. Corbett*, xxxix., 608.

16. *Hydraulic regulations—Application for mining location—Duties imposed on Minister of the Interior—Status of applicant—Vested rights—Contract binding on the Crown.*]—Under the hydraulic regulations for the disposal of mining locations in the Yukon Territory, enacted by the Governor-General in Council on 3rd December, 1898, as amended by subsequent regulations and by the order in council of 2nd February, 1904, the Minister of the Interior is charged with the duty not only of pronouncing on the question whether or not the locations applied for should be reserved for disposal under such hydraulic regulations, but also of determining the priority of rival claimants, the extent of the locations and the conditions of any lease to be granted.—Until the minister has given a decision favourable to an applicant, there can be no implied contract binding upon the Crown in respect to the location applied for, and the mere filing of an application for an hydraulic lease confers no status or prior rights on the applicant in respect to the ground therein described. *Smith v. The King; Fooks v. The King*, xl., 258.

17. *Mining regulations—Hydraulic lease—Breach of conditions—Construction of deed—Forfeiture—Right of lessees—Procedure on inquiry—Judicial duties of arbiter.*]—Under a condition for defeasance in a lease of a mining location, made by the Crown in virtue of the hydraulic mining regulations of 3rd December, 1898, a provision that the Minister of the Interior is to be the "sole and final judge" of the fact of default by the lessee does not entitle the Crown to cancel the lease and re-enter until the fact of such default has been determined by the Minister in the exercise of the functions vested in him after an inquiry of a judicial nature in which an opportunity has been afforded to all parties interested of knowing and being heard in respect to the matters alleged against them in such investigation.—*Quere, per Idington, J.*—Was there not sufficient evidence in the case to shew that there had been no such breach of the conditions as

could work a forfeiture of the lease? (Leave to appeal to Privy Council was refused, 18th July, 1908.) *Bonanza Creek Hydraulic Concession v. The King*, xl, 281.

18. *Mining regulations — Hydraulic lease — Breach of conditions — Construction of deed — Forfeiture — Right of lessees — Procedure on inquiry — Judicial duties of arbiter.* — Under circumstances similar to those involved on the appeal in the case of *The Bonanza Creek Hydraulic Concession v. The King* (40 Can. S. C. R. 281) this appeal was allowed with costs for the reason that there could be no right of cancellation of the lease or re-entry by the Crown until default by the lessees had been established upon an investigation of a judicial nature by the Minister of the Interior in the exercise of the functions vested in him by the hydraulic regulations and the terms of the lease. — *Per* Idington, J. — The facts disclosed by the evidence could not justify the cancellation of the lease or re-entry for breach of the conditions thereof. (Leave to appeal to Privy Council was refused, 18th July, 1908.) *Klondyke Government Concession v. The King*, xl, 294.

19. *Crown lands — Holders of location ticket — Prior right to mining rights — Privilege reserved to "proprietor of the soil" — Construction of statute — R. S. Q. (1888) ss. 1269, 1440, 1441; 55 & 56 Vict. c. 20 (Que.)* — The expression "proprietor of the soil" in section 1441 of the Revised Statutes of Quebec, 1888, as amended by 55 & 56 Vict. c. 20, read in connection with s. 1269, Rev. Stats. Que., 1888, is not intended to designate the holder of a location ticket, and, consequently, persons holding Crown lands, merely as locatees, have no vested preferential rights to grants from the Crown of the mining rights therein, under ss. 1440 and 1441 of the Revised Statutes of Quebec, 1888, as amended by the "Act to amend and consolidate the Mining Law," 55 & 56 Vict. c. 20 (Que.). *Green v. Blackburn*, xl, 647.

20. *B. C. "Mineral Act, 1891" — Apex location — Exploitation of vein — Continuity — Extralateral workings — Encroachment — Trespass — Onus of proof.* — To justify an encroachment in the exercise of the right, under the British Columbia "Mineral Act, 1891" (54 Vict. c. 25) of following and exploiting a mineral vein extralaterally beyond the vertical plane of the side-line of the location within which it has its apex, the owner of the apex must prove the identity and continuity of the vein from such apex to his extralateral workings. In the present case, as the appellants failed to discharge the onus thus resting upon them, the judgment appealed from (13 B. C. Rep. 234) was affirmed. *B. N. White Co. v. Star Mining & Milling Co.*, xli, 377.

21. *Mining agreement — Interest in ore to be mined — After-acquired chattels — Transfer and delivery — Registration — B. C. "Bills of Sale Act," 1905 — Construction of statute.* — An agreement creating an equitable interest in ore to be mined is not an instrument requiring registration under the provisions of the British Columbia "Bills of Sale Act," 5 Edw. VII. c. 8. — Judgment

appealed from (14 B. C. Rep. 183) affirmed. *Traves v. Forrest*, xlii, 514.

22. *Mining Act — Grant of mining land — Reservation of pine timber — Right of grantee to cut for special purposes — Trespass — Cutting pine — Right of action.* — The Ontario Mining Act, R. S. O. [1897] c. 36 as amended by 62 Vict. c. 10, s. 10, provides in s. 39, s.-s. 1, that "the patents for all Crown lands sold or granted as mining lands shall contain a reservation of all pine trees standing or being on the lands, which pine trees shall continue to be the property of Her Majesty, and any person holding a license to cut timber or saw logs on such lands may at all times, during the continuance of the license, enter upon the lands and cut and remove such trees and make all necessary roads for that purpose." By the other provisions of the section, the patentee may cut and use pine required for necessary building, fencing and fuel and other mining purposes and remove and dispose of what is required to clear the land for cultivation, but for any cut except for such building, fencing and other mining purposes he shall pay Crown dues. — *Held*, Idington and Duff, JJ., dissenting, that a patentee and a lessee of mining lands who had taken possession thereof, but were not at the time of the trespasses complained of in actual physical possession, have, notwithstanding such reservation, or exception, such possession of the pine trees, or such an interest therein, as would entitle them to maintain actions against a trespasser cutting and removing them from the land. *Glenwood Lumber Co. v. Phillips* ([1904] A. C. 405) followed; *Casselman v. Hersey* (32 U. C. Q. B. 333) discussed. — In this case the defendants cut and removed the pine timber from plaintiffs' mining lands without license from the Crown, but claimed that they subsequently acquired the Crown's title to it and should be regarded as licensees from the beginning. — *Held*, Idington and Duff, JJ., dissenting, that assuming that the Crown could after the trees had been cut and removed, take away by its act the plaintiffs' vested right of action the evidence showed that defendants were cutting on adjoining Crown land as well as on plaintiff's locations and did not clearly establish that any title acquired by defendants included what was cut on the latter. *National Trust Co. Limited v. Miller; Schmidt v. Miller*, xlvi, 45.

23. *Removal of ore — Boundary — Copy of plan — Evidence — Falsa demonstratio. Nova Scotia Steel Co. v. Bartlett*, Cout. Cas. 298.

24. *Placer mining regulations — Staking claims — Overlapping locations — Abandoned claims. Miller v. Campbell*, Cout. Cas. 280.

25. *Negligence — Mining operations — Contract for special works — Engagement by contractor — Control and direction of mine — Defective machinery — Notice — Failure to remedy defect — Liability for injury to miner*, xxxiv, 177.

See NEGLIGENCE.

26. *Appeal — Discretion of court below — Amendment — Formal judgment — Mining regulations*, xxxiv, 279.

See APPEAL.

27. *Commissioner of Mines—Appeal from decision—Quashing appeal—Final judgment—Estoppel—Mandamus—Appropriate remedy*, xxxiv., 328.

See APPEAL.

28. *Practice—Pleading—Condition precedent—Construction of statute—59 Vict. c. 62, ss. 9, 25 (B.C.)—Mineral claim—Expropriation—Watercourses—Waterworks—Trespass—Damages—Waiver—Injunction*, xxxv., 309.

See EXPROPRIATION.

29. *Title to land—Sale of mineral rights—Litigious rights—Champerty*, xxxv., 327.

See TITLE TO LAND.

30. *Crown lands—Mining lease—Trespass—Conversion—Title to land—Evidence—Description in grant—Plan of survey—Certified copy*, xxxv., 527.

See TITLE TO LAND.

31. *Vendor and purchaser—Sale of mining locations—Consideration in lump sum—Separate valuations—Misrepresentation—Deceit and fraud—Measure of damages*, xxxvi., 279.

See VENDOR AND PURCHASER.

32. *Title to land—Plan of survey—Evidence—Onus of proof—Findings of jury—Error—New trial*, xxxviii., 336.

See NEW TRIAL.

33. *Negligence—Accident in mine—Fall of rock—Covering of shaft—Fellow servant, Temiskaming Mining Co. v. Siven*, xlvi., 643.

34. *Company—Subscription for shares—Misrepresentation—Action for calls—Charge to jury—Misdirection—Objection—Pleading. Boeck v. Gowganda Mines*, xlvi., 645.

35. *Powers of company—Sale of shares—Security by mortgage—Subsequent creditor—Status—Jurisdiction—Foreclosure. Hughes v. No. Elec. & Mfg. Co.*, l., 626.

See COMPANY.

36. *Dead of land—Reservation—Right of passage—Changed conditions—Object of conveyance. Can. Cement v. Fitzgerald*, liii., 263.

See EASEMENT.

## MINISTER OF THE CROWN.

1. *B. C. "Crown Procedure Act"—Refusal to submit petition of right—Tort—Right of action—Damages*, xxxix., 202.

See ACTION.

2. *Mines and minerals—Hydraulic regulations—Application for mining location—Duties imposed on Minister of the Interior—Status of applicant—Vested rights—Contract binding on the Crown*, xl., 258.

See MINES AND MINING.

3. *Mining regulations—Hydraulic lease—Breach of conditions—Construction of deed*

—*Forfeiture—Right of lessees—Procedure on inquiry—Judicial duties of arbiter*, xl., 281, 294.

See MINES AND MINING.

## MINORITY.

1. *Action against minor—Exception of minority—Practice—Irregularity in procedure—Waiver after majority—Relitigation—Prejudice—Nullity—Review by appellate court—Arts. 246, 250, 304, 320, 323, 324, 987 C. C.—Arts. 78, 174, 176, 1039, 1263 C. P. Q.]—An action for damages *ex delicto* was instituted against a minor without impleading a tutor to assist him, and the exception of minority was set up. Proceedings taken by the plaintiff to have a tutor appointed had not been concluded when the defendant became of age and an order, which was disregarded by the defendant, was then obtained requiring him to plead to the action. On a summons for his examination *sur faits et articles*, defendant appeared and certain objections to questions were made by counsel on his behalf. On an inscription for judgment *ex parte*, subsequently filed, judgment was entered against him.—*Held, per Idington, Duff and Brodeur, J.J.*, that irregularities of procedure in a court of first instance are matters to be dealt with by the judges of that court and, unless some prejudice has resulted therefrom, the discretion exercised by such judges in respect thereto ought not to be disturbed by an appellate court.—*Per Idington, Duff and Brodeur, J.J., Fitzpatrick, C.J., and Anglin, J., contra.*—In the circumstances the defendant suffered no prejudice within the meaning of article 174 of the Code of Civil Procedure. The exception resulting from minority is relative merely and may be waived by a defendant, sued during his minority, without the necessary assistance required by law, appearing after attaining majority and taking objections to subsequent proceedings in the action. He cannot, thereafter, complain of being treated as a defendant properly cited before the court nor of a judgment *ex parte* entered against him therein.—*Per Idington, Duff and Brodeur, J.J.*—Irregularity in inscription for judgment *ex parte* is not a reason for the dismissal of an action.—*Per Fitzpatrick, C.J., and Anglin, J., dissenting.*—The fact that the defendant was a minor at the time of the institution and service of the action and that no tutor or curator was made a party to the suit for the purpose of assisting him therein constitutes an absolute bar to the action which could not be validated in consequence of further proceedings therein after the defendant attained the age of majority. The action was a nullity *ab initio* and, consequently, the defendant suffered prejudice within the meaning of art. 174 C. P. Q. *Larue v. Poulin* (9 Que. P. R. 157); *Fairbanks v. Howley* (10 Que. P. R. 72), and *Robert v. Dufresne* (7 Que. P. R. 226), referred to. *Sering v. Levine*, xlvii., 103.*

2. *Contract—Promissory note—Security for debt—Husband and wife—Parent and child—Pressure*, xxxv., 393.

See CONTRACT; PARENT AND CHILD.

**MISDIRECTION.**

*Operation of railway—Yard siding—Stopping station platform—Private passage—Dangerous way—Negligence—Procedure at trial—Objections to charge to jury—Practice.*—Where, on a specific objection to his charge, the trial judge recalled the jury and directed them as requested, the contention that the directions thus given were erroneous should not be entertained on appeal. (Leave to appeal to Privy Council was refused.) *Canadian Pacific Ry. Co. v. Hansen*, xl., 194.

AND see JURY; NEW TRIAL.

**MISREPRESENTATION.**

*Sale of land—Deceit—Contract—Warranty.* *Bridgeman v. Hepburn*, xlii., 228.

See SALE OF LAND.

See FRAUD.

**MISTAKE.**

1. *Agreement for delivery of bonds—Mistake in deed.*—In the action by the corporation against the railway company, a reference was made to the master to decide the ownership of certain bonds of which Burke, one of the defendants, had become purchaser at a judicial sale in the course of litigation between the appellants and the respondent. They had executed an agreement providing that, on payment of \$5,000, the price of adjudication, and a judgment for \$67,000 against Ritchie, the bonds should be transferred to him. Ritchie contended that only \$5,000 was to be paid, and that after he had signed the agreement he discovered the mistake in its provision for payment of the larger sum. The master decided that Ritchie was entitled to the bonds upon payment of the smaller sum. His ruling was reversed by Meredith, C.J., but was restored by the judgment of the Court of Appeal.—*Held*, reversing the judgment appealed from, that upon a correct view of the evidence, the judgment of Meredith, C.J., was right and should be restored. *Burke v. Ritchie*, *Cout. Cas.* 365.

2. *Crown—Banks and banking—Forged cheques—Payment—Representation by drawee—Implied guarantee—Estoppel—Acknowledgment of bank statement—Liability of indorsers—Mistake—Action—Money had and received.*—A clerk in a department of the Government of Canada, whose duty was to examine and check its account with the Bank of Montreal, forged departmental cheques and deposited them to his credit in other banks. The forgeries were not discovered until some months after these cheques had been paid by the drawee to the several other banks, on presentation, and charged against the Receiver-General on the account of the department with the bank. None of the cheques were marked with the drawee's acceptance before payment. In the meantime, the accountant of the department, being deceived by the false returns of checking by the clerk, acknowledged the correctness of the statements of the account as furnished by the

bank where it was kept. In an action by the Crown to recover the amount so paid upon the forged cheques and charged against the Receiver-General:—*Held*, affirming the judgment appealed from (11 Ont. L. R. 595), that the bank was liable unless the Crown was estopped from setting up the forgery. *Per Davies, Idington and Duff, JJ.*, that estoppel could not be invoked against the Crown. *Per Girouard and MacLennan, JJ.*, that, apart from the question of the Crown being subject to estoppel, under the circumstances of this case, a private person would not have been estopped had his name been forged as drawer of the cheques. *Held, per Davies and Idington, JJ.* The acknowledgment by the accountant of the department of the correctness of the statements furnished by the bank, being made under a mistake as to the facts, the accounts could be re-opened to have the mistake rectified.—The defendant bank made claims against the other banks, as third parties, as indorsers, or as having received money paid by mistake, for the reimbursement of the several amounts so paid to them, respectively. On these third party issues, it was held:—*Per Girouard and MacLennan, JJ.*—The drawee, having paid the cheques on which the name of its customer was forged, could not recover the amounts thereof from holders in due course. *Price v. Neal* (4 Burr 1355) followed.—*Per Davies and Idington, JJ.*—As the third party banks relied upon the representation that the cheques on which the name of its customer applied from their payment on presentation, and subsequently paid out of the funds to their depositor or on his order, the drawee was estopped and could not recover the amount so paid from them, either as indorsers or as for money paid to them under mistake.—In the result, the judgment appealed from (11 Ont. L. R. 595) was affirmed. (Leave to appeal to Privy Council refused. 31st July, 1907.) *Bank of Montreal v. The King*, xxxviii., 258.

3. *Trust—Company law—Extra remuneration—Ultra vires act of directors—Ratification—Recovery of moneys illegally paid—Mistake of law.*—By a resolution of the directors, the secretary of the company had been authorized to sell the company's bonds, for which he was to be paid a commission at the rate of 5 per cent. on the amounts received. Subsequently, at a time when they had no authority to do so, the directors converted the preferred stock held by certain shareholders into bonds, and paid the secretary for his services in making the conversion at the rate of 5 per cent. on the amount of bonds thus disposed of. In an action to recover back from the secretary the moneys so received by him as commission:—*Held*, that, although the secretary had received the commissions under mistake of law, yet, as he must be assumed to have had knowledge of the illegality of the transaction, the moneys could be recovered back by the company. Subsequently the scheme of conversion was approved of by a resolution of the shareholders, but it did not appear that they had been fully informed as to the arrangement for the payment of a commission to the secretary in that respect, in addition

to his regular salary.—*Held*, that the resolution of the shareholders had not the effect of ratifying the payment of the commissions. *Rountree v. Sydney Land and Loan Co.*, xxxix., 614.

4. *Municipal corporation — City and county—Separation—Agreement as to assets—Subsequent discovery of funds not included—Action for city's share—Accord.*—In 1901 the Town of Woodstock was incorporated as a city, and in February, 1902, the city and the County of Oxford entered into an agreement, ratified by their respective by-laws, purporting to settle all questions between them arising out of the erection of the town into a city. This agreement was acted upon until December, 1907, when the city, claiming to have discovered the existence of a fund of \$37,000, collected from the ratepayers of the several municipalities composing the county, which had not been considered in the settlement, brought action for its share of said fund, but did not ask for rescission or modification of the agreement.—*Held*, affirming the judgment of the Court of Appeal (22 Ont. L. R. 151), that in the absence of fraud or mutual mistake the agreement was a bar to such action. *Woodstock v. Oxford*, xlv., 603.

5. *Vendor and purchaser—Sole of lands—Misrepresentation—Fraud—Error—Rescission of contract—Sale or exchange—Dation en paiement—Improvements on property given in exchange—Option of party aggrieved—Action to rescind—Actio quantum minoris—Latent defects—Damages—Warranty—Agreement in writing—Formal deed*, xxxiv., 102.

See VENDOR AND PURCHASER.

6. *Misrepresentation — Lay agreement—Mortgage—Execution of documents by illiterate persons—Evidence*, xxxv., 110.

See CONTRACT.

7. *Mutual life insurance — Natural premium system—Level premium—Mortuary calls—Rate of assessment—Rating at attained age—Fraud—Puffing statements—Warranty—Misrepresentation—Acquiescence—Rescission of contract—Estoppel* xxxv., 330.

See INSURANCE, LIFE.

8. *Mines and mining—Vendor and purchaser—Sale of mining locations—Consideration in lump sum—Separate valuations—Misrepresentation—Deceit and fraud—Measure of damages*, xxxvi., 279.

See VENDOR AND PURCHASER.

9. *Practice—Revising minutes of judgment—Costs of abandoned defences—Reference to trial judge*, xxxviii., 103.

See PRACTICE.

10. *Banks and banking—Forged cheque—Negligence—Responsibility of drawee—Payment—Indorsement—Implied warranty—Principal and agent—Action—Money had and received—Change in position—Laches*, xl., 366.

See BANKS AND BANKING.

11. *Ships and shipping—Material used in construction—Sale of goods—Contract—Principal and agent—Misrepresentations—Conversion—Trove—Evidence—Misdirection—New trial—Ship's husband—Pledging credit of owners—Necessary outfitting at home port*, Cout. Cas., 131.

See SHIPS AND SHIPPING.

## MISTRIAL.

*Jury trial—Judge's charge—Practical withdrawal of case—Evidence—New Trial*, xxxviii., 165.

See NEW TRIAL.

## MITOYENNETE.

See PARTY WALL.

## MONOPOLY.

1. *Contract—Public policy—Restraint of trade—Combination—Conspiracy—Construction of statute—"Criminal Code" s. 498—Words and phrases—"Unduly" preventing competition, etc.*—A contract between dealers fixing prices to be paid by them for specified articles or commodities which may be the subject of trade and commerce with the object of restricting competition and establishing a monopoly therein, constitutes an agreement unduly to prevent or lessen competition within the meaning of section 498 of the Criminal Code, R. S. C., 1906, ch. 146, and is not enforceable between the parties. Judgment appealed from (20 Man. R. 178) reversed, Davies, J., dissenting.—*Per* Davies, J., dissenting.—As the agreement was not, in the circumstances, void at common law as being unreasonably in restraint of trade it did not violate the statute. *Weidman v. Shragge*, xlv., 1.

2. *Toll-bridge—Infringement of privilege—Exclusive limits—Future rights*, xxxvi., 26.

See TOLLS.

3. *Construction of statute—Toll-bridge—Franchise—Exclusive limits—Measurement of distance—Encroachment—58 Geo. III. c. 20 (L. C.)*, xxxvi., 224.

See FRANCHISE.

4. *Constitutional law — Inter-provincial and international ferries—Establishment or creation of ferries—License—Franchise—Exclusive rights—Powers of Parliament—Orders in Council—Dominion Acts in relation of ferries*, xxxvi., 206.

See FERRIES.

5. *Waterworks—Statutory contract—Exclusive franchise—Conditions of defenceance—Forfeiture of monopoly—Demurrer—Right of action by municipality—Rescission—Art. 1065 C. C.—40 Vict. c. 68 (Que.)*, xl., 629.

See ACTION.



## MORTGAGE.

1. *Equitable mortgage—Mines and mining—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgagee—Registry laws—Priority—Actual notice—Lien for Crown dues paid as rent—C. S. N. B. c. 30, s. 139.*—The courts below (37 N. B. Rep. 140; 3 N. B. Eq. 28) held that mining leases of lands in the Province of New Brunswick and of the minerals therein, issued by the Crown to the appellant subsequent to a mortgage executed by it in the State of New York in favour of the respondent, a company incorporated under the laws of that state, which do not reserve the minerals to the state, were subject to the mortgage; that a judgment creditor of the mortgagor (who purchased the leases at a sheriff's sale in execution of his own judgment and afterwards obtained new leases in his own name from the Crown), took the new leases subject to the mortgage; that the mortgage, though not registered under the "General Mining Act," C. S. N. B. (1903), ch. 30, sec. 139, was not void as against a judgment creditor who had actual notice of the mortgage and whose judgment was not registered under that section at the time of the commencement of the suit, and that the judgment creditor was not entitled to a prior lien for rent paid to the Crown on the licenses declared to be held in trust for the mortgagee. An appeal to the Supreme Court of Canada was dismissed. Maclellan, J., dissenting. *Mineral Products Co. v. Continental Trust Co.*, xxxvii., 517.

2. *Money advanced to construct buildings—Lien for materials supplied—Payment to contractor—Transactions in fraud of mortgagor's rights—Redemption—Costs.*—A building and loan company advanced money to an illiterate woman for the purpose of aiding in the construction of a house to be erected upon lands mortgaged to it to secure the loan. The mortgage contained no provision for advances to contractors, etc., as the work progressed, beyond the following: "And it is hereby agreed between the parties hereto, that the mortgagees, their successors and assigns, may pay any taxes, rates, levies, assessments, charges, moneys for insurance, liens, costs of suit, or matters relating to liens or incumbrances on the said lands, and solicitors' charges in connection with this mortgage, and valuator's fees, together with all costs and charges which may be incurred by taking proceedings of any nature in case of default by the mortgagor, her heirs, executors, administrators or assigns, and shall be payable with interest, at the rate aforesaid, until paid and, in default, the power of sale hereby given shall be forthwith exercisable. And it is further agreed that monthly instalments in arrear shall bear interest at the rate aforesaid until paid."—In a suit for redemption.—*Held*, first, that the clause in the mortgage did not justify the mortgagees in making advances to contractors and persons supplying material without the express order of the mortgagor. Secondly, that the mortgagees ought not to have recognized an order in favour of the contractor for the total amount of the loan when

they knew that the contractor had not completed his contract and was, therefore, not entitled to the money when the order contained no name of a witness, and shewed that the mortgagor was unable to sign her name.—The payment having been made by the loan company to a lumber company supplying material to the contractors for the building, without the express authority of the mortgagor, and the lumber company having taken an assignment of the mortgage, and attempted to enforce it against the mortgagor, the transaction was declared fraudulent as against the mortgagor, and the payment to the lumber company disallowed.—*Held*, also, that the only costs the assignees of the mortgage were entitled to add to the mortgage debt were the costs of an ordinary redemption suit consented to by a mortgagee.—Judgment appealed from varied, and appeal dismissed with costs. *Black v. Hiebert*, xxxviii., 557.

3. *Assignment by mortgagor for benefit of creditors—Priorities—Assignment of claims of execution creditors—Redemption—Assignments and Preferences Act, s. 11 (Ont.).*—After judgment for foreclosure of mortgage or redemption judgment creditors of the mortgagor with executions in the sheriff's hands were added as parties in the master's office and proved their claims. The master's report found that they were the only incumbrancers and fixed a date for payment by them of the amount due to the mortgagees. After confirmation of the report S. obtained assignments of these judgments and was added as a party. He then paid the amount due the mortgagees, and the master took a new account and appointed a day for payment by the mortgagor of the amount due S. on the judgments as well as the mortgage. This report was confirmed and, the mortgagor having made an assignment for benefit of creditors before the day fixed for redemption, an order was made by a judge in chambers adding the assignee as a party, extending the time for redemption and referring the case back to the master to take a new account and appoint a new day.—*Held*, affirming the judgment of the Court of Appeal (13 Ont. L. R. 127), that under the provisions of sec. 11 of the Assignments and Preferences Act the assignee of the mortgagor could only redeem on payment of the total sum due to S. under the mortgage and the judgments assigned to him. *Scott v. Swanson*, xxxix., 229.

4. *Manitoba "Real Property Act,"—Power of sale—Special covenant—Notice—Statutory supervision—Registered title—Equitable rights—Possession by mortgagee—Limitation of action—Construction of statute, R. S. M., 1902, c. 148, s. 75—"Real Property Limitation Act," R. S. C. 1902, c. 100, §. 20.*—In respect of lands subject to the operation of the "Real Property Act, R. S. M., 1902," ch. 148, mortgagees have no registered interest, but merely obtain powers of disposing thereof; these powers do not vest as incidental to the estate mortgaged, but are efficacious only by virtue of the statute. Where the mortgage stipulates for a power of sale, on default, without notice, and contains no proviso dispensing with the official supervision required by



the statute, a sale by the mortgagee, purporting to be made under that power, without compliance with the requirements of section 110 of the Act or an order of the court, cannot operate to extinguish the registered title of the mortgagor.—Judgment appealed from (20 Man. R. 522) affirmed, Idington and Anglin, J.J., dissenting.—*Per Davies, Duff and Brodeur, J.J.*, affirming the judgment appealed from (20 Man. R. 522).—The registered title of mortgagors in lands subject to the operation of the "Real Property Act," R. S. M. 1902, ch. 148, and of persons claiming through them, are protected by the provisions of the 75th section of that statute denying the acquisition of title adverse to or in derogation of that of the registered owner of such lands by length of possession only; the limitation provided by section 20 of the "Real Property Limitation Act," R.S.M., 1902, ch. 100, in favour of mortgagees, has no application to lands after they have been brought under the "Real Property Act." *Smith and National Trust Co.*, xlv., 618.

5. *Bills and notes—Collateral security—Recovery on mortgage—New evidence discovered after reference to take accounts—Appeal to Supreme Court—Lapse of time.*—The action was to recover on a covenant in a mortgage for the payment of money and interest alleged to be due to the plaintiff under the mortgage which purported to secure \$2,800 with interest. As to the mortgage the question involved was whether or not the plaintiff could claim re-payment of \$1,000 paid, some time after the mortgage was executed, to retire a promissory note, made by the defendant and indorsed by the plaintiff, and which was in part renewal of a similar note which had been so made and indorsed prior to the mortgage. The defence was that the note was given for the purpose of raising funds for the use of a partnership, which the trial judge found existed between the plaintiff and the defendant. The defendant contended that not only was the mortgage given to secure the note, but also that he was not personally liable to repay the \$1,000 to the plaintiff. By the plaintiff it was contended that the mortgage was given, amongst other things, to secure him against liability on the note in question.—The trial judge held that the note had been indorsed by the plaintiff for the accommodation of the defendant, and that the mortgage had been given to secure the plaintiff in respect of the note, and he directed a reference to the master to take accounts. This decision was affirmed by the Court of Appeal, Perdue, J., dissenting.—During the taking of accounts the defendant discovered a statutory declaration by the plaintiff to the effect, amongst other things, that the full amount of the mortgage had been advanced by him to the defendant and that it had been taken for the purpose of securing the advance so made and not as collateral security. In these circumstances the court appealed from, in pursuance of section 71 of the "Supreme Court Act," granted special leave for the present appeal, although it had not been brought within the time prescribed by the Act. — After hearing counsel on behalf of the appellant, and without

calling upon counsel for the respondent for any argument, the appeal was dismissed with costs, the court not being satisfied that the judgment appealed from was so clearly wrong that it should be reversed. *Jukes v. Fisher*, xlvii., 404.

6. *Company law—Powers of company—Sale of shares by company—Subsequent creditor—Status.*—Three directors owned all the stock of a mining company to which they had advanced \$43,000 for expenses of operating. Two of them were at variance with the third as to the mode of operating and all refused further advances. The company having no other means of procuring money, it was agreed that the two directors should sell their stock to the third for \$60,000 secured by mortgage on the company's property, the debt of \$43,000 to be discharged and the purchasing director to advance funds for operating, and until the first payment had been made on the mortgage no such advances should be a charge on the company's property. Payments were made on the mortgage which afterwards fell into arrears, and on action by the mortgagees an order was made for sale and delivery "up of possession." More than a year after the mortgage was made the mining company incurred a debt to the respondent company which brought action for the amount and for a declaration that the mortgage was *ultra vires* of the company and that the judgment in the mortgage action was void. The action was dismissed at the trial. The Appellate Division held the mortgage void but only as to the excess over the indebtedness of the company at the time it was made.—*Held*, reversing the judgment appealed from (31 Ont. L. R. 221) and restoring that of the trial judge, Fitzpatrick, C.J., and Idington, J., dissenting, that the mortgage was valid; that though the expressed consideration was the price of the shares sold by one holder to another, the real consideration was the discharge of the company's existing indebtedness and securing of financial aid for the future.—*Per Davies, Duff and Brodeur, J.J.*—The judgment in the foreclosure action was a conclusive answer to the attack on the mortgage by the company. *The Great North-Western Railway Co. v. Charlebois* ((1899) A. C. 114) distinguished.—Also *per Davies, Duff and Brodeur, J.J.*—The trial judge having in effect decided that he had jurisdiction to pass upon the validity of the mortgage, that decision was binding on all parties until reversed in appeal, and, having regard to what occurred at the trial, the decision on the point of jurisdiction was not appealable. — *Per Fitzpatrick, C.J.*, and Idington, J., dissenting.—The agreements and records made by the parties concerned in the transaction upon which alone the mortgage in question rests shew it to have been given solely to secure to the mortgagees the price of their sales of shares in the company to another shareholder and that, as such, the mortgage was *ultra vires* and void as against any creditors of the company. *Hughes v. Northern Electric & Manufacturing Co.*, l., 626.

7. *Payment by instalments—Acceleration clause—Payment of part postponed—Right of foreclosure.*—A mortgage provided for

payment in three annual sums of \$2,500 each. There was a special provision that out of the last instalment the mortgagor could retain \$1,000 until he received a conveyance of the interest of an infant who, with the mortgagee, executed an agreement to convey when he became of age. There was also the acceleration clause making the whole amount due on default in paying any part. In an action to foreclose default having been made in payment of the first annual instalment.—*Held*, affirming the decision of the Appellate Division (31 Ont. L. R. 471), which maintained the judgment at the trial (30 Ont. L. R. 502), that the postponement of the time for payment of the \$1,000, part of the last instalment, did not disentitle the mortgagee to his remedy of foreclosing; but *held*, varying the judgment below, that the acceleration clause in the mortgage did not apply to the \$1,000, payment of which was postponed; that the personal recovery against the mortgagor should not include this sum; and that the judgment below should be amended by providing that the proceedings should be stayed by payment into court of the balance. *Thomson v. Willson*, li., 307.

8. *Title to land—Vente à réméré—Security for loan—Time for redemption—Promise of re-sale—Condition—Equitable relief—Pleading—Waiver—New points on appeal—Practice—Arts. 1549, 1550 C. C.*—Where the right to redeem lands conveyed *à droit de réméré* as security for a loan has not been exercised within the stipulated term, or an extension thereof, the purchaser becomes absolute owner and there is no power in the courts of the Province of Quebec under which an order may be made which could have the effect of extending the time limited for redemption.—After the expiration of the time limited for redemption of lands conveyed *à droit de réméré*, as security for a loan, the purchaser in a letter written to the vendor, requested payment of the loan before a date mentioned therein and, in default of such payment, insisted upon the rights granted by the conveyance.—*Held*, that the letter might be considered as a promise of re-sale of the lands to the vendor which lapsed on failure to make the payment within the time therein stipulated.—Duff, J., took no part in the decision of the appeal.—*Per Fitzpatrick, C.J., and Brodeur, J.*—Questions which have not been raised or brought to the attention of the courts below ought not to be considered on an appeal to the Supreme Court of Canada. *Gagnan v. Belanger*, liii., 204.

9. *Sale of land—Consideration—Exchange of properties—Indemnity to vendor—Evidence.*—In 1912 D. advanced money to P., who conveyed to him certain properties, in Ottawa, Ont., including one on LeBreton Street. In 1913, P. entered into an agreement with C. to exchange the LeBreton Street property for lots on Lisgar Street, which was carried out by conveyances between C. and D. In his deed C. stated that the consideration was "an exchange of lands and \$1.00," and conveyed the lots on Lisgar Street, subject to certain mortgages, the description being followed by the words,

"the assumption of which mortgages is part of the consideration herein." C. was obliged to pay these mortgages, and brought suit against D. to recover the amount so paid.—*Held*, affirming the judgment of the Appellate Division (34 Ont. L. R. 580), that the case was not within the rule of equity whereby the purchaser of an equity of redemption may be obliged to indemnify his vendor against liability for the mortgage. *Small v. Thompson* (28 Can. S. C. R. 219) distinguished.—*Held*, also, that parol evidence was properly received to shew the relations between P. and D.; that D. received the conveyance from C. merely as P.'s nominee, and held it afterwards only as security for his advances to P.; that he never claimed to be owner and never went into possession except as P.'s agent; and that he was not a purchaser of the property, but only a mortgagee. *Campbell v. Douglas*, liv., 28.

10. *Sale of land—Vente à réméré—Redemption—Term—Judicial proceedings—Art. 1550 C. C.*—Article 1550 of the Civil Code does not oblige the vendor, in a *vente à réméré*, to take judicial proceedings for redemption within the time stipulated in the deed. It is sufficient that, within such time, he signifies to the vendee his intention to redeem. Duff and Anglin, JJ., dissented.—Judgment appealed from (Q. R. 25 K. B. 464), affirmed. *Johnson v. Laflamme*, liv., 495.

11. *Construction of deed—Mortgage or sale—Equity of redemption. McLean v. McKay*, Cout. Cas. 334.

12. *Mistake—Misrepresentation—Lay agreement—Execution of documents by illiterate persons—Evidence, xxxv., 110.*

See CONTRACT.

13. *Foreclosure—Redemption—Assignment pending suit—Procedure in court below—Costs, xxxv., 181.*

See PRACTICE.

14. *Mandate—Principal and surety—Negligence—Laches—Release of surety—Mortgage or pledge—Construction of contract—Principal and agent, xxxv., 663.*

See PRINCIPAL AND SURETY.

15. *Limitation of actions—Unregistered deed—Subsequent registered mortgage—Possession—Right of entry, xxxvi., 455.*

See LIMITATIONS OF ACTIONS.

16. *Appeal—Jurisdiction—Discretionary order—Stay of proceedings—Final judgment—Controversy involved—R. S. C. c. 129, s. 76—R. S. C. c. 135, s. 28, xxxvii., 173.*

See APPEAL.

17. *Admiralty law—Jurisdiction of the Exchequer Court of Canada—Claim under mortgage on ship—Action in rem—Pleading—Abatement of contract price—Defects in construction—Damages, xl., 418.*

See SHIPS AND SHIPPING.

18. *Fire insurance—Insurance by mortgage—Interest insured—Payment to mortgagee—Subrogation, Calm. Cas. 1.*

See INSURANCE, FIRE.

19. *Contract—Conditional sale—Guarantee—Rescission—Mortgagor and mortgagee—Power of sale—Creditor re-taking possession—Continuing liability—Appropriation of money received by creditor—Release of debtor—Discharge of surety, Cout. Cas. 217.*

See CHATTEL MORTGAGE.

20. *Title to lands—Homestead and pre-emption rights—Unpatented Dominion lands—“Transfer”—Incumbrance—Charge to secure debts—Sanction of minister—Absolute nullity—Construction of statute—Dominion Lands Act. American Abell Engine Co. v. McMillan, xlii., 377.*

See TITLE TO LAND.

AND see PRIVILEGES AND HYPOTHECS.

21. *Tramway—Operation on highway—Sale—Unpaid vendor. Ahearn & Soper v. N. Y. Trust, xlii., 267.*

22. *Foreclosure—Equitable jurisdiction of court—Opening up foreclosure proceedings—Construction of statute—“Real Property Act,” R. S. M. 1902, c. 148—5 & 6 Edw. VII. c. 75, s. 3 (Man.)—Equity of redemption—Certificate of title, xlii., 1.*

See TITLE TO LAND.

23. *Chattel mortgage—Sale under powers—Notice—Offer to redeem—Tender—Equitable relief—Evidence—Proceedings taken in good faith, xlv., 302.*

See CHATTEL MORTGAGE.

24. *Sale under power—False bidding—Withdrawal of bid. Kaiserhoff Hotel Co. v. Zuber, xlvi., 651.*

25. *Vendor and purchaser—Sale of mortgaged lands—Agreement—Condition precedent—Cash payment—Default—Objection to title—Repudiation—Specific performance. Cushing v. Knight, xlvi., 555.*

See VENDOR AND PURCHASER; CHATTEL MORTGAGE.

26. *Winding-up proceedings—Company in liquidation—Sale of assets—Consent to sale of mortgaged ship—Sale by order of court—Mariners' liens—Sale free from incumbrances—Special fund—Privileged charge—Priority—Valuation of security—Release of mortgage—Marshalling securities—Subrogation. Traders Bank v. Lockwood, xviii., 593.*

See LIEN.

27. *Bill of sale—Chattel mortgage—Registration—Affidavit—Verification—B. C. “Bills of Sale Act,” 5 Edw. VII. c. 8, s. 7, xlix., 541.*

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2. *Conditional sale—Price payable before delivery—Execution against movables—Possession by judgment debtor—Ownership—Procedure by bailiff—Guardian to second seizure—Sale super non domino et non possedente—Adjudication upon involunt seizure—Title to goods—Rescission of sale—Action—Legal maxims, xli., 331.*

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3. *Privileges and hypothecs—Tramway—Operation of highway—Title to land—Immobilization by destination—Sale of tramway by sheriff as a “going concern”—Unpaid vendor—Lien on price of cars—Pledge—Contract—Construction of statute, 3 Edw. VII. c. 91 (Que.)—Priority of claim—Collocation and distribution—Arts. 379, 2000 C. C.—Art. 752 Mun. Code. Ahearn & Soper v. N. Y. Trust, xlii., 267.*

See PRIVILEGES AND HYPOTHECS.

4. *Fixtures—Lessor and lessee—Buildings placed on leased land—Evidence—Onus of proof. Bing Kee v. Yick Chong, xliii., 334.*

See LEASE.

## MUNICIPAL CORPORATIONS.

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### 1. ASSESSMENTS, RATES AND TAXES.

1. *Assessment and taxes—Exemptions—Railways—R. S. N. S. (1900) c. 73—Imposition of tax—Date—Municipal Act—R. S. N. S. (1000) c. 70.]—Section 3 of R. S.*

N. S. (1900) c. 73 (Assessment Act) exempted from taxation "the road, rolling stock . . . used exclusively for the purpose of any railway, either in course of construction or in operation, *exempted* under the authority of any Act passed by the legislature of Nova Scotia." Prior to the passing of this Act the appellants' railway had always been exempt from taxation, but all former assessment Acts were repealed by these Revised Statutes, so that it was not "exempted" when the latter came into force. By 2 Edw. VII. ch. 25, assented to on March 27th, 1902, the word "exempted" was struck out of the above clause and, in May, 1902, the appellants were included in the assessment roll for that year for taxation on their railway.—*Held*, by Taschereau, C.J., that under the above recited clause the railway was exempt from taxation.—*Held*, by Sedgewick, Davies, Nesbitt and Killam, JJ., that if the railway could be taxed under the Assessment Act of 1900 the rate was not authorized until the amending Act of 1902 by which it was exempt had come into force and no valid tax was, therefore, imposed. *Dominion Iron and Steel Co. v. McDonald*, xxxv., 98.

2. *Assessment and taxes—Contestation of roll—Limitations of actions—Interruption of prescription—Suspensive condition—Construction of statute—52 Vict. c. 79 (Q.)—62 Vict. c. 58, s. 408 (Q.)—Collection of taxes—Art. 2236 C. C.]*—The prescription of three years in respect of taxes provided by the Montreal City Charter, 52 Vict. c. 79 (Q.), runs from the date of the deposit of the assessment roll, as finally revised, in the treasurer's office, when the taxes become due and exigible, and the prescription is not suspended or interrupted by a contestation of the assessment roll, even although the contestation may have been filed by the proprietor of the lands assessed. Judgment appealed from reversed, Girouard and Nesbitt, JJ., dissenting. (Appeal to Privy Council dismissed, [1906] A. C. 241.) *City of Montreal v. Cantin*, xxxv., 223.

3. *Exemption from taxes—Resolution of council—Discrimination—Establishment of industry—36 Vict. c. 81, s. 1 (N.B.)*.—By section 1 of 36 Vict. c. 81, the New Brunswick Legislature authorized the town council of Woodstock from time to time to "give encouragement to manufacturing enterprises within the said town by exempting the property thereof from taxation for a period of not more than ten years by a resolution declaring such exemption." In 1892 the council passed the following resolution:—"That any company establishing a woollen mill in the town of Woodstock be exempted from taxation for a period of ten years."—*Held*, per Davies, Idington and MacLennan, JJ., that this resolution provided for discrimination in favour of companies and against individuals who might establish a woollen mill or mills in the town and was therefore void. *City of Hamilton v. Hamilton Distillery Co.* (38 Can. S. C. R. 239), followed.—*Held*, per Davies, J.—The resolution exempting any company and not any property of a company was too indefinite and uncertain to be the basis for a

claim for exemption.—In 1893 a woollen mill was established in Woodstock by the Woodstock Woollen Mills Co., and operated for some years without taxation. In 1899 the mill was sold under execution and, two months later, the Carleton Woollen Co. (appellants) were incorporated and acquired the said mill from the purchaser at the sheriff's sale, and have operated it since.—*Held*, that the appellants could not by so acquiring the mill which had been exempted be said to have "established a woollen mill" without shewing that when it was acquired it had ceased to exist as such, which they had not done.—Judgment appealed from, affirming that of Barker, J., at the hearing (3 N. B. Eq. 138) affirmed. *Carleton Woollen Co. v. Town of Woodstock*, xxxviii., 411.

4. *Montreal city charter—52 Vict. c. 79, s. 120 (Que.)—Construction of statute—"Current year"—Assessment and taxes—Limitation of action—Local improvements—Special tax.]*—By s. 120 of the charter of the City of Montreal, 52 Vict. c. 79 (Que.), the right to recover taxes is prescribed and extinguished by the lapse of "three years, in addition to the current year, to be counted from the time at which such tax, etc., became due." A special assessment for local improvements became due on the 14th of March, 1898, and action was brought to recover the same on the 4th day of February, 1902.—*Held*, affirming the judgment appealed from (Q. R. 15 K. B. 479), the Chief Justice and Duff, J., dissenting, that the words "current year" in the section in question, mean the year commencing on the date when the tax became due, and that the time limited for prescription had not expired at the time of the institution of the action. *Vanier v. City of Montreal*, xxxix., 151.

5. *Appeal—Stated case—Provincial legislation—Assessment—Municipal tax—Foreign company—"Doing business in Halifax."*—An Ontario company resisted the imposition of a license fee for "doing business in the City of Halifax" and a case was stated and submitted to the Supreme Court of Nova Scotia for an opinion as to such liability. On appeal from the decision of the said court to the Supreme Court of Canada, counsel for the City of Halifax contended that the proceedings were really an appeal against an assessment under the city charter, that no appeal lay therefrom to the Supreme Court of the province, and, therefore, and because the proceedings did not originate in a superior court, the appeal to the Supreme Court of Canada did not lie.—*Held*, per Fitzpatrick, C.J. and Duff, J., that as the appeal was from the final judgment of the court of last resort in the province, this court had jurisdiction under the provisions of the Supreme Court Act, and it could not be taken away by provincial legislation. Per Davies, J.—Provincial legislation cannot impair the jurisdiction conferred on this court by the Supreme Court Act. In this case the Supreme Court of Nova Scotia had jurisdiction under Order XXXIII., Rule 1 of the Judicature Act.—Per Idington, J.—if the case was stated under the Judicature Act Rules

the appeal would lie, but not if it was a submission under the charter for a reference to a judge at request of a ratepayer.—By s. 313 of the said charter (54 Vict. c. 58) as amended by 60 Vict. c. 44, "Every insurance company or association, accident and guarantee company, established in the City of Halifax, or having any branch office or agency therein shall . . . pay an annual license fee as hereinafter mentioned. . . . Every other company, corporation, association or agency doing business in the City of Halifax (banks, insurance companies or associations, etc., excepted) shall . . . pay an annual license fee of one hundred dollars."—*Held*, that the words "every other company" in the last clause were not subject to the operation of the *ejusdem generis* rule, but applied to any company doing business in the city. Judgment appealed from overruled on this point.—A carriage company agreed with a dealer in Halifax to supply him with their goods and give him the sole right to sell the same, in a territory named, on commission, all monies and securities given on any sale to be the property of the company, and goods not sold within a certain time to be returned. The goods were supplied and the dealer assessed for the same as his personal property. — *Held*, Davies and MacLennan, J.J., dissenting, that the company was not "doing business in the City of Halifax" within the meaning of s. 313 of the charter and was not liable for the license fee of one hundred dollars thereunder.—Judgment of the Supreme Court of Nova Scotia (39 N. S. Rep. 403), affirmed, but reasons overruled. *City of Halifax v. McLaughlin Carriage Co.*, xxxix., 174.

6. *Constitutional law—Municipal taxation—Official of Dominion Government—Taxation on income—B. N. A. Act, 1867, ss. 91 and 92.*—Subsection 2 of s. 92 B. N. A. Act, 1867, giving a provincial legislature exclusive powers of legislation in respect to "direct taxation within the province," etc., is not in conflict with s.-s. 8 of s. 91, which provides that Parliament shall have exclusive legislative authority over "the fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada." Girouard, J., *contra*.—*Held*, therefore, Girouard, J., dissenting, that a civil or other officer of the Government of Canada may be lawfully taxed in respect to his income as such by the municipality in which he resides. *Abbott v. City of St. John*, xl., 597.

7. *Assessment and taxes—Exemption—Charter of Edmonton—Construction of statute—"License fee"—N. W. T. Ord., 192 of 1900—N. W. T. Ord., 1904, c. 10—Con. Ord. N. W. T., c. 89.*—The provision of the charter of the Town of Edmonton (N. W. T. Ord., 1904, c. 19), title xxxii., s. 3, s.-s. 4, exempting any person assessed in respect of any business from the payment of "a license fee in respect of the same business" does not apply to fees exigible upon licenses issued by the provincial government under the "Liquor License Ordinance," Con Ord., N. W. Terr., c. 89.—Judgment appealed from (2 Alta. L. R. 38) affirmed. *York v. City of Edmonton*, xlii., 363.

8. *Exemption of industry from taxation—Special assessment—Local improvement.*—By agreement with the City of Halifax, sanctioned by an Act of the legislature, a company doing business in the city was granted, for a certain period, "a total exemption from taxation" except for water rates.—*Held*, reversing the judgment of the Supreme Court of Nova Scotia (45 N. S. Rep. 552), Fitzpatrick, C.J., dissenting, that a special assessment for a proportionate part of the cost of a public sewer, claimed to be chargeable against the lands of the company, was "taxation" within the meaning of said agreement and the company was exempt from liability therefor. *Nova Scotia Car Works v. City of Halifax*, xlvii., 406.

9. *Assessment and taxes—Constitutional law—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of the boundaries of Manitoba—Construction of statutes respecting the constitution of Canada, Manitoba and the North-West Territories—Construction of contract—Grant in presenti—Cause of action—Jurisdiction—Waiver, xxxv., 550.*

See ASSESSMENT AND TAXES.

10. *Assessment and taxes—County School Fund—Contributions by incorporated towns—Construction of statute—3 Edw. VII. c. 6, s. 7 (N.S.), xxxvii., 514.*

See ASSESSMENT AND TAXES.

11. *Appeals from Ontario—Action—Declaration of illegality of by-law—Injunction—Water rates—Discrimination, xxxviii., 239.*

See MUNICIPAL CORPORATION.

12. *Collection of municipal taxes—Action in Recorder's Court—Montreal City Charter, 62 Vict. c. 58 (Que.)—Appeal—Jurisdiction—Judgment by Court of Review—Special tribunal—Court of last resort—Supreme Court Act, R. S. C., 1906, c. 139, s. 41, xli., 427.*

See APPEAL.

13. *Exemption from taxation—School rates—Appeal—Extension of time. John Goodison Thresher Co. v. McNab*, xlii., 691.

See PRACTICE.

14. *Exemption from taxation—Board of Revision—Judicial functions—Administrative powers—Construction of statute—"Vancouver Incorporation Act," xlv., 29.*

See ASSESSMENT AND TAXATION.

15. *Taxation of electric and gas installations on streets—Construction of statute—Words and phrases—"Terrain"—"Lot"—Immovable property—Charter of Town of Westmount—56 Vict. c. 54, s. 100, xlv., 304.*

See ASSESSMENT AND TAXATION.

16. *Assessment and taxation—Exemptions—Crown lands—Allotment for irrigation purposes—Ungranted concession—Construction of statute—Words and phrases—"Land"—"Owner"—"Occupant"—Constitutional law—"B. N. A. Act, 1867," s. 125—Alberta "Rural Municipality Act"—"Irrigation Act. Southern Alberta v. Rural Mun. McLean*, liii., 151.

See ASSESSMENT AND TAXATION.

17. *Assessment and taxes—Lease of Crown lands—Interest of occupier—Constitutional law—Exemption from taxation—Construction of statute*—"B. N. A. Act, 1867," s. 125—(Sask.) 6 *Edu. VII.*, c. 36, *Local Improvement Act*—(Sask.) 7 *Edu. VII.*, c. 3, "Supplementary Revenue Act"—*Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts*, xlix., 563.

See ASSESSMENT AND TAXATION.

18. *Assessment and taxation—Exemptions—Crown lands—Allotment for irrigation purposes—Ungranted concession—Construction of statute—Words and phrases—"Land"—"Owner"—"Occupant"—Constitutional law*—"B. N. A. Act, 1867," s. 125—*Alberta "Rural Municipality Act,"* 3 *Geo. V.*, c. 3—"Irrigation Act," R. S. O., 1906, c. 61, liii.

See ASSESSMENT AND TAXATION.

## 2. BY-LAWS AND RESOLUTIONS.

19. *Railway aid—Municipal by-law—Condition precedent—Part performance—Annulment of by-law—Right of action.*—An action to annul a municipal by-law will lie although the obligation thereby incurred may be conditional and the condition has not been, and may never be, accomplished.—Where a resolute condition precedent to the payment of a bonus under a municipal by-law in aid of the construction and operation of a railway has not been fulfilled within the time limited on pain of forfeiture, an action will lie for the annulment of the by-law, at any time after default, notwithstanding that there may have been part performance of the obligations on the part of the railway company, and that a portion of the bonus may have been advanced to the company by the municipality. *City of Sorel v. Quebec Southern Railway Co.*, xxxvi., 686.

AND see ACTION.

20. *Election law—Vote on by-law—Scrutiny—Powers of judge—Inquiry into qualification of voter—Disposition of rejected ballots*—"Ontario Municipal Act," 1903, ss. 369 *et seq.*—"Voters' Lists Act," 1907, s. 24.]—A County Court judge holding a scrutiny of the ballot papers deposited in a vote on a municipal by-law may go behind the voters' list and inquire if a tenant whose name is placed thereon has the residential qualification entitling him to vote. *Davies and Brodeur, JJ.*, dissenting.—The judge has no power to inquire whether rejected ballots were cast for or against the by-law.—*Held, per Fitzpatrick, C.J.*, and *Duff, J.*—Ballots rejected on a scrutiny must be deducted from the total number of votes cast in favour of the by-law. *Davies and Brodeur, JJ., contra.*—The Supreme Court affirmed the decision of the Court of Appeal (26 Ont. L. R. 339), reversing the judgment of a Divisional Court (25 Ont. L. R. 267), which reversed the decision at the hearing (23 Ont. L. R. 598). *In re West Lorne Scrutiny*, xvii., 451.

21. *Railway aid—By-law—Condition—Part performance—Right of action to avoid*, xxxvi., 686.

See ACTION.

22. *Contract by municipal corporation—Powers—By-law or resolution—Right of action—Confession of judgment—Evidence—Admissions—Pleading—Estoppel by record—Art. 1245 C. C.—Concurrent findings of fact—Practice on appeal*, xxxiv., 495.

See EVIDENCE.

23. *Appeals from Ontario—Action—Injunction—Validity of by-law—Water rates—Discrimination*, xxxviii., 239.

24. *By-law affecting Indian reserves—Jurisdiction. Armour v. Town of Onondaga*, xliii., 218.

See APPEAL.

25. *Appeal—Jurisdiction—Matter in controversy—Stare decisis—Municipal by-law—Injunction—Contract—Collateral effect of judgment—Construction of statute—"Supreme Court Act" R. S. C. (1906), c. 139, ss. 36, 39 (c), 46. Shawinigan Hydro-Electric v. Shawinigan Water, etc.*, xliiii., 650.

See APPEAL.

## 3. CONTRACTS.

26. *Contract—Resolution by municipal corporation—Acceptance of offer to purchase—Evidence—Written instruments—Statute of Frauds—Estoppel.*—T. offered to purchase lands which the municipality had bid in at tax sale, and to pay therefor the amount of the arrears of taxes and costs. The council resolved to accept "the amount of taxes, costs and interest" against the lands, and authorized the reeve and clerk to issue a deed at that price.—*Held*, reversing the judgment appealed from, that, even if communicated to T. as an acceptance of his offer, this resolution would have raised no contract, on account of the variation made by the addition of interest.—An instrument, which was never delivered to T., was executed by the reeve and clerk of the municipality, in the statutory form of conveyance upon a sale for taxes, reciting the above resolution, but without a reference to any contract in pursuance of the resolution, and about two months after the passing of the resolution, upon receipt of another offer for the same lands, the council resolved to intimate to the person making the second offer "that the lot had been sold to T."—*Held*, that these circumstances could not be relied upon as an admission of a prior contract of sale.—*Held*, also, that, even if it could be inferred that contractual relations had been established between T. and the municipality, it did not appear that there had been any written communications in respect thereto made on behalf of the municipality and, consequently, the alleged admissions of a contract did not satisfy the Statute of Frauds and could have no effect. *District of North Vancouver v. Tracy*, xxxiv., 132.

27. *Municipal franchise — Operation of tramway — Suburban lines — Earnings outside municipal limits — Construction of contract — Payment of percentages — Blended accounts — Estimation of separate earnings.*—The City of Montreal called for tenders for the establishment and operation of an electric passenger railway, within its limits, in accordance with specifications and subsequently, on the 8th of March, 1893, entered into a contract with a company then operating a system of horse tramways in the city which extended into adjoining municipalities. The contract granted the franchise for the period of thirty years from the 1st of August, 1892, and one of its clauses provided that the company should pay to the city, annually, during the term of the franchise, "from the 1st of September, 1892, upon the total amount of its gross earnings arising from the whole operation of its said railway, either with cars propelled by electricity or with cars drawn by horses," certain percentages specified, according to the gross earnings from year to year. Upon the first settlement, on the 1st September, 1893, the company paid the percentages without any distinction between earnings arising beyond the city limits and those arising within the city, but, subsequently, they refused to pay the percentages except upon the estimated amount of the gross earnings arising within the city. In an action by the city to recover the percentages upon the gross earnings of the tramway lines, both inside and outside, of the city limits.—*Held*, reversing the judgment appealed from, the Chief Justice and Killam, J., dissenting, that the city was entitled to the specified percentages upon the gross earnings of the company arising from the operation of the tramway both within and outside of the city limits. (Reversed by Privy Council, [1906] A. C. 100.) *City of Montreal v. Montreal St. Railway Co.*, xxxiv., 459.

28. *Construction of railway — Injunction — Interested party — Public corporations — Franchises in public interest — Lapse of chartered powers — "Railway" or "tramway" — Agreement as to local territory — Invalid contract — Public policy — Dominion Railway Act — Work for general advantage of Canada — Quebec Railway Act — Quebec Municipal Code — Limitation of powers.*—An agreement by a corporation to abstain from exercising franchises granted for the promotion of the convenience of the public is invalid as being contrary to public policy and cannot be enforced by the courts. — *Per Sedgewick and Killam, JJ.* A company having power to construct a railway within the limits of the municipality has not such an interest in the municipal highways as would entitle it to an injunction prohibiting another railway company from constructing a tramway upon such highways with the permission of the municipality under the provisions of article 479 of the Quebec Municipal Code. The municipality has power, under the provisions of the Municipal Code, to authorize the construction of a tramway by an existing corporation notwithstanding that such corporation has allowed its powers as to the construction of new lines to lapse by non-user within the

time limited in its charter.—*Per Girouard and Davies, JJ.* A railway company which has allowed its powers as to construction to lapse by non-user within the time limited in its charter, and which does not own a railway line within the limits of a municipality where such powers were granted, has no interest sufficient to maintain an injunction prohibiting the construction therein of another railway or tramway. Where a company subject to the Dominion Railway Act, with powers to construct railways and tramways, has allowed its powers as to the construction of new lines to lapse by non-user within the time limited, it is not competent for it to enter into an agreement with a municipality for the construction of a tramway within the municipal limits under the provisions of article 479 of the Quebec Municipal Code. *Montreal Park and Island Ry. Co. v. Chateauguay and Northern Ry. Co.*, xxxv., 48.

29. *City and county — Mistake — Separation — Accord — Agreement as to assets — Subsequent discovery of funds not included — Action for city's share.*— In 1901 the Town of Woodstock was incorporated as a city, and in February, 1902, the city and the County of Oxford entered into an agreement, ratified by their respective by-laws, purporting to settle all questions between them arising out of the erection of the town into a city. This agreement was acted upon until December, 1907, when the city, claiming to have discovered the existence of a fund of \$37,000, collected from the ratepayers of the several municipalities composing the county, which had not been considered in the settlement, brought action for its share of said fund, but did not ask for rescission or modification of the agreement.—*Held*, affirming the judgment of the Court of Appeal (22 Ont. L. R. 151), that in the absence of fraud or mutual mistake the agreement was a bar to such action. *Woodstock v. Oxford*, xlv., 603.

30. *Member of council — Interest in municipal contract — Public policy — Legal maxim — Money received under prohibited contract — Recovery of funds — Right of action — Statute — (Que.) 58 Vict., c. 42, ss. 1, 2, 11 — Arts. 989, 1047 C. C.*—A contractor with a municipality applied to the mayor thereof for financial assistance in carrying out works he had agreed to construct and obtained the necessary financial aid from him upon an understanding that the mayor should receive a bonus in consideration of the financial assistance to be rendered. On the completion of the works, but prior to the dates when the corporation was obliged to make payment, a promissory note was obtained from the municipality which was indorsed by the contractor, delivered to the mayor as collateral security for the amount owing to him, and, by the latter, was discounted at a bank. The mayor retained the proceeds of the note for the purpose of satisfying the amount of the bonus promised to him and some other charges which he claimed in connection with his services in financing the contractor. In an action by the contractor to recover the funds.—*Held*, that the arrangement so made had the effect of giving the mayor an interest in the con-



tract incompatible with his duty as a member of the municipal council, contrary to public policy, and in violation of the provisions of ss. 1 and 2 of the Quebec Statute, 58 Vict. c. 42, and that he was not entitled to retain the moneys.—*Held*, also, that, in the circumstances of the case, the plaintiff's right of action was not affected by the illicit nature of the agreement, and that he was entitled to recover the amount so retained in an action for money had and received to his use by the defendant, or under the provisions of section 11 of the Quebec statute, 58 Vict. c. 42.—Judgment appealed from reversed. *Consumers Cordage Co. v. Connolly* (31 Can. S. C. R. 244) followed. (Leave to appeal to Privy Council granted, 7th July, 1914.) *Lapointe v. Messier*, xlix., 271.

31. *Contract—Exclusive franchise—Renewal at expiration of term—Right of preference—By-law—Approval by ratepayers.*—The municipal corporation granted exclusive franchises to R. for supplying electric light, etc., to the inhabitants of the municipality for the term of ten years, with a proviso giving R. a preference over any other person tendering for such services, at the end of that term, at the rates mentioned in the competing tender, for an additional term of ten years. On the termination of the ten years mentioned in the contract, in pursuance of powers obtained from the legislature permitting the municipal corporation to supply electric light, etc., to the inhabitants, the corporation passed a by-law whereby it undertook to perform these services, and refused to renew the contract for the additional term. In an action by R. to have the by-law set aside, a declaration that he was entitled to the renewal of his contract for the additional term, and for an injunction restraining the corporation from acting upon the by-law.—*Held*, affirming the judgment appealed from (Q. R. 23 K. B. 97), that there was no obligation arising under the contract which prevented the corporation from exercising the new powers vested in it for the advantage of the inhabitants and that, in consequence of the exercise of those powers, R. had no contractual right to a renewal for the additional term.—As the by-law in question had been ratified by the provincial statute 3 Geo. V., c. 67, during the time the suit was pending, the cross-appeal by the corporation was allowed and the by-law and a resolution of the municipal council based thereon were declared valid. *Ricard v. Grand Mère*, l., 122.

32. *Contract with company—Franchise for water supply—Protection against fire—Negligence—Liability of company to ratepayer—Délit—Damages.*—A municipal corporation, with assent of the ratepayers, entered into a contract by which it gave the defendant company the exclusive privilege for twenty-five years of maintaining a system of water supply to the municipality. The company was authorized to fix rates for water supplied for domestic purposes, and was obliged, for protection against fire, to have hydrants at certain places and at all times, in case of fire, except when the plant was undergoing necessary repairs, to main-

tain a specified capacity and pressure of water. The property of B., a ratepayer, was destroyed by a fire which attained serious dimensions owing to the pressure being at the outset much less than that required by the contract.—*Held*, affirming the judgment of the King's Bench (Q. R. 22 K. B. 487), which affirmed the Court of Review (Q. R. 41 S. C. 348), Brodeur, J., dissenting, that there was no contractual relation between B. and the company; that the contract did not evidence any intention by the parties to it to give a right of action against the company to each ratepayer in case of violation of the provisions for fire protection, and that B., therefore, could not maintain an action for the value of his property so destroyed.—*Held*, also, Brodeur, J., dissenting, that B. could not maintain an action for damages on the ground that the failure to maintain the pressure stipulated for in the contract constituted a *délit* or *quasi-délit* under the law of Quebec. *Belanger v. Montreal Water & Power Co.*, l., 356.

33. *Powers of council—Highways—Exclusive privilege—Necessity of by-law—Validity of contract—Right of action—Status of plaintiff—Shareholder in joint-stock company—Ratepayer—Special injury—Public interest—Prosecution by Attorney-General—Practice—Art. 978, C. P. Q.*—Assuming to act under authority of an existing by-law regulating traffic by autobusses and in virtue of a special statute (2 Geo. V., c. 56 (Que.)), and the general powers conferred by the city charter, the municipal council passed a resolution authorizing the corporation of the municipality to enter into a contract granting a joint stock company the exclusive privilege of operating autobus lines on certain streets in the city and charging fares for the carriage of passengers. An action was brought by a shareholder in a tramway company (which held similar privileges), who was also a municipal ratepayer attacking the validity of the by-law and of a contract made by the municipal corporation in pursuance of the resolution on the grounds that there was no authority for the granting of such exclusive privileges, that such powers, if they existed, could only be exercised by means of a by-law, and that a provision in the contract whereby the municipality became entitled to certain shares in the stock of the autobus company was *ultra vires* of the municipal corporation.—*Held*, affirming the judgment appealed from (Q. R. 23 K. B. 338), Idington and Anglin, J.J., dissenting, that in the absence of evidence of special injury sustained by the plaintiff, he had no status entitling him to bring the action.—*Per* Idington, J., dissenting.—The plaintiff was entitled to institute the action by virtue either of his quality as a shareholder in the tramway company, the privileges of which might be injuriously affected, or as a ratepayer of the municipality.—*Per* Anglin, J., dissenting.—The plaintiff could bring the action in his capacity as a ratepayer of the municipality.—*Per* Fitzpatrick, C.J. and Duff and Brodeur, J.J.—An appropriate remedy in such a case would be by action prosecuted by the Attorney-General of the province under article 978 of the Code of



Civil Procedure.—*Per Duff, J.*—Such an action might be prosecuted either by the municipal corporation itself or by an authority representing the general public.—Validity of the by-law, resolution and contract in question discussed by Idington, Duff and Anglin, *JJ. Robertson v. Montreal*, lii., 30.

34. *Annexation of territory—Portion of county road—Railway franchise—Annual payments—Divisibility after annexation—Ontario Railway and Municipal Board—Order for annexation—By-law.*—In 1902, the County of Wentworth passed a by-law by which an electric railway company was given the privilege of running cars over a county road on paying annually to the county a certain sum for each mile of the operated road. In 1909, territory of the county, including part of said road, was annexed to the City of Hamilton.—*Held, Brodeur, J.*, dissenting, that the agreement with the railway company remained in force in respect to the portion of road so annexed and the county was entitled to the whole annual payment as if the annexation had not taken place.—The railway company, by agreement in writing, accepted the said by-law of the county, and covenanted with the latter "their successors and assigns" to perform all the conditions thereof. *Held, Brodeur, J.*, dissenting, that the City of Hamilton did not, as a consequence of the annexation of county territory, become the "successor" of the county under said agreement and by-law so as to be entitled to a proportion of the payments to be made by the railway company thereunder.—*Per Fitzpatrick, C.J.* and Idington and Duff, *JJ.*—The Ontario Railway and Municipal Board was not invested with authority to provide, in its order extending the boundaries of the city, that such rights as those reserved by section 24 of the county by-law should, on such extension of the boundaries, pass to the city in whole or in part.—Judgment of the Appellate Division (35 Ont. L. R. 434) reversed and that of the trial judge (31 Ont. L. R. 659) restored. *County of Wentworth v. Hamilton Radial Electric Railway Co.*, liv., 178.

35. *Title to land—Conveyance upon conditions—Public park—Trust—Forfeiture—Assignment of interest—Decree in favour of assignee—Champertous agreement*, xxxv., 121.

See TITLE TO LAND.

36. *Board of Railway Commissioners for Canada—Jurisdiction—Construction of subway—Cost—Apportionment—Tramway—Agreement with municipality*, xxxvii., 354.

See MUNICIPAL CORPORATIONS.

37. *Use of streets—Payment for use—Percentages of receipts—Traffic beyond city limits—Validity of agreement.*, xxxviii., 106.

See MUNICIPAL CORPORATIONS.

38. *Statutory contract—Monopoly—Condition of defeasance—Forfeiture—Rescission*, xl., 629.

See ACTION.

#### 4. DRAINAGE.

39. *Drainage—Construction of sewers—Nuisance—Injunction—Damages—Right of action—Practice*; *Cout. Cas.* 162.

See APPEAL.

#### 5. DUTIES AND POWERS.

40. *Sale of corporate property—Committee of council—Authority to sell—Ratification.*—A committee of a municipal council cannot, unless authorized by the council, sell corporate property, and if they do an action lies against them by the corporation for any loss incurred thereby.—Such illegal sale cannot be ratified by resolution of the council carried by the votes of the members of the committee. *Town of New Glasgow v. Brown*, xxxix., 586.

41. *Municipal council—Illegal expenditure—Action by ratepayer—Intervention of Attorney-General validating Act—Right of appeal.*—Prior to the passing of the Act of the Legislature of Nova Scotia, 7 Edw. VII. c. 61, the city council of Halifax had no authority to pay the expenses of the mayor in attending a convention of the Union of Canadian Municipalities.—Where a municipal council illegally pays away money of the municipality to one of its officers an action to recover it back may, if the council refuses to allow its name to be used, be brought by a ratepayer suing on behalf of all the ratepayers and need not be in the name of the Attorney-General.—Pending such an action the legislature passed an Act authorizing payment by the council of any sums for principal, interest and costs incurred by the defendant "in the event of judgment being finally recovered by the plaintiff."—*Held, per Fitzpatrick, C.J.* and MacLennan, *J.*, that the meaning of the words quoted was that the action might proceed to a finality, including any competent appeal, and that they did not put an end to the appeal to this court.—*Per Fitzpatrick, C.J.* and MacLennan, *J.*—*Quære.*—Should not the action have been brought on behalf of all the ratepayers and inhabitants of the municipality?—Judgment appealed from (41 N. S. Rep. 351), affirmed. *MacIreith v. Hart*, xxxix., 657.

42. *Powers—Land tax sales—Purchase by corporation—Vesting of title—Manitoba Real Property Act—Agreement to re-convey—Necessity of by-law.*—After the City of Winnipeg had become purchaser of lands within the city, sold for arrears of overdue taxes, and had obtained a certificate of title therefor under the Real Property Act, a resolution of the city council was passed agreeing that the land should be re-conveyed to the former owner on payment of the taxes in arrears with interest and costs.—*Held*, that the corporation was not bound by the resolution, as the re-conveyance of the lands could be made only under the authority of a by-law as provided by the city charter. *Waterous Engine Works Co. v. The Town of Palmerston* (21 Can. S. C. R.

556) and *District of North Vancouver v. Tracy* (34 Can. S. C. R. 132) followed.—Judgment appealed from (17 Man. R. 497) affirmed. *Ponton v. City of Winnipeg*, xli., 18, 366.

43. *Constitutional law—Legislative jurisdiction—“Early closing by-law”—Property and civil rights—Local or private matters—Regulation of trade and commerce—B. N. A. Act, 1867, s. 91, s.-s. 2; s. 92, s.s. 8, 13, 16—57 Vict. c. 50 (Que.).*—Provincial legislation authorizing a municipality to regulate the closing of shops of a particular character within its limits, is a subject which falls within the classes of matters enumerated as being within the exclusive jurisdiction of provincial legislatures under s.-s. 13 or s.-s. 16 of s. 92 of the “British North America Act, 1867,” and is not an interference with the exclusive legislative jurisdiction of the Parliament of Canada conferred by the second sub-section of s. 91 of that Act.—Unless a by-law, enacted in good faith under the authority of the Quebec statutes, 57 Vict. c. 50, and 4 Edw. VII. c. 39, appears to be so unreasonable, unfair or oppressive as to be a plain abuse of the powers conferred upon the municipal council it should not be set aside.—Judgment appealed from (Q. R. 17 K. B. 420), reversed. *City of Montreal v. Beauvais*, xlii., 211.

44. *Appeal—Quo warranto—Action by ratepayer—Payment of money—Statutory procedure—Matter of form—“Montreal City Charter,” ss. 42, 334, 338—Construction of statute—3 Edw. VII. c. 62, ss. 6 and 27.*—An action by a ratepayer of the City of Montreal to compel the members of the finance committee of the city council to reimburse the city for moneys which it was alleged they authorized to be illegally expended, and asking for their disqualification under s. 338 of the “City Charter” is not a proceeding in *quo warranto* under the provisions of articles 987 et seq. of the Code of Civil Procedure. — By s. 334 of the charter (3 Edw. VII. c. 62, s. 27), the city council of Montreal must at the end of each year appropriate the revenues of the city for the services during the coming year, including a reserve of five per cent. of the total revenues, three per cent. of which is to provide for unforeseen expenses. By s. 42 of the charter, as amended by 3 Edw. VII. c. 62, s. 6, the finance committee of the council must consider all recommendations involving the expenditure of money, unless an appropriation has been already voted for the purpose. An item of unforeseen expenditure came before the council and was passed and sent to the finance committee, which directed the city treasurer to pay the amount, and it was paid accordingly. — *Held*, the Chief Justice and Girouard, J., *contra*, that the reserve of the two per cent. for unforeseen expenses was not an appropriation of the amount so directed to be paid.—*Held*, also, the Chief Justice and Girouard, J., dissenting, that under the provisions of the charter it is essential that every recommendation for the payment of money, where there has been no previous appropriation for the payment to be made, must receive the consideration

of the finance committee and be sanctioned or rejected by that committee before being finally acted upon by the council. That any such payment made without this formality, even when made *bonâ fide* and though, in fact, sanctioned by the finance committee after it had been finally dealt with by the council, and though the city suffered no prejudice in consequence of such payment, is an illegal expenditure and involves the consequences provided in such cases by the 338th section of the “City Charter.” *Larin v. Lapointe*, xlii., 521.

45. *Public library—Offer of funds—Special legislation—Contract for plans—Municipal powers.*—A sum of money was offered the City of Sydney for a public library on condition that the city procured the site and provided for its maintenance. An Act of the legislature authorized the purchase of the site and a special tax for its cost and future maintenance of the library. The city council invited tenders for plans of the building, and accepted that of C. Bros. & Co. The scheme, however, fell through, the money offered was not paid nor the library built. C. Bros. & Co. sued the city for the cost of their plans.—*Held*, that the city had no authority to enter into any contract involving the expenditure of municipal funds in respect to the said building, and the action could not be maintained. *City of Sydney v. Chappel Brothers*, xliii., 478.

46. *Statutory duty—County officers—Office accommodation—Discretion—Mandamus.*—The courts should not interfere by *mandamus* with the reasonable exercise by a county council of its discretion in selecting the place in the county at which an office shall be provided for the County Crown Attorney and Clerk of the Peace.—Judgment of the Court of Appeal (19 Ont. L. R. 659) affirmed. *Rodd v. County of Essex*, xliv., 137.

47. *Water service—Statutory authority—Construction of statute—Water for domestic, fire and other purposes—Motive power—Discretion of council.*—The charter of a town (50 Vict. c. 58, s. 6 [N.B.]), provides that “the town council of Town of Campbellton are hereby authorized and empowered to provide for the said town a good and sufficient supply of water for domestic, fire and other purposes.” — *Heid*, per Fitzpatrick, C.J. and Duff, J. (Idington, J., *contra*, Davies and Anglin, JJ., *dubitante*), that the statute empowers the municipality to furnish water for the use of the customer in working a printing press.—The town council, by by-law, fixed the rates to be paid for water including “printing presses, one service, 1¼ pipe or less, per year, \$30.” C., proprietor of a newspaper and printing establishment, connected his premises with the water mains by a two-inch pipe and received water for a year for his motor, paying said rate therefor. He then continued the use of the water for some months when the council passed a resolution that newspaper proprietors should be notified that the supply would be cut off at a certain date, which was done. C. brought an action for damages to his business.—*Held*,

*per* Idington, J.—The council had no authority to make the contract with C.; there was no authority in the absence of a special contract with the town, to place a two-inch service pipe for receipt of water; and if the municipality had power to enter into this agreement it was under no duty to exercise it.—*Per* Fitzpatrick, C.J. and Duff, J., that the municipality having entered upon the service of the appellant's motor was bound to continue it unless and until the council in the *bonâ fide* and reasonable exercise of its discretion thought it desirable to discontinue it in the interest of the inhabitants as a whole. — *Per* Davies and Anglin, JJ.—If any contract existed it was one under which C. was entitled to a supply of water for his motor so long as the town council should, in its discretion, deem it advisable to continue it. There was no evidence to warrant the jury's finding that the council was guilty of negligence and exercised its discretion *malâ fide*. — *Per* Fitzpatrick, C.J., and Duff, J.—The circumstances disclosed were such as to warrant a finding of unfair discrimination against C., but the damages awarded were excessive.—Judgment ordering a new trial (39 N. B. Rep. 573) affirmed. *Crockett v. Town of Campbellton*, xlv., 606.

48. *Assessment and taxation—Meetings of council—Court of Revision—Transacting business outside limits of municipality—Place of meeting—Revision of assessment rolls—By-laws—Sale for arrears of taxes—Construction of statute—55 Vict. c. 33, s. 83 (a) (B.C.)—R. S. B. C., 1897, c. 144—Statutory relief—Estoppel—Acquiescence—Laches—Limitation of action.]—Per Fitzpatrick, C.J. and Idington and Anglin, JJ.—Prior to the amendment of the British Columbia "Municipal Act, 1892," by the "Municipal Amendment Act, 1894," 57 Vict. (B.C.) c. 34, s. 15, municipal councils subject to those statutes had no power to hold meetings for the transaction of any administrative, legislative or judicial business of the municipal corporation at a place outside of the territorial boundaries of the municipality. — *Per* Fitzpatrick, C.J. and Idington, Duff and Anglin, JJ.—Courts of revision organized under the British Columbia municipal statutes, have no power to exercise their functions as such, except at meetings held within the territorial limits of the municipality where the property, described in the assessment rolls to be revised by them, is situate.—Section 15 of the "Municipal Amendment Act, 1894," inserted in the "Municipal Act, 1892" (B.C.), a new provision, section 83 (a), as follows: "All meetings of a municipal council shall take place within the limits of the municipality, except when the council have unanimously resolved that it would be more convenient to hold such meetings, or some of them, outside of the limits of the municipality."—*Held*, Brodeur, J., dissenting, that there was no proof of such a unanimous resolution as the statute requires.—The council of the respondent municipality, without any formal resolution as provided by the amended statute, held its meetings during several years at a place outside the limits of the municipality, and organized courts of revision there. These courts held all their meetings at the same*

place as the council, and assumed to revise the municipal assessment rolls at those meetings. The council approved the rolls so revised, and enacted by-laws, from year to year, levying rates and authorizing the collection of taxes on the lands mentioned in the rolls, and, after notice as provided by the statutes, sold lands so assessed and alleged to be in arrear for the taxes so imposed.—*Held*, Brodeur, J., dissenting, that the assessment rolls were invalid, that the by-laws levying the rates and authorizing the collection of taxes on the lands mentioned therein were null and void, and that the sales of the lands so made for alleged arrears of taxes were illegal and of no effect.—*Per* Duff and Anglin, JJ., Brodeur, J., *contra*.—The default in payment of taxes, by the appellant, and his subsequent inaction and silence, while aware of the fact that his lands had been sold for alleged arrears of taxes, did not disentitle him from taking advantage of the statutory procedure respecting the contestation of sales for arrears of taxes either by estoppel, acquiescence or laches. The provisions of s. 126 (3) of the "Municipal Act, 1892," (now R. S. B. C. 1897, c. 144, s. 86(2)), have no application to invalidate by-laws enacted by municipal councils on occasions when they could not perform legislative functions.—The judgment appealed from was reversed, Brodeur, J., dissenting, on the ground that, as the council had held its first meeting in each year within the limits of the municipality and adjourned for the purpose of holding its next meeting at the place outside of the municipality where all other meetings were held, the by-laws approving of the assessment rolls and those levying rates and authorizing the collection of taxes were valid and the sale of the lands in question for arrears of such taxes was legal and effective. *Anderson v. Municipality of South Vancouver*, xlv., 425.

49. *Statutory powers—Electric light and power—Waterworks—Immovable outside boundaries—Purchase on credit—Promissory notes—Hypothec—By-law—Loans—Approval of ratepayers—Special rate—Sinking fund—Construction of statute—(Que.) 8 Edw. VII. c. 95—R. S. O., 1909, tit. XI.—"Cities and Towns Act."]*—The council of the Town of Shawinigan Falls, acting under a special Act of incorporation, 8 Edw. VII. c. 95, and the "Cities and Towns Act," R. S. Q., 1909, Title XI., enacted a by-law authorizing the purchase by the municipality of the appellants' electric light and power plant, which was situated outside the municipal boundaries, but within twenty miles thereof, for the purpose of establishing a system of electric lighting and waterworks within the municipality. The price of the property was to be paid in part by annual instalments, to be secured by the promissory notes of the municipal corporation, and the balance, being the amount of a subsisting hypothec and interest thereon, was to be satisfied by the corporation assuming the hypothecary obligations. Previous to enactment the by-law had not been approved by a vote of the ratepayers, and it did not impose a special rate to meet interest and establish a sinking-fund, as required by article 5668 R. S. Q., 1909.—*Held*, affirm-

ing the judgment appealed from (Q. R. 19 K. B. 546), Anglin, J., dissenting, that the by-law was invalid. — *Held*, per Davies, Idington and Duff, JJ., that the municipal corporation had no power to establish such works outside the boundaries of the municipality. Per Anglin, J., dissenting, that in view of the situation of the electric and power plant, the peculiar circumstances of the case, and the special provisions of the Act incorporating the town, it was competent for the municipal corporation to acquire the property and to establish and maintain the works in question. — Per Davies, J., Anglin, J., *contra*, that the by-law was invalid for want of provision, either in itself or in another by-law contemporaneously enacted, fixing the necessary rate for the purpose of meeting interest and establishing a sinking fund, as required by article 5668 R. S. Q., 1909. — Per Idington, J., Anglin, J., *contra*, that the by-law was one which required the approval of the ratepayers of the municipality, as provided by article 5783 R. S. Q., 1909, respecting loans, and, as their assent had not been obtained prior to enactment the by-law was invalid. — Per Anglin, J. — The statutory obligation in respect of the imposition of a special rate to meet interest and establish a sinking fund would be discharged by the levy of the necessary rates for those purposes from year to year until the debt to be incurred was extinguished. *Shawinigan Hydro-Electric Co. v. Shawinigan Water and Power Co.*, xlv., 585.

50. *Undertaking with ratepayer—Non-collection of taxes—Discretion—Assessment and taxes.* — *Held*, per Idington and Anglin, JJ. — Where there is no statutory prohibition thereof it is not illegal for a municipality, in the *bonâ fide* exercise of its discretion, and to carry out an undertaking with a ratepayer, to refrain from collecting the taxes levied on the latter's property over and above a fixed annual sum stipulated for. — *Held*, per Duff and Brodeur, JJ. — A ratepayer has no status *in curia* to compel the corporation to collect the balance of taxes so allowed to remain unpaid each year. — Judgment of the Appellate Division (28 Ont. L. R. 593) affirmed. *Norfolk v. Roberts*, l., 283.

51. *Expropriation—Statutory powers—Lands outside municipality—Appointment of arbitrators—Procedure—Award—“Towns Corporations Act,” R. S. Q., 1888, arts. 4561-4569—Charter of Town of Fraserville, 3 Edw. VII., c. 69; 6 Edw. VII., c. 50—Quebec “Expropriation Act,” 54 Vict. c. 38—Words and phrases—“Avoisinant”—“Adjoining.”* — The statutes incorporating the Town of Fraserville (3 Edw. VII., c. 69; 6 Edw. VII., c. 50 (Que.)), by s. 183 gave power to expropriate lands both within and outside the limits of the municipality, and s. 193 substituted a new section to replace article 4561 of the Revised Statutes of Quebec, 1888, in regard to expropriations. In expropriating lands outside its limits for an electric lighting system the town proceeded under articles 4562 to 4569 of the “Towns Corporations Act.” R. S. Q., 1888, incorporated as part of the charter

by force of article 4178, R. S. Q., 1888, and obtained an order appointing an arbitrator on behalf of the owner from a judge of the Superior Court. Notwithstanding objection by the owner, an award was made and he brought action to set it aside on the ground that, by s. 193, the application of articles 4562 to 4569 was confined, in the case of the Town of Fraserville, to expropriations within its limits and, as to expropriations beyond that area, nominations of arbitrators could be made only by the Attorney-General as provided by the “Expropriation Act,” 54 Vict. c. 38. — *Held*, Anglin, J., dissenting. — That the sixth section of the Act, 6 Edw. VII., c. 50, by specifically authorizing the municipality to expropriate lands outside its limits enacted provisions incompatible with those of article 4561, R. S. Q., 1888, as so replaced by s. 193, and it was, therefore, repealed as the repugnant provisions of the later statute prevailed. *The King v. The Justices of Middlesex* (2 B. & Ad. 818), and *In re Cannings and County Council of Middlesex* ([1907], 1 K. B. 51), followed. Consequently, the procedure adopted for the appointment of arbitrators was proper and the award was valid. — The statute, 6 Edw. VII., c. 50, by s. 6, authorizing expropriations outside the town, in the French version made use of the phrase “dans ou en dehors de la ville et les municipalités avoisinantes,” while the English version used the term “adjoining municipalities.” The 297th section of the charter provided that in the event of discrepancy preference should be given to the French version. — *Held*, that the statute should be interpreted according to the meaning of the broader term “avoisinantes,” used in the French version, and consequently, in exercising such powers of expropriation, the municipality was not limited to taking lands in contiguous municipalities. — Per Anglin, J. — By section 193 of the charter the application of the provisions of the “Towns Corporations Act,” arts. 4165 *et seq.* R. S. Q., 1888, is expressly confined to expropriations within the town; s. 193 was not excluded from the charter nor impliedly repealed by the amendment of 1906 to s. 183, and the appointment of arbitrators by the judge was an usurpation of the jurisdiction conferred by articles 5754*d* and 5754*e*, R. S. Q., 1888 (54 Vict. c. 38, s. 1), upon the Attorney-General of the province. *Pouliot v. Town of Fraserville*, liv., 310.

52. *Municipal council—Illegal expenditure—Action by ratepayer—Parties—Right of appeal*, xxxix, 657.

See MUNICIPAL CORPORATIONS.

53. *Appeal—Jurisdiction—Matter in controversy—Municipal franchise—Demolition of waterworks—Title to land—Future rights.* *La Cie Lorette v. Verrett*, xliii., 156.

See APPEAL.

54. *Appeal—Jurisdiction—Matter in controversy—Instalment of municipal tax—Collateral effect of judgment.* *Town of Outremont v. Joyce*, xliiii., 611.

See APPEAL.

55. *Construction of works — Riparian rights—Access to waterfront. Merritt v. Toronto, xlviii, 1.*

See RIPARIAN RIGHTS.

56. *Fire insurance—General conflagration —Acts of municipal officials—Demolition of buildings—Statutory authority—R. S. Q., 1888, art. 4426—Indemnity—Subrogation — Tort—Transfer of rights to municipality — Liability of insurer, li., 562.*

See FIRE INSURANCE.

## 6. HIGHWAYS.

57. *Reservation for highway—Opening by road—Damages.]—The action was to recover a strip of land taken along the side of W.'s property, for opening of a by-road, and for damages by removal of fences. Questions were raised as to the right of the corporation, without paying indemnity, to take possession of this land as part of the reservation for road allowance established by law. The judgment appealed from, in reversing the Superior Court, maintained the action, granted \$20 damages, and ordered that W. should be reinstated in possession of the strip of land. This judgment was reformed by striking out the damages and adding, after the direction, that W. should be reinstated in possession by the words "si mieux n'aime la dite corporation de payer au dit demandeur la somme de \$200, comme prix du dit terrain, le tout avec dépens, dans l'une ou l'autre alternative, contre la dite corporation dans toutes les cours." Township of Arundel v. Wilson; Cout. Dig. 210.*

58. *Municipal corporation—Street—Power to raise the level—Liability for injury to owners of abutting property—Nuisance.]—The City of Saint John, by its charter, had power to alter and repair its streets. Under this charter the corporation frequently altered the level of streets. An Act of the legislature recited that, owing to irregularities of the ground upon which the city was situated, it had been found expedient to make alterations in the level of streets, that this had rendered it necessary for proprietors of houses to erect steps and stairways to obtain access to their properties, that the corporation had undertaken to authorize this being done, but doubts had arisen as to its power so to do. The statute thereupon proceeded to empower the council of the corporation to permit such steps to be placed upon the highway so long as they did not encroach beyond a certain distance. In 1874 the corporation raised the level of church street, supporting the work in front of the plaintiff's house by a wall and placing a fence thereon, cutting off his direct access to the street. The plaintiff claimed first, that the defendants had no statutory authority to do the work complained of, and, secondly, that, in the construction of the work, the defendants had acted arbitrarily and oppressively, even if they had the statutory power to raise the level of the street. At the trial the plaintiff was nonsuited, the court holding that, in raising the level of the street, the corporation had*

acted within the powers granted by its charter, and that there was no evidence to support the contention that the council had acted arbitrarily. On appeal to the full court it was held, the Chief Justice and Duff, J., dissenting, that the non-suit should be set aside and a new trial had between the parties, the court holding that as a matter of law the defendants had not, under any Act of the legislature, authority to raise the street in the manner in which they did raise it, and that, whatever might be their jurisdiction over the street, the particular mode in which they raised the street in question was in excess of their jurisdiction. On appeal to the Supreme Court of Canada. — *Held*, Fournier and Henry, J.J., dissenting, that the judgment of the full court (18 N. B. Rep. 636), should be set aside, and the non-suit granted at the trial restored.—*Held, per* Gwynne, J., that, by the Act of incorporation and other Acts of the legislature, the power of altering and repairing the highway was restricted by no condition save the implied one that the work should be done so as not to constitute a public nuisance; and, if not a public nuisance, the convenience of all private persons, however great the damages suffered, had to yield to the public interest.—*Leader v. Moxon* (2 W. Bl. 924), discussed. *City of Saint John v. Pattison* (Cass. Dig. 173; Cout. Dig. 904); Cam. Cas. 537.

59. *Municipal corporation — Highway — Snow cleaning—Care of streets—Bad repair — Loss of profits to omnibus line—Negligence—Right of action—Damages.]—W. was the proprietor of an omnibus line plying in certain streets of the City of Halifax during the winter of 1881-2, under a license from the city. About the 10th January the snow fell very heavily, and about the 20th, owing to the snow being thrown from the sidewalks into the street, the roadway became filled with pitch holes, some of which were four feet deep. Other severe snow storms through the winter aggravated the condition of the road. The plaintiff alleged that, by reason of this bad repair of the roadway, he had suffered damages to a large amount by the wrecking of his carriages, straining of his horses, breaking of harness, etc., and loss of profits through the diminution in traffic on his 'bus line. Plaintiff complained to the city authorities, asking that men be put to work to level the snow between the sidewalks, but his request was refused. The action was tried before McDonald, C.J., and a jury, when a verdict for the plaintiff for \$600 damages was found. The defendants obtained a rule to set aside the verdict, and for a new trial, which, after argument, was discharged by the Supreme Court of Nova Scotia (16 N. S. Rep. 371). In appeal to the Supreme Court of Canada:—*Held*, the Chief Justice and Gwynne, J., dissenting, that the judgment of the court below should be affirmed and the appeal dismissed with costs.—*Per* Strong, J.—Under the Act incorporating the defendants and subsequent Acts amending the same, not only were the defendants liable to indictment for breach of their public duties in respect of the matters complained of, but the plaintiff could*

also maintain an action as a person especially injured thereby.—The evidence was amply sufficient to warrant the trial judge in leaving the case to the jury, and, the condition of the street being one which might have been remedied by levelling the hillocks which had been formed, and which caused the damage the respondent complained of, the verdict should be upheld.—The loss of profits claimed was not too remote, but was quite as much an immediate and natural cause of the injury as was the loss of custom in *Lancashire & Yorkshire Ry. Co. v. Gidlow* (L. R. 7 H. L. 517). — *Per Henry, J.*—The City of Halifax was liable for the negligence of the street commissioners although they were appointed by the city council and not by the Court of General Sessions as provided by R. S. N. S. (4 ser.) c. 49. *City of Halifax v. Walker*, *Cout. Dig.* 954, 978; *Cam. Cas.* 569.

60. *Boundary roads—Rivers and streams—Bridges—Deviation of boundary road—Liability of adjoining counties for repairs to bridges.*—The county of Victoria adjoins the county of Peterborough on the west, and, up to 1863, the counties were united for municipal and other purposes. The boundary road between the counties in part of its course formerly passed between the 10th concession of the township of Verulam in the county of Victoria and the 19th concession of the township of Harvey in the county of Peterborough, and the lots in the latter concession from 1 to 15 constituted a range of broken lots forming a narrow strip of land fronting on the west side of Pigeon Lake, and separated by that body of water from the rest of the township. The boundary line road between these counties deviated at several places, owing to natural obstructions, and near the village of Bobcaygeon, which was wholly situate in the township of Verulam, the road in deviating from the boundary line crossed the two outlets of Sturgeon Lake, and bridges were built there, during the union, at the joint expense of the two counties, and were treated as subject to a joint control and liability. By 42 Vict. c. 47 (Ont.), which came into force on the 5th March, 1880, that portion of the township of Harvey, lying on the west of Pigeon Lake, was detached from Harvey and joined to Verulam for all purposes. The bridges near the village of Bobcaygeon having got into disrepair, the defendant refused to admit any liability therefor, contending that, since the passing of 42 Vict. the repair of these bridges rested wholly with the township of Verulam. At the trial before Robertson, J., it was held (15 Ont. App. R. 446), that, notwithstanding the provisions of 42 Vict., the bridges remained under the joint control and liability of the two counties. On appeal to the Court of Appeal (15 Ont. App. R. 617), it was held that, by virtue of the legislation, Verulam had become a township bordering on a lake, and that the boundary line between the two townships, which was also the county boundary line, had now become the centre line of Pigeon Lake, and not, as formerly, on the original road allowance between Verulam and Harvey. On appeal by the plaintiff to the Supreme Court of Canada:—*Held*, that

the judgment of the Court of Appeal should be affirmed, and the appeal dismissed with costs.—*Per Taschereau, Gwynne and Patterson, JJ.*, that since the passing of 42 Vict. c. 47, the boundary line must be regarded as having always been as by that Act established, with the range of broken lots wholly in the township of Verulam in the County of Victoria, and with the boundary between Verulam and Harvey running along the centre line of Pigeon Lake; and that ss. 535 and 538, c. 184, R. S. O. (1887), had no application, as those sections only applied to cases where the intention of the survey was that there should be a road upon the boundary line, but, viewing the boundary line as located by the Act of 1880 in and through Pigeon Lake, it could not be said that the bridges in question were upon the road between the two townships, or on a deviation from such road. *County of Victoria v. County of Peterboro*, *Cout. Dig.* 905; *Cam. Cas.* 608.

61. "*Railway Act, 1903*," ss. 23, 184 — *Construction, etc., of street railway or tramway—Removal of tracks, etc.* — *Board of Railway Commissioners for Canada—Jurisdiction—Condition precedent—Use of highways in cities and towns—Consent by municipal authority—Approval of by-law—Quebec Municipal Code, arts. 464, 481.*—In the case of a street railway or tramway or of any railway to be operated as such upon the highways of any city or incorporated town, the consent of the municipal authority required by s. 184 of the "Railway Act, 1903," must be a valid by-law approved and sanctioned in the manner provided by the provincial municipal law, and, in the absence of evidence of such consent having been so obtained, the Board of Railway Commissioners for Canada have no jurisdiction to enforce an order in respect to the construction and operation of any such railway. The order appealed from was reversed and set aside, the Chief Justice and Girouard, J., dissenting. *Montreal Street Railway Co. v. Montreal Terminal Railway Co.*, xxxvi., 369.

62. *Appeal—Jurisdiction—Annulment of proces-verbal—Injunction—Matter in controversy—Art. 560 C. C.—Servitude.*—In a proceeding to set aside resolutions by a municipal corporation giving effect to a *proces-verbal*, the court followed *Toussignant v. County of Nicolet* (32 Can. S. C. R. 353), and quashed the appeal with costs. Article 560 C. C. referred to. *Leroux v. Parish of Ste. Justine*, xxxvii., 321.

63. *Reservation for highway—Opening first front road—Appropriation—Indemnity—Award—Proces-verbal—Description of lands and owners—Formal defects—Quebec Municipal Code, arts. 16, 903, 906, 914, 918.*—In proceedings for the opening of first front roads for which reservations have been made in the grants of land by the Crown, the provisions of the Quebec Municipal Code requiring a description of the lands appropriated for the highway and the owners thereof are imperative and not merely matters of form which may be cured by the provisions of article 16 of that Code, and fail-ure to comply with these requirements nulli-

fies the proceedings. — Judgment appealed from (Q. R. 17 K. B. 566) reversed, Davies and Idington, JJ., dissenting. *King's Asbestos Mines v. Municipality of South Thetford*, xli., 585.

64. *Highways—Nuisance—Repair of sidewalks—Statutory duty—Negligence—Nonfeasance—Personal injury—Civil liability—Right of action—Construction of statute—“Vancouver City Charter”—64 V. c. 54, s. 219 (B.C.).*—Where a municipal corporation is guilty of negligent default by nonfeasance of the statutory duty imposed upon it to keep its highways in good repair, and adequate means have been provided by statute for the purpose of enabling it to perform its obligations in that respect (v.g., 64 Vict. c. 54 [B.C.]), persons suffering injuries in consequence of such omission, may maintain civil actions against the corporation to recover compensation in damages, although no such right of action has been expressly provided for by statute, unless something in the statute itself or in the circumstances in which it was enacted justifies the inference that no such right of action was to be conferred—*Coe v. Wise* (5 B. & S. 440; L. R. 1 Q. B. 711) and *Mersey Docks Trustees v. Gibbs* (L. R. 1 H. L. 93) applied. *Municipality of Pictou v. Geldert* ([1893] A. C. 524); *Municipal Council of Sydney v. Bourke* ([1895] A. C. 433); *Sanitary Commissioners of Gibraltar v. Orfila* (15 App. Cas. 400); *Cowley v. Newmarket Local Board* ([1892] A. C. 345); *Campbell v. City of Saint John* (26 Can. S. C. R. 1); and *City of Montreal v. Mulcair* (28 Can. S. C. R. 458) distinguished.—Judgment appealed from (15 B. C. Rep. 367) affirmed.—*Per Fitzpatrick, C.J., and Duff, J.*—The common law obligation under which the inhabitants of parishes, in England, through which highways passed were responsible for their repair has no application in the Province of British Columbia. *City of Vancouver v. McPhalen*, xlv., 194.

65. *Closing streets—“Passage of by-law”—Coming into force of by-law—Time for appealing—3 & 4 Edw. VII. c. 64 (Man.).—“Winnipeg City Charter”—Construction of statute.*—A municipal by-law for the diversion and closing of certain highways and the transfer of the land to a railway company provided that it should “come into force and effect” on the execution of a supplementary agreement between the municipal corporation and a railway company “duly ratified by council”; it also determined the classes of persons and property entitled to compensation in consequence of being injuriously affected by the diversion and closing of the streets. The statute (3 & 4 Edw. VII. c. 64, s. 708, s.-s. c (1)), conferring these powers, gave persons dissatisfied with the determination the right to appeal to a judge “within ten days after the passage of the by-law.” Another by-law was subsequently enacted by which the first by-law was “ratified and confirmed and declared to be now in force.” The defendants, who had been excluded from the class of persons to receive compensation, appealed to a judge, under the section of the statute above referred to, within ten days after the enactment of the second by-law.—

*Held*, that the term “within ten days after the passage of the by-law” in the statute had reference to the date when the by-law affecting the streets and determining the classes entitled to compensation became effective; that the first by-law did not come into force and effect in such a manner as to injuriously affect the defendants until it was ratified and confirmed by the subsequent by-law, and, consequently, the defendants’ appeal came within the time limited by the statute.—Judgment appealed from (20 Man. R. 669) affirmed. *City of Winnipeg v. Brock*, xlv., 271.

66. *Repair of highways—Statutory duty—“Unfenced trap” in sidewalk—Misfeasance—Actionable negligence—Notice—Knowledge—Personal injuries—Liability of corporation—Evidence—Findings of jury—“Res ipsa loquitur.”*—Where a municipal corporation is liable for damages sustained by reason of negligent nonfeasance of the statutory duty imposed upon it to maintain its highways in good repair, the questions of notice or knowledge of the defects do not arise. There is a presumption, in such cases, against the municipal corporation and upon it lies the onus of adducing positive evidence in rebuttal; it is not sufficient to shew that the existence of the defects were not known by the corporation officials. *Mersey Docks and Harbour Trustees v. Gibbs* (L. R. 1 H. L. 93), applied; *City of Vancouver v. McPhalen* (45 Can. S. C. R. 194) and *McClelland v. Manchester Corporation* ([1912] 1 K. B. 118) referred to. *Davies and Anglin, JJ., contra.*—An unprotected opening in the sidewalk of one of the principal streets of the city, having the appearance of being recently made for some purposes in connection with the laying of gas-pipes, was permitted to remain without proper repair during most of the day, and, at about four o’clock in the afternoon, the plaintiff’s injuries were sustained by stepping into the hole while making use of the sidewalk.—*Held*, affirming the judgment appealed from (1 West. Weekly Rep. 31; 19 W. L. R. 322), *Davies and Anglin, JJ.*, dissenting, that evidence of these facts made out a proper case for submission to the jury, and upon which they could return findings of breach of statutory duty and misfeasance on the part of the municipal corporation. *City of Vancouver v. Cummings*, xlv., 437.

67. *Dedication of lands for highway—Opening of street—Construction of agreement.*—A land company made a donation of certain lots of land to the municipal corporation for the purpose of a highway and the corporation agreed to open and construct a portion of the street when necessary.—*Held*, that, on the proper construction of the agreement, in view of the powers conferred upon the corporation by section 85 of its charter (Que.), 56 Vict. c. 54, the word “necessary” in the agreement should be construed as meaning “necessary in the public or general interest” and not merely in the interest of the other party to the agreement. *In re Morton and the City of St. Thomas* (6 Ont. App. R. 323) and *Pells v. Boswell* (8 O. R. 680), referred to. *Hutchison v. City of Westmount*, xlix., 621.



68. *Municipal corporation — Altering streets — Partial closing of highway — Exchange for adjacent land — Validity of by-law — Assent of ratepayers*—R. S. B. C. 1911, c. 170, s. 53, s.-ss. 176, 193.]—Under the provisions of sub-sections 176 and 193 of section 53 of the British Columbia "Municipal Act," R. S. B. C. 1911, c. 170, empowering municipal corporations to alter, divert or stop up public thoroughfares and to exchange them for adjacent land, a municipal corporation has power by by-law to close up a portion of a highway and dispose of the strip so taken from its width in exchange for adjacent or contiguous lands to be used in lieu thereof, although the effect may be to cause the narrowing of the highway. *Davies, J.*, dissented.—*Per Idington and Brodeur, JJ.*—Such a by-law is valid although passed without the assent of the ratepayers previously obtained. *British Columbia Railway Co. v. Stewart* (1913) A. C. 816 and *United Buildings Corporation v. City of Vancouver* (1915) A. C. 345 applied.—The decision of the Court of Appeal for British Columbia on a previous appeal in the same proceedings (21 B. C. Rep. 401) was approved. *West Vancouver v. Ramsay*, liii., 459.

69. *Maintenance of highways — Improper use of sidewalk — Damage by trespasser — Notice of disrepair — Nuisance — Negligence — Injury to pedestrian — Liability for damages.*] — The municipal corporation was obliged, and given power, to maintain its highways in a reasonable state of repair, having regard to the character of the streets and the locality in which they were situated, and regulations had been enacted to prohibit vehicular traffic over the sidewalks except at crossings specially constructed in a manner to sustain such traffic. At a place where no such crossing had been provided vehicles had been, for over a year, habitually driven across a wooden sidewalk and no action to prevent such trespasses had been taken by the municipal authorities. During the afternoon of the day before the accident, a plank was broken by a heavy vehicle crossing the sidewalk and it continued in this condition until the evening of the following day when a pedestrian tripped in the hole and sustained injuries for which he brought action to recover damages. — *Held*, reversing the judgment appealed from (9 West. W. R. 1287; 33 West. L. R. 851), *Davies, J.*, dissenting, that in these circumstances the municipal corporation was charged with notice of the condition of disrepair of its public sidewalk and, having failed to remedy the nuisance within a reasonable time, it was guilty of negligence involving liability in damages.—*Per Duff J.*—Section 507 of the charter of the City of Edmonton does not impose upon the municipality an absolute responsibility for harm suffered by individuals in consequence of a street being in a state of disrepair constituting a dangerous nuisance; but the municipality is responsible for the consequences of such a state of disrepair if, through the observance of proper precautions, it could have prevented the nuisance coming into existence: *Hammond v. Vestry of St. Pancras* (L. R. 9 C. P. 316), and *Bateman v. Poplar District Board of Works* (37 Ch. D. 272), applied. Proof of the existence of such a nuisance and result-

ing damage is, in itself, sufficient to create a *prima facie* cause of action against the municipality under section 507 of the charter. *Jamicson v. City of Edmonton*, liv., 443.

70. *Construction of railway — Injunction — Parties — Public franchise — Lapse of powers — "Railway" or "Tramway" — Local territory — Invalid contract — Public policy — Dominion Railway Act — Work for general advantage of Canada — Quebec Railway Act — Municipal Code — Limitation of powers*, xxxv., 48.

See MUNICIPAL CORPORATIONS.

71. *Highway — Dedication — Acceptance by public — User*, xxxvii., 210.

See HIGHWAYS.

72. *Agreement with municipality — Use of streets — Electric tramway — Percentage on receipts — Traffic beyond city limits — Validity of contract*, xxxviii., 106.

See MUNICIPAL CORPORATIONS.

73. *Construction of statute — Ontario "Municipal Act" — Bridges — Crossing by engines — Condition precedent — R.S.O. (1897) c. 242 — 3 Edw. VII. c. 7, s. 43 — 4 Edw. VII. c. 10, s. 60*, xlv., 187.

See STATUTE.

74. *Trespass — Easement — Public way — Dedication — User — Prescription — Estoppel — "Law and Transfer of Property Act," R. S. O. 1897, c. 119. Peters v. Sinclair*, xviii., 57.

See EASEMENT.

## 7. LIQUOR LAWS.

75. *Municipal Act — Vote on by-law — Local option — Division into wards — Single or multiple voting — 3 Edw. VII. c. 19, s. 355 (Ont.)*]—Section 355 of the Ontario Municipal Act, 3 Edw. VII. c. 19, providing that "when a municipality is divided into wards each ratepayer shall be so entitled to vote in each ward in which he has the qualification necessary to enable him to vote on the by-law" does not apply to the vote on a local option by-law required by s. 141 of the Liquor License Act (R. S. O. [1897] c. 245).—Judgment of the court of appeal (13 Ont. L. R. 447) affirming that of the divisional court (12 Ont. L. R. 488) affirmed. *Sinclair v. Town of Owen Sound*, xxxix., 236.

## 8. MILITIA,

76. *Municipal corporation — Aid to civil power — Pay of militia — Legislative jurisdiction — Civil rights and obligations — Constitutional law*, Cout. Cas. 343.

See MILITIA.

77. *Municipal sewers — Negligence — Drainage — Capacity of drain — Vis major.*]—*F.* brought action against the City of Ottawa claiming damages for the flooding of his premises by water backed up from the sewer



with which his drain pipe was connected.—*Held*, Idington and Duff, J.J., dissenting, that that according to the evidence the sewer is capable of carrying off a fall of  $1\frac{1}{2}$  inches of water per hour, which is considered as meeting the requirements of good engineering and is the standard adopted by all the cities of Canada and the Northern States; the city, therefore, was not liable.—*Held*, also, that a fall of rain at the rate of 3 inches per hour for nine minutes was one which could not reasonably be expected and for which the city was not obliged to provide. *Foulkner v. City of Ottawa*, xli., 190.

78. *Negligence — Misfeasance.*—The corporation of Halifax in laying a concrete sidewalk broke up a portion of the asphalt sidewalk of a crossing street and replaced it with earth and ashes. The rain washed away the filling and T. was injured by stepping into the excavation. — *Held*, affirming the judgment appealed from (47 N. S. Rep. 498), that the corporation was guilty of misfeasance and a verdict in favour of T. should stand. *City of Halifax v. Tobin*, l., 404.

79. *Negligence — Obstruction of highway — Street railway — Trolley poles between tracks — Statutory authority — Protection by light.*—The Act incorporating the Hamilton Street Railway Co. authorized the City Council to enter into an agreement with the company for the construction and location of the railway. A by-law passed by the Council directed that the poles for holding wires should, on part of a certain street, be placed between the tracks, which was done under supervision of the City Engineer.—*Held*, reversing the judgment appealed against (32 Ont. L. R. 578), that the location of the poles was authorized by the legislature and did not constitute an obstruction of the highway amounting to a nuisance; the company was, therefore, not liable for injury resulting from an automobile while driven at night coming in contact with the pole.—*Held*, also, that as on the City Council was cast the duty of regulating the operation of the railway in respect to traffic and travelling on the street and it had made no regulation as to lighting the pole the company was under no obligation to do so. *Hamilton Street Railway Co. v. Weir*, li., 506.

## 9. NUISANCE.

80. *Raising level of streets — Injury to property — Liability of corporation*, Cam. Cas. 537.

See MUNICIPAL CORPORATIONS.

81. *Drainage — Construction of sewers — Injunction — Damages — Right of action — Practice*, Cout. Cas. 162.

See APPEAL.

## 10. RAILWAYS AND TRAMWAYS.

82. *Jurisdiction of Board of Railway Commissioners — Construction of subway — Apportionment of cost — Person interested or*

*affected — Street railway — Agreement with municipality.*—An application for a subway crossing of a highway, under section 186 of the "Railway Act, 1903," may be made on behalf of a municipality interested or affected. The Board, on application by the City of Ottawa, ordered a subway to be made under the track of the Canada Atlantic Railway Co. where it crosses Bank Street, the cost to be apportioned among the city, the C. A. Ry. Co., and the Ottawa Electric Ry. Co. By an agreement between the O. E. Ry. Co. and the city the company was given the right to run its cars along Bank Street and over the railway crossing, paying therefor a specific sum per mile. The O. E. Ry. Co. appealed from that portion of the order making them contribute to the cost of the subway, contending that the city was obliged to furnish them with a street over which to run their cars and they could not be subjected to greater burdens than those imposed by the agreement.—*Held*, that the O. E. Ry. Co. was a company "interested or affected" in or by the said work within the meaning of section 47 of the said Railway Act, and could properly be ordered to contribute to the cost thereof.—*Held*, further, that there was nothing in the agreement between said company and the city to prevent the Board making said order or to alter the liability of the company so to contribute. *Ottawa Electric Ry. Co. v. City of Ottawa and Canada Atlantic Ry. Co.*, xxxvii., 354.

AND see RAILWAYS.

83. *Agreement — Electric street railway — Payment for use of streets — Percentage of receipts — Traffic beyond city — Validity of agreement.*—By agreement between the City of Hamilton and the Hamilton Street Ry. Co. the latter was authorized to construct its railway on certain named streets and agreed to pay to the city, *inter alia*, certain percentages on their gross receipts.—*Held*, following *Montreal Street Ry. Co. v. City of Montreal* ([1906] A. C. 100) that such payment applies in respect to all traffic in the city including that originating or terminating in the adjoining township of Barton.—*Held*, also, that as, when the railway was extended into Barton, the company agreed with that township to carry passengers from there into the city at city rates, the percentage was payable on the whole of such traffic and not on the portion within the city only.—*Held*, further, that the power of the company to construct its railway was not derived wholly from its charter, but was subject to the permission of the city corporation; the city had, therefore, a right to stipulate for payment of such percentages and the agreement therefor was *intra vires*.—The judgment of the Court of Appeal (10 Ont. L. R. 575), affirming that of Meredith, J., at the trial (8 Ont. L. R. 455) was affirmed. *Hamilton St. Ry. Co. v. City of Hamilton*, xxxviii., 106.

84. *Board of Railway Commissioners — Jurisdiction — Railway crossing — Contribution to cost — Party interested — Municipality — Distance from work.*—A municipality may be a "party interested" in works for the protection of a railway crossing over a highway though such works are neither within or immediately adjoining its bounds and the Board of Railway Commissioners has juris-

dition to order it to pay a portion of the cost of such work. *County of Carleton v. City of Ottawa*, xli., 552.

85. *Franchise — Operation of tramway — Suburban lines — Earnings outside municipal limits — Contract — Percentages — Blended accounts — Separate earnings*, xxxiv., 459.

See MUNICIPAL CORPORATIONS.

86. *Construction of railway — Injunction — Parties — Public franchise — Lapse of powers — "Railway" or "Tramway" — Local territory — Invalid contract — Public policy — Dominion Railway Act — Work for general advantage of Canada — Quebec Railway Act — Municipal Code — Limitation of powers*, xxxv., 48.

See MUNICIPAL CORPORATIONS.

87. *Exemption from taxation — Nova Scotia Assessment Act*, xxxv., 98.

See MUNICIPAL CORPORATIONS.

88. *"Railway Act, 1903" — Street railway or tramway — Construction, etc. — Removal of tracks, etc. — Jurisdiction of Board of Railway Commissioners — Condition precedent — Use of highways in cities and towns — Consent by municipal authority — Approval of by-law — Quebec Municipal Code, arts. 464, 481*, xxxvi., 369.

See MUNICIPAL CORPORATIONS.

89. *Municipal aid — By-law — Condition precedent — Part performance — Action to annul*, xxxvi., 686.

See ACTION.

90. *Railway aid — Construction of agreement — Espropriation — Description of lands — Reference to plans — R. S. N. S. 1900, c. 99 — 3 *Edw. VII. c. 97 (N.S.)*, xxxvii., 75.*

See CONTRACT.

91. *Contract — Breach of conditions — Liquidated damages — Penalty — Cumulative remedy — Operation of tramway — Construction and location of lines — Use of highways — Car service — Time-tables — Municipal control — Territory annexed after contract — Abandonment of monopoly — 55 *Vict. c. 99 (Ont.)*, xxxvii., 430.*

See TRAMWAY.

92. *Board of Railway Commissioners — Jurisdiction — Location of railway — Consent of municipality — Crossing — Leave of Board — Discretion*, xl., 620.

See BOARD OF RAILWAY COMMISSIONERS.

93. *Operation of tramway — Powers of municipal corporation — Legislative authority — Use of streets — By-law — Conditions imposed — Penalty for breach of conditions — Repeal of by-law — Contractual obligations — Offences against by-law — Jurisdiction of Recorder's Court — Prohibition*, xli., 145.

See RECORDER'S COURT.

94. *Street railway — Assumption by municipality — Principle of valuation — Operation in two municipalities — Compulsory taking. Berlin v. Berlin & Waterloo St. R. R. Co.*, xliii., 581.

See TRAMWAY.

95. *Board of Railway Commissioners — Jurisdiction — Railway upon or along highway — Leave to construct — Approval of location — Condition imposed — Payment of damages to abutting landowners — Construction of statute — R. S. C. 1906, c. 37, ss. 47, 155, 159, 235, 237, xliiii., 412.*

See RAILWAY.

96. *Board of Railway Commissioners — Consideration of complaints — Evidence — Rejection — Agreement as to special rates — Unjust discrimination. Montreal Park & Island Ry. Co. v. Montreal*, xliiii., 256.

See BOARD OF RAILWAY COMMISSIONERS.

97. *Board of Railway Commissioners — Jurisdiction — Municipal streets — Railway upon or along highway — Leave to construct — Approval of location — Condition imposed — Payment of damages to abutting landowners — Construction of statute — R. S. C. 1906, c. 37, ss. 47, 155, 159, 235, 237. G. T. P. Ry. Co. v. Fort William*, xliiii., 412.

See RAILWAY.

98. *Railways — Location — Registration of plans — Construction of line — Plan of subdivision subsequently filed — Dedication of highway — Rights of municipality — Priority — "Railway Act," R. S. C. 1906, c. 37 — Dominion "Railway Act," 1903. Edmonton v. Calgary & Edmonton Ry.*, liii., 406.

See RAILWAY.

## 11. WATERWORKS.

99. *Appeal — Action for declaration and injunction — 60 & 61 *Vict. c. 34, s. 1 (d) — Municipal corporation — Water rates — Discrimination.*] — The Act 60 & 61 *Vict. 34 (d)* relating to appeals from the Court of Appeal for Ontario does not authorize an appeal in an action claiming only a declaration that a municipal by-law is illegal and an injunction to restrain its enforcement. — A by-law providing for special water rate from certain industries does not bring in question "the taking of an annual or other rent, customary or other duty or fee" under s. 1 (d) of the Act R. S. C. 1906, c. 139, s. 48 (d). — By 24 *Vict. c. 56, s. 3 (Can.)* the city council of Hamilton was "empowered from time to time to establish by by-law a tariff of rents or rates for water supplied or ready to be supplied in the said city from the said waterworks." — *Held*, affirming the judgment of the Court of Appeal (12 *Ont. L. R. 75*) which sustained the verdict at the trial (10 *Ont. L. R. 280*) that the rate for water supplied to any class of consumers must be an equal rate to all members of such class and a by-law providing for a rate on certain manufacturers higher than that to be paid by others was illegal. *Attorney-General v. City of Toronto* (23 *Can. S. C. R. 514*) followed. *City of Hamilton v. Hamilton Distillery Co.*; *City of Hamilton v. Hamilton Brewing Association*, xxxviii., 239.*

100. *Waterworks — Statutory contract — Exclusive franchise — Condition of defeasance — Forfeiture of monopoly — Demurrer — Right of action by municipality — Rescission — Art. 1065 C. C. — 40 *Vict. c. 63 (Que.)*.] —*

By the Quebec statute, 40 Vict. c. 68, Louis Molleur and others, now represented by the defendants, were substituted as sole owners of the waterworks of St. John's in the place of "The Waterworks Co. of St. John's," incorporated under R. S. C. (1859), c. 65, charged with all the obligations and responsibilities of said company, and, by the said Act, 49 Vict. c. 68, the new proprietors were granted the exclusive right and privilege of placing pipes or water conduits under the streets and squares of the Town of Saint John's (now the City of St. John's, the appellant), under certain other conditions and obligations in the last mentioned statute recited and the monopoly created was, by s. 3, liable to be forfeited in case of neglect or refusal in discharging the obligations thereby imposed.—*Held*, that the contract existing between the parties, in virtue of the above recited statutes, was liable to rescission under the provision of the 1065th article of the Civil Code of Lower Canada, upon default in the specific performance by the defendants of the obligations thereby imposed, and that, upon proof of default in the specific performance of any of the said obligations, the municipal corporation was entitled to maintain an action in its corporate capacity to have the exclusive right and privilege granted by the statute declared forfeited, surrendered and annulled.—The judgment appealed from (Q. R. 16 K. B. 559) deciding that the action would lie only for breach of obligations expressly declared to involve forfeiture was reversed, *Davies, J.*, dissenting. *Ville de St. Jean v. Molleur*, xl, 629.

101. *Water commission — Construction of statute — Damages to existing works — Appropriation of water*, xxxiv., 650.

See WATERWORKS.

### NARROW CHANNEL.

1. *Maritime law — Collision — Inland waters — Narrow channel — Boston harbour.*—Rule 25 of the United States "inland rules to prevent collision of vessels" provides that "in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel."—*Held*, affirming the judgment appealed against (9 Ex. C. R. 160) that the inner harbour of Boston, Mass., is not a narrow channel within the meaning of said rule. *The "Calvin Austin" v. Lovitt*, xxxv., 616.

2. *Look-out — Signals — Fault — Collision — Damages.*—Where a ship navigating a narrow channel has no proper look-out and neglects to signal her course at a reasonable distance, thus perplexing and misleading a meeting ship, the former is alone responsible for all damages caused by collision, even if, in the agony of collision, a different manoeuvre on the part of the other ship might have avoided the accident.—Judgment appealed from (9 Ex. C. R. 67) reversed, *Girouard, J.*, dissenting. (Appeal to Privy Council dismissed, [1907] A. C. 112.) *SS. "Cape Breton" v. Richelieu and Ontario Navigation Co.*, xxvii., 564.

AND see ADMIRALTY LAW.

### NATIONAL TRANSCONTINENTAL RAILWAY.

See RAILWAY.

### NATIONAL TRANSCONTINENTAL RAILWAY ACT.

*Expropriation — Eminent domain — Public work — Abandonment — Revesting land taken — Compensation — Estimating damages — Construction of statute — Jurisdiction of Exchequer Court — 3 Edw. VII. c. 71 — "Railway Act," R. S. C. 1906, c. 37, s. 207 — "Exchequer Court Act," R. S. C. 1906, c. 140, s. 20 — "Expropriation Act," R. S. C. 1906, c. 143 — "Railways and Canals Act," R. S. C. 1906, c. 35, s. 7, lii., 402.*

See EXPROPRIATION.

### NATURALIZATION.

*Legislation respecting orientals — Chinese places of business — Employment of white females — Local and private matters — Property and civil rights — Naturalized British subject — Conviction under provincial statute*, xlix., 440.

See CONSTITUTIONAL LAW.

### NAVIGABLE WATERS.

1. *Negligence — Driving lumber — Rights in navigable waters — River improvements — Contract with Crown — Rights of contractor — Reckless driving — "Rivers and Streams Act" (Ont.) — "B. N. A. Act, 1867," ss. 91 (10), 92 (109).*—In 1910, Parliament voted money for "Montreal River Improvements above Latchford" and the Crown, through the Minister of Public Works, gave a contract to H. in connection with the work. In performance of the work L. placed a cofferdam on each side of the river, leaving an opening between them some 200 feet wide. In the spring of 1911 the cofferdam on the north side was covered by three feet of water and the logs of B., being driven down through the opening, were allowed to rest against a pier a few hundred feet below and formed a jam the rear of which was over the cofferdam. Either by weight of the jam or increased pressure by breaking it, in the ordinary mode, the destruction of the cofferdam was caused.—*Held*, *Fitzpatrick, C. J.*, and *Duff, J.*, dissenting, that B. was responsible for the injury so caused; that with more care in driving the formation of the jam might have been avoided; that, if breaking the jam in the ordinary way was likely to cause damage, another mode should have been adopted even if it would cause delay and greater expense; and that the employees of B. acted with a wilful disregard of the contractors' rights and caused "unnecessary damage."—*Held, per Davies, Anglin and Brodeur, J.J.*, that, in the absence of Dominion legislation to the contrary, the rights of lumbermen under the Ontario "Rivers and Streams Act" (pre-Confederation legislation) are not subordinate but equal to those

of persons acting for the Dominion Government in matters respecting navigation.—*Per Davies and Duff, J.J., Anglin, J., dubitante.*—The cofferdam was a "structure" and subject to the provisions of s. 4 of the "Rivers and Streams Act."—*Per Davies and Anglin, J.J.*—Even if not a "structure" as it was placed in the river under sanction of Dominion legislation, B.'s rights were restricted practically as they would be under section 4.—*Held, per Fitzpatrick, C.J., and Duff, J.*—A vote for "River Improvements" does not of itself authorize an interference with the rights of lumbermen under the "Rivers and Streams Act." These rights were exercised in the usual and proper manner and as no breach of duty by B. to avoid "unnecessary damage" was proved he could not be held liable for the damage to the cofferdam.—Judgment of the Appellate Division (37 Ont. L. R. 17) reversing that at the trial (34 Ont. L. R. 204), affirmed. *Booth v. Lowery*, liv., 421.

2. Title to lands — Grant from Crown—Implied reservations—Description — Inlet of navigable river—Crown domain—Public law—Construction of deed — Possession—Estoppel—Evidence—Waiver, xxxiv., 603.

See RIVERS AND STREAMS.

3. Title to land—Accession—Sea beaches—Servitude — Passage of navigable waters — Possession annale—Possessory action, xxxiv., 716.

See TITLE TO LANDS.

AND see RIVERS AND STREAMS.

4. Railways — Jurisdiction of Board of Railway Commissioners—Deviation of tracks—Separation of grades—"Highway"—Dedication—User—Public way or means of communication—Access to harbour — Construction of statute—"Special Act"—*R. S. C. 1906, c. 37, ss. 2 (11), (28), 3, 237, 238, 241; 56 V. c. 48 (D.), xlii., 613.*

See RAILWAYS.

5. Rivers and streams—Navigable waters—Floatability — Ownership of beds—Grant of Crown lands—Conveyance of bed of navigable waters—Title to land—*Art. 400 C. C., liv., 143.*

See RIVERS AND STREAMS.

## NAVIGATION.

1. Maritime law—Inland waters—Narrow channel—*Boston harbour.*—Rule 25 of the United States "inland rules to prevent collision of vessels" provides that "in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel."—*Held*, affirming the judgment appealed against (9 Ex. C. R. 160) that the inner harbour of Boston, Mass., is not a narrow channel within the meaning of said rule. *The "Calvin Austin" v. Lovitt*, xxxv., 616.

2. Admiralty law—Navigation—Narrow channel — Rule of the road — Look-out — Meeting ships — Collision — Special rule of port—*Sorel harbour regulations*—Lights and

*signals* — *Negligence* — *Evidence* — *Damages.*—A pilot in charge of a ship, or a man at the wheel, is not a sufficient look-out within the rules of navigation for preventing collisions in narrow channels. Judgment appealed from (9 Ex. C. R. 67) affirmed.—Where meeting ships are in collision and one of them has neglected to observe the regulations, there must be evidence of gross dereliction of duty or want of skill in navigation in order to make out a case for apportionment of damages against the other ship. — Where a ship navigating a narrow channel has no proper look-out and neglects to signal her course at a reasonable distance, thus perplexing and misleading a meeting ship, the former is alone responsible for all damages caused by collision, even if, in the agony of collision, a different manoeuvre on the part of the other ship might have avoided the accident.—Judgment appealed from (9 Ex. C. R. 67) reversed. *Girouard, J., dissenting.* (Appeal to Privy Council dismissed, [1907] A. C. 112). *SS. "Cape Breton" v. Richelieu and Ontario Navigation Co.*, xxxvi., 564.

AND see ADMIRALTY LAW.

3. Maritime law — Collision — Crossing ships — Admiralty rules, 1897, rule 19.] — The *SS. "Parisian,"* making for Halifax Harbour, came along the western shore, sailing almost due north to a pilot station, on reaching which she slowed down, finally stopping her engines. The "*Albano*," a German steamship for the same port, approached some miles to the eastward, sailing first, by error, to the north-east, and then changing her course to the south-west, apparently making for the eastern passage to the harbour. She again altered her course, however, and came almost due west towards the pilot station. When about a quarter of a mile from the "*Parisian*" she slowed down, and on coming within eight or nine ship's lengths gave three blasts of her whistle, indicating that she would go full speed astern. The "*Parisian*" then, seeing that a collision was inevitable, went full speed ahead for about 200 feet when she was struck on the starboard quarter and had to make for the dock to avoid sinking outside. The "*Parisian's*" engines were stopped about six minutes before the collision, and a boat from the pilot cutter was rowing up to her when she was struck. At the time of the collision, about 5 p.m., the wind was light, weather fine and clear, there was no sea running and no perceptible tide.—*Held*, affirming the judgment of the local judge that the captain of the "*Albano*" had no right to regard the "*Parisian*" as a crossing ship within the meaning of rule 19 of the Admiralty rules, 1897; and that the "*Parisian*" having properly stopped to take a pilot on board, and being practically in the act of doing so at the time, the "*Albano*" was bound to avoid her and was alone to blame for the collision. (Appeal to Privy Council allowed, [1907] A. C. 193). *Owners SS. "Albano" v. Owners SS. "Parisian,"* xxxvii., 284.

AND see ADMIRALTY LAW.

4. Shipping — Collision — Violation of rules not affecting accident—Steering wrong course.]—The Supreme Court will not set aside the finding of a nautical assessor on

questions of navigation adopted by the local Judge unless the appellant can point out his mistake and show conclusively that the judgment is entirely erroneous. *The Picton* (4 Can. S. C. R. 648) followed. — A steamer coming up Halifax harbour ran into a schooner, striking her stern on the port side. No sound signals were given. The green light of the schooner was seen on the steamer's port bow and the latter starboarded her helm to pass astern and then ported. She then was so close that the engines were stopped too late to prevent the collision. — *Held*, that the steamer alone was to blame for the collision. — *Held*, also, that though under the rules the schooner should have kept her course and also was to blame for not having a proper lookout, neither fault contributed to the collision. (Appeal to Privy Council stood dismissed, 27th May, 1907, for want of prosecution, under Privy Council Rule V. of 13th June, 1853). *SS. "Arranmore" v. Rudolph*, xxxviii., 176.

5. *Admiralty law — Salvage — Injury to saving ship — Necessities of service — Seaman-ship — Appeal on nautical question.* — In an admiralty case the Supreme Court of Canada must weigh the evidence for itself unassisted by expert advice and will, if the evidence warrants it, reverse the judgment appealed against on a question of seamanship or navigation. — The ship "M." brought an action for the value of salvage services rendered to the "N.," part of the damages claimed being for injury to the "M." in performing such services. — *Held*, Girouard and Macleannan, JJ., dissenting, that the evidence established that said injury was not caused by necessities of the service, but by unskilful seamanship and improper navigation; the judgment appealed against should consequently be varied by a substantial reduction of the damages allowed by the local judge. — The dissenting judges were of opinion that sufficient ground was not shewn for disturbing the findings of the trial judge. *The "Nanna" v. The "Mystic"*, xli., 168.

6. *Railways — Construction — Route and location plans — Approval — Obstruction to navigation — Demolition of works — Jurisdiction of Board of Railway Commissioners — "Railway Act," R. S. C. 1906, c. 37, ss. 30 (h), (i), 230, 233.* — Where a railway company, in the professed exercise of its powers as a railway company and without the approval of the route by the Minister and of the location plans and works by the Board of Railway Commissioners for Canada, has constructed a solid filling across navigable waters, the Board, under the provisions of sections 230 and 233 coupled with sub-sections (h) and (i) of section 30 of the "Railway Act," R. S. C. 1906, c. 37, has jurisdiction to order the demolition of the works so constructed. *Grand Trunk Pacific Ry. Co. v. Rochester*, xlvi., 238.

7. *Negligence — Navigation of inland waters — Collision — Government ships and vessels — "Public work" — "The Eschequer Court Act," s. 16 — Construction of statute — Right of action*, xxxviii., 126.

See NEGLIGENCE.

8. *Pilotage — Port of St. John, N.B. — Ships propelled wholly or in part by steam — Coal barges towed — R. S. C. (1886) c. 80, ss. 58, 59, xxxviii., 169.*

See SHIPS AND SHIPPING.

9. *Navigation — Trent canal crossing — Swing bridge — Cost of construction — Maintenance — Order in council*, xxxviii., 211.

See RAILWAYS.

10. *Admiralty law — Foreign bottoms — Collision in foreign waters — Jurisdiction of Canadian courts*, xxxviii., 303.

See SHIPS AND SHIPPING.

11. *Admiralty law — Negligence — Over-taking vessel — Findings of fact — Cause of collision*, *Cout. Cas.* 405.

See ADMIRALTY LAW.

12. *Admiralty law — Tug and tow — Contract of navigation — Collision of tug — Liability of tow — Foreign ship — Proceedings in foreign court — Jurisdiction in Canada*, li., 39.

See ADMIRALTY LAW.

## NEGLIGENCE.

1. BUILDINGS AND PREMISES, 1-12.
2. CARRIERS, 13-17.
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21. TRAMWAYS, 272-285.

### 1. BUILDINGS AND PREMISES.

1. *Damages — Overholding tenant — Trespasser — Licensee — Master and servant.* — A trespasser or bare licensee injured through negligence may maintain an action. — The workmen of a contractor for tearing down portions of a building in order to make alterations turned on a water-tap in a room where they were working and neglected to

turn it off whereby goods in the story below were damaged by water.—*Held*, reversing the judgment appealed from (37 N. S. Rep. 115), Davies and Nesbitt, J.J., dissenting, that the act of the workmen was done in course of their employment; that it was negligent; and that the owner of the goods could recover damages though he was in possession merely as an overholding tenant who had not been ejected. *Sivert v. Brookfield*, xxxv., 494.

2. *Operation of machinery—Continuing nuisance—Negligence—Droits du voisinage—Vibration, smoke, dust, etc.—Series of torts—Statutory franchise—Permanent injury—Abatement of nuisance—Prospective damages—Method of assessing damages—Limitations of actions—Prescription of actions in tort—Arts. 377, 379, 380 and 2261 C. C.*—Where injuries caused by the operation of machinery have resulted from the unskilful or negligent exercise of powers conferred by public authority and the nuisance thereby created gives rise to a continuous series of torts, the action accruing in consequence falls within the provisions of art. 2261 of the Civil Code of Lower Canada, and is prescribed by the lapse of two years from the date of the occurrence of each successive tort. *Wordsworth v. Harley* (1 B. & Ad. 391); *Lord Oakley v. Kensington Canal Co.* (5 B. & Ad. 138); and *Whitehouse v. Fellowes* (10 C. B. N. S. 765) referred to.—In the present case, the permanent character of the damages so caused could not be assumed from the manner in which the works had been constructed and, as the nuisance might, at any time, be abated by the improvement of the system of operation or the discontinuance of the negligent acts complained of, prospective damages ought not to be allowed, nor could the assessment, in a lump sum, of damages, past, present, and future, in order to prevent successive litigation, be justified upon grounds of equity or public interest. Judgment appealed from reversed, the Chief Justice and Girouard, J., dissenting. *Fritz v. Hobson* (14 Ch. D. 342) referred to. *Gareau v. The Montreal Street Railway Co.* (31 Can. S. C. R. 463) distinguished. *Montreal Street Railway Co. v. Boudreau*, xxxvi., 329.

3. *Construction of building—Contract for construction—Collapse of wall—Building not completed—Vis major.*—*Held*, per Davies and Maclellan, J.J.—The owner of a building in course of construction owes to those whom he invites into or upon it the duty of using reasonable care and skill in order to have the property and appliances upon it intended for use in the work fit for the purposes they are to be put to. Such duty is not discharged by the employment of a competent architect to prepare plans for the building and a competent contractor to attend to the work of construction.—*Per* Idington, J.—The fact that the building is in an unfinished state may render the obligation of the owner towards a workman employed upon it less onerous in law than it would be in the case of a completed structure.—*Per* Duff, J.—Does the rule governing the duty of occupiers respecting the safe condition of the premises apply without qualification where the structure is incom-

plete and the invitee is engaged in completing it or fitting it for its intended use?—*Per* Davies and Maclellan, J.J.—In the present case the failure to guard against the effect of a sudden storm of so violent and extraordinary a character that it could not have been expected was not negligence for which the owner was liable.—Judgment of the Court of Appeal (12 Ont. L. R. 4) and of the Divisional Court (9 Ont. L. R. 57) affirmed, Idington, J., *dubitante*. *Valiquette v. Fraser*, xxxix., 1.

4. *Builders and contractors—Responsibility for faults in construction—Latent defect—Installations in constructed building—“Automatic Sprinkler System”—Injuries by flooding—Damages sustained by subsequent purchaser—Right of action—Assessment of damages—Expertise.*—The plaintiff's *auteur* employed the defendant to install an “automatic sprinkler” in his building (subsequently sold to plaintiff) and in executing the work, the defendant made insufficient connections with the city water-mains by means of a pipe already existing in the building. As the result of this fault in construction, the pipes became disjointed and the plaintiff's goods, consisting largely of cases containing wines in labelled bottles, were damaged. The plaintiff notified defendant that he would hold him liable for the damages thus sustained and requested him to attend at an expert valuation to be made by fire insurance adjusters and valuers, but plaintiff disregarded the notification and did not attend. The experts assessed the damages, in the manner usually adopted in similar cases of damages caused by fire, at \$3,397.11, and the plaintiff's action was for this amount with amounts added for expenses incurred in repairs to the pipes, fees to the experts and for expenses of protest. The judgment appealed from (Q. R. 17 K. B. 449) affirmed the trial judgment (14 R. L. (N.S.) 172) maintaining the action, and held that, under arts. 1055, 1688 and 1696 C. C., the contractor was responsible for the damages sustained, that the subsequent purchaser had a right of action against him, as he was the person injured through the latent defects in construction, that the method of assessing damages adopted was a proper mode to follow under the circumstances, and that the repairs, experts' fees and costs of protest were items of damages which could properly be recovered in the action. This decision was affirmed by the Supreme Court, on appeal, Davies, J., *dubitante*, for the reasons given by Tellier, J., at the trial, and Bossé and Trenholme, J.J., in the court appealed from. *McGuire v. Fraser*, xl., 577.

5. *Sale of ruined building—Personal responsibility of vendor.*—Where a ruined building is sold by A. to B., B. engaging himself to remove the materials from the ground, there is no responsibility imposed upon A., under the provisions of article 1054 of the Civil Code of Lower Canada, in respect of injuries sustained in consequence of the negligence of B. in the removal of the materials, as A. had no control over the operations of demolition and removal by B. and his workmen.—Judgment appealed from (Q. R. 17 K. B. 232) affirmed. *DeKérangat v. Eastern Townships Bank*, xli., 259.

6. *Appeal—Jurisdiction—Amount in controversy—Conditions and reservations—Supreme Court Act, s. 29—Refusal to accept conditional renunciation—Costs of appeal in court below—Costs of enquete—Nuisance—Statutory powers—Legal maxim, xxxv., 255.*

See APPEAL; DAMAGES.

7. *Responsibility of contractors—Repairs to plumbing—Damage by steam—Control of premises—Master and servant, xxxix., 265.*

8. *Railway yard siding—Sloping platform—Private passage—Dangerous way, xl., 194.*

See PRACTICE.

9. *Gas works—Defective system—Protection of employees, xl., 580.*

10. *Railway station buildings—Planked walk—Dangerous way—Invitation or license—Breach of duty—Questions for jury, Cam. Cas. 262.*

11. *Municipal corporation—Drainage—Capacity of drain—Vis major, xli., 190.*

See MUNICIPAL CORPORATION.

12. *Builders and contractors—Carelessness of workmen—Liability of employer—Dangerous appliances—Electric wires—Volunteer—New trial. Dunphy v. Martineau, xlii., 224.*

## 2. CARRIERS.

13. *Carriers—Operation of railway—Defective system—Gratuitous passenger—Free pass—Limitation of liability—Employer and employee—Fellow-servant—Evidence—Onus of proof.]—The plaintiff's husband was an employee engaged as a mechanic in the company's workshops and was travelling thither to his work on one of the company's passenger cars, as a passenger, without payment of fare. A freight car became detached from a train, some distance ahead of the passenger car and proceeding in the same direction; it ran backwards down a grade, collided with the passenger car and the plaintiff's husband was killed. The manner in which the freight car became detached was not shewn. On the body of deceased there was found a permit or "pass," which was not produced, and there was no evidence to shew any conditions in it, nor over what portion of the company's lines nor for what purposes it was to be honoured. On the close of the plaintiff's case the defendants adduced no evidence whatever, and the jury found that the company was at fault, owing to a defective system of operation of their trains, and assessed damages, at common law, for which judgment was entered for the plaintiff.—Held, that there was a presumption that deceased was lawfully on the passenger car and, in the exercise of their business as common carrier of passengers, the company were, therefore, obliged to use a high degree of care in order to avoid injury being caused to him through negligence; that there was nothing in the evidence to shew that deceased occupied the position of a fellow-servant with the em-*

ployees engaged in the operation of the trains which were in collision; and that, in the absence of evidence shewing any agreement, express or implied, or some relationship between the company and deceased which would exclude or limit liability, the plaintiff was entitled to recover damages at common law.—Judgment appealed from (16 B. C. Rep. 113) affirmed. *Nightingale v. Union Colliery Co.* (35 Can. S. C. R. 65) distinguished. *British Columbia Electric Ry. Co. v. Wilkinson*, xlv., 263.

14. *Dangerous way—Operation of railway—Defective bridge—Gratuitous passenger—Liability of carrier for damages, xxxv., 65.*

15. *Operation of railway—Condition limiting liability—Contract to carry passenger, Cam. Cas. 10.*

See RAILWAYS.

16. *Carriers by water—Special contract—Exemption from liability—Construction of terms—"At owner's risk"—"Baggage"—Wilful misconduct—Damages. Cam. Cas. 66.*

17. *Carrier—Bill of lading—Exemption from liability—Climatic conditions—Frost. Vipond v. Furness, Withy & Co., liv., 521.*

See SHIPPING.

## 3. CAUSA CAUSANS; PROXIMATE CAUSE.

18. *Ferry boat wharf—Dangerous way—Precautions for preventing accidents—Evidence—Findings of jury—Non-suit.]—A passenger, arriving on the pontoon wharf, as a ferry boat was swinging out and was a few feet away from the wharf with the gangways withdrawn, attempted to jump aboard over the stern bulwarks and was drowned. In an action by her representatives to recover damages from the ferry company on account of negligence in failing to provide proper means to prevent accidents at their wharf, the jury found that the drowning was caused by the fault of the company "in not having proper gates at the gangway openings leading from the pontoon to the boat," and that deceased was herself negligent "by her imprudence in attempting to board the boat after the gangway had been raised and the boat was swinging preparatory to leaving the pontoon," but that she "was not then aware that the boat had left the wharf.—Held, reversing the judgment appealed from (Girouard, J., dissenting, on a different appreciation of the facts), that, as there was no proof of any negligence on the part of the company which proximately and effectively contributed to the accident, but, on the contrary, it appeared that the sole, direct, proximate and effective cause of the accident was the wilful and rash act of the deceased in attempting to jump aboard the ferry boat over the bulwarks, after the gangways had been withdrawn and the boat had got under way, the company could not be held responsible in damages. *Tooke v. Bergeron* (27 Can. S. C. R. 587) and *The George Matthews Co. v. Bouchard* (28 Can. S. C. R. 585) followed. *Quebec and Lewis Ferry Co. v. Jess*, xxxv., 693.*



19. *Trespass—Horse racing—Intruder upon race track—Carelessness.*—After the first heat of a trotting match in which N. had been a competitor he was seated in his sleigh and walking his horse upon his proper side of one of the tracks, laid out by the ploughing away of the snow on the ice of a public harbour, while waiting to be called for the next heat. M., who had not been a competitor in that race, came along the same track, from an opposite direction to that in which N. was going, driving his vehicle at excessive speed and, in attempting to pass in a narrow space between the ridge formed by the snow and N.'s sleigh, collided with it, causing injuries to N. and damaging his sleigh and harness.—*Held*, affirming the judgment appealed from (39 N. S. Rep. 133) that even if M. was lawfully upon the track in question he was responsible for damages as the accident was solely attributable to his improvident carelessness and want of judgment. *Manning v. Noas*, xxxviii., 226.

20. *Employer and employee—Improper appliances—Proximate cause—Finding of jury—Evidence.*—T., an engineer, was scalded by steam escaping when the front of a valve was blown out by the pressure on it. In an action for damages against his employers the jury found that the bursting was caused by strain on the valve, that the employers were guilty of negligence in allowing the engine to run on an improper bed and that they did not supply proper appliances and keep them in proper condition for the work to be done by T., the engine-bed and room all being in bad condition; they also found that the valve was not defective.—*Held*, that in the absence of a finding that the negligence imputed to the employers was the proximate cause of the injury to T., and of evidence to justify such a finding, the action must fail. *Thompson v. Ontario Sewer Pipe Co.*, xl., 396.

21. *Dangerous way—Defective works—Injury to servant—Proximate cause*, xxxiv., 387.

22. *Operation of railway—Imprudence of person injured—Proximate cause*, xxxv., 296.

23. *Construction of railway—Defective road-bed—Dangerous way—Vis major—Onus of proof—Latent defect*, xxxvii., 632.

24. *Construction of building—Contract—Collapse of wall—Uncompleted building—Vis major*, xxxix., 1.

25. *Electric lighting—Dangerous currents—Trespass—Breach of contract—Surreptitious installations—Liability for damages*, xxxix., 326.

26. *Operation of tramway—Disregarding rules—Motorman injured by his own mismanagement—Contributory negligence*, xxxix., 398.

27. *Operation of railway—Moving train—Regulations—Personal liability of employee—Signal "all a-board"—Estoppel*, Cam. Cas. 589.

#### 4. COMMON EMPLOYMENT.

28. *Negligence—Tort—Liability of the Crown—Demise of the Crown—Personal action—Release—Operation of railway—Common employment—Exchequer Court Act, 50 & 51 V. c. 16, s. 16 (c)—Appeals to Privy Council.*—Under s.-s. (c) of s. 16 of the "Exchequer Court Act" (50 & 51 Vict. c. 16), an action in tort will lie against the Crown, represented by the Government of Canada.—Under the Civil Code of Lower Canada, in case of death by negligence of servants of the Crown, an action for damages may be maintained by the widow of the deceased on behalf of herself and her children. The action of the widow is not barred by her acceptance of the amount of a policy of insurance on the life of deceased from the Intercolonial Railway Employees' Relief and Insurance Association, under the constitution, rules and regulations of which the Crown is declared to be released from liability to make compensation for injuries to or death of any member of the association. *Miller v. Grand Trunk Railway Co.* ((1906) A. C. 187) followed.—The doctrine of common employment does not prevail in the Province of Quebec.—The right of action for compensation for injury or death by negligence of Government employees does not abate on demise of the Crown. *Viscount Canterbury v. The Queen* (12 L. J. c. 281) referred to.—The Judicial Committee of the Privy Council refused leave to appeal from a judgment of the Supreme Court of Canada in accord with a long series of decisions in the Dominion. *Armstrong Case* referred to by the Chief Justice at page 76, *post*. *The King v. Desrosiers*, xli., 71.

29. *Common employment—Dangerous works—Safety of workmen—Defective system—Employer's liability—Jury's findings—Sufficiency of answers—Practice—Discontinuance against co-defendant—Release of joint tortfeasor.*—The plaintiff's husband was a linesman employed on piece-work by the defendants with a gang of men setting posts in holes previously dug by the company with which they had contracted to erect the posts and prepare them to carry electric wires. A post set in one of these holes was insufficiently sunk or set in position without proper packing to hold it rigidly in the light soil of an embankment. Deceased was sent up the post to attach crossbars which were being hoisted to him by fellow-workmen by means of a block and tackle when, owing to the strain, the post fell causing injuries which resulted in his death. The post-holes, as dug by the company, had been accepted by the defendants for the purposes of their contract, but they made no inspection as to their sufficiency, nor did they give instructions in regard to necessary precautions to ensure the safety of their employees engaged in setting up the posts and preparing them for wiring.—*Held*, affirming the judgment appealed from (4 West. W. R. 1311; 13 D. L. R. 143; 25 West. L. R. 66) that the failure to sink the postholes to sufficient depth and obtain proper filling to pack the post, and ensure the safety of the employee required to climb it, was personal negligence on the part of the defendants, the consequences of



which they could not avoid by pleading that the accident occurred through the fault of a fellow-servant.—*Per Duff, J.*—In the circumstances of the case the answers by the jury that the defendants had failed to set the posts at sufficient depth and pack them with sufficiently rigid material involved a finding that there was negligence in these respects imputable to the defendants for which they were personally responsible in an action for damages. *Waugh-Milburn Construction Co. v. Slater*, xlviii., 609.

30. *Employer's liability—Competent superintendence—Common employment—Contributory negligence—Master and servant.*—*B.* was employed by the company as a labourer in preparing a site for a power house, and working on a narrow ledge on a hillside preparing a place on which to erect a drilling machine. Stones or earth falling from above struck *him* and he fell off the ledge to the bottom of the excavation, sustaining severe injuries. In an action against the company for damages under the common law it was contended that failure to protect the workmen by a barrier above the ledge was negligence for which defendants were responsible.—*Held, per Davies and Anglin, J.J.*, that such negligence was that of the company's superintendent, a fellow servant of *B.*, and the company was not responsible.—*Per Duff and Anglin, J.J.*, following *Wilson v. Merry* (L. R. 1 H. L. Sc. 326), that, as it was proved that the company had appointed a competent engineer to take charge of the work, invested him with the requisite authority and responsibility for protecting the workmen and supplied him with the materials necessary for the purpose, they had discharged their duty towards their employees and were not responsible for the injury to *B.*—Judgment of the Court of Appeal (22 B. C. Rep. 241), reversed. *Idington and Brodeur, J.J.*, dissenting. *Western Canada Power Co. v. Bergklint*, liv., 285.

31. *Employees of the Crown—Common employment—Defence by the Crown—Workmen's Compensation Act (Man.)*, xxxvi., 462.

32. *Provincial laws in Canada—Judicial notice—Conflict of laws—Common employment—Construction of statute—§ Edu. VII. c. 11, s. 2, ss. 3 (N.B.)—“Longshoreman”—“Workman,”* xxxix., 311.

33. *Operation of railway—Breach of statutory duty—Common employment—Nova Scotia Railway Act—Employers' Liability Act—Fatal Injuries Act*, xxxix., 593.

34. *Accident in mine—Fall of rock—Covering of shaft—Fellow servant. Temiskaming Mining Co. v. Siven*, xlvi., 643.

##### 5. CONTRIBUTORY NEGLIGENCE.

35. *Employer and employee—Disobedience of orders—Dangerous way, works, and appliances.*—Where a foreman has given the necessary orders to ensure the safety of a

workman engaged in dangerous work, an employee who disobeys such orders, and, in consequence, sustains injuries, cannot hold his employer responsible in damages on the ground that the foreman was bound to see that the orders were not disobeyed. *Lamoureux v. Fournier dit Larose* (33 Can. S. C. R. 675), discussed and distinguished. *Royal Electric Co. v. Paquette*, xxxv., 202.

36. *Electric railway—Duty of motorman—Contributory negligence—Reasonable care.*—*L.* started to cross a street traversed by an electric railway and proceeded in a north-westerly direction with his head down and apparently unconscious of his surroundings. A car was coming from the east and the motorman saw *him* when he left the curb at a distance of about fifty yards. Twenty yards further on he threw off the power, and when *L.*, still abstracted, crossed the devil strip and stepped on the track, reversed, being then about ten feet from *him*. The fender struck *him* before he crossed, and he received injuries causing his death. On the trial of an action by his widow the jury found that the motorman was negligent in not having his car under proper control, that *L.* was negligent in not looking out for the car, but that the motorman could, notwithstanding, have avoided the accident by the exercise of reasonable care. A majority of them found, also, that *L.*'s negligence did not continue up to the moment of impact.—*Held, Davies and Anglin, J.J.*, dissenting, that the jury were entitled to find as they did; that when the motorman first saw *L.* he should have realized that he might attempt to cross the track, and it was his duty, then, to have the car under control; and that his failure to do so was the direct and proximate cause of the accident for which the railway company was liable.—*Held, per Davies, J.*—The motorman was not guilty of negligence prior to the negligence of *L.* which consisted in stepping on the track when the car was near and it was then too late to prevent the accident.—*Held, per Anglin, J.*—The findings of the jury, especially the finding that *L.*'s “negligence was not a continuing act up to the moment of the accident,” were not satisfactory and there should be a new trial.—(Leave to appeal to the Privy Council was refused, 4th Aug., 1914.) *Long v. Toronto Railway Co.*, l., 224.

37. *Master and servant—Skilled manager omitting ordinary precautions—Electric shock causing his own death—Defective appliances*, xxxiv., 215.

38. *Dangerous way—Defective works—Injury to servant—Proximate cause*, xxxiv., 387.

39. *Electric wiring—Trespass—Evidence—New trial*, xxxiv., 698.

40. *Operation of railway—Proximate cause—Imprudence of person injured*, xxxv., 296.

41. *Employers' Liability Act—Defective ways, etc.—Care in moving cars—Contributory negligence*, xxxv., 517.

42. *Electric wires—Dangerous works—Ordinary precautions—Employer and employee—Voluntary exposure to danger*, xxxvi., 1.

43. *Operation of tramway—Precautions for safety of passengers—Crossing cars—Sounding gong—Slackening speed—Dangerous places—Neglect of rules—Passenger alighting from front of car—Contributory negligence*, xxxvii., 515.

44. *Dangerous operations—Defective system—Findings of fact—Common fault*, xxxix., 332.

45. *Voluntary exposure to danger—Protection of machinery—Charge of judge—Findings of jury*, xxxix., 365.

46. *Street railway—Rules—Contributory negligence—Motorman injured by his own mismanagement*, xxxix., 398.

47. *Master and servant—Insulation of electric wires—Duty of employee—Neglect to make inspection*, xl., 181.

48. *Operation of railway—Collision—Stop at crossing—Statutory rule—Company's rule—Contributory negligence*, xl., 251.

49. *Operation of tramway—Approaching cross-street—Rules of company—Charge of judge—Contributory negligence—Findings of jury*, xl., 540.

50. *Railway crossing—Contributory negligence—Life insurance—Reduction of damages*, Cam. Cas. 228.

51. *Operation of railway—Signal "all aboard"—Passenger boarding moving train—Estoppel—Personal liability of employee*, Cam. Cas. 589.

52. *Operation of railway—Dangerous way—Passenger jumping off derailed train*, Cout. Cas. 418.

53. *Operation of railway—Level crossing—Signals—Weight of evidence—New trial*, 8 Can. Ry. Cas. 61.

54. *Employer and employee—Compensation for injury—Contributory negligence—Construction of statute—"Workmen's Compensation Act"—2 E.D.C. VII., c. 74, s. 2—Remedial legislation—Refusal of damages—Right of appeal—Evidence*, xlv., 106.

See APPEAL; WORKMEN'S COMPENSATION ACT.

55. *Injury to workman—Liability of employer—Common fault. Dominion Bridge Co. v. Jodoin*, xlvi., 624.

## 6. DAMAGES.

56. *"Lord Campbell's Act"—Findings of jury—Verdict—Damages.*]—Where there is evidence in support of a verdict, upon proper directions to the jury by the trial judge, a court of appeal ought not to interfere with the assessment of damages unless they appear to be so excessive that no reasonable men, upon such evidence, would have

awarded such an amount. Judgment appealed from affirmed. *Grand Trunk Ry. Co. v. Depencier*, Cout. Cas. 343.

57. *Damages—Physical injuries—Mental shock—Severity of damages.*]—T. was riding in a street car when it collided with a train. He was thrown violently forward on the back of the seat in front of him, but was able to leave the car and walk a short distance towards his place of business when he collapsed and was taken home in a cab. He was laid up for several weeks and never recovered his former state of health. On the trial of an action against the railway company one medical witness gave as his opinion that the physical shock received by T. was the exciting cause of his condition, while others ascribed it to a disturbed nervous system. Negligence on the part of the company was not denied, but the trial judge was asked to direct the jury to distinguish, in assessing damages, between the physical and nervous injuries, which he refused to do. — *Held*, affirming the judgment of the Court of Appeal (22 Ont. L. R. 204), that the trial judge properly refused to direct the jury as requested; that the injuries to T.'s nervous system were as much the direct result of the negligence of the company as those to his physical system, and he could recover compensation for both; and that in any case it was impossible for the jury to sever the damages. *Victorian Railway Commissioners v. Coultas* (13 App. Cas. 222) distinguished. *Toronto Ry. Co. v. Louis*, xlv., 268.

58. *Free pass on railway—Consideration for transportation—Misdirection—Findings of jury—Excessive damages—New trial*, xxxv., 68.

See DAMAGES.

59. *Overholding tenant—Treasury—Licensee—Master and servant—Injury to goods*, xxxv., 494.

60. *Operation of machinery—Continuous nuisance—Droits du voisinage—Vibrations, smoke, dust, etc.—Series of torts—Statutory franchise—Permanent injury—Abatement of nuisance—Prospective damages—Method of assessing damages—Limitations of actions—Prescription in actions of tort*, xxxvi., 329.

61. *Street railway—Excessive speed—Gong not sounded—Contributory negligence—Damages—Funeral expenses*, xxxviii., 327.

62. *Findings of fact—Common fault—Apportionment of damages*, xxxix., 332.

63. *Faults in construction—Installations in constructed building—"Automatic sprinkler system"—Injuries by flooding—Damages sustained by subsequent purchaser—Right of action—Assessment of damages—Expertise*, xl., 577.

64. *Carriers by water—Special contract—Exemption from liability—Construction of terms—"At owner's risk"—"Baggage"—Wilful misconduct*, Cam. Cas. 66.

See CARRIERS.

65. *Assessment of damages—Practice—Life insurance—Deduction of amount of policy from damages found*, Cam. Cas. 228.

66. *Municipal corporation—Care of streets—Snow cleaning—Bad state of repair—Loss of profits by omnibus owner—Right of action—Damages*, Cam. Cas. 569.

67. *Operation of railway—Damages—Solatium doloris—Verdict—New trial*, xliii., 205.

See DAMAGES.

68. *Bailment—Evidence—Damages—Storage of meat. Charrest v. Man. Cold Storage*, xlii., 253.

See BAILMENT.

69. *Bailment—Evidence—Damages—Storage of meat*, xlii., 253.

See BAILMENT.

70. *Appeal—Practice—Concurrent findings of fact—Negligence of employees—Shipping—Action for damages—Personal injury—Evidence—Res ipsa loquitur—Limitation of liability—“Canada Shipping Act,” R. S. C. 1906, c. 113, s. 921, xliii., 637.*

See APPEAL.

71. *Construction of statute—N.-W. Ter. Ord. 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—“Bank Act,” R. S. C. (1903) c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Measure of damages*, xliv., 473.

See CHATTEL MORTGAGE.

## 7. DANGEROUS MATERIALS, SYSTEM, WAY OR WORKS.

72. *Negligence—Careless mooring of vessels—Vis major.*]—The plaintiff's tug, “Vigilant,” was moored at a wharf in Vancouver harbor with another tug, the “Lois,” belonging to the defendant, lying outside and moored there by a line attached to the “Vigilant.” The “Lois” was left in that position all night with no one in charge and no fenders out on the side next the “Vigilant.” During the night a heavy gale came up and the “Lois” pounded the “Vigilant” causing her considerable damage.—*Held*, affirming the judgment appealed from, that, as the defendant was not a trespasser, he was not guilty of negligence, under the circumstances, in leaving his tug as he did and that he was not obliged to observe extreme and unusual precautions to avoid injury by a storm of exceptional violence. *Bailey v. Cates*, xxxv., 293.

73. *Master and servant—Dangerous works—Knowledge of master—Employer's Liability Act.*]—T., an employee in a mill, entered the elevator on the second floor to go down to the ground floor, and while in the elevator it fell to the bottom of the shaft and T. was injured. On the trial of an action for dam-

ages it was proved that the elevator was over twenty years old; that it had fallen before on the same day owing to the dropping out of the key pinion gear which had been replaced; and the jury found that the vibration and general dilapidation of the running gear caused the key again to fall out occasioning the accident. On appeal from the judgment of the Court of Appeal maintaining a verdict for the plaintiff:—*Held*, Nesbitt, J., dissenting, that the company was negligent for not exercising due care in order to have the elevator in a safe and proper condition for the necessary protection of its employees and was, therefore, liable at common law.—*Held*, per Nesbitt, J., that as the company had employed a competent person to attend to the working of the elevator it was not liable at common law for his negligence, although it was liable under the Employers Liability Act. *Canada Woollen Mills v. Traplin*, xxxv., 424.

74. *Dangerous way, works, etc.—Master and servant—Findings of jury—New trial.*]—In constructing the bins for an elevator, a staging had to be raised as the work progressed by ropes held by men standing on the top until it could be secured by dogs placed underneath. When secured workmen stood on the staging and nailed planks to the sides of the bin. The planks were run along a tramway at the side of the bins by rollers and thrown off to the side of the bin farthest from the tramway. While two men on the top of the bin were holding up the staging until it could be secured, a plank on top of the adjoining pile fell off. In falling it hit the men on top of the bin and they were precipitated to the bottom and one of them killed. In an action by his widow against the contractor for building the elevator, twenty-five questions were submitted to the jury, and on their answers a verdict was entered for the plaintiff.—*Held*, Idington, J., dissenting, that while the falling of the plank caused the accident, there was no finding that the same was due to the negligence of the defendant, nor any that the death of deceased was due to negligence for which, under the evidence, defendant was responsible. Therefore, and because many of the questions submitted were irrelevant to the issue and may have confused the jury, there should be a new trial. *Jamieson v. Harris*, xxxv., 625.

75. *Electric wires—Dangerous works—Ordinary precautions—Employer and employee—Knowledge of risk—Contributory negligence—Voluntary exposure to danger.*]—An employer carrying on hazardous works is obliged to take all reasonable precautions, commensurate with the danger of the employment, for the protection of the employees, and, where this duty has been neglected, the employer is responsible in damages for injuries sustained by an employee as the direct result of such omission. *Lepitre v. The Citizens' Light and Power Company* (29 Can. S. C. R. 1) referred to by Nesbitt, J.—In such a case it is not sufficient defence to show that the person injured had knowledge of the risks of his employment, but there must be such knowledge shown as, under the circumstances, leaves no doubt that the risk was voluntarily

incurred, and this must be found as a fact. *Montreal Park & Island Railway Co. v. McDougall*, xxxvi., 1.

76. *Employer and employee—Dangerous machinery—Want of proper protection—Voluntary exposure—Findings of jury—Charge of judge—Assignment of facts—Practice—Assessment of damages.*—An experienced master mechanic, who was familiar with the machinery in his charge and had instructions to take the necessary precautions for the protection of dangerous places, in attempting to perform some necessary work, lost his balance and fell upon an unprotected gearing which crushed him to death. In an action by his widow for damages, questions were submitted to the jury without objection by the parties and no objection was raised to the judge's charge, at the trial. The jury were not asked to specify the particular negligence which caused the injury and, by their answers, found that deceased was acting under the instruction and guidance of the company's officers, who were his superiors at the time of the accident; that he had control of the work to be done but had not full charge, control and management of the machinery generally; that there was fault on the part of the company, and that he had not unnecessarily or negligently assumed any risk.—*Held*, affirming the judgment appealed from (Q. R. 31 S. C. 273), *Davies, J.*, dissenting, that as there was evidence from which the jury could reasonably draw inferences and come to these conclusions, as to the facts, and, as no objection was made to the questions put to them and to the charge of the judge, at the trial, their findings ought not to be interfered with on appeal. *Royal Paper Mills Co. v. Cameron*, xxxix., 365.

77. *Negligence—Dangerous works—Protection of employees—Evidence—Questions for jury—Judge's charge—Findings of fact—Inferences.*—An experienced employee of the defendants was killed by an explosion of illuminating gas while discharging his duties in the meter-room at the defendants' gas works. It was shewn that there might possibly have been an escape of gas from the controllers or other fixtures in the room or in the blow-room adjoining it; that there had been no special precautions by the defendants to detect any such escape of gas that might occasionally happen, and that the meter-room had always been and, at the time of the accident, was lighted by means of open gas jets. There was no exact proof of any particular fault, attributable to the defendants, which could have been the whole cause of the explosion, and its origin and course were not explained. In an action for damages by the widow and representatives of deceased, the jury found that the explosion had resulted from the fault and imprudence of the defendants in lighting the meter-room by open gas jets, and contributory negligence on the part of the deceased was negated.—*Held*, affirming the judgment appealed from (Q. R. 16 K. B. 246), *Davies and MacLennan, JJ.*, dissenting, that, in the circumstances, the jury were justified in finding that there had been such negligence and imprudence on the part of the de-

fendants, in such use of open gas jets, as would render them responsible for the injury complained of. *Montreal Light, Heat and Power Co. v. Regan*, xl., 580.

78. *Dangerous works—Defective appliances—Evidence—Onus of proof—Presumption—Art. 1054 C. C.—“Res ipsa loquitur.”*—In an action to recover damages for injuries sustained by him in consequence of an accident in the company's calcium carbide works, the plaintiff's evidence shewed that a furnace operated upon a new system had been recently installed, that he was employed with other workmen to charge the furnace, draw off the liquid carbide when it was ready through openings in the base of the furnace, clean the orifices and re-plug them with moist mortar preparatory to re-charging. While the plaintiff was in the performance of his work in re-plugging one of these orifices an explosion occurred which caused the injuries complained of.—There was no evidence of contributory negligence.—*Held*, *Duff and Anglin, JJ.*, dissenting, that, apart from any presumption arising under article 1054 C. C., the fact of the explosion occurring under such circumstances sufficiently established actionable negligence on the part of the company.—*Per Fitzpatrick, C.J.*, and *Anglin, J.* (*Girouard and Duff, JJ.*, *contra* and *Idington, J.*, expressing no opinion upon the question), that, under article 1054 of the Civil Code of Lower Canada, masters and employers, as well as other persons, are responsible for damages caused by things under their control or care where they fail to establish that the cause of the injury was attributable to the fault of the person injured, to *vis major* or to pure accident, or that it occurred without fault imputable to themselves.—Judgment appealed from (Q. R. 18 K. B. 271) reversing the decision of the Court of Review (Q. R. 35 S. C. 285), affirmed, *Duff, J.*, dissenting. *Shawinigan Carbide Co. v. Doucet*, xlii., 281.

79. *Employer and employee—Duty of employer—Proper system—Common employment—Master and servant.*—An employer is under an obligation to provide safe and proper places in which his employees can do their work and cannot relieve himself of such obligation by delegating the duty to another.—It follows that if an employee is injured through failure of his employer to fulfil such obligation, the latter cannot in an action against him for damages, invoke the doctrine of common employment. *Ainslie Mining & Railway Co. v. McDougall*, xlii., 420.

80. *Dangerous works—Joint tortfeasors—Judgment against one of several persons responsible for damages—Bar to action.*—A proprietor or principal contractor undertaking works in the circumstances inherently dangerous cannot delegate the duty of providing against such danger so as to escape personal responsibility if that duty be neglected.—Failure to discharge such duty makes the proprietor and his contractor, or the contractor and his sub-contractor, as the case may be, equally liable as joint tortfeasors for resultant injury.—A judgment for damages sustained in consequence of

any such injury against one of such joint tortfeasors is a bar to a subsequent action therefor against another. — Judgment appealed from (19 Man. R. 641) affirmed. *Longmore v. J. D. McArthur Co.*, xliii., 640.

81. *Employer and employee—Dangerous works—Defective system—Liability of incorporated company—Fault of employee.*—An incorporated company carrying on dangerous operations is liable at common law for damages sustained by an employee in consequence of injuries occasioned by the use of a system which failed to provide a safe and proper place in which the employee could do his work; it is not relieved from this responsibility by the fact that the operations were superintended by a competent foreman. *Ainslie Mining and Railway Co. v. McDougall* (42 Can. S. C. R. 420) followed. Judgment appealed from (15 B. C. Rep. 461) affirmed. *Brooks, Scanlon, O'Brien Co. v. Fakkema*, xlv., 412.

82. *Employer and employee—Dangerous work—Dangerous materials—Risk of employment—Warnings and instructions—Employer's liability—Damages—Limitation of action—Construction of statute—"Railway Act, R.S.C. 1906," c. 37, s. 306—"Construction and operation" of railway.*—Where instructions and warning are necessary to enable employees, in circumstances involving danger, to appreciate and protect themselves against the perils incident to the work in which they are engaged, it is the duty of the employer to take reasonable care to see that such instructions and warnings are given. The employer may delegate that duty to competent persons, but, where compensation is sought for injuries sustained by an employee owing to neglect to give such instructions and warning, the onus rests upon the employer to shew that the duty was delegated to a person qualified to discharge it or that other adequate provision was made to ensure protection against unnecessary risk to the employees. The failure of the employer to take reasonable care in the appointment of a properly qualified superintendent, to whom the duty of selecting persons to be employed is entrusted, amounts to negligence involving liability for damages sustained in consequence of the acts of incompetent servants. *Young v. Hoffman Manufacturing Co.* ((1907) 2 K. B. 646) applied; judgment appealed from (21 Man. R. 121) affirmed. In this case, as the risk incident to the employment of an incompetent foreman was not one of those which are assumed by an employee, the plaintiff was entitled to recover damages at common law. Judgment appealed from (21 Man. R. 121) reversed.—The limitation of one year, in respect of actions to recover compensation for injuries sustained "by reason of the construction or operation" of railways, provided by section 306 of the "Railway Act" (R. S. C. 1906, c. 37) relates only to injuries sustained in the actual construction or operation of a railway; it does not apply to cases where injuries have been sustained by employees engaged in works undertaken by a railway company for procuring or preparing materials which may be necessary for the construction of their railway. *Canadian Northern Railway Co. v. Robinson*

((1911) A. C. 739) applied; judgment appealed from (21 Man. R. 121) affirmed. (Leave to appeal to Privy Council refused, 20th March, 1912.) *Canadian Northern Ry. Co. v. Anderson*, xlv., 355.

83. *Master and servant—Dangerous works—Defective system—Careless management—Fault of fellow servant—Efficient superintendence—Employer's duty—Evidence—Action—Liability at common law—"B. C. Employers' Liability Act"—Pleading—Practice—Charge to jury—New trial.*—To afford protection to workmen about to be employed on a ledge below, several of them, including the plaintiff, were directed by the defendants' foreman to clear loose rocks from the hillside and form a berm above the place where the work was to be done. The clearing was imperfectly performed, although the foreman was informed by some of the men that "it was all right." While plaintiff was at work on the lower ledge he was struck by rocks, which rolled down the hillside, fell over the cliff and sustained injuries for which he brought action to recover damages under the British Columbia "Employers' Liability Act" and at common law. It appeared from the evidence that it was customary to clear off such inclines or to erect pences or barriers for the protection of the workmen on lower ledges, but not to do both, and there was evidence that on this hillside barriers were unnecessary and might be dangerous. At the trial the jury found that the defendants had been negligent "in not sufficiently clearing the face of the incline and placing barriers to prevent rolling stones and other debris from causing injury to the employees," and judgment was entered for the plaintiff. By the judgment appealed from (17 B. C. Rep. 443) the Court of Appeal dismissed the action, holding that the cause of the injury was the failure to clear the hillside sufficiently, which was due to the fault of the plaintiff and his fellow workmen.—*Held*, that, having regard to the character of the work in which the plaintiff was engaged when injured, the employers' duty to provide reasonable protection for him could properly be delegated to a competent superintendent or foreman (furnished with adequate materials and resources), whose negligence would not render the employer liable at common law. *Wilson v. Merry* (L. R. 1 H. L. (Sc.) 326), applied. *Ainslie Mining and Railway Co. v. McDougall* (42 Can. S. C. R. 420), and *Brooks, Scanlon, O'Brien Co. v. Fakkema* (44 Can. S. C. R. 412), distinguished.—*Per Fitzpatrick, C.J.*, and *Anglin, J.*—On the evidence failure to clear the face of the incline sufficiently was due either (and most probably) to the negligence of the plaintiff and the workmen engaged with him or to that of the foreman and, consequently, a judgment against the defendants at common law was not justified. The finding that the omission to place barriers above the men working on the lower ledge was negligence is not supported by the evidence; if it were, such negligence would be that of the superintendent. The trial proceeded on the assumption that the works were in charge of a competent superintendent and foreman, having discretion and means to furnish all reasonable safeguards,

and an admission to that effect was made at bar, on the hearing of the appeal—consequently, the appeal should be dismissed.—*Per* Idington and Brodeur, JJ.—The findings of the jury were sufficiently supported by evidence and warranted a judgment at common law.—*Per* Idington, J.—The defendants were bound to allege and prove that they had delegated to a competent person the duty of providing proper safeguards and had furnished him with the means of doing so.—*Per* Duff, J.—There was evidence upon which the jury might have found that the duty of providing proper safeguards had been entrusted to a competent person provided with the necessary means of doing so, but this was not admitted and the failure of the trial judge to leave this question to the jury caused a mistrial.—In the result a new trial was ordered, *Idington and Brodeur, JJ.*, dissenting. *Bergklint v. Western Canada Power Co.*, 1, 39.

84. *Dangerous way—Defective works—Employers' Liability Act—Injury to workman—Proximate cause*, xxxiv., 387.

85. *Dangerous way—Defective bridge—Operation of railway—Gratuitous passenger—Liability of carrier for damages*, xxxv., 65.

86. *Employer and employee—Disobedience of orders—Dangerous work*, xxxv., 202.

87. *Ferry wharf—Dangerous way—Precautions for preventing accidents—Evidence—Findings of jury—Non-suit*, xxxv., 693.

88. *Mines and mining—Dangerous ways, etc.—Inspection of pit—Employer and employee—Evidence—Presumption—Reversal of findings of fact*, xxxvi., 13.

89. *Construction of railway—Defective road-bed—Dangerous way—Vis major—Onus of proof—Latent defect*, xxxvii., 632.

90. *Electric wires—Highway—Dedication—Proximity to public bridge—Injury to child*, xxxviii., 27.

91. *Dangerous works—Ship labourers—Open hatchway—Dangerous way—Common employment—Conflict of laws*, xxxix., 311.

92. *Dangerous operations—Defective system—Common fault*, xxxix., 332.

93. *Operations of railway—Yard siding—Sloping platform—Private passage—Dangerous way*, xl., 194.

See PRACTICE.

94. *Railway station buildings—Dangerous way—Invitation of license—Breach of duty—Questions for jury*, Cam. Cas. 262.

95. *Operation of tramway—Use of highway—Repair of streets—Dangerous way—Speed—Headlights—Ordinary reasonable care*, Cout. Cas. 284.

96. *Operation of tramway—Dangerous way—Removal of ice and snow—Right of way*, Cout. Cas. 309.

97. *Operation of railway—Dangerous way—Rotten ties—Contributory negligence*, Cout. Cas. 418.

98. *Explosion of dynamite—Evidence—Inferences. Toronto Construction Co. v. Strati*, xlv., 7.

## 8. DEFECTIVE CONSTRUCTIONS, MACHINERY, OR PLANT.

99. *Dangerous way, works, etc.—Master and servant—Workmen's Compensation Act—Evidence*.—M., proprietor of iron works, had built an engine in the course of business, and while it was standing on a railway track in the workshop a heavy dray standing near, owing to the horses attached being startled, was thrown against it whereby it was overturned and killed a workman at a bench three or four feet away. On the trial of an action by the administratrix of the workman's estate the jury found that the accident was due to the negligence of M. in not having the engine properly braced.—*Held*, that this finding was justified by the evidence, and M. was liable under the Workmen's Compensation for Injuries Act (R. S. O. [1897] c. 160.—*Held*, also, that the accident did not occur though a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of the employer. *Miller v. King*, xxxiv., 710.

100. *Dangerous operations—Defective system—Findings of fact—Common fault—Apportionment of damages*.—The Supreme Court of Canada affirmed the unanimous judgments of the courts below, whereby it was held that defendant was liable in damages for injuries sustained by the plaintiff through an accident which occurred in consequence of a defective system of blasting rocks with dynamite permitted by his foreman on works where the plaintiff was engaged by him in a dangerous operation. *The Montreal Rolling Mills Co. v. Corcoran* (27 Can. S. C. R. 595), and *Tooke v. Bergeron* (27 Can. S. C. R. 567) distinguished. The plaintiff had been guilty of contributory negligence and damages apportioned according to the practice in the Province of Quebec. *Paquet v. Dufour*, xxxix., 332.

101. *Defective system—Injury to employee—Evidence—Verdict—Practice—Exception to judge's charge—New points on appeal—New trial—Master and servant—Jury*.—During bridge construction a travelling crane was operated on elevated tracks under a system which did not provide for signals on every occasion when it was set in motion, and it was not provided with guards for the protection of workmen employed upon the elevated stagings. A signal was given, on starting the crane, at some distance from the workmen; shortly afterwards it came to a momentary stop and moved on again towards the workmen without any further signal and plaintiff was injured. In his action for damages, the plaintiff charged want of proper system and guards. The Court of Appeal set aside a judgment in favour of plaintiff, upon a gen-

eral verdict by the jury, and ordered a new trial for the purpose of assessing damages under the British Columbia "Employers' Liability Act" on the ground that it had been admitted that there was a system in existence which, if properly carried out, would have been sufficient for the protection of the workmen.—*Held*, that, on a proper appreciation of the evidence, having regard to the course of the trial, the directions of the trial judge had presented the issues fully to the jury, and, there being evidence to support it, their verdict ought not to have been disturbed. *Davies and Anglin, JJ.*, dissented.—*Per Duff and Brodeur, JJ.*—Where exception to the directions of the judge has not been taken at the trial or in the first court of appeal, it is, in the absence of special circumstances, too late to urge such objections upon a subsequent appeal to a higher court. *White v. Victoria Lumber and Manufacturing Co.* (1910) A. C. 606 followed. *Creveling v. Canadian Bridge Co.*, li., 216.

102. *Braking apparatus—Sand valves—Notice of defect in machinery—Railway Act, 1888—Liability of employer—Provident society—Contract indemnifying employer—Indemnity and satisfaction*, xxxiv., 45.

103. *Mining operations—Contract for special work—Engagement by contractor—Control of direction of mine owner—Defective machinery—Notice—Failure to remedy defect—Liability for injury sustained by miner*, xxxiv., 177.

104. *Electric plant—Defective appliances—Master and servant—Engagement of skilled manager—Electric shock—Contributory negligence*, xxxiv., 215.

105. *Dangerous way—Defective works—Injury to servant—Proximate cause—Moving railway cars*, xxxiv., 387.

106. *Employers' Liability Act—Defective ways, works, etc.—Care in moving cars—Contributory negligence*, xxxv., 517.

107. *Latent defect in road-bed of railway—Improper construction—Vis major—Onus of proof*, xxxvii., 632.

108. *Electrical installation—Cause of fire—Defective transformer—Improper wiring—Evidence—Onus of proof*, xxxvii., 676.

109. *Operation of Government railway—Negligence of fellow servant—Defective switch—Public work—Tort—Liability of Crown—Right of action—Lord Campbell's Act*, xl., 229.

110. *Improper appliances—Employer and employee—Proximate cause—Findings of jury—Evidence*, xl., 396.

111. *Builders and contractors—Faults of construction—Latent defect—Installations in constructed building—"Automatic sprinkler system"—Damages*, xl., 577.

112. *Dangerous works—Explosive gas—Protection of employees—Evidence—Questions for jury—Judge's charge—Findings of fact—Inferences*, xl., 580.

113. *Operation of railway—Condition of road-bed—Dangerous way—Derailed train—Passenger jumping off train*, *Cout. Cas.* 418.

114. *Employers' liability—Defective appliances—Warnings and instruction—Injury to workman. Drolet v. Denis*, xlviii., 510.

## 9. ELECTRICITY.

115. *Electric plant—Defective appliances—Master and servant—Electric shock—Engagement of skilful manager—Contributory negligence.*—An electrician engaged with defendants as manager of their electric lighting plant and undertook to put it in proper working order, the defendants placing him in a position to obtain all necessary materials for that purpose. About three months after he had been placed in charge of the works he was killed by coming in contact with an incandescent light socket in the power house which had been there during the whole of the time he was in charge, but, at the time of the accident, was apparently insufficiently insulated.—*Held*, that there was no breach of duty on the part of the defendants towards deceased, who had undertaken to remedy the very defects that had caused his death, and the failure to discover them must be attributed to him.—The judgment appealed from (14 Man. L. R. 74) ordering a new trial was affirmed, but for reasons different from those stated in the court below. *Davidson v. Stuart*, xxxiv., 215.

116. *Electric wire—Trespasser—Evidence—Contributory negligence—New trial.*—Ahearn & Soper had a contract to illuminate certain buildings for the visit of the Duke of York to Ottawa, and obtained power from the Ottawa Electric Co. For the purposes of the contract wires were strung on a telegraph pole and fastened with tie-wires, the ends of which were uninsulated. R., an employee of the Ottawa Electric Co., was sent by the latter to place a transformer on the same pole and, in doing so, his hands touched the ends of the tie-wire by which he received a shock and fell to the ground, being seriously injured. To an action for damages for such injury Ahearn & Soper pleaded that R. had no right to be on the pole and was a trespasser, and on the trial their counsel urged that the work he was doing was connected with the lighting of a building in the city. The Court of Appeal held that this defence was established and dismissed the action.—*Held*, reversing the judgment appealed from (6 Ont. L. R. 619), that the counsel's address did not indicate that the building referred to was not one of those to be illuminated under the contract, and the evidence did not shew that R. was not engaged in the ordinary business of his employers and the case should be retried, the jury having failed to agree at the trial.—A rule of the Ottawa Electric Co. directed every employee whose work was near apparatus carrying dangerous currents to wear rubber gloves, which would be furnished on application. R. was not wearing such gloves when he was hurt.—*Held*, that the mere fact of the absence of gloves was not such negli-



gence on R.'s part as would warrant the case being withdrawn from the jury; that, as to A. & S. R. was not bound by said rules; and that though his failure to take such precaution was evidence of negligence he had a right to have it left to the jury and considered in connection with other facts in the case. *Randall v. Ahearn & Soper*, xxxiv., 698.

117. *Electrical installations—Cause of fire—Defective transformer—Improper wiring—Evidence—Onus of proof.*—In an action to recover the amount of a policy of fire insurance paid by the plaintiffs upon the destruction of the premises insured by fire caused, as alleged, through the defective condition of a transformer of the defendant company, whereby a dangerous current of electricity was allowed to enter the insured building, the evidence failed to shew conclusively that the transformer was out of order previous to the occurrence of the fire, and at the same time it appeared that the wiring of the building may have been defective.—*Held*, affirming the judgment appealed from, that the onus of proof upon the plaintiffs had not been satisfied, and that they could not recover. *Abraih v. The North Eastern Railway Co.* (11 Q. B. D. 440), referred to. *Guardian Fire and Life Assurance Co. v. Quebec Railway, Light and Power Co.*, xxxvii., 676.

118. *Electric light company—Wires on public highway—Proximity to bridge—Injury to child—Dedication.*—Several years ago the owners of land in the township of York built a bridge over a ravine for access to and from the City of Toronto, and about 1894 the Toronto Electric Light Co. placed wires across the ravine about ten feet from the bridge. In 1904 the bridge was reconstructed and made wider, being brought to within from 14 to 20 inches of the wires, which had become worn and ceased to be insulated. G., a boy under nine years of age, while playing on the bridge, put his arm through the railing and his hand touching the wire he was badly injured.—*Held*, reversing the judgment of the Court of Appeal (12 Ont. L. R. 413), that the plans and deeds in evidence shewed a dedication as a public highway of the bridge and land of each side of it, and such highway included the land over which the wires passed.—*Held*, also, that the wires in the condition in which they were at the time of the accident were dangerous to those using the highway and the company were liable for the injury to G. *Gloster v. Toronto Electric Light Co.*, xxxviii., 27.

119. *Electric lighting—Dangerous currents—Trespass—Breach of contract—Surreptitious installations—Liability for damages.*—P. obtained electric lighting service for his dwelling only, and signed a contract with the company whereby he agreed to use the supply for that purpose only, to make no new connections without permission, and to provide and maintain the house-wiring and appliances "in efficient condition, with proper protective devices, the whole according to fire underwriters' requirements." He surreptitiously connected wires with the house-wiring and carried the current into

an adjacent building for the purpose of lighting other premises by means of a portable electric lamp. On one occasion, while attempting to use this portable lamp, he sustained an electric shock which caused his death. In an action by his widow to recover damages from the company for negligently allowing dangerous currents of electricity to escape from a defective transformer through which the current was passed into the dwelling:—*Held*, reversing the judgment appealed from, that there was no duty owing by the company towards deceased in respect of the installation so made by him without their knowledge, and in breach of his contract, and that, as the accident occurred through contact with the wiring which he had so connected without their permission, the company could not be held liable in damages. *Montreal Light, Heat and Power Co. v. Lawrence*, xxxix., 326.

120. *Master and servant—Duty of employee—Insulation of electric wires—Onus of proof.*—An electric line-foreman in the company's employ met his death from contact with imperfectly insulated live wires while at work in proximity to them in the power-house. The evidence left some doubt whether the duties of deceased included the inspection and care of the wires both inside and outside of the power-house, or whether his engagement was to perform the duties in question in respect only to the wires outside the power-house walls.—*Held*, that the onus of proof as to the point in dispute was on the defendants and, such onus not having been satisfied, they were liable in damages. Judgment appealed from affirmed. *Davies, J.*, dissenting on a different view of the evidence, and holding that the duties of deceased included the inspection and care of the interior wiring. *Quebec Ry., Light and Power Co. v. Fortin*, xl., 181.

121. *Construction of statute—Limitations of actions—Contract for supply of electric light—Injury to person not privy to contract—“Consolidated Railway Company's Act, 1896,” 59 V. c. 55 (B.C.), ss. 29, 50, 60.*—The appellant company, having acquired the property, rights, contracts, privileges and franchises of the Consolidated Railway and Light Company, under the provisions of "The Consolidated Railway Company's Act, 1896" (59 Vict. ch. 55 [B.C.]), is entitled to the benefit of the limitation of actions provided by section 60 of that statute. *Idington, J.*, dissenting.—The limitation so provided applies to the case of a minor injured while residing in his mother's house, by contact with an electric wire in use there under a contract between the company and his mother.—Judgment appealed from (14 B. C. Rep. 224), reversed. *Davies and Idington, JJ.*, dissenting. *British Columbia Electric Railway Co. v. Crompton*, xliii., 1.

122. *Dangerous works—Electric transmission line—Independent contractor—Master and servant—Strengthening poles—Stringing wires—Injury to linesman—Risk of employment—Responsibility of owner.*—The company having become aware that the poles for an electric transmission line erected by them had become insecure employed an independ-



ent contractor to strengthen the poles and to string wires upon them. The plaintiff, a linesman employed by the contractor, ascended a pole before it had been secured, without first having ascertained that it was safe for him to do so, in order to string wires upon it. The pole fell while he was at work upon it and he was injured.—*Held*, reversing the judgment appealed from (18 B. C. Rep. 407), that the accident was the result of the default of the contractor in relation to the work he had undertaken in regard to the strengthening of the poles and, consequently, the owners of the transmission line were not liable for the damages sustained by the plaintiff. *Marney v. Scott* (1899), 1 Q. B. 986; *Indermaur v. Dames* (L. R. 2 C. P. 311), and *Lucy v. Bawden* (1914), 2 K. B. 318, referred to. *Western Canada Power Co. v. Veiasky*, xlix., 423.

123. *Electric transmission—Statutory authority—Special Act—Character of installations—System of operation—Grounding transformers—Defective fittings—Vis major—Responsibility without fault—Art. 1054 C. C.*—After heavy rains, in cold weather, had coated trees and electric wires with icicles, a violent wind tore a branch from a tree, growing on private grounds, and blew it a distance of 33 feet on to a highway where it fell across the defendants' electric transmission wire, causing a high-tension current to escape to secondary house-supply wires, used only for low-tension currents, and resulting in the destruction of the buildings by fire. The high-tension current, 2,200 volts, was stepped down from the primary wire to about 110 volts on the secondary wires by means of a transformer which was not grounded, owing to doubts then existing as to doing so being safe practice. The secondary wires were used by the defendants to supply electric light to consumers, the owners of the buildings destroyed, but these buildings were not fitted with "modern" installations for electric lighting nor with cut-offs to intercept high-tension currents.—V.'s action was to recover damages for the destruction of his building, alleged to have been occasioned by the defendants' defective system. The insurance companies, being subrogated in the rights of owners of buildings insured by them, brought actions to recover the amounts of the policies which had been paid:—*Held*, per Idington, Anglin and Brodeur, JJ. (Davies and Duff, JJ., *contra*). Under the provisions of article 1054 of the Civil Code, the defendants were liable for the damages claimed as they had failed to establish that they were unable, in the circumstances, to prevent the escape of the high-tension electric current, a dangerous thing under their care, which had been the cause of the injuries, or that the injuries thus caused had resulted from the fault of the owners of the buildings themselves. The defence of *vis major* was not open as the circumstances in which the injuries occurred could have been foreseen and provided against by the installation of a safer system for transmission of electricity.—Judgment appealed from (Q. R. 24 K. B. 214), reversed, Davies and Duff, JJ., dissenting.—*Per* Anglin and Brodeur, JJ.—As the special Acts under which the defendants carried on their operations provide that the com-

pany shall be "responsible for all damages which its agents, servants, or workmen cause to individuals or property in carrying out or maintaining any of its said works" (58 & 59 Vict. (D.) ch. 59, sec. 13), and that the company "shall be responsible for all damages which it may cause in carrying out its works" (44 & 45 Vict. (Que.) ch. 71, sec. 2), they are liable for damages resulting from the operation of their constructed works, without regard to any consideration of fault or negligence on their part.—*Per* Davies and Duff, JJ., dissenting.—Under article 1054 of the Civil Code, the onus lies upon the plaintiff to prove that the injury complained of resulted from the fault of the thing which the defendant had under his care; in the absence of such proof there is no liability on the part of the defendant. In the circumstances of the case the defendants are entitled to succeed on the ground that the damages were the result of *vis major*. *Canadian Pacific Railway Co. v. Roy* (1902), A. C. 220; *Dumphy v. Montreal Light, Heat and Power Co.* (1907), A. C. 454; *McArthur v. Dominion Cart-ridge Co.* (1905), A. C. 72; *Shawinigan Carbide Co. v. Doucet* (Can. S. C. R. 281; Q. R. 18 K. B. 271); and *Canadian Pacific Railway Co. v. Dionne* (14 Rev. de Jur. 474), referred to. *Vaudry v. Quebec Railway, Light, Heat & Power Co.*, liii., 72.

124. *Electrical installations—Necessary protection of employees—Onus of proof—Voluntary exposure to danger. The Shawinigan Carbide Co. v. St. Onge*, xxxvii., 688.

125. *Wires charged with high currents—Dangerous works—Ordinary precautions—Employer and employee—Knowledge of risk—Contributory negligence—Voluntary exposure to danger*, xxxvi., 1.

#### 10. EMPLOYEES' LIABILITY.

126. *Employer and workman—Volenti non fit injuria—Finding of jury.*—In an action claiming compensation for personal injuries caused by negligence, the defendant who invokes the doctrine of *volenti non fit injuria* must have a finding by the jury that the person injured voluntarily incurred the risk unless it so plainly appears by the plaintiff's evidence as to justify the trial judge in withdrawing it from the jury and dismissing the action. Sedgewick and Nesbitt, JJ., dissenting. *Canada Foundry Co. v. Mitchell*, xxxv., 452.

127. *Master and servant—Negligent driving—Horse owned by servant—Vehicle and harness owned by master—Duty of employee—Liability for damages.*—T., an employee of D., while in discharge of the duties of his employment, driving his own horse attached to a vehicle belonging to his employer, who also owned the harness, negligently caused injuries to C., which resulted in his death. In an action for damages by the widow and children of C.:—*Held*, affirming the judgment appealed from (Q. R. 15 K. B. 472), that as the injury complained of was caused by the fault of the servant during the performance of his duties in the course of his employment, the master and

servant were jointly and severally responsible in damages. *Turcotte v. Ryan*, xxxix., 8.

128. *Evidence—Provincial laws in Canada—Judicial notice—Conflict of laws—Common employment—Construction of statute—§ Edw. VII., c. 11, s. 2, s.-s. 3 (N.B.)—"Longshoreman"—"Workmen."*—As an appellate tribunal for the Dominion of Canada, the Supreme Court of Canada requires no evidence of the laws in force in any of the provinces or territories of Canada. It is bound to take judicial notice of the statutory or other laws prevailing in every province or territory in Canada, even where they may not have been proved in the courts below, or although the opinion of the judges of the Supreme Court of Canada may differ from the evidence adduced upon these points in the courts below. *Cooper v. Cooper* (13 App. Cas. 88), followed (a).—The plaintiff, a longshoreman, was engaged by the defendant, in Montreal, to act as foreman on his contracts as a stevedore at the port of St. John, N.B. While in the performance of his work, plaintiff went into the hold to rearrange a part of the cargo in a vessel, in the port of St. John, and, in assisting the labourers, stood under an open hatchway where he was injured by a heavy weight falling upon him on account of the negligence of the winchman in passing it across the upper deck. The winchman had attempted to remove the article which fell, without any order from his foreman, the plaintiff, and with improperly adjusted tackle. In an action for damages instituted in the Superior Court, at Montreal:—*Held*, that the plaintiff was entitled to recover either under the law of the Province of Quebec or under the provisions of the New Brunswick Act, 3 Edw. VII., c. 11, as he came within the class of persons therein mentioned to whom the law of the latter province relating to the doctrine of common employment does not apply. *Logan v. Lee*, xxxix., 311.

(a) NOTE: Cf. R. S. C. (1906) c. 145, s. 17.

129. *Construction contract—Sub-contract—Dangerous premises—Servant or agent—Building materials—Duty of principal contractor—Injury to invitee—Responsibility for damages—Evidence—Findings of jury.*—The McG. Co., contractors for plumbing and heating in a building under construction, sub-let part of their contract to the R. Co., who manufactured the necessary material at Amherst, N.S., and at one time shipped a boiler-plate for use in executing their sub-contract consigned to the McG. Co. at Montreal. The McG. Co. sent the advice note of the shipment to the R. Co.'s local representative, who employed carters to get the plate from the railway company and carry it to the place where the works were being carried on. It was, under directions of the McG. Co.'s foreman, leaned up against a pillar of the building and remained there for about one day in a position where it projected over a part of the cartway used for bringing materials into the building. T. applied for employment as a labourer on the works and was told to return next day which he did and, while waiting to be employed, stood near the plate. When a vehicle en-

tered the cartway the plate fell upon T., causing injuries from which he died. In an action by his dependents to recover damages from the R. Co. and the McG. Co.:—*Held*, Anglin, J., dissenting, that, in the circumstances, the McG. Co. were responsible for damages; that the fault from which the injury resulted was that of their foreman who, acting as their servant or agent, supervised the placing of the plate in a dangerous position, and that the plate itself was a thing which was, at the time, in the care of the McG. Co. *Lucy v. Bawden* ([1914] 2 K. B. 318), referred to. *Held*, also, Anglin, J., dissenting, that the evidence shewing the circumstances stated, justified the jury in finding that deceased was lawfully in the place where the accident occurred, that he had not been guilty of contributory negligence, and that the accident was due to negligence of the McG. Co. and the sub-contractors in placing the plate in a dangerous position. *W. J. McGuire Co. v. Bridger*, xlix., 632.

130. *Operation of tramway—Employers' liability—Accident in course of employment—"Workmen's Compensation Act"—Right of action—Dependent relations—Construction of statute—(Que.) 9 Edw. VII., c. 66, ss. 3, 15—R. S. Q., 1909, arts 7321, 7323, 7335—Incompatible enactment—Repeal—Art. 1056 C. C.—Practice—Charge to jury—Misdirection—Excessive damages—Modification of verdict—Master and servant—New trial—Art. 503 C. P. Q.*—The remedy given by article 1056 of the Civil Code, in cases of *délit* and *quasi-délit*, was taken away in regard to the classes of persons enumerated in section 3 of the Quebec statute respecting compensation for injuries to workmen, 9 Edw. VII., ch. 66, by the limitation in section 15 of that statute (now articles 7323 and 7335 of the Revised Statutes of Quebec, 1909), but the effect of these enactments was not to repeal the provisions of article 1056 C. C., with respect to ascendant relations who were only partially dependent for support on a deceased workman to whom the statute applied. The judgment appealed from (Q. R. 23 K. B. 212) was reversed, Davies and Brodeur, JJ., dissenting.—*Per* Davies, J., dissenting.—The words "in all cases to which this Act applies," in the Quebec statute respecting compensation for injuries to workmen, 9 Edw. VII., ch. 66, sec. 15, have reference to the special classes of employment referred to in the first section of the Act, and not to the classes of persons entitled to compensation thereunder. Consequently, the effect of section 15 is to limit the employers' liability to the compensation prescribed by that Act and to that only.—Where no objection has been taken to the judge's charge to the jury at the trial and it does not appear that any substantial prejudice was thereby occasioned there should not be an order for a new trial under the provisions of articles 498 *et seq.* of the Code of Civil Procedure.—The majority of the court considered that the amount of damages awarded by the jury was so grossly excessive that there should be a new trial and it was ordered accordingly unless the plaintiff agreed that the verdict should be reduced to an amount mentioned. (See art. 503 C.P.Q.) *Lamontagne v. Quebec Railway, Light, Heat & Power Co.*, l., 423.

131. *Master and servant—Use of motor car—Disobedience—Act in course of employment—Employer's liability.*]—B. was owner of an automobile and hired a chauffeur to run it, giving him positive instructions that the car was not to be used except for purposes of the owner and his family, and that, when not in use for such purposes, it was to be kept in a certain garage. On the evening of the accident in question the chauffeur took his master's family to a theatre, in Winnipeg, and was directed by them to take the car to the garage and return for them after the close of the performance. The chauffeur took the car from the garage before the appointed time and proceeded with it for the purpose of visiting a friend in a distant part of the city. While so using the car, contrary to instructions, he negligently ran down the plaintiff, causing injuries for which an action was brought to recover damages against B.—*Held*, affirming the judgment appealed from (24 Man. R. 235), that, at the time of the accident, the chauffeur was not engaged in the performance of any act appertaining to the course of his employment as the servant of the owner of the car and, consequently, his master was not liable in damages. *Storey v. Ashton* (L. R. 4 Q. B. 476), followed. *Halperin v. Bulling*, 1, 471.

132. *Power company—Accident to employee—Injury from supposed dead wire—Duty of employer—Proper system.*]—A power company is not liable for injury to an employee from contact with an electric wire represented to be harmless, but which had, in some way become charged, when it is shewn that every reasonable precaution had been taken for the safety of employees and there is nothing which proves or from which it can be inferred that the accident was due to the negligence of some person for which the company was responsible.—*Per* Idington, J., dissenting.—The only reasonable inference from the evidence is that the accident was caused by negligence; therefore, as decided by *McArthur v. Dominion Cartridge Co.* ([1905] A. C. 72), and *Toronto Railway Co. v. Fleming* (47 Can. S. C. R. 612), it is not necessary to determine precisely how such negligence produced the injury complained of. There was also some evidence of a want of a proper system and of failure to employ competent persons to superintend the work. Judgment of the Appellate Division (32 Ont. L. R. 612) reversed, *Fitzpatrick, C.J.*, and *Idington, J.*, dissenting. *Toronto Power Co. v. Raynor*, J., 490.

133. *Hire of machinery—Of hirer—Of owner—Master and servant.*]—The steel company hired from the paper company a crane and crew of two men, D. to run it and a fireman. In doing the work for which it was hired, the crane fell and D. was killed. In an action by his widow for damages, the jury found that the crane was a dangerous machine and that the steel company was negligent in not having a rigger to superintend its operation:—*Held*, affirming the judgment of the Appellate Division (35 Ont. L. R. 371), that the steel company owed to D. the duty of seeing that the crane was properly operated; that the evidence

justified the finding of the jury that a rigger was necessary for that purpose; and that the judgment against that company should stand.—The jury also found that the crane was defective when delivered to the steel company, and that the paper company was guilty of negligence in not supplying proper equipment for it.—*Held*, reversing the judgment of the Appellate Division, *Davies and Idington, J.J.*, dissenting, that the relation of master and servant existed between the paper company and D. up to the time of the latter's death; that the company, in sending D. to run a dangerous machine not properly equipped, would be responsible for any injury caused by its operation; and that it was not relieved from responsibility by the fact that the injury might have been avoided if the steel company had provided proper superintendence over its operation. *Algoma Steel Corporation v. Dubé*, liii., 481.

134. *Railway braking apparatus—"Railway Act, 1888," s. 243—Sand valves—Notice of defect in machinery—Contract indemnifying employer—Indemnity and satisfaction*, xxxiv., 45.

135. *Operation of railway—Assault on passenger—Duty of conductor*, xxxiv., 74.

See RAILWAYS.

136. *Contract for special works in mine—Engagement by contractor—Control and direction of mine owner—Defective machinery—Notice—Failure to remedy defect—Liability for injury to miner—Master and servant*, xxxiv., 177.

137. *Engagement of skilled manager—His neglect of ordinary precautions—Death by electric shock—Contributory negligence*, xxxiv., 215.

138. *Mining plans and survey—Negligence of higher official—Duty of absent owners—Operation of metalliferous mines—Common law liability—Employers' Liability Act, R. S. B. C. c. 69, s. 3*, xxxiv., 244.

139. *Dangerous work, works, etc.—Master and servant—Workmen's Compensation Act—Evidence*, xxxiv., 710.

140. *Employee disobeying orders—Dangerous work and appliances*, xxxv., 202.

141. *Master and servant—Dangerous works—Knowledge of master—Employers' Liability Act*, xxxv., 424.

142. *Overholding tenant—Injury to goods—Damages—Trespasser—Licensee—Master and servant*, xxxv., 494.

143. *Dangerous works—Electric wires—Ordinary precautions—Knowledge of risk—Contributory negligence—Voluntary exposure to danger*, xxxvi., 1.

144. *Constitutional law—Operation of railways—Agreements for exemption from liability for negligence—Prohibitory legislation—Powers of Parliament*, xxxvi., 136.

145. *Construction of building—Contract—Collapse of wall—Uncompleted building—Vis major*, xxxix., 1.

146. *Landlord and tenant—Master and servant—Acts in course of employment—Alterations to plumbing—Damage by steam, etc.—Responsibility of contractors—Control of premises, xxxix., 265.*

147. *Operation of railway—Breach of statutory duty by trainmen—Common employment—Nova Scotia Railway Act—Employers' Liability Act—Fatal Injuries Act, xxxix., 593.*

148. *Duty of employee—Insulation of electric wires—Onus of proof, xl., 181.*

149. *Employee on government railway—Negligence of fellow servant—Defective switch—Tort—Liability of Crown—Public work, xl., 229.*

150. *Improper appliances—Proximate cause of injury to employee—Findings of jury—Evidence, xl., 396.*

151. *Employer's liability—Answers by jury—"Volenti non fit injuria"—Issue undecided—Practice—B. C. Supreme Court Rules, O. 58, r. 4—New trial, xlix., 43.*

See NEW TRIAL.

#### 11. EVIDENCE.

152. *Injury to employee—Disobedience—Enforcing rules of factory—Verdict against weight of evidence—Misdirection—New trial—Costs.]—In an action for compensation for injuries sustained by K. while employed in a factory, the jury found that the company was at fault for laxity in the enforcement of its regulations made to secure the safety of employees and that K. contributed to the accident which occasioned his injuries by disobedience to orders given to him in pursuance of those regulations. The jury estimated K.'s damages at \$3,500, deducted \$2,000 on account of the fault attributed to him and returned a verdict against the company for \$1,500, on which judgment was entered. It was contended that the jury had been misdirected by the trial judge and that the findings and verdict were against the weight of evidence. The judgment appealed from (Q. R. 36 S. C. 425) was set aside and a new trial directed without costs. *Canadian Rubber Co. v. Karavokiris, xliv., 303.**

153. *Dangerous ways, etc.—Inspection of mining pit—Protection of workmen—Presumptions—Reversal of findings of fact, xxxvi., 13.*

154. *Operation of railways—Level crossings—Excessive speed—Fencing—Reasonable inferences, xxxvi., 180.*

155. *Construction of railway—Defective road-bed—Dangerous way—Vis major—Onus of proof—Latent defect, xxxvii., 632.*

156. *Cause of fire—Defective electric wiring—Onus of proof, xxxvii., 676.*

157. *Master and servant—Duty of employee—Insulation of electric wires—Onus of proof, xl., 181.*

#### 12. FINDINGS OF FACT.

158. *Findings of fact—Common fault—Apportionment of damages.]—In actions to recover damages for personal injuries in the Province of Quebec, where the plaintiff has been found guilty of contributory negligence the damages should not be divided equally between the parties, but apportioned according to the degree in which they were respectively blamable for its occurrence.—Judgment appealed from (Q. R. 36 S. C. 535) affirmed. *Nichols Chemical Co. v. Lefebvre, xlii., 402.**

159. *Employer's liability—Ship labourer—Disregard of rules—"Accident in course of employment"—Action—Claim by dependents—Findings of jury—Evidence—Art. 1054 C.C.]—A labourer employed on board a ship went ashore for purposes of his own while the ship was in port and, on returning to his work, he attempted to descend from the upper deck by the hatchway, which was prohibited by rules laid down for the men engaged in stowing cargo. In doing so he fell into the hold, his body struck his foreman (who was there in the discharge of his duties) and caused injuries which resulted in the death of the foreman. There was evidence to shew that the rules, which required labourers to use the companion-way, instead of the hatch-way by which the labourer had attempted to descend, had been habitually disregarded. The jury found that the defendants were at fault "in not having taken the necessary precautions to enforce their rules," judgment went for the plaintiff, and this judgment was affirmed by the Court of Review.—*Held*, that there was evidence to support the finding of the jury and, consequently, their verdict should not be disturbed on appeal.—*Quære, per Fitzpatrick, C.J.*—Whether or not the course of judicial decisions in the Province of Quebec has adopted the principle that, in a case like the present, an employer is subject to liability derived from the law alone, and departed from the rule of the Roman Civil Law that there is no liability without fault.—*Per Brodeur, J.*—The exception, in article 1054 C. C., relieving parents, tutors, curators, schoolmasters and artisans from liability, in cases where it is established that they could not prevent the act which caused injury, does not apply to employers. *Donaldson v. Deschenes, xlix., 136.**

160. *Electric shock—Action against two defendants—Findings of jury—Joint liability—Agreement between defendants—Right to indemnity.]—In an action against two parties claiming from them jointly and severally compensation for the death of plaintiff's son from electric shock caused by negligence, where there is no contributory negligence both defendants may be held liable if the negligence of each was a real cause of the accident. *Cf. Algoma Steel Corporation v. Dubé (53 Can. S. C. R. 48).*—By an agreement between the Interurban Electric Co. and the City of Toronto, operating the Hydro-Electric System, the former undertook to "save harmless and indemnify the said corporation . . . against all loss, damages . . . which the corporation may . . . have to pay . . . by reason*

of any act, default or omission of the company or otherwise howsoever." An employee of the company was killed in course of his employment and in an action by his personal representative the jury found that the city and the company were each guilty of negligence which caused the accident.—*Held*, that the agreement did not apply to the case of damages which the city would have to pay as a consequence of its own negligence and neither relieved it from liability nor entitled it to indemnity.—Judgment of the Appellate Division (36 Ont. L. R. 269) affirmed. *Toronto v. Lambert*, liv., 200.

161. *Jury trial—Practice—Findings as to negligence—Questions as to special grounds—Judge's charge—Non-direction—Misdirection—Application of law to facts—New trial*, xxxv., 362.

See NEW TRIAL.

162. *Master and servant—Volenti non fit injuria—Finding of jury*, xxxv., 452.

163. *Dangerous system—Master and servant—Findings of jury—New trial*, xxxv., 625.

164. *Ferry wharf—Precautions for preventing accidents—Dangerous way—Evidence—Findings of jury—Non-suit*, xxxv., 693.

165. *Evidence—Presumption—Reversal of findings of fact—Protection of workmen in mines*, xxxvi., 13.

166. *Operation of railway—Excessive speed—Fencing—Level crossings—Evidence—Reasonable inferences*, xxxvi., 180.

167. *Operation of railway—Evidence—Findings of jury*, xxxvii., 1.

168. *Finding of jury—Specific questions as to cause of injury—Exercise of statutory privilege—Use of highway*, xxxvii., 94.

169. *Railway crossing—"Look and listen"—Findings of jury*, xxxviii., 94.

170. *Street railway—Excessive speed—Gong not sounded—Contributory negligence—Damages*, xxxviii., 327.

171. *Employer and employee—Dangerous machinery—Want of proper protection—Voluntary exposure—Findings of jury—Charge of judge—Assignment of facts—Assessment of damages*, xxxix., 365.

172. *Dangerous works—Protection of employees—Evidence—Judge's charge—Questions for jury—Findings of fact—Inferences*, xl., 580.

173. *Right of appeal—Special leave to appeal per saltum—Questions in controversy—Workmen's compensation for injuries—Damages—Amendment to pleadings—Rule 615—Nonsuit—Verdict—Procedure*, Cout. Cas. 326.

See APPEAL.

174. *New trial—Misdirection—Questions for jury—Verdict on issues—Damages*, xli., 431.

See DAMAGES.

### 13. HIGHWAYS.

175. *Municipal corporation—Highways—Nuisance—Repair of sidewalks—Statutory duty—Nonfeasance—Personal injury—Civil liability—Right of action—Construction of statute—"Vancouver City Charter"—64 V. c. 54, s. 219 (B.C.)*—Where a municipal corporation is guilty of negligent default by nonfeasance of the statutory duty imposed upon it to keep its highways in good repair, and adequate means have been provided by statute for the purpose of enabling it to perform its obligations in that respect (*v.g.*, 64 Vict. c. 54 [B.C.]), persons suffering injuries in consequence of such omission, may maintain civil actions against the corporation to recover compensation in damages, although no such right of action has been expressly provided for by statute, unless something in the statute itself or in the circumstances in which it was enacted justifies the inference that no such right of action was to be conferred.—*Coe v. Wise* (5 B. & S. 440; L. R. 1 Q. B. 711) and *Mersey Docks Trustees v. Gibbs* (L. R. 1 H. L. 93) applied. *Municipality of Pictou v. Geldert* ([1893] A. C. 524); *Municipal Council of Sydney v. Bourke* ([1895] A. C. 433); *Sanitary Commissioners of Gibraltar v. Orfila* (15 App. Cas. 400); *Cowley v. Newmarket Local Board* ([1892] A. C. 345); *Campbell v. City of Saint John* (26 Can. S. C. R. 1); and *City of Montreal v. Mulcair* (28 Can. S. C. R. 458) distinguished.—Judgment appealed from (15 B. C. Rep. 367) affirmed.—*Per Fitzpatrick, C.J.*, and *Duff, J.*—The common law obligation under which the inhabitants of parishes in England through which highways passed were responsible for their repair, has no application in the Province of British Columbia. *City of Vancouver v. McPhalen*, xlv., 194.

176. *Municipal corporation—Repair of highways—Statutory duty—"Unfenced trap" in sidewalk—Misfeasance—Actionable negligence—Notice—Knowledge—Personal injuries—Liability of corporation—Evidence—Findings of jury—"Res ipsa loquitur"*—Where a municipal corporation is liable for damages sustained by reason of negligent nonfeasance of the statutory duty imposed upon it to maintain its highways in good repair, the questions of notice or knowledge of the defects do not arise. There is a presumption, in such cases, against the municipal corporation and upon it lies the onus of adducing positive evidence in rebuttal; it is not sufficient to shew that the existence of the defects were not known by the corporation officials. *Mersey Docks and Harbour Trustees v. Gibbs* (L. R. 1 H. L. 93), applied; *City of Vancouver v. McPhalen* (45 Can. S. C. R. 194) and *McClelland v. Manchester Corporation* ((1912) 1 K. B. 118) referred to. *Davies and Anglin, J.J., contra.*—An unprotected opening in the sidewalk of one of the principal streets of the city, having the appearance of being recently made for some purposes in connection with the laying of gas-pipes, was permitted to remain without proper repair during most of the day, and, at about four o'clock in the afternoon, the plaintiff's injuries were sustained by stepping into the hole while making use of the sidewalk—

*Held*, affirming the judgment appealed from (1 West. Weekly Rep. 31; 19 W. L. R. 322), Davies and Anglin, J.J., dissenting, that evidence of these facts made out a proper case for submission to the jury, and upon which they could return findings of breach of statutory duty and misfeasance on the part of the municipal corporation. *City of Vancouver v. Cummings*, xlvii., 457.

177. *Municipality—Misfeasance.*] — The corporation of Halifax in laying a concrete sidewalk broke up a portion of the asphalt sidewalk of a crossing street and replaced it with earth and ashes. The rain washed away the filling and T. was injured by stepping into the excavation.—*Held*, affirming the judgment appealed from (47 N. S. Rep. 498), that the corporation was guilty of misfeasance and a verdict in favour of T. should stand. *City of Halifax v. Tobin*, l., 404.

178. *Obstruction of highway—Municipal corporation—Street railway—Trolley poles between tracks—Statutory authority—Protection by light.*]—The Act incorporating the Hamilton Street Railway Co. authorized the City Council to enter into an agreement with the company for the construction and location of the railway. A by-law passed by the Council directed that the poles for holding wires should, on part of a certain street, be placed between the tracks, which was done under the supervision of the City Engineer. — *Held*, reversing the judgment appealed against (32 Ont. L. R. 578), that the location of the poles was authorized by the legislature and did not constitute an obstruction of the highway amounting to a nuisance; the company was, therefore, not liable for injury resulting from an automobile while driven at night coming in contact with the pole.—*Held*, also, that as on the City Council was cast the duty of regulating the operation of the railway in respect to traffic and travelling on the street, and it had made no regulation as to lighting the pole, the company was under no obligation to do so. *Hamilton Street Ry. Co. v. Weir*, li., 506.

179. *Exercise of statutory privilege—Operation of tramway—Use of highway—Findings of jury—Questions at trial*, xxxvii., 94.

180. *Electric wires—Proximity to bridge—Highway—Injury to child—Dedication to use of public*, xxxviii., 27.

181. *Railway crossing—"Look and listen"—Findings of jury*, xxxviii., 94.

182. *Fencing of railway—Animals "at large on the highway or otherwise"—Trespass from lands not belonging to owner—Construction of statute—Words and phrases*, xxxix., 251.

183. *Municipal corporation—Care of streets—Bad state of repair—Snow cleaning—Injury to omnibus owner—Loss of profits—Damages—Right of action*, Cam. Cas. 589.

See ACTION.

184. *Operation of tramway—Use of highway—Repair of streets—Dangerous way—Speed—Headlights—Exercise of ordinary and reasonable care*, Cout. Cas. 284.

185. *Municipal corporation—Maintenance of highways—Improper use of sidewalk—Damage by trespasser—Notice of disrepair—Nuisance—Injury to pedestrian—Liability for damages*, liv., 443.

See MUNICIPAL CORPORATION.

#### 14. LACHES.

186. *Banks and banking—Forged cheque—Negligence—Responsibility of drawee—Payment—Mistake—Indorsement—Implied warranty—Principal and agent—Action—Money had and received—Change in position—Laches.*] — A cheque for \$6, drawn on the plaintiff, was fraudulently altered by changing the date and the name of the payee, and by raising the amount to \$1,000. The drawee refused payment for want of identification of the person who presented it. The defendant bank, without requiring identification, advanced \$25 in cash to the forger on the forged cheque, placed the balance, \$975, to his credit in a deposit account, indorsed it and received the full amount of \$1,000 from the drawee. After receipt of this amount, the defendant paid the further sum of \$800 to the forger out of the amount so placed to the credit of his deposit account. The fraud was discovered a few days later and, on its refusal to refund the money it had thus received, the action was brought to recover it back from the defendant as indorser or as having received money paid under mistake of fact.—*Held*, that the drawee of the cheque, although obliged to know the signature of its customer, was not under a similar obligation in regard to the writing in the body of the cheque; that, as the receiving bank had dealt with the drawee as a principal and not merely as the agent for the collection of the cheque and had obtained payment thereof as indorser and holder in due course, it was liable towards the drawee which had, through the negligence of the receiving bank, been deceived in respect to the genuineness of the body of the cheque, and that the drawee was entitled to recover back the money which it had thus paid under a mistake of fact, notwithstanding that, after such payment, the position of the defendant had been changed by paying over part of the money to the forger. *The Bank of Montreal v. The King* (38 Can. S. C. R. 258), distinguished. *Newall v. Tomlinson* (L. R. 6 C. P. 405); *Durrant v. The Ecclesiastical Commissioners for England and Wales* (6 Q. B. D. 234); *The Continental Caoutchouc and Gutta Percha Co. v. Kleinwort, Sons & Co.* (20 Times L. R. 403), and *Kleinwort, Sons & Co. v. The Dunlop Rubber Co.* (23 Times L. R. 696) followed.— Judgment appealed from (17 Man. R. 68) affirmed, Idington, J., dissenting. *Dominion Bank v. Union Bank of Canada*, xl., 366.

187. *Mandate—Principal and surety—Laches—Release of surety—Mortgage—*

*Pledge—Construction of contract—Principal and agent—Arts. 1570, 1959, 1966, 1975 U. C., xxxv., 663.*

See PRINCIPAL AND SURETY.

188. *Forged note—Estoppel—Discount by bank—Notice—Duty to notify holder, xxxv., 133.*

See BANKS AND BANKING.

189. *Laches by receiver—Winding up partnership—Management of business, xxxvi., 647.*

See LACHES.

## 15. LANDLORD AND TENANT.

190. *Landlord and tenant—Master and servant—Acts in course of employment—Alterations to plumbing—Damage by steam, etc.—Responsibility of contractors—Control of premises—Cross-appeal between respondents—Practice.]—*In the lease of a shop, the landlord agreed to supply steam heating and, in order to improve the system, engaged a firm of plumbers to make alterations. Before this work was completed and during the absence of the tenant, the plumbers' men, who were at work in another part of the same building, with steam cut off for that purpose, at the request of the caretaker employed by the landlord, turned the steam on again which, passing through unfinished pipes connected with the shop, escaped through an open valve in a radiator and injured the tenant's goods.—*Held*, that the landlord was liable in damages for the negligent act of his caretaker in allowing steam to be turned on without ascertaining that the radiator was in proper condition to receive the pressure, and that the plumbing firm were also responsible for the negligence of their employees in turning on the steam, under such circumstances, as they were acting in the course of their employment in what they did although requested to do so by the caretaker.—The judgment appealed from (16 Man. L. R. 411) was affirmed with a variation declaring the plumbers jointly liable with the landlord.—The action was against the two defendants, jointly, and the plaintiff obtained a verdict, at the trial, against both. The Court of Appeal confirmed the verdict as to McN. and dismissed the action as to the other defendants. McN. appealed to the Supreme Court of Canada, making the other defendants respondents on his appeal.—*Held*, that the plaintiff, respondent, was entitled to cross-appeal against the said defendants, respondents, to have the verdict against them at the trial restored. (Leave to appeal to Privy Council refused, 12th March, 1908). *McNichol v. Malcolm*, xxxix., 265.

191. *Overholding tenant—Trespasser—License—Master and servant—Injury to goods—Damages, xxxv., 494.*

## 16. LORD CAMPBELL'S ACT.

192. *Operation of railway—Unsafe roadbed—Speed of trains—Disobedience to orders—Answers by jury—"Lord Campbell's Act"—Injury sustained outside province—*

*Right of action in Manitoba.]—*At a curve in the permanent way there was a sink-hole, over which the roadbed had been recently constructed, where the weight of passing trains caused the tracks to be depressed, but trains running slowly had been safely operated across the unsafe spot for several months. Orders had been given that no trains were to be run over this place at greater speed than 5 miles per hour. The husband of plaintiff was engine-driver of a train which was run over the dangerous spot at a rate exceeding that indicated in the order and was derailed, causing injuries which resulted in his death. The accident happened in the Province of Ontario and the action to recover damages was instituted in Manitoba. In answer to the question, "In what did such negligence consist?" the jury answered, "a defective roadbed, and not having provided a watchman for same."—*Held*, affirming the judgment appealed from (24 Man. R. 807), Idington and Brodeur, JJ., dissenting, that the answer returned by the jury was insufficient and vague; that there was no reasonable evidence to support a finding that, assuming the order regulating speed of trains to be observed, the permanent way at the place in question was so dangerous as to make it negligence on the part of the railway company, *vis-à-vis* deceased, to operate trains thereupon or that the cause of the accident was the state of the roadbed rather than the running of the train at excessive speed.—*Per* Idington, Duff and Brodeur, JJ.—A legal obligation *ex delicto*, arising in consequence of a fatal accident which happened beyond the territorial limits of the Province of Manitoba, may be enforced in the Manitoba courts where, according to the law in force in Manitoba, a similar right of action would have arisen if the accident had occurred within the province. *Phillips v. Eyre* (L. R. 6 Q. B. 1) referred to. *Lewis v. Grand Trunk Pacific Railway Co.*, lii., 227.

193. *Operation of government railway—Defective switch—Port—Negligence of fellow servant—Public work—Liability of Crown—Right of action—Echequer Court Act, xl., 229.*

194. *Right of action—"Lord Campbell's Act"—Death by accident—Action by widow—Accord and satisfaction, xlix., 577.*

See ACTION.

## 17. MINES AND MINING.

195. *Mining operations—Contract for special works—Engagement by contractor—Control and direction of mine owner—Defective machinery—Notice—Failure to remedy defect—Liability for injury sustained by miner.]—*The sinking of a winze in a mine belonging to the defendants was let to contractors who used the hoisting apparatus, which the defendants maintained and operated by their servants, in the excavation, raising and dumping of materials, in working the mine under the direction of their foreman. The winze was to be sunk according to directions from defendants' engineer and the contractors' employees were subject to



the approval and direction of the defendants' superintendent, who also fixed the employees' wages and hours of labour. The plaintiff, a miner, was employed by the contractors under these conditions and was paid by them through the defendants. While at his work in the winze the plaintiff was injured by the fall of a hoisting bucket which happened in consequence of a defect in the hoisting gear that had been reported to the defendants' master-mechanic and had not been remedied. — *Held*, affirming the judgment appealed from (1 B. C. Rep. 9), Taschereau, C.J., dissenting, that the plaintiff was in common employ with the defendants' servants engaged in the operation of the mine and that even if there was a neglect of the duty imposed by statute, in respect to inspection of the machinery, as the accident occurred in consequence of the negligence of one of his fellow servants, the defendants were excused from liability on the ground of common employment. *Hastings v. LeRoi No. 2*, xxxiv., 177.

196. *Mining plans and surveys — Negligence of higher official — Duty of absent owners — Operation of metalliferous mines — Common law liability — Employers' Liability Act — R. S. B. C. c. 69, s. 3.* — The provisions of the third section of the "Inspection of Metalliferous Mines Act, 1897," of British Columbia, do not impose upon an absent mine owner the absolute duty of ascertaining that the plans for the working of the mine are accurate and sufficient and unless the mine owner is actually aware of inaccuracy or imperfections in such plans, he cannot be held responsible for the result of an accident occurring in consequence of the neglect of the proper officials to plat the plans up to date according to surveys. — The defendant company acquired a mine which had been previously worked by another company and provided a proper system of surveys and operation and employed competent superintendents and surveyors for the efficient carrying out of their system. An accident occurred in consequence of neglect to plat the working plans according to surveys made up to date, the inaccurate plans misleading the superintendent so that he ordered work to be carried out without sufficient information as to the situation of openings made or taking the necessary precautions to secure the safety of the men in the working places. The engineers, who had made the surveys and omitted platting the information on the plans had left the employ of the company prior to the engagement of the deceased who was killed in the accident. — *Held*, Taschereau, C.J., *contra*, that the employers not being charged with knowledge of the neglect of their officers to carry out the efficient system provided for the operation of their mine, could not be held responsible for the consequences of failure to provide complete and accurate plans of the mine. — *Held*, also, that negligence of the superintendent would be negligence of a co-employee of the person injured for which the employers would not be liable at common law, although there might be liability under the British Columbia "Employers' Liability Act" (R. S. B. C. c. 69, s. 3), for negligence on the part of the superintendent. — Judgment appealed from reversed and a new trial ordered, Taschereau,

C.J., being of opinion that a judgment should be entered in favour of the plaintiffs. — *Per* Taschereau, C.J.:—An employee who has left the service of the common master cannot be regarded as a fellow workman of servants engaged subsequently. *Hosking v. LeRoi No. 2*, xxxiv., 244.

197. *Mines and mining — Dangerous ways, works, etc. — Inspection of pit — Employer and employee — Evidence — Presumption — Reversal of findings of fact.* — While at work in the pit of an asbestos mine the pit foreman was killed by loose rock falling on him from the wall of the pit. Some time before the accident, after setting off a blast, the wall had been inspected by a competent person, under the personal direction of the pit foreman himself, and the particular spot from which the loose rock fell tested by sounding and prying with a crowbar and judged to be safe. In an action to recover damages the courts below inferred from the evidence that the wall of the pit had been allowed to remain in an unsafe condition, and held the defendants responsible on account of negligence in this respect. On appeal to the Supreme Court of Canada: — *Held*, reversing the judgment appealed from, Girouard, J., dissenting, that as an inspection had been duly made by competent persons, using their best judgment in the honest discharge of their duty, who reported the wall to be secure, there could be no negligence imputed to the company in that respect, although it afterwards appeared that there had been error in judgment or in the manner in which the inspection was performed. — *Held*, also, Girouard, J., dissenting, that where there is evidence that makes it unnecessary to draw inferences or rely upon presumptions from facts proved, the findings of two courts below, which have acted upon such inferences or presumptions, should be reversed. *Canadian Asbestos Co. v. Girard*, xxxvi., 13.

## 18. NAVIGATION.

198. *Navigation of inland waters — Collision — Government ships and vessels — "Public work" — "The Exchequer Court Act," s. 16 — Construction of statute — Right of action.* — His Majesty's steam-tug "Champlain," while navigating the River St. Lawrence, at some distance from a place where dredging was being carried on by the Government of Canada, and engaged in towing an empty mud-scow, owned by the Government, from the dumping ground back to the place where the dredging was being done, came in collision with the suppliant's steam barge, which was also navigating the river, and the barge sustained injuries. — *Held*, affirming the judgment of the Exchequer Court of Canada, that there could be no recovery against the Crown for damages suffered in consequence of negligence of its officers or servants, as the injury had not been sustained on a public work within the meaning of the sixteenth section of the "Exchequer Court Act." *Chambers v. Whitehaven Harbour Commissioners* ([1899] 2 Q. B. 132); *Hall v. Snowden, Hubbard & Co.* ([1899] 2 Q. B. 136), *Lowth v. Ibbotson* ([1899] 1 Q.



B. 1003), *Farnell v. Bowman* (12 App. Cas. 643) and *The Attorney-General of the Straits Settlements v. Weyms* (13 App. Cas. 192), referred to. *Paul v. The King*, xxxviii., 126.

199. *Maritime law—Collision—Tug and tow—Negligence of tow.*—A tug with the ship "Wandrian" in tow left a wharf at Parrsboro. N.S., to proceed down the river and get to sea. The schooner "Helen M." was at anchor in the channel and the tug directed its course so as to pass her on the port side when another vessel was seen coming out from a slip on that side. The tug then, when near the "Helen M." changed her course, without giving any signal, and tried to cross her bow to pass down on the starboard side and in doing so the "Wandrian" struck her, inflicting serious injury. In an action against the "Wandrian" by the owners of the "Helen M." the captain of the former insisted that the schooner was in the middle of the channel, which was about 400 feet wide, but the local judge found as a fact that she was on the eastern side.—*Held*, affirming the judgment of the local judge (11 Ex. C. R. 1) that the navigation of the tug was faulty and shewed negligence; that if the "Helen M." was on the eastern side of the channel as found by the judge there was plenty of room to pass on her port side, and if, as contended, she was in the middle of the channel she could easily have been passed to starboard; and that in attempting to cross over and pass to starboard when she was so near the "Helen M." as to render a collision almost inevitable was negligence on the tug's part; and that the "Helen M." exercised proper vigilance and was not negligent in failing to slacken her anchor chain as the "Wandrian" was too close and had not signalled.—*Held*, also, that the tow was liable for such negligence in the navigation of the tug. *The "Wandrian" v. Hatfield*, xxxviii., 431.

200. *Maritime law—Collision—Failure to hear signal—Evidence.*—The S.S. "Senlac" was coming out of Halifax harbour taking the eastern side of the channel. There was a dense fog at the time and the fog signals were sounded at regular intervals. She was making about six knots and having passed George's Island heard the whistle of an incoming steamer. Fog signals were given in reply and when the incoming vessel, the "Rosalind," was estimated to be about half a mile off the "Senlac" gave a single short blast and directed her course to starboard. The "Rosalind" replied to this signal and stopped her engines. Within a few seconds the "Senlac" was seen about a ship's length away on the port bow and almost at the same moment the latter gave two short blasts on her whistle and swung to port threatening to cross the "Rosalind's" bow. The "Rosalind's" engines were immediately put "full speed astern" but too late to avoid a collision in which the "Senlac" was seriously damaged. At the trial of an action by the latter, reliance was placed on the failure of the "Rosalind" to respond to her signals, but the first signal admitted to have been heard on the "Rosalind" was the one

short blast when the "Senlac" went to starboard. The result of the trial was that both vessels were found in fault and on appeal by the "Rosalind":—*Held*, that the "Senlac" was in fault in continuing on her course when the vessels were quite near together instead of stopping and reversing and was alone to blame for the collision, and that the failure to hear her signals was not negligence on the part of the "Rosalind" and did not contribute in any material degree to the accident. *S.S. "Rosalind" v. Steamship Senlac Co.*, xli., 54.

201. *Driving lumber—Rights in navigable waters—River improvements—Contract with Crown—Rights of contractor—Reckless driving—"Rivers and Streams Act" (Ont.)*—*"B. N. A. Act, 1867," ss. 91 (10), 92 (10).*—In 1910, Parliament voted money for "Montreal River Improvements above Latchford" and the Crown, through the Minister of Public Works, gave a contract to H. in connection with the work. In performance of the work L. placed a cofferdam on each side of the river leaving an opening between them some 200 feet wide. In the spring of 1911 the cofferdam on the north side was covered by three feet of water and the logs of B., being driven down through the opening, were allowed to rest against a pier a few hundred feet below and formed a jam the rear of which was over the cofferdam. Either by weight of the jam or increased pressure by breaking it, in the ordinary mode, the destruction of the cofferdam was caused.—*Held*, Fitzpatrick, C.J., and Duff, J., dissenting, that B. was responsible for the injury so caused; that with more care in driving the formation of the jam might have been avoided; that, if breaking the jam in the ordinary way was likely to cause damage, another mode should have been adopted even if it would cause delay and greater expense; and that the employees of B. acted with a wilful disregard of the contractors' rights and caused "unnecessary damage."—*Held*, per Davies, Anglin and Brodeur, J.J., that, in the absence of Dominion legislation to the contrary, the rights of lumbermen under the Ontario "Rivers and Streams Act" (pre-Confederation legislation) are not subordinate but equal to those of persons acting for the Dominion Government in matters respecting navigation. — *Per Davies and Duff, J.J., Anglin, J., dubitante.*—The cofferdam was a "structure" and subject to the provisions of section 4 of the "Rivers and Streams Act."—*Per Davies and Anglin, J.J.*—Even if not a "structure" as it was placed in the river under sanction of Dominion legislation, B.'s rights were restricted practically as they would be under section 4.—*Held*, per Fitzpatrick, C.J., and Duff, J. — A vote for "River Improvements" does not of itself authorize an interference with the rights of lumbermen under the "Rivers and Streams Act." These rights were exercised in the usual and proper manner and as no breach of duty by B. to avoid "unnecessary damage" was proved he could not be held liable for the damage to the cofferdam.—Judgment of the Appellate Division (37 Ont. L. R. 17) reversing that at the trial (34 Ont.

L. R. 204) affirmed. *Booth v. Lowery*, liv., 421.

202. *Careless mooring of vessels* — *Vis major*, xxxv., 293.

203. *Dangerous way* — *Ferry wharf* — *Evidence*—*Precautions for preventing accidents*—*Findings of jury*—*Non-suit*, xxxv., 693.

204. *Admiralty law*—*Navigation*—*Narrow channel*—*Rule of the road* — *Lookout* — *Meeting ships*—*Collision* — *Special rule of port*—*Sorel harbour regulations*—*Lights and signals*—*Evidence*—*Damages*, xxxvi., 564.

See ADMIRALTY LAW.

205. *Maritime law* — *Collision*—*Crossing ships*—*Admiralty Rules*, 1897, r. 19, xxxvii., 284.

See ADMIRALTY LAW.

206. *Admiralty law* — *Navigation*—*Over-taking vessel*—*Findings of fact*—*Cause of collision*, *Cont. Cas.* 405.

See ADMIRALTY LAW.

207. *Appeal*—*New grounds* — *Collision*, xli., 154.

See ADMIRALTY LAW.

208. *Admiralty law* — *Collision*—*Narrow channel* — *Departmental rules*. *Bonham v. The "Honoreva"*, liv., 51.

See ADMIRALTY LAW.

## 19. PUBLIC WORKS; LIABILITY OF CROWN.

209. *Employees of the Crown* — *Common employment* — *Defence by Crown* — *Workmen's Compensation Act.*] — *The Manitoba Workmen's Compensation Act* does not apply to the Crown, *Idington, J.*, dissenting. — *In Manitoba*, the Crown as represented by the Government of Canada may, in an action for damages for injuries to an employee, rely on the defence of common employment. *Idington, J.*, dissenting (9 Ex. C. R. 330, affirmed.) *Ryder v. The King*, xxxvi., 462.

210. *Injury on public work* — "*Public Works Health Act*" — *Construction of statute*—*R. S. C. 1906, c. 135, s. 3*—*Regulations by order-in-council* — *Breach of statutory duty*—*Action* — *Misjoinder.*] — *The provisions of section 3 of the "Public Works Health Act," R. S. C. 1906, c. 135*, do not impose on a Government Department or a company constructing a public work the obligation to provide hospitals and surgical attendance for the treatment of personal injuries sustained by employees, whether of themselves or of their contractors or sub-contractors, in the construction of such work. *Grand Trunk Pacific Ry. Co. v. White*, xliii., 627.

211. *Navigation of inland waters*—*Collision* — *Government ships and vessels* — "*Public work*"—*Right of action*—*Construction of statute* — *Eachesquer Court Act*, xxxviii., 126.

212. *Negligence of fellow servant*—*Operation of railway*—*Defective switch*—*Tort*—*Public work*—*Liability of Crown*—*Right of action*—*Lord Campbell's Act*, xl., 229.

213. *Government railway*—*Operation over other lines* — *Agreement for running rights* — *Extensions and branches*—"*Public work*" — *Construction of statute* — "*Government Railways Act*" — "*Eachesquer Court Act*," xl., 431.

See RAILWAYS.

214. *River improvements* — *Precautions against danger to existing constructions* — *Alteration of natural conditions*—*Responsibility for damages*—*Vis major*, xli., 116.

See RIVERS AND STREAMS.

215. *Crown* — *Injury on public work* — *Government railway* — *Fire from engine*—*R. S. C. 1906, c. 140, s. 20 (c)*. *Chamberlain v. The King*, xlii., 350.

See PUBLIC WORK.

216. *Crown*—*Negligence*—*Injury on public work*—*Government railway*—*Fire from engine*—*R. S. C. (1906) c. 140, s. 20 (c)*—*Words and phrases*, xlii., 350.

See CROWN.

217. *Crown*—*Injury to "property on public work"*—*Jurisdiction*—*R. S. C. [1906] c. 140, s. 20 (b) and (c)*, liii., 626.

See CROWN.

218. *Public work* — *Damage to adjacent lands*—*Liability of Crown* — "*Eachesquer Court Act*," s. 20—*Litigious rights*—*Bar to action*—"*Rideau Canal Act*," 8 Geo. IV. c. 1 (U.C.)—*Limitation of action*, liiii., 450.

See PUBLIC WORK.

## 20. RAILWAYS.

219. *Railways*—*Braking apparatus*—*Railway Act (1888) s. 243* — *Sand valves*—*Notice of defects in machinery*—*Liability of company*—*Provident society*—*Contract indemnifying employer*—*Indemnity and satisfaction*—*Lord Campbell's Act* — *Art. 1056 C. C.*—*Right of action.*] — *The "sander" and sand-valves of a railway locomotive, which may be used in connection with the brakes in stopping a train, do not constitute part of the "apparatus and arrangements" for applying the brakes to the wheels required by section 243 of the Railway Act of 1888.* — *Failure to remedy defects in the sand-valves, upon notice thereof given at the repair shops in conformity with the company's rules, is merely the negligence of an employee and not negligence attributable to the company itself: therefore, the company may validly contract with its employees so as to exonerate itself from liability for such negligence and such a contract is a good answer to an action under article 1056 of the Civil Code of Lower Canada.* *The Queen v. Grenier* (30 Can. S. C. R. 42) followed. — *Girouard, J.*, dissented on the ground that the negligence found by the jury was negli-

gence of both the company and its employees. (Reversed by Privy Council, [1906] A. C. 184). *Grand Trunk Railway Co. v. Miller*, xxxiv., 45.

220. *Railway crossing—Rate of speed—Crowded districts—Fencing—51 Vict. c. 29, ss. 197, 259 (D.)—55 & 56 Vict. c. 27, ss. 6 and 8 (D.).*—In passing through a thickly peopled portion of a city, town or village a railway train is not limited to the maximum speed of six miles an hour prescribed by 55 & 56 Vict. c. 27, s. 8, so long as the railway fences on both sides of the track are maintained and turned into the cattle guards at highway crossings as provided by s. 6 of said Act. Judgment of the Court of Appeal (5 Ont. L. R. 313) reversed, Girouard, J., dissenting. *Grand Trunk Railway Co. v. McKay*, xxxiv., 81.

221. *Dangerous way—Defective works—Employer's Liability Act—Injury to servant—Proximate cause—(R. S. N. S. (1900), c. 79.)*—D. was engaged in moving cars at a quarry of the company. The cars were loaded at a chute under a crusher and had to be taken past an unused chute about 200 feet away supported by a post placed 7½ inches from the track. D. having loaded a car found that it failed to move as usual after unbraking and he had to come down to the foot-board and shove back the foot-rod connected with the brake. The car then started and he climbed up the steps at the side to get to the brake on the top, but was crushed between the car and the post. He could have got on the rear of the car instead of using the steps or jumped down and walked along after the car until it had passed the post. The manager at the quarry had been warned of the danger from the post but had done nothing to obviate it.—*Held*, reversing the judgment appealed from (36 N. S. Rep. 113), Davies and Killam, J.J., dissenting, that D.'s own negligence was the cause of his injury and the company were not liable.—*Held*, per Davies and Killam, J.J., that the position of the post was a defect in the company's works under the Employers' Liability Act which was evidence of negligence. *Dominion Iron and Steel Co. v. Day*, xxxiv., 387.

222. *Dangerous way—Operation of railway—Defective bridge—Gratuitous passengers—Liability of carrier for damages.*—In the absence of evidence of gross negligence, a carrier is not liable for injuries sustained by a gratuitous passenger. [*Moffatt v. Bate-man* (L. R. 3 P. C. 115) followed. *Harris v. Perry & Co.* ([1903] 2 K. B. 219) distinguished.—Although a railway company may have failed to properly maintain a bridge under their control so as to ensure the safety of persons travelling upon their trains, the mere fact of such omission of duty does not constitute evidence of the gross negligence necessary to maintain an action in damages for the death of a gratuitous passenger. Judgment appealed from (9 B. C. Rep. 453) affirmed. *Nightingale v. Union Colliery Co.*, xxxv., 65.

223. *Railway—Proximate cause—Imprudence of person injured.*—A railway train was approaching a station in London and

the conductor jumped off before the train reached it, intending to cross a track between his train and the station, contrary to the rule prohibiting employees to get off a train in motion. A light engine was at the time coming towards him, on the track he wished to cross, which struck and killed him. The light engine was moving slowly and showed a red light at the end nearest the conductor which would indicate that it was either stationary or going away from him. In an action by the conductor's widow she was non-suited at the trial and a new trial was granted by the Court of Appeal.—*Held*, reversing the judgment of the Court of Appeal, Davies and Killam, J.J., dissenting, that as the light engine had been allowed to pass a semaphore beyond the station on the assumption, which was justified, that it would pass before the train came to a stop at the station, and as, if the deceased had not, contrary to rule, left the train while in motion, he could not have come into contact with said engine, the plaintiff was not entitled to recover.—*Held*, per Davies and Killam, J.J., dissenting, that the act of the deceased in getting off the train when he did was not the proximate cause of the accident and plaintiff was entitled to have the opinion of the jury as to whether or not deceased was misled by the red light. *Grand Trunk Ry. Co. v. Birkett*, xxxv., 296.

224. *Employers' Liability Act—Defect in ways, works, &c.—Care in moving cars—Contributory negligence.*—O., a workman in the employ of defendant company, was directed by a superior to cut sheet iron and to use the rails of the company's track for the purpose. The superior offered to assist and the two sat on the track facing each other. O. had his back to two cars standing on the track to which, after they had been working for a time, an engine was attached which backed the cars towards them, and O. not hearing or seeing them in time was run over and had his leg cut off.—*Held*, that O. did not use reasonable precautions for his own safety in what he knew to be a dangerous situation and could not recover damages for such injury.—*Held*, also, that the employees engaged in moving the cars were under no obligation to see that there was no person on the track before doing so.—*Held*, per Sedgewick, Nesbitt and Killam, J.J., that the want of a place specially provided for cutting the sheet iron was not a defect in the ways, works, &c., of the company within the meaning of section 3 (a) of The Employers' Liability Act.—*Held*, per Girouard and Davies, J.J., that if it was such defect it was not the cause of the injury to O. *Dominion Iron and Steel Co. v. Oliver*, xxxv., 517.

225. *Constitutional law—Operation of railway—Negligence—Agreements for exemption from liability—Prohibitory legislation—Power of Parliament.*—An Act of the Parliament of Canada providing that no railway company within its jurisdiction shall be relieved from liability for damages for personal injury to any employee by reason of any notice, condition or declaration issued by the company, or by any insurance or provident association of railway employees;

or of the rules or by-laws of the association; or of privacy of interest or relation between the company and the association or contribution of funds by the company to the association; or of any benefit, compensation or indemnity to which the employee or his personal representatives may become entitled to or obtain from such association; or of any express or implied acknowledgment, acquittance or release obtained from the association prior to such injury purporting to relieve the company from liability, is *intra vires* of said Parliament. Nesbitt, J., dissenting. (Appeal to Privy Council dismissed, [1907] A. C. 65.) *In re Railway Act, 1904*, xxxvi., 136.

226. *Operation of railway — Excessive speed — Level crossings — Fencing — Railway Act, 1888, ss. 194, 197—55 & 56 Vict. c. 27, s. 6 (D.) — Evidence — Reasonable inferences.*—The provisions of 55 & 56 Vict. c. 27, s. 6, amending s. 197 of The Railway Act, 1888, and requiring at every public road crossing at road level of the railway the fences on both sides of the crossing and of the track to be turned in to the cattle guards, applies to all public road crossings and not to those in townships only as is the case of the fencing prescribed by s. 194 of The Railway Act, 1888. *Grand Trunk Railway Co. v. McKay* (34 Can. S. C. R. 81) followed.—Three persons were near a public road crossing when a freight train passed, after which they attempted to pass over the track and were struck by a passenger train coming from the direction opposite to that of the freight train and killed. The passenger train was running at the rate of forty-five miles an hour, and it was snowing slightly at the time. On the trial of actions under "Lord Campbell's Act" against the railway company, the jury found that the death of the parties was due to negligence "in violating the statute by running at an excessive rate of speed," and that deceased were not guilty of contributory negligence. A verdict for the plaintiff in each case was maintained by the Court of Appeal.—*Held*, that the railway company was liable; that the deceased had a right to cross the track and there was no evidence of want of care on their part and the same could not be presumed and, though there may not have been precise proof that the negligence of the company was the direct cause of the accident, the jury could reasonably infer it from the facts proved and their finding was justified. *McArthur v. Dominion Cartridge Co.* ([1905] A. C. 72) followed; *Wakelin v. London & South Western Railway Co.* (12 App. Cas. 41) distinguished.—*Held*, also, that the fact of deceased starting to cross the track two seconds before being struck by the engine was not proof of want of care, that owing to the snowstorm and the escaping steam and noise of the freight train they might well have failed to see the headlight or hear the approach of the passenger train if they had looked and listened. *Grand Trunk Railway Co. v. Hainer*; *Grand Trunk Railway Co. v. Hughes*; *Grand Trunk Railway Co. v. Bready*, xxxvi., 180.

227. *Operation of railway—Straying animals—Negligence—Duty as regards trespassers—Herding stock—Evidence — Inferences*

*as to fact.*] — A railway company is not charged with any duty in respect of avoiding injury to animals wrongfully upon its line of railway until such time as their presence is discovered. Idington, J., dissented, though concurring in the judgment on the other grounds. *Canadian Pacific Railway Co. v. Eggleston*, xxxvi., 641.

228. *Operation of railway — Finding of jury—Evidence.*—A brought an action, as administratrix of the estate of her husband, against the C. P. R. Co., claiming compensation for his death by negligence and alleging in her declaration that the negligence consisted in running a train at a greater speed than six miles an hour through a thickly populated district and in failing to give the statutory warning on approaching the crossing where the accident happened. At the trial questions were submitted to the jury who found that the train was running at a speed of 25 miles an hour, that such speed was dangerous for the locality, and that the death of deceased was caused by neglect or omission of the company in failing to reduce speed as provided by "The Railway Act." A verdict was entered for the plaintiff and on motion to the court *in banco*, to have it set aside and judgment entered for defendants, a new trial was ordered on the ground that questions as to the bell having been rung and the whistle sounded should have been submitted to the jury. The plaintiff appealed to the Supreme Court of Canada to have the verdict at the trial restored and the defendants, by cross-appeal, asked for judgment.—*Held*, Idington, J., dissenting, that by the above findings the jury must be held to have considered the other grounds of negligence charged, as to which they were properly directed by the judge, and to have exonerated the defendants from liability thereon, and the new trial was improperly granted on the ground mentioned.—*Held*, also, that though there was no express finding that the place at which the accident happened was a thickly peopled portion of the district, it was necessarily imported in the findings given above, that this fact had to be proved by the plaintiff and there was no evidence to support it; and that, as the evidence shewed it was not a thickly peopled portion, the plaintiff could not recover and the defendants should have judgment on their cross-appeal. *Andreas v. Canadian Pacific Ry. Co.*, xxxvii., 1.

229. *Railways—Defective construction of road-bed—Dangerous way—Vis major—Evidence—Onus of proof—Latent defect.*—The road-bed of appellants' railway was constructed, in 1893, at a place where it followed a curve round the side of a hill, a cutting being made into the slope and an embankment formed to carry the rails, the grade being one and one-half per cent., or 78.2 feet to the mile. The whole of the embankment was built on the natural surface, which consisted, as afterwards discovered, of a layer of sandy loam of three or four feet in depth resting upon clay subsoil. No borings or other examinations were made in order to ascertain the nature of the subsoil and the road-bed remained for a number of years without shewing any subsidence except such as was considered to be due to

natural causes and required only occasional repairs; the necessity for such repairs had become more frequent, however, for a couple of months immediately prior to the accident which occasioned the injury complained of. Water, coming either from the berm-ditch, or from a natural spring formed beneath the sandy loam, had gradually run down the slope, lubricated the surface of the clay and, finally, caused the entire embankment and sandy layer to slide away about the time a train was approaching, on the evening of 20th September, 1904. The train was derailed and wrecked and the engine-driver was killed. In an action by his widow for the recovery of damages:—*Held*, that in constructing the road-bed, without sufficient examination, upon treacherous soil and failing to maintain it in a safe and proper condition, the railway company was, *primâ facie*, guilty of negligence which cast upon them the onus of shewing that the accident was due to some undiscoverable cause; that this onus was not discharged by the evidence adduced from which inferences merely could be drawn and which failed to negative the possibility of the accident having been occasioned by other causes which might have been foreseen and guarded against, and that, consequently, the company was liable in damages. Judgment appealed from affirmed, following *The Great Western Railway Co. of Canada v. Braid* (1 Moo. P. C. (N.S.) 101). *Quebec and Lake St. John Ry. Co. v. Julien*, xxxvii., 632.

230. *Railway crossing—Findings of jury—“Look and listen.”*—M. attempted to drive over a railway track which crossed the highway at an acute angle where his back was almost turned to a train coming from one direction. On approaching the track he looked both ways, but did not look again just before crossing, when he could have seen an engine approaching which struck his team and he was killed. In an action by his widow and children, the jury found that the statutory warnings had not been given and a verdict was given for the plaintiffs and affirmed by the Court of Appeal.—*Held*, affirming the judgment of the Court of Appeal (12 Ont. L. R. 71), Fitzpatrick, C.J., *hesitante*, that the findings of the jury were not such as could not have been reached by reasonable men and the verdict was justified. *Wabash Railroad Co. v. Misener*, xxxviii., 94.

231. *Railway Act, 1903—3 Edw. VII. c. 58, s. 237—Animals at large—Construction of statute—Words and phrases—“At large upon the highway or otherwise” — Fencing of railway—Trespass from lands not belonging to owner.*—C.’s horses strayed from his enclosed pasture situated beside a highway which ran parallel to the company’s railway, entered a neighbour’s field adjacent thereto, passed thence upon the track through an opening in the fence, which had not been provided with a gate by the company, and were killed by a train. There was no person in charge of the animals, nor was there evidence that they got at large through any negligence or wilful act attributable to C.—*Held*, affirming the judgment appealed from (16 Man. R. 323), that, under the provisions of the fourth sub-section of section 237

of “The Railway Act, 1903,” the company was liable in damages for the loss sustained notwithstanding that the animals had got upon the track while at large in a place other than a highway intersected by the railway. *Canadian Pacific Ry. Co. v. Caruthers*, xxxix., 251.

232. *Operation of railway — Breach of statutory duty — Common employment—Nova Scotia Ry. Act, R. S. N. S. (1900) c. 99, s. 251—Employers’ Liability Act—Fatal Injuries Act.*—Section 251 of the Railway Act of Nova Scotia provides that when a train is moving reversely in a city, town or village the company shall station a person on the last car to warn persons standing on or crossing the track, of its approach and provides a penalty for violation of such provision.—*Held*, that this enactment is for the protection of servants of the company standing on or crossing the track as well as of other persons.—M. was killed by a train consisting of an engine and coal car, which was moving reversely in North Sydney. No person was stationed on the last car to give warning of its approach and as the bell was encrusted with snow and ice it could not be heard. Evidence was given that on a train of the kind the conductor was supposed to act as brakesman and would have to be on the rear of the coal-car to work the brakes, but when the car struck M., who was engaged at the time in keeping the track clear of snow, the conductor was in the cab of the engine.—*Held*, Idington, J., dissenting, that an absolute duty was cast on the company by the statute to station a person on the last car to warn workmen, as well as other persons, on the track which, under the facts proved, they had neglected to discharge. The defence under the doctrine of common employment was therefore, not open to them. *Groves v. Wimborne*, ([1898] 2 Q. B. 402), followed.—*Held*, per Idington, J., that the evidence shewed the only failure of the company to comply with the statutory provision to have been through the acts and omissions of the fellow-servants of deceased; that the company, therefore, could not be held liable for the consequences under the “Fatal Injuries Act;” that it is, therefore, unnecessary to determine the applicability of the said section of the “Railway Act,” as the fellow-servants were guilty of common law negligence which rendered the company liable but only by virtue of and within the limits of the “Employers’ Liability Act.” (Leave to appeal to Privy Council refused, 12th May, 1908.) *McMullin v. Nova Scotia Steel and Coal Co.*, xxxix., 593.

233. *Negligence of fellow-servant—Operation of railway—Defective switch—Public work—Tort—Liability of Crown—Right of action—Exchequer Court Act, s. 16 (c)—Lord Campbell’s Act—Art. 1056 C. C.*—In consequence of a broken switch, at a siding on the Intercolonial Railway (a public work of Canada), failing to work properly, although the moving of the crank by the pointsman had the effect of changing the signal so as to indicate that the line was properly set for an approaching train, an accident occurred by which the locomotive engine was wrecked and the engine-driver killed. In an action to recover damages

from the Crown, under article 1056 of the Civil Code of Lower Canada:—*Held*, affirming the judgment appealed from (11 Ex. C. R. 119), that there was such negligence on the part of the officers and servants of the Crown as rendered it liable in an action in tort; that the "Exchequer Court Act," 50 & 51 Vict. c. 16, s. 16 (c), imposed liability upon the Crown, in such a case, and gave jurisdiction to the Exchequer Court of Canada to entertain the claim for damages; and that the defence that deceased having obtained satisfaction or indemnity within the meaning of article 1056 of the Civil Code, by reason of the annual contribution made by the Railway Department towards The Intercolonial Railway Employees' Relief and Insurance Association, of which deceased was a member, was not an answer to the action. *Miller v. The Grand Trunk Railway Co.* ([1906] A. C. 187) followed. (Leave to appeal to Privy Council was refused, 18th July, 1908.) *The King v. Armstrong*, xl., 229.

234. *Operation of railway — Collision — Stop at crossing — Statutory rule — Company's rule — Contributory negligence — E. S. O.* [1906] c. 37, s. 278.]—A train of the Wabash Railroad Co. and one of the Canadian Pacific Railway Co. approached a highway crossing at obtuse angles. The former did not, as required by s. 278 of the Railway Act, come to a full stop; the latter did so at a semaphore nearly 900 feet from the crossing and receiving the proper signal proceeded without stopping again at a "stop post" some 400 feet nearer where a rule of the company required trains to stop. The trains collided and the engineer of the Canadian Pacific Railway Co. was killed. In an action by his widow:—*Held*, that the failure of the engineer to stop the second time was not contributory negligence which prevented the recovery of damages for the death of plaintiff's husband caused by the admitted negligence of defendants. *Wabash Rd. Co. v. McKay*, xl., 251.

235. *Railway crossing — Contributory negligence—Life insurance—Deduction from damages—Practice—Appeal—Equal division of opinion—Costs.*—Plaintiff's husband was driving in his wagon along the highway in the town of Strathroy where it crossed the defendants' line of railway. There was evidence to shew that the view of an approaching train was obstructed by the station house, buildings and cars, until a person approaching on the highway had reached within a short distance of the main line. The evidence was contradictory as to the ringing of a bell or the sounding of a whistle, but the jury found that the engineer had failed to do either in approaching the crossing in question. The plaintiff's evidence shewed that the deceased, in approaching the crossing, was driving with his head down, apparently oblivious of his surroundings. For the defence it was deposed to, that the deceased was driving slowly in approaching the main track with his head down, but when some distance off he perceived the train and struck his horses with a whip, but was hit before he was able to cross the line. The jury found the defendants guilty of negligence

and negatived any contributory negligence on the part of the deceased. The deceased had effected a policy of insurance on his life, and, at the trial, the jury were directed to deduct the amount of the policy from the verdict. The Divisional Court, Wilson, C.J., dissenting, held that the case was one for the jury; that the findings in plaintiff's favour should not be disturbed and that the policy of insurance had been improperly directed by the learned judge at the trial to be deducted from the damages. In the Court of Appeal it was held that it could not be said that the verdict of the jury was against the weight of evidence, applying the principles laid down in *Metropolitan Ry. Co. v. Wright* (11 App. Cas. 152). Haggarty, C.J., and Osler, J., were of opinion that the policy of insurance should be deducted from the damages, while Burton and Patterson, JJ., were of the contrary opinion. — *Held*, per Sir W. J. Ritchie, C.J., Fournier and Henry JJ., that the appeal should be dismissed with costs.—*Held*, per Strong, Taschereau and Gwynne, JJ., that the deceased was guilty of contributory negligence.—*Held*, per Sir W. J. Ritchie, C.J., and Strong, Fournier and Henry, JJ., that the policy of insurance should not be deducted from the damages. — *Held*, per Taschereau, J., that it was the duty of the deceased before attempting to cross the track to look and see whether a train was approaching, and that his failure to do so was the cause of the accident.—The court being equally divided in opinion the appeal was dismissed without costs. [Cf. *Grand Trunk Railway Co. v. Jennings* (13 App. Cas. 800).] *Grand Trunk Ry. Co. v. Beckett* (xvi., 713). Cas. 228.

236. *Railway station buildings—Dangerous way—Invitation or license—Breach of duty—Negligence — Questions for jury.*—The approach to a station of the Grand Trunk Railway from the highway was by a planked walk crossing several tracks, and a train stopping at the station sometimes overlapped this walk, making it necessary to pass around the rear car to reach the platform. J., intending to take a train at this station before daylight, went along the walk as his train was coming in, and seeing, apparently, that it would overlap, started to go around the rear when he was struck by a shunting engine and killed. It was the duty of this shunting engine to assist in moving the train on a ferry, and it came down the adjoining track for that purpose before the train had stopped. Its headlight was burning brightly, and the bell was kept ringing. There was room between the two tracks for a person to stand in safety. In an action by the widow of J. against the company:—*Held*, affirming the judgment of the Court of Appeal (16 Ont. App. R. 37), Fournier and Gwynne, JJ., dissenting, that the company had neglected no duty which it owed to the deceased as one of the public. *Held*, per Strong and Patterson, JJ., that while the public were invited to use the planked walk to reach the station, and also to use the company's premises, when necessary, to pass around a train covering the walk, there was no implied guaranty that the traffic of the road

should not proceed in the ordinary way, and the company was under no obligation to provide special safeguards for persons attempting to pass around a train in motion.—*Held, per Taschereau, J.*, that the death of the deceased was caused by his own negligence.—*Held, per Patterson, J.*—In an issue of negligence, the jury should be asked, "What was the duty which you find to have been neglected?" *Jones v. Grand Trunk Ry. Co.* (xviii., 696); *Cam. Cas.* 262.

237. *Operations of railway—Negligence—Moving train—Regulations—Personal liability of employee—Estoppel.*—Plaintiff was the holder of a first-class ticket entitling her to transportation from Sussex to Penobscot, on the Intercolonial Railway, upon which the defendant was a conductor. The train, consisting of a number of freight cars, with one second and one first-class car, after its arrival at Sussex was backed up so that the first-class car, which was at the rear end of the train, was at a distance from the station platform. After the conductor had given the signal "all aboard," the train started but was not stopped when the first class car came alongside the platform. The plaintiff attempted to board the car as it passed the platform, but fell and was injured.—*Held, per Taschereau and Gwynne, J.J.*, dissenting, that it was the duty of the conductor to have had the first-class car brought up in front of the platform, before starting from the station, to allow passengers to get on board in safety, and that his failure to do so was negligence for which the plaintiff was entitled to recover.—*Per Henry, J.*—Although getting on a train in motion is a violation of the railway regulations, the conductor was estopped from setting this up, as he directed the passenger to get on board, which could only be accomplished by getting on the train while in motion.—*Per Henry, J.*—That a railway company carrying passengers cannot shield itself from the consequences of its negligence by shewing that the person injured obeyed specific instructions of the conductor instead of the general regulations and directions of which he had notice.—*Per Taschereau and Gwynne, J.J.*, dissenting.—The accident occurred by the folly and recklessness of the plaintiff, in attempting to board a moving train, and not through any carelessness of the conductor. *McFadden v. Hall.* (Court. Dig. 961; 1191); *Cam. Cas.* 589.

238. *Operation of railway—Negligence by fellow servants—Non-suit.*—The action was by a brakeman employed by the company for damages in respect of injuries incurred by him while in discharge of his duty through the negligence of servants of the company in checking the speed of the train on which he was working too suddenly, so that a part of the train became detached. The jury found for the plaintiff, and the trial judge granted a non-suit, although he was inclined to the view that the plaintiff had made out a case. The non-suit was set aside by the Divisional Court.—The Supreme Court of Canada dismissed the appeal with costs for the reasons given in the Divisional Court, *Gwynne, J.*, dissenting. *Lake Erie and Detroit River Railway Co. v. Scott.* Court. Cas. 211.

239. *Railways—"Fatal Accidents Act"—R. S. O. (1897) c. 129, s. 10.*—A re-hearing was ordered, the court intimating that the re-hearing should be upon the whole case, but drawing the attention of counsel specially to the case of *Mason v. Town of Peterborough* (20 Ont. App. R. 683), and to the combined effect of the "Fatal Accidents Act," and of s. 10, c. 129, R. S. O. (1897)—the questions being as to whether the two actions can now be maintained, or, if not, which one must fail. [Note.—Settled out of court.] *Grand Trunk Ry. Co. v. Speers.* Court. Cas. 347.

240. *Operation of railway—Dangerous way—Passenger jumping off train.*—Plaintiff jumped off a car when the train had become derailed. Other passengers who remained on the train were not injured. The charge of negligence was that the company had allowed the ties to become rotten, thus causing the rails to spread and resulting in the derailment. The defence was that if the plaintiff had not unnecessarily jumped off the car he would have escaped injury. The appeal was dismissed with costs. *Halifax and Southwestern Ry. Co. v. Shea.* Court. Cas. 418.

241. *Operation of railway—Level crossing—Negligence—Statutory signals—Findings against weight of evidence—New trial—Practice.*—S. sustained injuries through running into the engine of a railway train while he was riding a bicycle over a level crossing. On the trial of his action to recover damages, his witnesses stated that they had not heard the whistle sounded nor the bell of the engine rung, and he admitted that he had not taken any precautions to ascertain whether he could cross the track in safety. The evidence for the defence was positive as to the statutory signals being properly given, as well as other warnings of danger.—*Held, per Fitzpatrick, C.J.*, and *Duff, J.*, that the question was not as to the credibility of the witnesses on either side, but whether the character of the evidence for the plaintiffs could, in a reasonable view of the whole evidence adduced, be held to countervail the direct and positive testimony on behalf of the defendants, and, as it could not, the findings by the jury that the company had been guilty of negligence in failing to give the statutory signals were against the weight of evidence and unreasonable.—*Per Girouard, J.*, that S. was guilty of contributory negligence in failing to take proper precautions to avoid the accident and the action should be dismissed. *Railroad Company v. Houston* (95 U. S. R. 697), referred to.—The judgment appealed from was reversed and a new trial ordered, *Idington and Maclellan, J.J.*, dissenting. *Grand Trunk Ry. Co. v. Sims.* 8 Can. Ry. Cas. 61.

242. *Railways—British Columbia Railway Act—Fire on right-of-way—Combustible matter on berm—Origin of fire—Damage to adjoining property—Evidence—Practice—New points raised on appeal.*—In an action against a railway company subject to the British Columbia Railway Act, if there is no evidence that the company had knowledge or notice of the existence of a fire on their right-of-way, not caused by the opera-



tion of the railway, the fact that the condition of the right-of-way facilitated the spread of the fire to adjoining property which was destroyed by it does not amount to actionable negligence.—Where a matter relied upon to support the action was not urged at the trial nor asserted on an appeal to the provincial court it is too late to put it forward for the first time on an appeal to the Supreme Court of Canada.—Judgment appealed from (14 B. C. Rep. 169) affirmed, Idington, J., dissenting. *Laidlaw v. Crowsnest Southern Railway Co.*, xlii., 355.

243. *Construction of statute—7 & 8 Edw. IV., c. 31, s. 2 — Government railway — Fire from engine—Damages.*—By 7 & 8 Edw. IV., c. 31, s. 2, the Government of Canada is liable for damage to property caused by a fire started by a locomotive working on a government railway, whether its officers or servants are or are not negligent, and by a proviso the amount of damages is limited if modern and efficient appliances have been used, and the officers or servants "have not otherwise been guilty of any negligence."—*Held*, Davies, J., dissenting, that the expression "have not otherwise been guilty of any negligence" means negligence in any respect and not merely in the use of a locomotive equipped with modern and efficient appliances. — Sparks from a locomotive set fire to the roof of a government building near the railway track, and the fire was carried to and destroyed private property. The roof of this building had on several previous occasions caught fire in a similar way, and the Government officials, though notified on many of such occasions, had only patched it up without repairing it properly.—*Held*, reversing the judgment of the Exchequer Court (12 Ex. C. R. 389), that the Government officials were guilty of negligence in having a building with a roof in such condition so near to the track, and the owner of the property destroyed was entitled to recover the total amount of his loss. *Leger v. The King*, xliii., 164.

244. *Death from contact with train—Absence of eye witness—No warning at crossing—Findings of jury — Reasonable inferences—Balance of probabilities.*—About 5.30 on a December afternoon, G. left his place of employment to go home. An hour later his body was found some 350 yards east of a crossing of the Grand Trunk Railway, nearly opposite his house. There was no witness of the accident, but it was shewn on the trial of an action by his widow and children, that shortly after he was last seen an express train and a passenger train had passed each other a little east of the crossing, and there was evidence shewing that the latter train had not given the statutory signals when approaching the crossing. The jury found that G. was killed by the passenger train, and that his death was due to the negligence of the latter in failing to give such warnings. This finding was upheld by the Court of Appeal.—*Held*, that the jury were justified in considering the balance of probabilities and drawing the inference from the circumstances proved, that the death of G. was

caused by such negligence. *Grand Trunk Ry. Co. v. Griffith*, xlv., 380.

245. *Negligence—Operation of railway — Protection of passenger — Evidence—Mere conjecture.*—On appeal from the judgment of the Supreme Court of Alberta (2 Alta. L. R. 549), affirming the judgment of Harvey, J., at the trial, dismissing the plaintiff's action with costs, the Supreme Court of Canada made an order that a new trial should be had, the Chief Justice and Idington, J., dissenting. *Beck v. Canadian Northern Railway Co.*, xlvii., 397.

246. *Railways — Operation — Excessive speed — Trespasser — "Railway Act," R. S. C., 1906, c. 37, ss. 275, 408—Cause of accident.*—While a train was running at the speed of about thirty miles an hour, on the company's line along the harbour front in the City of Vancouver, B.C., H., who had unlawfully entered upon the right-of-way through a break in the company's fences, attempted to cross the tracks in front of the train. The engine driver saw H., at a distance of about 500 feet and whistled several times. H. paid no attention to the danger signals and continued walking in an oblique direction towards the track, and, observing his apparent intention to cross the track and his disregard of the signals, the engine driver then applied the emergency brakes which failed to stop the train in time to avoid the accident by which H. was killed. In an action for damages by his widow and child.—*Held*, that, notwithstanding the fact that deceased was a trespasser and committing a breach of section 408 of the "Railway Act," R. S. C., 1906, c. 37, the company was liable because their engine driver neglected to apply the emergency brakes at the time he became aware of the danger of accident when he first noticed deceased attempting to cross the tracks. *Canadian Pacific Railway Co. v. Hinrich*, xlviii., 557.

247. *Railways—Operation — Equipment —Coupling apparatus—Duty to provide and maintain—Protection of employees—Inspection—"Inevitable accident" — Findings of jury—Evidence — Common employment — Conflict of laws—"Railway Act," R. S. C., 1906, c. 37, s. 264—Construction of statute —Vis major.*—A car attached to a fast freight train arrived at a station on the railway, in Saskatchewan, during a cold night in the winter; it was equipped with an approved coupling device, as required by section 264(c) of the "Railway Act," R. S. C., 1906, c. 37, and, on the arrival of the train, it had been inspected according to the usual practice and no defect was then found. When the train was being moved for the purpose of cutting out the car, the uncoupling mechanism failed to work and, in consequence the plaintiff, an employee, sustained injuries. Subsequently the coupler was taken apart and it was then discovered that the locking-block was jammed with ice (not visible from the exterior) which had formed inside the chamber and prevented its release by the uncoupling device used to disconnect the car before the train was moved. In an action for damages, instituted in the



Province of Manitoba. the jury found that the company had been negligent "through lack of proper inspection," and judgment was entered on their verdict. On appeal from the judgment of the Court of Appeal for Manitoba setting aside the verdict and entering judgment for the defendants:—*Held, per Fitzpatrick, C.J. and Davies and Anglin, J.J.*—The obligation resting upon the company, both under the statute and at common law, was discharged by the customary inspection of the car which had been made according to what was shewn to be good railway practice, and there was no further duty imposed in regard to unusual conditions not perceivable by the ordinary methods of inspection. — *Per Davies and Anglin, J.J.* — Viewed as a finding upon a question of fact, the verdict of the jury upon the technical question as to the system of inspection should be set aside as being against evidence. *Jackson v. Grand Trunk Railway Co.* (32 Can. S. C. R. 245); *Jones v. Spencer* (77 L. T. 537); *Metropolitan Asylum District v. Hill* (47 L. T. 29); *Jackson v. Hyde* (28 U. C. Q. B. 294); and *Field v. Rutherford* (29 U. C. C. P. 113), referred to.—*Per Anglin, J.* (Idington, J., *contra*).—The defence of common employment, although taken away by legislation in the Province of Saskatchewan, where the injuries were sustained, was available as a defence in the courts of Manitoba, where the action was brought. *The "Halley"* (L. R. 2 P. C. 193), referred to.—Judgment appealed from (23 Man. R. 435), affirmed, Idington and Duff, J.J., dissenting.—*Per Idington and Duff, J.J.*, dissenting. — Section 264 of the "Railway Act" imposes upon railway companies the absolute and continuing duty not only to provide, but also to maintain in efficient use the apparatus thereby required: where it is shewn that the apparatus failed to operate, when used, the onus is upon the railway company, in an action under section 386 of the "Railway Act," to shew that there had been a thorough inspection thereof made to ascertain that it was in efficient working order before the train was moved. *Johnson v. Southern Pacific Co.* (25 S. C. Repr. 159), referred to. *Phelan v. Grand Trunk Pacific Railway Co.*, li., 113.

248. *Government railway regulations — Operation of trains—Negligent signaling — Fault of fellow servant—Common fault—Boarding moving train — Disobedience of employee—Voluntary exposure to danger — Master and servant—Cause of injury — R. S. C. 1906, c. 36, ss. 49, 54.*—By regulation of the Intercolonial Railway, no person is allowed to get aboard cars while trains are in motion. Without ascertaining that all his train-crew were aboard, the conductor signalled the engineman to start his train from a station where it had stopped to discharge freight. One of the crew, who had been assisting in unloading, then attempted to board the moving train, and in doing so, he was injured.—*Held*, that the injury sustained by the employee was the direct and immediate consequence of his infraction of the regulation which he was, by law, obliged to obey and not the result of the fault of the conductor; that

by disobedience to the regulation, the employee had voluntarily exposed himself to danger from the moving train; that the negligence of the conductor in giving the signal to start the train was not an act for which the Government of Canada could be held responsible, and that its relation to the accident was too remote to be regarded as the cause of the injury.—Judgment appealed from (15 Ex. C. R.), affirmed. *Turgeon v. The King*, li., 588.

249. *Railways—System of construction—Exposed switch-rods — Dangerous contrivance—Verdict—Findings against evidence.*—In accordance with what was shewn to be good railway practice the tracks in the company's yards were provided with switch-rods which were left uncovered and elevated a slight distance above the ties. While in performance of his work, during the day time, an employee sustained injuries which, it was alleged, happened in consequence of tripping on switch-rods while a car was being moved over the switch. In an action by him for damages, the jury based their verdict in his favour on a finding that the railway company had been negligent in permitting the switch-rods to remain in an exposed condition.—*Held, per curiam*, affirming the judgment appealed from (8 West. W. R. 853), that the finding of negligence by the jury in regard to the switch-rods in question was against the evidence as to proper method of construction and could not be upheld. Idington and Brodeur, J.J., dissented on the view that evidence respecting the unsafe condition of the switch-rods had been properly submitted to the jury and their findings thereon ought not to be questioned. *Mallory v. Winnipeg Joint Terminals*, liii., 323.

250. *Railways — Ejecting trespasser from moving train—Imprudence — Liability for act of servant—Master and servant.*—As a train was moving away from a station, where it had stopped, the conductor ordered a brakeman to eject two trespassers from it. On proceeding to do so the brakeman found a man stealing a ride upon the narrow ledge of the engine-tender, and in a scuffle which ensued, the plaintiff, who was on the edge of the ledge, but was not seen by the brakeman, owing to the darkness, was pushed off the train and injured. In an action for damages, the jury found that the brakeman had been at fault in attempting to eject the man whom he saw while the train was in motion, and that it was "dubious" whether he was aware of the presence of the plaintiff in the dangerous position.—*Held, per Fitzpatrick, C.J. and Idington and Anglin, J.J.* (affirming judgment appealed from (9 West. W. R. 1052)), that the reckless indifference of the brakeman, in circumstances in which he ought to have been aware of the presence of the plaintiff, was a negligent act for which the railway company was liable.—*Per Davies and Brodeur, J.J.*, dissenting.—As it was not shewn by the evidence nor found by the jury that the brakeman was aware of the presence of the plaintiff in a dangerous position the plaintiff, being a trespasser, could not recover damages against the company for the injuries he sustained. *Canadian Northern Railway Co. v. Diplock*, liii., 376.

251. Operation of railway — Assault on passenger—Duty of conductor, xxxiv., 74.

See RAILWAYS.

252. Railways—Free pass—Consideration for transportation—Misdirection — Findings of jury—New trial—Excessive damages — Art. 503 C. P. Q., xxxv., 68.

See DAMAGES.

253. Joint operation of railway—Master and servant—Negligence—Responsibility for act of joint employee—Traffic agreement — 62 & 63 Vict. c. 5 (D.), xxxvi., 655.

See RAILWAYS.

254. Operation of railway — Unnecessary combustibles left on right of way—"Railway Act, 1903," ss. 118 (j) and 239—R. S. C. (1906) c. 37, ss. 151 (j) and 297—Damages by fire—Point of origin—Charge by judge—Finding by jury—New trial—Practice—New evidence on appeal — Supreme Court Act, ss. 51 and 73, xxxix., 390.

See RAILWAYS.

255. Railways — Constitutional law — Legislative jurisdiction — Application of statute — "The Prairie Fires Ordinance" — Con. Ord. N. W. T. (1898) c. 87, s. 2—N. W. T. Ord. 1903, (1st sess.), c. 25 and c. 30, (2nd sess.)—Works controlled by Parliament — Operation of Dominion railway, xxxix., 476.

See RAILWAYS.

256. Operation of railway—Yard siding—Sloping platform—Private passage—Dangerous way—Procedure at trial—Objections to charge to jury—Practice, xl., 194.

See PRACTICE.

257. Government railway—Operation over other lines—Agreement for running rights—Extensions and branches—"Public work"—Construction of statute—"Government Railways Act"—R. S. C. 1906, c. 36, s. 80—"Exchequer Court Act"—R. S. C. 1906, c. 140, s. 20 (c), xl., 431.

See RAILWAYS.

258. Railways — Negligence — Condition limiting liability — Contract to carry passenger, Cam. Cas. 10.

See RAILWAYS.

259. Railway — Accident—Railway rules — Special instructions—Defective system — Common law negligence—Workmen's Compensation Act—Damages, xliii., 494.

See RAILWAY.

260. Railway—Findings of jury—Valens — Pleading, Grand Trunk Ry. Co. v. Brulot, xlvi., 629.

261. Operation of railway—Condition of yard — "Lay-out" of concourse—Switching — "Workmen's Compensation for Injuries Act," R. S. M., 1902, c. 178—Contributory negligence—Evidence — Volenti non fit injuria—Non-suit—New trial, xlvi., 403.

See RAILWAYS.

262. Electric railway — Breach of company's rules. Winnipeg Electric Railway Co. v. Hill, xlvi., 657.

263. Shipment by railway—Carriage of passenger—Special contract — Notice of condition—Exemption from liability, xlvi., 622.

See RAILWAYS.

264. Operation of railway—Contravention of statute—Protection of employees—Foreign car—Defective equipment, xlvi., 634.

See RAILWAYS.

265. Evidence—Onus—Railway company — Excessive speed—"Railway Act," s. 275—8 & 9 Edw. VII., c. 32, s. 13, xlvi., 561.

See EVIDENCE.

266. Action—Damages—Timber on pre-empted lands—Rights of pre-emptor—B. C. "Land Act," R. S. B. C., 1911, c. 129, ss. 77 et seq. and 132—Issue on appeal—Practice—Fire set by railway locomotive—Assessment of damages — Findings of trial judge, xlix., 33.

See DAMAGES.

267. Railways — Shipping contract — Carrying person in charge of live stock—Free pass—Release from liability — Approved form—Action by dependents—Conflict of laws—"Railway Act," R. S. C., 1906, c. 37, s. 340. C. P. R. v. Parent, li., 234.

See RAILWAYS.

268. Railways—Shipping contract — Carrying person in charge of live stock—Free pass—Release from liability — Approved form—Action by dependents — Conflict of laws—"Railway Act," R. S. C., 1906, c. 37, s. 340, li., 234.

See RAILWAYS.

269. Railway company — Unloading cars — Limitation of action—Operation of railway—R. S. C. (1906), c. 37, s. 306. C. N. Ry. Co. v. Pszeniczny, liv., 36.

See RAILWAYS.

270. Railways—Construction of statute—"Railway Act," R. S. C., 1906, c. 37, s. 306—Constitutional law—"Civil rights" — Jurisdiction of Dominion Parliament—Provincial legislation — "Employers' Liability Act," R. S. M., 1913, c. 61—Paramount authority—"Operation of railway"—Limitation of actions—Conflict of laws, liv., 36.

See RAILWAYS.

271. Government railways — Construction and maintenance—Level crossings—Regulations by Governor in Council—Construction of statute — "Government Railways Act," R. S. C., 1906, c. 36, ss. 16, 49, 54—Act of third person—Liability of Crown for damages, liv., 265.

See CROWN.

## 21. TRAMWAYS.

272. *Trial—Finding of jury—Exercise of statutory privilege—Use of highway—Operation of tramway.*—Where on the trial of an action based on negligence, questions are submitted to the jury, they should be asked specifically to find what was the negligence of the defendant which caused the injury and general findings of negligence will not support a verdict unless the same is shewn to be the direct cause of the injury.—Where a street car company has by its charter privileges in regard to the removal of snow from its tracks, and the city engineer is given power to determine the condition in which the highway shall be left after a snow storm, a duty is cast upon the company to exercise its privilege in the first instance in a reasonable and proper way and without negligence. *Mader v. Halifax Electric Tramway Co.*, xxxvii., 94.

273. *Operation of tramway—Precautions for safety of passengers—Crossing cars—Sounding gong—Slackening speed at dangerous places—Neglect of rules—Passenger alighting from front of car—Contributory negligence.*—A passenger on a crowded tram-car, being near the front of the car, on reaching his destination, made his way past several persons standing in the aisle and front vestibule and alighted from the front steps on the side next the parallel track upon which another car was coming at considerable speed in the opposite direction and was injured. The space between the crossing cars was about 44 inches, and there was no rule of the company to prevent passengers alighting from the front steps. The passenger was not aware of the car approaching from the opposite direction when he alighted, and the motorman of the car which struck him had neglected to observe a rule of the company requiring that speed should be slackened, and the gong rung continuously while cars were passing each other on the double tracks. The courts below held (15 Man. Rep. 338), that the company was liable in damages on account of the motorman's negligence; that the plaintiff had not been guilty of contributory negligence under the circumstances; and that the company was obliged to take proper precautions for the safety of passengers, even after they had alighted upon the street beside the tracks. Without calling upon counsel for the respondent, the Supreme Court of Canada dismissed the appeal with costs. *Winnipeg Electric St. Ry. Co. v. Bell*, xxxvii., 515.

274. *Street railway—Excessive speed—Gong not sounded—Contributory negligence—Funeral expenses—Damages.*—A passenger on a street car in Toronto going west alighted on the side farthest from the other track and passed in front of the car to cross to the opposite side of the street. The space between the two tracks was very narrow, and seeing a car coming from the west as she was about to step on the track, she recoiled, and at the same time the car she had left started and she was crushed between the two, receiving injuries from which she died. In an action by her father and mother for damages the jury found that

the company was negligent in running the east bound car at excessive speed and starting the west bound car and not sounding the gong in proper time. They found also that deceased was negligent, but that the company could, nevertheless, have avoided the accident by the exercise of reasonable care.—*Held*, that the case having been submitted to the jury with a charge not objected to by the defendants, and the evidence justifying the findings, the verdict for the plaintiffs should not be disturbed. The plaintiffs should not have had the funeral and other expenses incurred by the father of deceased allowed as damages in the action. *Toronto Ry. Co. v. Mulvaney*, xxxviii., 327.

275. *Street railway—Rules—Contributory negligence—Motorman injured by his own mismanagement.*—Rule 212 of the rules of the London St. Ry. Co. provides that "when the power leaves the line the controller must be shut off, the overhead switch thrown and the car brought to a stop . . ." A car on which the lights had been weak and intermittent for some little time passed a point on the line at which there was a circuit breaker when the power ceased to operate. The motorman shut off the controller, but instead of applying the brakes, allowed the car to proceed by the momentum it had acquired, and it collided with a stationary car on the line ahead of it. In an action by the motorman claiming damages for injuries received through such collision:—*Held*, that the accident was due to the motorman's disregard of the above rule and he could not recover. *Harris v. London St. Ry. Co.*, xxxix., 398.

276. *Operation of tramway—Approaching cross-street—Rules of company—Charge of judge—Contributory negligence—Findings of jury.*—A rule of the Toronto Ry. Co. provides that "when approaching crossings and crowded places where there is a possibility of accidents the speed must be reduced and the car kept carefully under control. Go very slowly over all curves, switches and intersections; never faster than three miles an hour . . ." A girl on the south side of Queen street wished to cross to University avenue, which reaches but does not cross Queen. She saw a car coming along the latter street from the east, and thought she had time to cross, but she was struck and severely injured. On the trial of an action for damages the judge in his charge said: "It is not a question, gentlemen of the jury, as to the motorman's duty under the rule, it is a question of what is reasonable for him to do." The jury found that defendants were not guilty of negligence; that plaintiff by the exercise of reasonable care could have avoided the injury; and that she failed to exercise such care by not taking proper precautions before crossing. The action was dismissed at the trial: a divisional court ordered a new trial on the ground that the judge had misdirected the jury in withdrawing from their consideration the rules of the company. The Court of Appeal restored the judgment at the trial.—*Held*, affirming the judgment of the Court of Appeal (15 Ont. L. R. 195), which set aside the order of the Divisional

Court for a new trial (13 Ont. L. R. 423), Idington, J., dissenting, that the action was properly dismissed. — *Held, per Girouard and Duff, JJ.*—The judge's charge was open to objection, but as under the findings of the jury and the evidence plaintiff could not possibly recover, a new trial should be refused. — *Per Davies, J.*—There was no misdirection. The jury were not led to believe that the rules were not to be considered, but only that they should not be the standard as to what was or was not negligence, which question should be decided on the facts proved.—*Per Maclellan, J.*—The place at which the accident occurred, where University avenue meets Queen street, is not a crossing or intersection within the meaning of the rules, and they do not apply in this case. *Brenner v. Toronto Ry. Co.*, xl., 540.

277. *Operation of tramway—Use of highway—Repair of streets—Dangerous way—Speed—Head-lights—Exercise of ordinary and reasonable care.*—The company's tramway line was laid upon a highway which it was not bound to keep in repair, and there was no provision by which head-lights were required to be used on its tram-cars during the night-time. The highway had become dangerous at a curve on the line on account of accumulations of ice and snow that inclined towards the tracks. After passing the front of a car, coming from the opposite direction, after dark, at the rate of about seven miles an hour and without a head-light, either through a sudden movement of the horse or on account of the inclination of the roadway, the vehicle in which the plaintiff was seated slid towards the side of the car, which struck it with great force and injured him. — *Held, per Taschereau, C.J. and Sedgewick and Davies, JJ.*, that, under the circumstances, the rate of speed at which the car was driven and the absence of a head-light did not constitute actionable negligence on the part of the company.—*Held, per Girouard and Mills, JJ.*, that, as the company was aware of the dangerous condition of the highway at the place where the accident occurred, during the night time, it was liable for negligence in failing to slacken speed and provide sufficient lights.—*Per Armour, J.*—As the questions involved related merely to questions of fact, the appeal should be dismissed.—The judges being thus equally divided in opinion, the appeal stood dismissed with costs, and the judgment appealed from stood affirmed. *Montreal Street Ry. Co. v. McDougall*, Cout. Cas. 284.

278. *Operation of tramway—Dangerous way—Removal of ice and snow—Right of way—Costs.*—The action was for damages sustained while the plaintiff was driving along the street railway tracks, on a public highway, between high banks of snow and ice. The car came behind the plaintiff's vehicle, warning was given by sounding the gong, and the rate of speed was reduced; plaintiff, however, delayed getting off the tracks until the car was very close to him, and then, in turning out, his sleigh slid on the inclined banks, and was struck by the side of the car. The courts below held that the tramcar had the right

of way, that the injuries were the direct result of the plaintiff's imprudence and dismissed the action. On an equal division in opinion, the appeal stood dismissed with costs. *Vincent v. Montreal Street Ry. Co.*, Cout. Cas. 309.

279. *Operation of tramway—Passenger riding on platform—Dangerous arrangement of car—Evidence.*—The action was brought by the widow of a person who lost his life in consequence of an accident which occurred while he was a passenger on one of the defendant company's tramcars. The evidence shewed that deceased was riding on the front platform of the car which was, at the time of the accident, running at the rate of three or four miles an hour; that, on approaching a switch, the car jolted and deceased was thrown off the platform underneath the wheels; that the doors of the car were open and were not protected by bars or other devices to secure the protection of passengers. The jury returned a verdict in favour of the plaintiff and for \$3,500 damages.—This verdict was set aside on the ground that no actionable negligence on the part of the company had been proved, and the action was dismissed.—By the judgment appealed from (15 B. C. Rep. 429), this judgment was reversed on the ground that there was some evidence before the jury to support their finding of negligence against the company, and also their finding against contributory negligence. — The Supreme Court of Canada dismissed the appeal with costs. *B. C. Electric Ry. Co. v. Dynes*, xvii., 395.

280. *Street railway—Explosion—Defective controller—Inspection.*—S. was riding on the end of the seat of an open street car in Toronto when an explosion occurred. The car was still in motion when other passengers in the same seat, apparently in a panic, cried to S. to get off, and when he did not do so, endeavoured to get past him whereby he was pushed off and injured. In an action for damages it appeared that the explosion was caused by a defective controller, and that the motorman at once cut off the current, but did not apply the brakes, and the jury found the company negligent in using a rebuilt controller in a defective condition and not properly inspected, and the motorman negligent in not applying the brakes.—*Held*, affirming the judgment of the Court of Appeal (27 Ont. L. R. 332), that the evidence justified the jury in finding that the controller had not been properly inspected and that a proper inspection might have avoided the accident.—*Held, per Idington and Brodeur, JJ., Anglin and Davies, JJ., contra*, that the motorman was guilty of negligence in not applying the brakes. *Toronto Railway Co. v. Fleming*, xvii., 612.

281. *Operation of tramway—Carelessness of person injured—Reckless conduct of motorman.*—The carelessness of the plaintiffs in driving across the tracks of a tramway was, in this case, excused by the reckless conduct of the defendants' motorman in failing to use proper precautions to avoid the consequences of their negligence after he had become aware of it. Judgment appealed

from (11 D. L. R. 3; 4 West. W. R. 263), affirmed. *City of Calgary v. Harnovis*, xviii., 494.

282. *Tramway company—Construction of works—Independent contractor—Dangerous system—Injury to property—Negligence—Exercise of statutory authority—Correlative duty—Damages—Special release.*—A company with statutory authority to construct a tramway acquired a strip of plaintiff's land for its right-of-way, the vendor granting a release for all damages which he might sustain by reason of the construction and operation of the tramway and the severance of his farm. The company let the work to a contractor who, in the construction of the road-bed blasted away a hillside by a method known as "top-lofting" thereby throwing large quantities of rock outside the right-of-way and upon plaintiff's adjoining lands in such a manner as to interfere with his use thereof. This injury could have been avoided by proper precautions. — *Held*, affirming the judgment appealed from (18 B. C. Rep. 81), Fitzpatrick, C.J., *hesitante*, that the company was responsible in damages for the omission of their contractor to take precautions necessary to prevent his blasting operations producing the injury to the plaintiff's lands.—*Held*, further, that the general language of the release should be so construed as to restrict it to the matters in regard to which it had been granted with reference to the proper exercise of the powers of the company to construct the tramway in question, and that it could not apply to injuries caused through negligence. — *Per Duff, J.*—Where statutory powers respecting the construction of works are being exercised through an independent contractor, the correlative obligation of the beneficiaries of those powers to see that due care is taken to avoid unnecessary injurious consequences to the property of other persons is not discharged when their contractor fails to perform that duty, and they are responsible accordingly. *Hardaker v. Idle District Council* ((1896) 1 Q. B. 335), and *Robinson v. Beaconsfield Rural Council* ((1911) 2 Ch. 188), referred to. *Vancouver Power Co. v. Hounsome*, xlix., 430.

283. *Negligence—Operation of tramway—Block and staff system—Disregard of rules—Defective system.*—A motorman in the defendants' employ was injured in a collision with the car ahead of that upon which he was performing his work. The company's operation rules provided that cars operated in the same direction, as "double-headers," unless block signals were in use, should be kept at least five minutes apart, except in closing up at stations; also that, when the view ahead was obscured cars should be kept under such control that they might be stopped within the range of vision, but the rule was not enforced. The plaintiff, one of the company's motormen, on a foggy night, ran his car into the rear of another car standing at the station he was entering, and sustained injuries for which he claimed damages, alleging a defective system. The defence set up contributory negligence on

the part of the motorman, but made no allusion to the breach of these regulations. A judgment, entered on the verdict of the jury in favour of the plaintiff, was set aside by the Court of Appeal on the ground that the injury had resulted in consequence of the plaintiff's disregard of the rules. — *Held*, that as the rules had not been enforced by the defendants nor set up in their pleadings they could not be relied upon in support of the charge of contributory negligence. — Judgment appealed from (17 B. C. Rep. 498) reversed and a new trial ordered. *Daynes v. British Columbia Electric Ry. Co.*, xlix., 518.

284. *Operation of tramway—Carriage of passengers—Crossing cars—Undue speed—Sounding gong—Findings of jury.* *Montreal Street Railway Co. v. Deslongchamps*, xxxvii., 685.

285. *Operation of tramway—Evidence—Findings of jury*, *Cout. Cas.* 349.

See PRACTICE.

286. *Operation of tramway—Injury to infant—Reckless running of car.* *Sydney and Glace Bay Ry. Co. v. Lott*, xlii., 220.

## NEGOTIORUM GESTIO.

*Liquidation of insolvent corporation—Distribution and collocation—Privileged claim—Expenses for preservation of estate—Fire insurance premiums—Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2009 C. C.*, xxxix., 318.

See COMPANY.

## NEWSPAPER.

1. *Trade mark—"Buster Brown"—Validity of registration.* — The term "Buster Brown" or "Buster Brown and Tige" for use as the title to a comic section of a newspaper cannot be registered as a trade mark. — The judgment appealed from (12 Ex. C. R. 1) was affirmed, *Davies and Duff, JJ.*, dissenting. *New York Herald Co. v. Ottawa Citizen Co.*, xli., 229.

2. *Defamation—Printing report of ghost haunting premises—Slander of title—Fair comment—Disparaging property—Special damages—Evidence—Presumption of malice—Right of action*, xxxix., 340.

See SLANDER OF TITLE.

3. *Libel—Privileged publications—Reports of judicial proceedings—Public policy—Pleadings in civil actions—Proceedings not in open court*, xli., 339.

See LIBEL.

## NEW TRIAL.

1. APPEALS, 1-8.
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## 1. APPEALS.

1. *Appeal—New trial—Alternative relief.*]—Where the plaintiff obtains a verdict at the trial and the defendant moves the Court of Appeal to have it set aside and judgment entered for him or in the alternative for a new trial, he cannot appeal to the Supreme Court if a new trial be granted. *Mutual Reserve Fund Life Association v. Dillon*, xxxiv., 141.

2. *Appeal—Jurisdiction—New trial—Discretion—Ontario appeals—60 & 61 Vict. c. 34—R. S. C. c. 135, s. 27.*]—*Per Fitzpatrick, C.J., and Duff, J.*—Section 27 of R. S. C. c. 135, prohibits an appeal from a judgment of the Court of Appeal for Ontario, granting, in the exercise of judicial discretion, a new trial in the action. *Per Davies, J.*—Under the rule in *Town of Aurora v. Village of Markham* (32 Can. S. C. R. 457) no appeal lies from a judgment of the Court of Appeal for Ontario on motion for a new trial unless it comes within the cases mentioned in 60 & 61 Vict. c. 34, or special leave to appeal has been obtained. Appeal from judgment of the Court of Appeal (11 Ont. L. R. 171) quashed. *Canada Carriage Co. v. Lea*, xxxvii., 672.

3. *Appeal—Alternative relief—Judgment granting one—Final judgment.*]—Where the party failing at the trial moves the court of last resort for the province for judgment or, in the alternative, a new trial, he cannot appeal to the Supreme Court of Canada from the judgment granting the latter relief. *Mutual Ins. Co. v. Dillon* (34 Can. S. C. R. 141) followed. *Ainslie Mining and Ry. Co. v. McDougall*, xl., 270.

4. *Appeal—Jurisdiction—Alternative relief.*]—On the case being called, counsel for respondent suggested that the court had no jurisdiction to entertain the appeal. Counsel for the appellant, after consideration, stated to the court that he was unable to distinguish the case from that of *The Mutual Reserve Fund Life Insurance Association v. Dillon* (34 Can. S. C. R. 141), and the appeal was quashed without costs. *Corporation of Delta v. Wilson*, Cout. Cas. 334.

5. *Application for nonsuit—Appeal—Jurisdiction—New trial ordered.*]—On appeal to the Court of Appeal for Ontario for entry of nonsuit plaintiff urged that if any relief was granted, it should not be a new trial. The Court of Appeal granted a new trial under the judicature rules. The defendants appealed in order to obtain the

nonsuit asked for, and respondent contended that the appeal was not from a judgment on a motion for a new trial under the statute, as no such motion was made; also, that it was made in respect to the exercise of a judicial discretion. Appellants claimed that the contention of plaintiff in the Court of Appeal amounted to a motion for a new trial and that since the amendment to the statute, in 1891, judicial discretion did not enter into the question. The appeal was quashed without costs. *Toronto Ry. Co. v. McKay*, Cout. Cas. 419.

6. *Floating saw-logs in rivers and streams—Damages—R. S. N. S. (1900), c. 95, s. 17—Procedure—Charge to jury—Report by trial judge—New trial—Review on appeal*, xxxiv., 265.

See APPEAL; RIVERS AND STREAMS.

7. *Assessment of damages—Reasons for judgment—Decree of Court of Appeal*, xxxvi., 159.

See DAMAGES.

8. *Appeal—Court of Review—Appeal to Privy Council—Appealable amount—Amendment to statute—Application—Notice of appeal—Marine insurance—Constructive total loss—Trial by jury—Misdirection. Sedgewick v. Montreal*, xli., 639.

## 2. CRIMINAL CASES.

9. *Criminal law—Trial for murder—Improper admission of evidence—New trial—Substantial wrong or miscarriage—Criminal Code, s. 1019.*]—By section 1019 of the "Criminal Code" it is provided that "no conviction shall be set aside or any new trial directed, although it appears that some evidence was improperly admitted or rejected or that something not according to law was done at the trial, . . . unless, in the opinion of the court of appeal, some substantial wrong or miscarriage was thereby occasioned on the trial."—*Held*, reversing the judgment appealed from (16 B. C. Rep. 9), *Davies and Idington, JJ.*, dissenting, that where evidence has been improperly admitted or something not according to law has been done at the trial which may have operated prejudicially to the accused upon a material issue, although it has not been and cannot be shewn that it did, in fact, so operate, and although the evidence which was properly admitted at the trial warranted the conviction, the court of appeal may order a new trial. *Allen v. The King*, xliiv., 331.

10. *Criminal law—Indictment for murder—Trial—Evidence—Criminal intent—Provocation—"Heat of passion"—Charge to jury—Misdirection—Reducing charge to manslaughter—"Substantial wrong"—Criminal Code, ss. 261, 1019—Appeal—Questions to be reviewed.*]—On a trial for the murder of a police officer there was evidence that E. and J. had set out from their home, during the night when the deceased was killed, with the intention of committing theft; J. and his wife testified that, on returning

home, E. had told them that a man, whom he supposed to a secret-police constable, had pointed a pistol at him and told him to "go to hell" and that he had shot him. The defence was rested entirely upon *alibi* and the accused testified on his own behalf stating that he had been at home during the whole of the night in question, but making no mention of any facts concerning the shooting. In his charge the trial judge reviewed the evidence, in a general way, and told the jury that, upon the evidence adduced, they must either convict or acquit of the crime of murder, that they could not return a verdict of manslaughter, that if they believed J.'s account of what happened to be substantially true they should convict of murder; and he did not instruct the jury as to what, in law, constituted manslaughter nor as to circumstances on which the verdict might be reduced to manslaughter. E. was convicted of murder.—*Held*, Duff, J., dissenting, that, on the evidence, the charge of the trial judge was right, and that the omission to instruct the jury in respect to manslaughter did not occasion any substantial wrong or miscarriage which could justify the setting aside of the conviction nor a direction for a new trial.—*Per* Fitzpatrick, C.J., and Idington, J.—In a criminal appeal, it is doubtful whether any question except that upon which there was a dissent in the court below could be reviewed on an appeal to the Supreme Court of Canada.—*Per* Duff, J., dissenting.—In the circumstances of the case, the effect of the charge was to withdraw from the jury some evidence which ought to have been considered by them and which, if considered by them, might have influenced them favourably towards the accused in arriving at their verdict; consequently, some substantial wrong was thereby occasioned of the trial and the conviction should not be permitted to stand. *Eberts v. The King*, xlvii., 1.

11. *Criminal law—Indictment for murder—Trial—Charge to jury—Misdirection—Constructive murder—Natural consequence of act.*—On the trial of an indictment for murder of one Kenneth Lea it was proved that the prisoners, who had been drinking, came on the deceased's lawn and commenced to shout and sing and use profane and insulting language towards him. He twice warned them away, and finally appeared with a loaded gun threatening to shoot. A rush was made towards the verandah where he stood, when he took hold of the barrel of the gun and struck one of the prisoners with the stock. The gun was discharged into his body and there was evidence that the prisoners then maltreated him and his wife. He was taken to a hospital in Halifax where he died shortly after. The trial judge in charging the jury instructed them that the prisoners were doing an unlawful act in trespassing on the property of deceased and that if they were actuated by malice it would be murder, if not it was manslaughter, drawing their attention especially to sections 256 and 259 (b) of the Criminal Code. The prisoners were found guilty of murder. On appeal from the decision of the Supreme Court of Nova Scotia on a reserved case:—*Held*, that the above direction to the jury ignored the requirements of the Code formu-

lated in sub-section (d) of section 259, to which the Judge should also have drawn their attention directing them to find whether or not the prisoners knew, or ought to have known, that their acts were likely to cause death, and his failure to do so left his charge open to objection and constituted misdirection for which the prisoners were entitled to a new trial. *Graves v. The King*, xlvii., 568.

12. *Criminal law—Indictment—Separate counts—Verdict—Conspiracy—Extraditable offence—Inadmissible evidence—Conviction—Inconsistency—Irregularity of procedure—Charge to jury—Address of counsel—Substantial wrong or miscarriage—"Criminal Code," s. 1019—Penalty.*—On an indictment containing several counts, including charges for theft, receiving stolen property and obtaining money under false pretences, in respect of which the person accused had been extradited from the United States of America, evidence was admitted on behalf of the Crown, for the purpose of shewing *mens rea*, which involved participation of the accused in an alleged conspiracy. The principal objections urged against a conviction upon the charges mentioned were (a) that by the manner in which the trial had been conducted the jury may have been given the impression that the accused was on trial for conspiracy, a non-extraditable offence; (b) that misstatements and inflammatory observations had been made by counsel for the Crown in addressing the jury; and (c) that, in his charge, the trial judge had failed to correct impressions which may have been thus made on the minds of the jury or to instruct them that portions of the evidence admitted in regard to other counts ought not to be considered by them in disposing of the charge of obtaining money under false pretences.—*Held*, that, as there was sufficient evidence to support the verdict of the jury on the charge of obtaining money under false pretences, quite apart from the irregularities alleged to have taken place at the trial, no substantial wrong or miscarriage had been occasioned and there could be no ground for setting aside the conviction or directing a new trial under the provisions of section 1019 of the Criminal Code.—Judgment appealed from (11 West. W. R. 46), affirmed. *Kelly v. The King*; liv., 220.

### 3. DAMAGES.

13. *Tort—Right of action—Damages—Pleading—Practice—Withdrawal of case from jury—Costs.*—In a case where it would be open to a jury to find that an actionable wrong had been suffered and to award damages, the withdrawal of the case from the jury is improper and a new trial should be had.—The Supreme Court of Canada reversed the judgment appealed from (12 B. C. Rep. 476), which had affirmed the judgment at the trial withdrawing the case from the jury and dismissing the action and allowing the plaintiff his costs up to the time of service of the statement of defence, costs being given against the defendant in all the courts and a new trial ordered. *Davies*

and MacLennan, J.J., dissented and, taking the view that the refusal, though illegal, had not been made maliciously, considered that, on that issue, the plaintiff was entitled to nominal damages, that, in other respects, the judgment appealed from should be affirmed and that there should be no costs allowed on the appeal to the Supreme Court of Canada. (Appeal to Privy Council dismissed, 9th July, 1908.) *Norton v. Fulton*, xxxix., 202.

14. *Negligence—Operation of railway—Damages—Solatium doloris—Verdict.*]—The court refused to order a new trial or reduction of damages, under the provisions or articles 502, 503, C. P. Q., where it did not appear that, under the circumstances, the amount of damages awarded by the verdict was so grossly excessive as to make it evident that the jury had been led into error or were influenced by improper motives. Davies, J., dissented in respect of that part of the verdict awarding damages in favour of one of the sons who was almost 21 years of age and earning wages at the time deceased was killed.—*Quere.*—In an action under article 1056 C. C., can a jury award damages in solatium doloris? *Robinson v. The Canadian Pacific Railway Co.* ([1892] A. C. 481) referred to. *Canadian Pacific Railway Co. v. Lachance*, xlii., 205.

15. *Negligence—Street railway—Excessive speed—Gong not sounded—Contributory negligence—Damages*, xxxviii., 327.

See NEGLIGENCE.

16. *Operation of railway—Unnecessary combustibles left on right of way—“Railway Act, 1903,” ss. 118 (j) and 239—R. S. C. (1906) c. 37, ss. 151 (j) and 297—Damages by fire—Point of origin—Charge by judge—Finding by jury—New trial—Practice—New evidence on appeal—Supreme Court Act, ss. 51 and 78*, xxxix., 390.

See RAILWAYS.

#### 4. DISCRETIONARY ORDERS.

17. *Appeal—Order for new trial—Weight of evidence—Discretion—New grounds on appeal.*]—Where the court whose judgment is appealed from ordered a new trial on the ground that the verdict was against the weight of evidence:—*Held*, that this was not an exercise of discretion with which the Supreme Court of Canada would refuse to interfere and the verdict at the trial was restored.—The argument of an appeal to the Supreme Court of Canada must be based on the facts and confined to the grounds relied on in the courts below. *Confederation Life Association v. Borden*, xxxiv., 338.

18. *Practice—Adduction of evidence—Cross-examination at trial—Vexatious and irrelevant questions—Discretionary order—Propriety of review.*]—The judge presiding at the trial of a cause has a necessary discretion for the protection of witnesses under cross-examination and, where it does not appear that he has exercised that discretion

improperly, his order ought not to be interfered with on an appeal. Hence, an appellate court is not justified in ordering a new trial on the ground that counsel has been unduly restricted in cross-examination by a question being disallowed which did not, at the time it was put to the witness, have relevancy to the issues.—*Idington, J.*, dissented on the ground that, under the circumstances of the case, counsel was entitled to have the question answered. *Brownell v. Brownell*, xlii., 368.

#### 5. EVIDENCE.

19. *Negligence—Electric wire—Trespasser—Evidence—Contributory negligence.*]—*Ahearn & Soper* had a contract to illuminate certain buildings for the visit of the Duke of York to Ottawa, and obtained power from the Ottawa Electric Co. For the purposes of the contract wires were strung on a telephone pole and fastened with tie-wires, the ends of which were uninsulated. R., an employee of the O. E. Co. was sent by the latter to place a transformer on the same pole and, in doing so, his hands touched the ends of the tie-wire by which he received a shock and fell to the ground being seriously injured. To an action for damages for such injury A. & S. pleaded that R. had no right to be on the pole and was a trespasser, and on the trial their counsel urged that the work he was doing was connected with the lighting of a building in the city. The Court of Appeal held that this defence was established and dismissed the action.—*Held*, reversing the judgment appealed from (6 Ont. L. R. 619), that the counsel's address did not indicate that the building referred to was not one of those to be illuminated under the contract and the evidence did not shew that R. was not engaged in the ordinary business of his employers and the case should be retried, the jury having failed to agree at the trial.—A rule of the O. E. Co. directed every employee whose work was near apparatus carrying dangerous currents to wear rubber gloves which would be furnished on application: R. was not wearing such gloves when he was hurt.—*Held*, that the mere fact of the absence of gloves was not such negligence on R.'s part as would warrant the case being withdrawn from the jury; that, as to A. & S., R. was not bound by said rules; and that though his failure to take such precautions was evidence of negligence he had a right to have it left to the jury and considered in connection with other facts in the case. *Randall v. Ahearn & Soper*, xxxiv., 698.

20. *Evidence—Verdict—Conditions—Policy of life insurance—Misrepresentation.*]—Unless the evidence so strongly predominates against the verdict as to lead to the conclusion that the jury have either wilfully disregarded the evidence or failed to understand or appreciate it, a new trial ought not to be granted. *Metropolitan Life Ins Co. v. Montreal Coal and Towing Co.*, xxxv., 266.

AND see EVIDENCE.



21. *Contradictory evidence — Wilful trespass — Rule in assessing damages—Practice—Adding party—Reversal on appeal.*—In an action for damages for entry upon a placer mining claim and removing valuable gold bearing gravel and dirt, the trial judge found the defendants guilty of gross carelessness in their work, held that they should be accounted wilful trespassers, and referred the cause to the clerk of the court to assess the damages. The referee adopted the severer rule applicable in cases of fraud in assessing the damages. The Territorial Court *in banco* reversed the trial judge in his findings of fact upon the evidence.—*Held*, reversing the judgment appealed from, that the trial judge's findings should be sustained with a slight variation, but that the referee had erred in adopting the severer rule against the defendants in assessing the damages, and that his report should be amended in view of such error.—*Semble*, that the record and pleadings should be amended by adding the plaintiff's partner as co-plaintiff.—*Held*, per Taschereau, C.J., dissenting, that although not convinced that there was error in the judgment of the trial judge which the court *in banco* reversed, while at the same time it did not appear that there was error in the judgment *in banco*, yet the latter judgment should stand, as the court *in banco* should not be reversed unless the Supreme Court, on the appeal, be clearly satisfied that it was wrong. (Leave to appeal to Privy Council refused, 4th Aug., 1905). *Kirkpatrick v. McNamee*, xxxvi., 152.

22. *Evidence—Admissibility — Harmless error—New trial.*] — The action was for price of goods sold and delivered, and the defence that the goods were received by defendant as plaintiffs' manager and not otherwise. A new trial was ordered on the ground that plaintiffs' books of account were improperly received in evidence against the defendant. The Supreme Court of Canada reversed the judgment appealed from (37 N.S. Rep. 361), and restored the verdict at the trial, holding that the books were received on the taking of evidence under commission by the express consent of both parties, and their reception could not afterwards be objected to on the general ground that they were irrelevant and immaterial to the issue. *Carstens v. Muggah*, xxxvi., 612.

23. *Jury trial—Judge's charge—Practical withdrawal of case—Evidence—New trial.*] — On trial of an action against a surety, the defence was that he had been discharged by the plaintiff's dealings with his principal. The trial judge directed the jury that the facts proved in no way operated to discharge him; and that while, if they could find any evidence to satisfy them that he was relieved from liability they could find for defendant, he knew of no such evidence, and it was not to be found in the case.—*Held*, that the disputed facts were practically withdrawn from the jury, and as there was evidence proper to be submitted and on which they might reasonably find for defendant there should be a new trial. *Wood v. Rockwell*, xxxviii., 165.

24. *Title to land—Plan of survey—Evidence—Onus of proof—Findings of jury — Error—New trial.*]—Where it appeared that in directing the jury, at the trial, the judge attached undue importance to the effect of a plan of survey referred to in a junior grant as against a much older plan upon which the original grants of the lands in dispute depended and that the findings were not based upon evidence sufficient in law to shift the onus of proof from the plaintiff and were, likewise, insufficient for the taking of accounts in respect to trespass and conversion of minerals complained of: *Held*, affirming the order for a new trial made by the judgment appealed from (1 East. L. R. 293), that, in the absence of evidence of error therein, the older grants and plan must govern the rights of the parties. *Bartlett v. Nova Scotia Steel Co.*, xxxviii., 336.

25. *Sale of goods—Set-off — Debtor and creditor—Partnership — Evidence—Creditor's books of account—Admissibility—Practice—New trial—Reducing verdict in lieu of new trial.*]—The plaintiffs were partners engaged in getting out timber for the defendant during three years ending 1882, and on the transaction were entitled to be paid by the defendant \$3,427.05, and brought their action to recover same. During 1883 and 1884 goods were sold and delivered by the defendant to the plaintiff P. O'B. to an amount exceeding the plaintiffs' claim against him. The defendant filed a set-off claiming that the goods sold to P. O'B. after 1882, were sold for and on behalf of the partnership. The plaintiffs claimed that the goods were sold to P. O'B. personally. At the trial defendant's books were placed in his hands by his counsel to refresh his memory as to the set-off. Plaintiffs counsel cross-examined him on the books of account for the purpose of shewing that the entries during 1883 and 1884 were charged to the plaintiff P. O'B. personally, and defendant's counsel in reply examined the defendants on the books to shew that some partnership entries prior to 1882 similarly appeared charged to the plaintiff P. O'B. The trial judge, in charging the jury, directed them to inspect the books for the purpose of testing the defendant's account of the transaction. The jury found for the defendants. Plaintiffs moved for a new trial on the ground that the trial judge had allowed the defendant's books to go in evidence to support his claim that the plaintiffs were partners. The full court ordered that there should be a new trial if the defendant refused to reduce his verdict on the set-off by \$1,200. On appeal by the plaintiffs to the Supreme Court of Canada: —*Held*, Strong and Gwynne, J.J., dissenting, that the appeal should be dismissed with costs.—*Held*, per Patterson, J., that the books having been put in evidence by the plaintiffs to shew the change in the defendant's mode of dealing with them, after 1882, which indicated a recognition by the defendant of the partnership having ceased, it was proper for the defendant, for the purpose of rebutting this inference, to exhibit the earlier accounts to support his assertion that the same mode of bookkeeping

had prevailed through all the years, and although there were some expressions of the trial judge which were susceptible of the construction that the jury were at liberty to inspect the books for the purpose of determining whether or not there was a partnership, after 1882, yet the jury was probably not misled thereby.—*Held, per Patterson, J.*, that upon a motion for a new trial in an action for goods sold and delivered it is open to the court to refuse a new trial, although satisfied that the findings of the jury as to some of the items of the account are not supported by the evidence, if the successful party consents to have the verdict reduced to the proper amount.—*Held, per Gwynne, J.*, dissenting, that the practice of refusing to grant a new trial upon condition of the party in whose favour the verdict has been rendered by a jury agreeing to accept a reduced amount named by the court has always been confined to cases of excessive damages only. (27 N. B. Rep. 145, affirmed.) *O'Brien v. O'Brien*, (Cout. Dig. 554; 992); *Cam. Cas.* 282.

26. *Negligence—Operation of railways—Highway crossings—Inconsistent findings—Questions to jury—Practice—Mistrial.*—Where the findings of a jury were conflicting and inconsistent to such a degree as to satisfy the court that there had been a mistrial, a new trial was directed, *Idington, J.*, dissenting. *Grand Trunk Ry. Co. v. Moore*, *Cout. Cas.* 401.

27. *Evidence—Improper admission—Un-corroborated testimony of plaintiff—Contradictory evidence—Verdict against weight of evidence—Practice, Cam. Cas.* 214.

See EVIDENCE.

28. *Ships and shipping—Material used in construction—Sale of goods—Contract—Principal and agent—Misrepresentations—Mistake—Conversion—Trover—Evidence—Misdirection—Ship's husband—Pledging credit of owners—Necessary outfitting at home port, Cout. Cas.* 131.

See SHIPS AND SHIPPING.

29. *Operation of railway—Level crossing—Negligence—Statutory signals—Findings against weight of evidence—New trial—Practice, 8 Can. Ry. Cas.* 61.

See NEGLIGENCE.

30. *Evidence—Cross-examination—Discretionary order. Brownell v. Brownell, xlii., 368.*

See PRACTICE.

31. *Evidence—Privilege—Notary—Jury trial—Practice—Charge to jury—Objections after verdict—Misdirection—Discretion. Barthe v. Huard, xlii., 406.*

See PRACTICE.

32. *Rejection of evidence—Withdrawal of case from jury, xlix., 518.*

See PRACTICE AND PROCEDURE.

33. *Negligence—Defective system—Injury to employee—Evidence—Verdict—Practice—Exception to judge's charge—New points on appeal, li., 216.*

See NEGLIGENCE.

34. *Damages—Verdict—Excessive award—Personal injuries—Complete reparation—Loss of prospective earnings—Pain and suffering—Evidence—Mortuary tables—Practice—Jury, lii., 281.*

See DAMAGES.

## 6. FINDINGS OF FACT.

35. *Finding of jury—New trial—Principal and agent—Qualification of juror—Waiver of objection—Written contract—Collateral agreement by parol.*—An agent employed to sell a mine for a commission failed to effect a sale, but brought action based on a verbal collateral agreement by the owner to pay "expenses" or "expenses and compensation" in case of failure. The jury found in answer to a question by the judge that "we believe there was a promise of fair treatment in case of no sale."—*Held, reversing the judgment in appeal* (9 B. C. Rep. 303), *Taschereau, C.J.* and *Killam, J.*, dissenting, that this finding did not establish the collateral agreement, but was, if anything, opposed to it, and the real issue not having been passed upon there must be a new trial.—If a juror on the trial of a cause is allowed without challenge to act as such on a subsequent trial, that is not *per se* a ground for setting aside the verdict on the latter. *Dunsmuir v. Louenburg, Harris & Co.*, xxxiv., 228.

36. *Negligence—Master and servant—Findings of jury—New trial.*—In constructing the bins for an elevator a staging had to be raised as the work progressed by ropes held by men standing on the top until it could be secured by dogs placed underneath. When secured, workmen stood on the staging and nailed planks to the sides of the bin. The planks were run along a tramway at the side of the bins by rollers and thrown off to the side of the bin farthest from the tramway. While two men on the top of the bin were holding up the staging until it could be secured, a plank on top of the adjoining pile fell off. In falling it hit the men on top of the bin, and they were precipitated to the bottom and one of them killed. In an action by his widow against the contractor for building the elevator, twenty-five questions were submitted to the jury and on their answers a verdict was entered for the plaintiff.—*Held, Idington, J.*, dissenting, that while the falling of the plank caused the accident there was no finding that the same was due to the negligence of the defendant nor any that the death of deceased was due to negligence for which, under the evidence, defendant was responsible. Therefore, and because many of the questions submitted were irrelevant to the issue and may have confused the jury, there should be a new trial. *Jamieson v. Harris*, xxxv., 625.

37. *Findings of jury—Alternative relief—Cross-appeal.*—Where a defendant obtained an order for a new trial in the court below and the plaintiff appealed to the Supreme Court of Canada, on a cross-appeal by the defendant the order for a new trial was set aside and the action was

dismissed.—Cf. *The Mutual Reserve Fund Life Association v. Dillon* (34 Can. S. C. R. 141); *Andreas v. Canadian Pacific Ry. Co.*, xxxvii., 1.

AND see NEGLIGENCE.

38. *Negligence—Operation of tramway — Approaching cross-street — Rules of company—Charge of judge—Contributory negligence—Findings of jury.*—A rule of the Toronto Ry. Co. provides that “when approaching crossings and crowded places where there is a possibility of accidents the speed must be reduced and the car kept carefully under control. Go very slowly over all curves, switches and intersections; never faster than three miles an hour . . . .” A girl on the south side of Queen street wished to cross to University avenue which reaches but does not cross Queen. She saw a car coming along the latter street from the east, and thought she had time to cross, but she was struck and severely injured. On the trial of an action for damages the judge in his charge said: “It is not a question, gentlemen of the jury, as to the motorman’s duty under the rule, it is a question of what is reasonable for him to do.” The jury found that defendants were not guilty of negligence; that plaintiff by the exercise of reasonable care could have avoided the injury; and that she failed to exercise such care by not taking proper precautions before crossing. The action was dismissed at the trial, a Divisional Court ordered a new trial on the ground that the judge had misdirected the jury in withdrawing from their consideration the rules of the company. The Court of Appeal restored the judgment at the trial.—*Held*, affirming the judgment of the Court of Appeal (15 Ont. L. R. 195), which set aside the order of the Divisional Court for a new trial (13 Ont. L. R. 423), Idington, J., dissenting, that the action was properly dismissed.—*Held*, per Girouard and Duff, J.J. The judge’s charge was open to objection, but as under the findings of the jury and the evidence plaintiff could not possibly recover, a new trial should be refused.—*Per* Davies, J.—There was no misdirection. The jury were not led to believe that the rules were not to be considered, but only that they should not be the standard as to what was or was not negligence, which question should be decided on the facts proved.—*Per* MacLennan, J. — The place at which the accident occurred, where University avenue meets Queen street, is not a crossing or intersection within the meaning of the rules, and they do not apply in this case. *Brenner v. Toronto Ry. Co.*, xl., 540.

39. *Employer’s liability — Negligence — Answers by jury—“Valenti non fit injuria” — Issue undecided—Practice—B. C. Sup. Ct. Rules, O. 58, r. 4.*—On the defence of “volens,” in an action for damages by an employee on account of injuries sustained in the course of his employment, the question which has to be considered is whether the plaintiff agreed that, if injury should befall him, the risk was to be his and not his master’s. *Smith v. Baker & Sons* ([1891] A. C. 325), referred to.—In an action to recover damages for injuries sus-

tained by the engine-man in charge of the company’s steam shovel in use on the construction of their works, questions were submitted to the jury to which they gave answers negating contributory negligence by the plaintiff and finding the company negligent in failing to provide a guard on part of the gearing, and in leaving it uncovered, but they did not answer one of the questions submitted to them, viz: “Did the plaintiff know and appreciate the risk and danger and did he voluntarily encounter them?” The defence resting upon this issue was duly presented at the trial and evidence submitted to support it.—*Held*, that, although the Court of Appeal for British Columbia, under Order 53, rule 4, of the “Supreme Court Rules, 1906,” has power to draw inferences of fact and to give any judgment and make any order which ought to have been made in the trial court, and to make such further or other order as the case in appeal may require, nevertheless, it should not undertake the functions of a jury where it may be reasonably open to them to come to more than one conclusion on the evidence. Therefore, in the circumstances of the present case, there should be an order for a new trial to have the issue of volens decided. *Paquin v. Beauclerk* ([1906] A. C. 148) and *Skeate v. Slaters* (30 Times L. R. 290), referred to.—Judgment appealed from reversed. *McPhee v. Esquimalt and Nanaimo Ry. Co.*, xlix., 43.

40. *Master and servant—Contract of service—Termination by notice—Incapacity of servant—Permanent disability—Findings of jury—Weight of evidence*, xxxiv., 366.

See MASTER AND SERVANT.

41. *Negligence—Operation of railway — Proximate cause—Imprudence of person injured*, xxxv., 296.

See NEGLIGENCE.

42. *Negligence—Trial—Finding of jury—Exercise of statutory privilege*, xxxviii., 94.

See NEGLIGENCE.

43. *Marine insurance — Abandonment—Repairs—Boston clause—Findings of jury — New trial—Practice—Evidence taken by commission—Judicial discretion.*—*Ins. Co. of North America v. McLeod; Western Ass. Co. v. McLeod; Nova Scotia Marine Ins. Co. v. McLeod*, Cout. Cas. 214.

## 7. MISDIRECTION.

44. *Unfair trial — Misdirection—Judge’s charge—Bias—Prejudice—Practice — Motion for new trial—Disposal of whole case.*—In an action for a partnership account the plaintiff claimed to be a partner in a gold mining business with the defendants H. and T., and alleged that he had been fraudulently induced by the defendants to surrender mining leases which were in the name of himself and T. by the statement made by H. that it was necessary so to do to obtain new mining leases of the same property from the Crown, and that without

his knowledge or consent, T. obtained the new leases to be granted to himself without any mention of the plaintiff. The defendants claimed that the agreement for partnership was conditional upon certain money advances to be made by the plaintiff, and that he having failed to carry out this condition, the plaintiff's membership in the partnership was put an end to. In charging the jury the trial judge in vigorous language made it clear that he believed the plaintiff's story, but concluded his charge by expressly telling the jury that they were not to be influenced by his view of the facts.—*Held*, reversing the judgment of the court below, that the motion for a new trial should be granted and the judgment below set aside.—*Per* Strong and Gwynne, JJ., that in a case tried by a jury an appellate court might finally dispose of the case upon the facts without sending it back for a new trial.—*Per* Ritchie, C.J.—The Supreme Court, as an appellate court for the Dominion, should not approve of such strong observations being made by a judge as were made in this case, in effect charging upon the defendants fraud not set out in the pleadings and not legitimately in issue in the cause.—*Per* Strong, Fournier, Taschereau, Gwynne and Patterson, JJ., that the case was essentially an equity case, and one in which a jury could advantageously have been dispensed with. *Hardman v. Putnam* (xviii., 714); *Cam. Cas.* 112.

45. *Assignment — Insolvency—Fraud — Right of action—Misdirection — Non-direction—Accounts—Practice.*—W., a trader, while in financial difficulties, transferred his property to B., one of his creditors, and subsequently made an assignment of his property in trust for the benefit of all his creditors. The trustee for the creditors brought an action to have the conveyances set aside. On the trial, after the evidence on both sides was concluded, plaintiff's counsel asked the judge to instruct the jury as to what, on the evidence of this case, might constitute fraud under Statute of Elizabeth, and he also asked that an account should be taken of the dealings between W. and B. The judge refused. The jury stated that they were unable to deal with the accounts, but found that there was no fraud in the transaction between W. and B.—*Held*, that the refusal of the judge to charge the jury as requested, amounted to a misdirection, and there should be a new trial; that the case could not be properly decided without taking the accounts, and that it could be more properly dealt with as an equity case.—*Quare*, *per* Patterson, J.—Whether an assignee for the benefit of creditors was entitled to maintain the action if there was no provision in the statute relating to assignments for the benefit of creditors, entitling him so to do. *Griffiths v. Boscowitz* (xviii., 718); *Cam. Cas.* 245.

46. *Practice—Jury trial—Findings as to negligence—Questions as to special grounds—Judge's charge—Non-direction — Misdirection — Application of law to facts.*—Upon a trial by jury, the judge in directing the jury as to the law is bound to call their

attention to the manner in which the law should be applied by them according to their findings as to the facts, the extent to which he should do so depending on the circumstances of the case he is trying, and, where the form of the charge was defective in this respect, and, consequently, left the jury in a confused state of mind as to the questions in issue, there should be a new trial. Judgment appealed from (10 B. C. Rep. 473) affirmed, *Davies, J.*, dissenting.—*Held*, *per* Nesbitt, J., that in an action founded on the negligence it is advisable that special questions should be submitted to the jury to enable them to state the special grounds on which they find negligence or no negligence. *Spencer v. Alaska Packers' Association*, xxxv., 362.

47. *Charge to the jury—Misdirection — Bias.*—Where the charge of the trial judge to the jury shewed passion and bias and was improper, a new trial was ordered. Judgment appealed from (37 N. B. Rep. 163), reversed, *Davies, J.*, dissenting. *Bustin v. Thorne*, xxxvii., 532.

AND *see* APPEAL.

48. *Misdirection — Questions for jury — Verdict on issues—Damages.*—An order for a new trial should not be granted merely on account of error in the form of the questions submitted to the jury where no prejudice has been suffered in consequence of the manner in which the issues were presented by the charge of the judge at the trial, and the jury has passed upon the questions of substance. — The judgment appealed from (18 Man. R. 134), was affirmed, the Chief Justice dissenting, and *Davies, J.*, *hesitante*, as to the quantum of the damages awarded. *Winnipeg Electric Ry. Co. v. Wald*, xli., 431.

49. *Evidence—Privilege—Notary — Jury trial—Practice—Charge to jury—Objections after verdict—Misdirection—Discretion.*—H., to qualify as candidate in a municipal election procured from a friend a deed of land giving him a *contre-lettre* under which he collected the revenues. Having sworn that he was owner of real estate to the value of \$2,000 (that described in the deed), B. in his newspaper accused him of perjury, and he took action against B. for libel. On the trial the deed to H. was produced, and the existence of the *contre-lettre* proved, but the notary having the custody of both documents refused to produce the latter, claiming privilege on the ground that it was a confidential document. The trial judge maintained this claim, but oral evidence was admitted proving to some extent what the *contre-lettre* contained. A verdict having been given in favour of H.—*Held*, that the trial judge erred in ruling that the notary was not obliged to produce the *contre-lettre*, as it was impossible without its production to determine what, if any, limitations it placed upon the deed, and there should be a new trial.—B. in his newspaper article also accused H. of having been drunk during the election, and the judge, in charging the jury, said: "You should consider the case as if the charge of drunkenness had been made against yourselves, your brother or your friend."—

*Held*, that this was calculated to mislead the jury, and was also a reason for granting a new trial.—If objection to one or more portions of the judge's charge is not presented until after the jury have rendered their verdict, the losing party cannot demand a new trial as of right, but in such case an appellate court, to prevent a miscarriage of justice, may order a new trial as a matter of discretion. *Barthe v. Huard*, xlii., 406.

50. *Charge to jury—Constitutional law—Legislative Assembly—Powers of Speaker—Precincts of House of Assembly—Expulsion*, xxxiv., 400.

See CONSTITUTIONAL LAW.

51. *Railways—Negligence—Free pass—Consideration for transportation—Misdirection—Findings of jury—Excessive damages—Art. 503 C. P. Q.*, xxxv., 68.

See PRACTICE.

52. *Construction of contract—Implied covenant—Verdict—Damages*, xxxv., 186.

See CONTRACT.

53. *Life insurance—Wagering policy—Misrepresentation—Questions for jury—Arts. 424, 427 C. P. Q.—Charge to jury*, xxxix., 323.

See INSURANCE, LIFE.

54. *Negligence—Builders and contractors—Carelessness of workmen—Liability of employer—Dangerous appliances—Electric wires—Volunteer—New trial. Dumphy v. Martineau*, xlii., 224.

See NEGLIGENCE.

55. *Negligence—Builders and contractors—Carelessness of workmen—Liability of employer—Dangerous appliances—Electric wires—Volunteer—Master and servant*, xlii., 224.

See NEGLIGENCE.

56. *Operation of tramway—Employers' liability—Accident in course of employment—"Workmen's Compensation Act"—Right of action—Dependent relations—Construction of statute—(Que.) 9 Edw. VII., c. 66, ss. 3, 15—R. S. Q. 1909, arts. 7321, 7323, 7335—Incompatible enactment—Repeal—Art. 1056 C. C.—Practice—Charge to jury—Misdirection—Excessive damages—Modification of verdict—Art. 503 C. P. Q.*, l., 423.

See NEGLIGENCE.

57. *Libel—Business reputation—Action by incorporated company—Truth of alleged facts—Fair comment—Justification—Public interest—Qualified privilege—Charge to jury—Misdirection—Misleading statements—Practice—Evidence—Special damages. Price v. Chicoutimi*, li., 179.

See LIBEL.

58. *Negligence—Defective system—Injury to employee—Evidence—Verdict—Practice—Exception to judge's charge—New points on appeal—New trial. Creveling v. Can. Bridge*, li., 216..

See PRACTICE AND PROCEDURE.

## 8. PRACTICE.

59. *R. S. B. C.*, 1911, c. 51—*Motion for judgment—Re-hearing. Tait v. B. C. Elec. Ry. Co.*, liv., 76.

See PRACTICE AND PROCEDURE.

## 9. VERDICT.

60. *Libel—Election contest—Withdrawal of candidate—Allegation of improper motives—Trial of action—Verdict for defendant*, xliii., 461.

See LIBEL.

## NON-SUIT.

*Negligence—Ferryboat wharf—Dangerous way—Precautions for preventing accidents—Evidence—Findings of jury—Non-suit*, xxxv., 693.

See NEGLIGENCE.

## NORTH-WEST TERRITORIES.

*Assessment and taxation—Constitutional law—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of boundaries of Manitoba—Construction of statutes in respect to the constitution of Canada, Manitoba and the North-West Territories—Construction of contract—Grant in presenti—Cause of action—Jurisdiction—Waiver*, xxxv., 550.

See ASSESSMENT AND TAXES.

## NOTARY.

1. *Principal and agent—Satisfaction and discharge—Payment in advance—Custody of deeds—Notarial profession in Quebec—Art. 3665 R. S. Q.—Attorney in fact—Implied mandate.*—A notary public, in the Province of Quebec, has not any actual or ostensible authority to receive moneys invested for his clients under instruments executed before him and remaining in his custody as a member of the notarial profession of that province (Q. R. 14 K. B. 420, affirmed). *Gervais v. McCarthy*, xxxv., 14.

AND see PRINCIPAL AND AGENT.

2. *Evidence—Copy of notarial will. Musgrave v. Angle*, xliii., 484.

See WILL.

3. *Action—Public officer—Notice—Principal and agent—Mandate—Pleading—Practice—New objections on appeal—Case on appeal—Notes of reasons by judges—Findings of fact—Art. 88 C. P. Q.*, xlvii., 382

See PRACTICE.

## NOTICE.

1. *Promissory note — Deposit receipt — Demand for payment—Action.*—In an action on an instrument in the following form: "\$1,200. Edmundston, N.B., July 12th, 1899. Received from the Reverend N. P. Babineau the sum of twelve hundred dollars, for which I am responsible, with interest at the rate of seven per cent. per annum, upon production of this receipt and after three months' notice. Fred LaForest." The court below held (37 N. B. Rep. 156), that the plaintiff could recover as for a promissory note and that a demand for immediate payment made more than three months before the action was a sufficient notice. Without calling upon counsel for the respondent, the Supreme Court of Canada dismissed the appeal. *LaForest v. Babineau*, xxxvii., 521.

2. *Bills and notes—Instalments of interest—Transfer after default to pay interest—"Overdue bills"—Notice—Holder in good faith—Bills of Exchange Act—Common law rule.*—Where interest is made payable periodically during the currency of a promissory note, payable at a certain time after date, the note does not become overdue within the meaning of ss. 56 and 70 of the "Bills of Exchange Act," merely by default in the payment of an instalment of such interest.—The doctrine of constructive notice is not applicable to bills and notes transferred for value.—Judgment appealed from reversed, *Idington and Macleannan, J.J.*, dissenting. (Leave to appeal to Privy Council refused, 18th July, 1908.) *Union Investment Co. v. Wells*, xxxix., 625.

3. *Broker—Purchase on margin — Non-payment—Sale without notice—Liability of customer—Damages.* *Sutherland v. Securities Holding Co.*, xxxvii., 694.

4. *Master and servant—Contract of service—Termination by notice—Incapacity of servant—Permanent disability—Findings of jury—Weight of evidence*, xxxiv., 366.

See MASTER AND SERVANT.

5. *Discount of forged note—Notice by bank—Duty to notify holder — Estoppel*, xxxv., 133.

See BANKS AND BANKING.

6. *Constitutional law—Railway company — Negligence — Agreements for exemption from liability—Power of Parliament to prohibit*, xxxvi., 136.

See RAILWAYS.

7. *Constitutional law — Imperial Acts in force in Yukon Territory — Title to land—"Torrens System"—Transfer by registered owner—Fraud—Litigious rights—Notice of lis pendens — Irregular registration — Indorsements upon certificate of title—Construction of statute — Pleading—Objections taken on appeal — Yukon Territorial Court Rules — Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117 — Waiver — Estoppel*, xxxvi., 251.

See TITLE TO LAND.

8. *Sale of goods—Suspensive condition—Term of credit—Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills — Fraudulent transfer—Insolvency—Banking—Bailee receipt—Brokers and factors—Principal and agent—Resiliation of contract — Revendication — Damages — Practice—Pleading*, xxxvi., 406.

See SALE.

9. *Railway aid — Municipal by-law — Condition precedent — Part performance—Annulment of by-law — Right of action—Assignment of obligation — Signification upon debtor—Art. 1571 C. C.*, xxxvi., 686.

See ACTION.

10. *Lease — Canal — Water-power—Improvements on canal—Temporary stoppage of power—Compensation — Total stoppage—Measure of damages — Loss of profits*, xxxvii., 259.

See LEASE.

11. *Equitable mortgage—Mines and minerals—Lease of mining lands—Sheriff's sale —Purchase by judgment creditor of mortgagee—Registry laws—Priority—Actual notice—Lien for Crown dues as rent—C. S. N. B. (1903) c. 30, s. 139*, xxxvii., 517.

See MINES AND MINING.

12. *Crown case reserved — Extension of time for notice of appeal—"Criminal Code," s. 1024—Order after expiration of time for service of notice—Jurisdiction*, xxxviii., 207.

See APPEAL.

13. *Promissory note — Protest in London, England—Notice of dishonour to indorser in Canada—Knowledge of address—First mail leaving for Canada—Notice through agent—Agreement for time—Discharge of surety—Appropriation of payments — Evidence*, xxxix., 290.

See BILLS AND NOTES.

14. *Practice—Ex parte inscription—Notice*, xxxix., 318.

See COMPANY.

15. *Supply of electric light—Cancellation of contract—Condition for terminating service—Interest in premises ceasing—"Heirs"—"Assigns," xxxix., 567.*

See CONTRACT.

16. *Breach of contract—Measure of damages—Notice of special circumstances—Collateral enterprises — Loss of primary and secondary profits—Discretionary order as to costs*, xxxix., 575.

See CONTRACT.

17. *Pleading—Purchase for value without notice—Onus of proof — Affirmative and negative evidence—Weight of evidence*, xl., 510.

See EVIDENCE.

18. *Assignment of chose in action—Statute of limitations—Acknowledgment of debt — Interest*, *Cam. Cas.* 239.

See LIMITATION OF ACTIONS.

19. *Appeal—Court of Review—Appeal to Privy Council — Appealable amount — Amendment to statute — Application—Notice of appeal—New trial*, xli., 639.

See APPEAL.

20. *Railways—Construction and operation — Location plans—Delaying notice to treat — Action to compel expropriation — Compensation in respect of lands not acquired—Mandamus—Use of highway—Crossing public lane—Nuisance*, xli., 65.

See RAILWAYS.

21. *Accident insurance—Condition of policy—Tender before action—Waiver*, xliv., 386.

See INSURANCE, ACCIDENT.

22. *Fire insurance—Conditions of policy — Notice of loss—Imperfect proofs — Non-payment of premium—Waiver—Application of statute—Remedial clause*, xliv., 419.

See INSURANCE, FIRE.

23. *Partnership—Principal and agent—Partnership funds—Third party—Banks and banking—Negotiable instrument — Inquiry*, xlv., 127.

See PARTNERSHIP.

24. *Sale under powers — Tender—Equitable relief—Proceedings taken in good faith*, xlv., 302.

See CHATTEL MORTGAGE.

25. *Vendor and purchaser—Condition of agreement—Sale of land — Payment on account of price — Cancellation — Return of money paid—Rescission—Form of action—Practice*, xlv., 338.

See VENDOR AND PURCHASER.

26. *Title to land — “Torrens System” — Priority of right—Registration—Caveat — Construction of statute — Saskatchewan “Land Titles Act,” 6 Edw. VII. c. 24 — Equities between purchasers—Assignment of contract — Conditions — Right enforceable against registered owner*, xlv., 551.

See TITLE TO LAND.

27. *Mortgage—Manitoba “Real Property Act”—Power of sale—Special covenant — Statutory supervision — Registered title — Equitable rights—Possession by mortgagee — Limitation of action — Construction of statute — R. S. M. 1902, c. 148, s. 75 — “Real Property Limitation Act.” R. S. M. 1902, c. 100, s. 29, xlv., 618.*

See MORTGAGE.

28. *Vendor and purchaser—Sale of land—Condition — Approval of assignments — Equitable estate or interest—Priority between transferees — Principal and agent—Fraudulent and criminal practices — Notice of previous transfer — Implied knowledge. MacLeod v. Sawyer-Massey Co., xlv., 622.*

29. *Municipal corporation — Repair of highways — Statutory duty — “Unfenced trap” in sidewalk—Misfeasance—Actionable negligence—Knowledge—Personal injuries—Liability of corporation — Evidence—Findings of jury—“Res ipsa loquitur,” xlv., 457.*

See MUNICIPAL CORPORATION.

30. *Banking — Security for advances — Assignment — Chose in action—Moneys to arise out of contract — Unearned funds — Equitable assignment of third party—Evidence—Priority of claim—Estoppel — Construction of statute — Manitoba “King’s Bench Act” — “Bank Act,” xlvii., 313.*

See BANKING.

31. *Action—Public officer—Notary public — Principal and agent—Mandate—Pleading — Practice — New objections on appeal — Case on appeal—Notes of reasons by judges — Findings of fact—Art. 88 C. P. Q., xlvii., 382.*

See PRACTICE.

32. *Construction of statute—“Quebec Public Health Act,” R. S. Q. 1909, art. 3913 — Inspection of food—Duty of health officers—Quality of food—Condemnation—Seizure—Effect of action by health officers—Controlling power of courts—Evidence—Injunction — Appeal—Jurisdiction — Question in controversy*, xlvii., 514.

See STATUTE.

33. *Shipment by railway — Carriage of passenger—Special contract—Notice of condition—Negligence—Exemption from liability*, xlvii., 622.

See RAILWAYS.

34. *Sale of land—Contract—Defeasance — “Time to be of the essence of the contract” — Deferred payments — Notice after default—Laches—Abandonment — Specific performance*, xlix., 14.

See SPECIFIC PERFORMANCE.

## NOVATION.

1. *Composition and discharge—Construction of deed—Reservation of collateral security—Delivering up evidences of debt.]—By deed of composition and discharge the bank agreed to accept composition notes in discharge of its claim against the plaintiff at a rate in the dollar, special reserve being made as to the securities it then held for the debt due by the plaintiff. The original debt was to revive in full on default in payment of any of the composition notes. Upon receiving the composition notes the bank surrendered the notes representing the full amount of its claim.—Held, reversing the judgment appealed from, that the effect of the agreement coupled with the reservation made was that the debtor was to be discharged merely from personal liability on payment of the composition notes but that the securities were to be still held by the bank for the purpose of reimbursing itself, if possible, to the extent of the balance of the original debt.—Held, also, that the surrender of the original notes by the bank did not extinguish the debt they represented and under the circumstances there was no novation. Banque d’Hochelaga v. Beauchamp, xxxvi., 18.*

2. *Contract — Sub-contractor — Order from contractor on owner — Evidence.]—T. was contractor for building a house and F. sub-contractor for the plumbing work. When*

F.'s work was done he obtained an order from T. on the owner in the following terms: "Please pay F. the sum of \$705, and charge to my account on building, Lucknow Street." F. took the order to the owner who agreed to pay if the architect certified that the work had been performed. F. and T. saw the owner and architect together shortly after, and on being informed by the latter that the account was proper and there were funds to pay it, the owner told F. that it would be all right and retained the order when F. went away. F. filed no mechanic's lien, but other sub-contractors did the next day, and T. assigned in insolvency. In an action by F. against the owner:—*Held*, Davies, J., dissenting, that there was a novation of the debt due from the owner to T.; that it was not merely an agreement by the owner to answer to F. for T.'s debt nor was the order to be treated as a bill of exchange and accepted as such. *Farquhar v. Zwicker*, xli., 30.

3. *Sale of land—Agreement for re-sale—Rescission.*—*Per* Davies and Idington, JJ. —Where the parties to a contract come to a fresh agreement of such a kind that the two cannot stand together, the effect of the second agreement is to rescind the first. *Frith v. Alliance Investment Co.*, xlix., 384.

AND see SPECIFIC PERFORMANCE.

4. *Partnership — Dissolution—New firm by continuing partner — Liability of new partnership — Rights of creditors — Trust*, Cam. Cas. 323.

See TRUSTS.

5. *Contract — Right to assign—Contracting firm becoming incorporated company — Breach of contract—Damages*, xlvii., 398.

See CONTRACT.

## NUISANCE.

1. *Refusal to accept conditional renunciation—Costs on appeal to court below—Costs of enquête—Statutory powers—Negligence—Legal maxim.*—In an action for \$15,000 for damages occasioned by a nuisance to neighbouring property, the plaintiff recovered \$3,000, assessed *en bloc* by the trial court without distinguishing between special damages suffered up to the date of action and damages claimed for permanent depreciation of the property. Before any appeal was instituted, the plaintiff filed a written offer to accept a reduction of \$2,590, persisting merely in \$410 for special damages to date of action, with costs, and reserving the right to claim all subsequent damages, including damages for permanent depreciation, but without admitting that the damages suffered up to the time of the action did not exceed the whole amount actually recovered. This offer was refused by the defendants as it did not affect the costs and contained reservations, and an appeal was taken by them, on which the Court of King's Bench, in allowing the appeal, reduced the amount of the judgment to \$410, reserved to plaintiff the right of action for subsequent special damages and damages for permanent depreciation and gave full costs against the appel-

lants, on the ground that they should have accepted the renunciation filed.—*Held*, Davies, J., dissenting, that the Court of King's Bench erred in holding that the defendants had no right to reject the conditional renunciation and in giving costs, and the reservation as to further action should be dismissed as to the \$2,590 with costs, and the reservation as to further action for depreciation disallowed, but that the judgment for \$410 with costs, as in an action of that class, with the reservation as to temporary damages accruing since the action, should be affirmed. As the costs at the *enquête* were considerably increased on account of the large amount of damages claimed, it was deemed advisable, under the circumstances, to order that each party should pay their own costs thus incurred.—*Held*, also, that, although the nuisance complained of was caused by the defendants acting under rights secured to them by special statute, yet, as there was negligence found against them upon evidence sufficient to support that finding, the maxim *sic utere tuo ut alienum non laedas* applied, and the powers granted by their special charter did not excuse them from liability. *The Canadian Pacific Railway Co. v. Roy* ([1902] A. C. 220) distinguished. *Montreal Water and Power Co. v. Davie*, xxxv., 255.

2. *Operation of machinery — Continuing nuisance—Negligence—Droits du voisinage—Vibration, smoke, dust, etc.—Series of torts — Statutory franchise—Permanent injury—Abatement of nuisance — Prospective damages—Method of assessing damages—Limitations of actions — Prescription of actions in tort—Arts. 377, 379, 380 and 2261 C. C.]* —Where injuries caused by the operation of machinery have resulted from the unskilful or negligent exercise of powers conferred by public authority and the nuisance thereby created gives rise to a continuous series of torts, the action accruing in consequence falls within the provisions of art. 2261 of the Civil Code of Lower Canada, and is prescribed by the lapse of two years from the date of the occurrence of each successive tort. *Wordsworth v. Harley* (1 B. & Ad. 391); *Lord Oakley v. Kensington Canal Co.* (5 B. & Ad. 138); and *Whitehouse v. Fel-loves* (10 C. B. N. S. 765) referred to.—In the present case, the permanent character of the damages so caused could not be assumed from the manner in which the works had been constructed and, as the nuisance might, at any time, be abated by the improvement of the system of operation or the discontinuance of the negligent acts complained of, prospective damages ought not to be allowed, nor could the assessment, in a lump sum, of damages, past, present and future, in order to prevent successive litigation, be justified upon grounds of equity or public interest. Judgment appealed from (Q. R. 13 K. B. 531) reversed, the Chief Justice and Girouard, J., dissenting. *Fritz v. Hobson* (14 Ch. D. 342) referred to. *Gareau v. The Montreal Street Railway Co.* (31 Can. S. C. R. 463) distinguished. *Montreal Street Railway Co. v. Boudreau*, xxxvi., 329.

3. *Rights appurtenant to dominant tenement—Construction of ice-house—Change in natural conditions — Flooding of servient*



*tenement — Aggravation of servitude—Injunction — Damages — Abatement of nuisance—Arts. 406, 501, 549 C. C.]—The construction upon a dominant tenement of an ice-house in a manner to cause the water from melting ice stored therein to flow down upon adjoining lands of lower level and injuriously affect the same is an aggravation of the natural servitude in respect of which the owner of the servient tenement may recover damages for the injury sustained and have a decree for the abatement of the nuisance.—Judgment appealed from affirmed, Girouard, J., dissenting. *Audette v. O' Cain*, xxxix., 103.*

4. *Irrigation works—Obstruction of highways—Duty to build and maintain bridges—Construction of statute—61 V. c. 35, ss. 11, 16, 37,] — By "The North-West Irrigation Act, 1898" (61 Viet. c. 35), it is provided (s. 11b) that irrigation companies should submit their scheme of works to the Commissioner of Public Works of the North-West Territories and obtain from him permission to construct and operate the works across road allowances and surveyed public highways which might be affected by them; that (s. 16) his approval and permission for construction across the road allowances and highways should be obtained prior to the authorization of the works by the Minister of the Interior of the Dominion, and (s. 37), that during the construction and operation of the works, they should "keep open for safe and convenient travel all public highways theretofore publicly travelled as such, when they are crossed by such works" and construct and maintain bridges over the works. The commissioner was the local officer in control of all matters affecting changes in or obstruction to road allowances and public highways vested in the territorial government, "including the crossing of such allowances or public highways by irrigation ditches, canals or other works." The commissioner granted permission to the appellants to construct and maintain their works across the road allowances and public highways shewn in their application "subject to the provisions of section 37 of the said North-West Irrigation Act," without imposing other conditions.—*Held*, reversing the judgment appealed from (3 Alta. L. R. 70), the Chief Justice and Idington, J., dissenting, that the absolute statutory duty in respect of the construction and maintenance of bridges imposed by section 37 of "The North-West Irrigation Act, 1898," relates solely to highways which were publicly travelled as such prior to the construction of the irrigation works, and that, as no further duty was imposed by the commissioner as a condition of the permission for the construction and maintenance of their works, the company was not obliged to erect bridges across their works at the points where they were intersected by road allowances or public highways which became publicly travelled as such after the construction of the works.—*Per Davies and Duff, JJ.*—In construing modern statutes conferring compulsory powers, including powers to interrupt the exercise of public rights, questions as to what conditions, obligations or liabilities are attached to, or arise out of the exercise*

of such powers, are primarily questions of the meaning of the language used or of the proper inferences respecting the legislative intention touching such conditions, obligations and liabilities to be drawn from a consideration of the subject-matter, the nature of the provisions as a whole, and the character of the objects of the legislation as disclosed thereby. *Alberta Railway and Irrigation Co. v. The King*, xlv., 505. (Leave to appeal to the Privy Council was granted, 20th July, 1911.)

5. *Municipal corporation — Raising level of streets—Injury to owners—Liability for damages*, Cam. Cas. 537.

See MUNICIPAL CORPORATION.

6. *Municipal corporation—Drainage—Construction of sewers—Injunction—Damages—Right of action—Practice*, Cout. Cas. 162.

See APPEAL.

7. *Railways—Construction and operation—Location plans—Delaying notice to grant—Action to compel expropriation — Compensation in respect of lands not acquired—Mandamus—Use of highway—Crossing public lane—Nuisance*, xlv., 65.

See RAILWAYS.

8. *Industrial improvements on streams — Raising height of dam — Nuisance—Damages—Expertise and arbitration—Right of action—Measure of damages—Practice—Future damages—Prescription—R. S. Q. 1888, arts. 5535, 5536*, xlv., 305.

See RIVERS AND STREAMS.

9. *Irrigation works—Obstruction of highways—Duty to build and maintain bridges—Construction of statute*, xlv., 495.

See STATUTE.

10. *Municipal corporation — Building by-law—Dangerous constructions — Abatement of nuisance—Condition precedent—Notice—Order to repair — Demolition of structure—Trespass — Forcible entry — Tort — Damages — Construction of statute — Montreal city charter*, xlv., 579.

See MUNICIPAL CORPORATION.

11. *Municipal corporation — Highways — Nuisance — Repair of sidewalks — Negligence — Statutory duty — Nonfeasance — Personal injury—Civil liability—Right of action—Construction of statute—"Vancouver City Charter*, xlv., 194.

See MUNICIPAL CORPORATION.

12. *Negligence — Obstruction of highway — Street railway — Trolley poles between tracks — Statutory authority — Protection by light. Hamilton St. R. R. v. Weir*, li., 506.

See RAILWAYS.

13. *Highway — Use of sidewalk — Municipal responsibility. Jamieson v. Edmonton*, liv., 443.

See MUNICIPAL CORPORATION.

**NULLITY.**

1. *Construction of deed—Ambiguity—Discharge of debtor—Contract—Illegal consideration—Right of action*, xxxvii., 613.

See DEED.

2. *Municipal corporation—Sale of corporate property—Committee of council—Authority to sell—Ratification*, xxxix., 586.

See MUNICIPAL CORPORATION.

3. *Action against minor—Exception of minority—Practice—Irregularity in procedure—Waiver after majority—Ratification—Prejudice—Review by appellate court*, xlvi., 103.

See PRACTICE.

**"NULLUM TEMPUS ACT."**

See PRESCRIPTION. *Tweedie v. The King*, lii., 197.

**OBLIGATION.**

See CONTRACT.

**OFFICIAL ASSIGNEE.**

*Construction of statute—Alberta "Assignments Act"—Assignment for benefit of creditors—Occupation of leased premises—Liability of official assignee. Northwest Theatre Co. v. MacKinnon*, lii., 588

See ASSIGNMENT.

**OPPOSITION.**

1. *Sheriff's sale of lands—Opposition *afin de charge*—Discretionary order—Default in furnishing security—Res judicata—Estoppel by record—F frivolous and vexatious proceedings—Quashing appeal—Jurisdiction of Supreme Court of Canada—R. S. C. c. 135, ss. 27, 59.—Arts. 651, 726 C. P. Q.]—In proceedings for the sale of lands under execution, the appellants filed an opposition to secure a charge thereon and, under the provisions of article 726 of the Code of Civil Procedure, a judge of the Superior Court ordered that the opposants should, within a time limited, furnish security that the lands, if sold subject to the charge, should realize sufficient to satisfy the claim of the execution creditor. On failure to give security as required the opposition was dismissed, and on appeal to the Supreme Court of Canada, the judgment dismissing the opposition was affirmed (35 Can. S. C. R. 1). Subsequently the proceedings in execution were continued and, on the eve of the date advertised for the sale by the sheriff, the opposants filed another opposition to secure the same charge, offered to furnish the necessary security, and obtained an order, staying the sale. The judgment appealed from maintained a subsequent order made under art. 651 C. P. Q. which revoked the order staying the sale and*

dismissed the opposition.—*Held*, that the judgment dismissing the opposition on default to furnish the required security was *chose jugée* against the appellants and deprived them of any right to give security or take further proceedings to secure their alleged charge upon the lands under seizure. *Per Taschereau, C.J.*—In a case like the present an appeal to the Supreme Court of Canada would be quashed, on motion by the respondent, as being taken in bad faith.—*Per Girouard, J.*—As the order by the judge of first instance was made in the exercise of judicial discretion the Supreme Court of Canada, under section twenty-seven of the Act, was deprived of jurisdiction to entertain the appeal. *Fontaine v. Payette*, xxxvi., 613.

2. *Vacating judgment—Appeal—Jurisdiction—Matter in controversy—Tierce opposition—Arts. 1185-1188 C. P. Q.—R. S. C. c. 135, s. 29.]—A creditor of an insolvent with a claim for \$600 filed a tierce opposition to vacate a judgment declaring the respondent to be the owner of the business of a restaurant and the liquor license accessory thereto, alleged to be worth over \$5,000. The opposition was dismissed on the ground that, under the circumstances of the case, the company had no *locus standi* to contest the judgment. On motion to quash an appeal to the Supreme Court of Canada:—*Held*, that as there was no pecuniary amount in controversy an appeal would not lie. *Coté v. The James Richardson Co.* (38 Can. S. C. R. 41), distinguished. *Canadian Breweries Co. v. Gariépy*, xxxviii., 236.*

3. *Opposition *afin de charge*—Order for security—Interlocutory judgment—Res judicata—Subsequent final order—Revision of merits or appeal—Practice*, xxxv., 1.

See APPEAL; COSTS.

**OPTION.**

1. *Principal and agent—Broker selling on Grain Exchange—Contract in broker's name—Liability of principal—Board rules—Indemnity*, xli., 61.

See BROKER.

2. *Broker—Dealings "on Change"—Speculative options—Principal and agent—Liability for contracts by agent in his own name—Privity of contract—Purchase and sales on "margin"—Settlements through clearing house—Wagering contract—Malum prohibitum—Criminal Code, s. 231, xlix., 595.*

See BROKER.

**ORDER.**

*Sheriff's sale of lands—Opposition *afin de charge*—Discretionary order—Default in furnishing security—Res judicata—Estoppel by record—F frivolous and vexatious proceedings—Quashing appeal—Jurisdiction of Supreme Court of Canada—R. S. C. c. 135, ss. 27, 59—Arts. 651, 726 C. P. Q.*, xxxvi., 613.

See OPPOSITION.

**ORDER IN COUNCIL.**

*Constitutional law — Inter-provincial and international ferries — Establishment or creation of ferries—License — Franchise — Exclusive rights — Powers of Parliament—R. S. C. c. 97—51 Vict. c. 23 (D.)—Acts by Governor in Council.]—Chapter 97 R. S. C. "An Act respecting Ferries" as amended by 51 Vict. c. 23, is *intra vires* of the Parliament of Canada.—The Parliament of Canada has authority to, or to authorize the Governor-General in Council, to establish or create ferries between a province and any British or foreign country or between two provinces.—The Governor-General in Council, if authorized by Parliament, may confer, by license or otherwise, an exclusive right to any such ferry. *In re International and Inter-provincial Ferries*, xxxvi., 206.*

**ORIENTALS.**

*Constitutional law — Criminal law — Legislation respecting orientals — Chinese places of business — Employment of white females—Statute—2 Geo. V. c. 17 (Sask.)—"B. N. A. Act, 1867," ss. 91, 92—Local and private matters — Property and civil rights—Naturalized British subject—Conviction under provincial statute, xlix., 440.*

See CONSTITUTIONAL LAW.

**OWNERSHIP.**

1. *Sale of goods—Owner not in possession—Authority to sell — Secret agreement — Estoppel*, xxxiv., 429.

See SALE.

2. *Construction of will — Usufruct—Substitution — Partition between institutes — Validating legislation—60 Vict. c. 95 (Q.)—Construction of statute—Restraint of alienation—Interest of substitutes—Devise of property held by institute under partition—Devolution of corpus of estate *es nature*—Accretion—*Res judicata*—Arts. 868, 948 C. C. xxxviii., 1.*

See WILL; AND see TITLE TO LAND.

**PARENT AND CHILD.**

1. *Contract—Security for debt—Promissory note—Husband and wife.]—C., a man without means, and W., a rich money lender, were engaged together in stock speculations, W. advancing money to C. at a high rate of interest in the course of such business. C. being eventually heavily in the other's debt it was agreed between them that if he could procure the signatures of his wife and daughter, each of whom had property of her own, as security, W. would give him a further advance of \$1,000. Though unwilling at first the wife and daughter finally agreed to sign notes in favour of C. for sums aggregating over \$7,000, which were delivered to W. Neither of the makers had independent advice.—*Held*, reversing the judgment appealed from, *Taschereau*, C.J., dissenting,*

that though the daughter was twenty-three years old she was still subject to the dominion and influence of her father and the contract made by her without independent advice was not binding. *Coz v. Adams*, xxxv., 393.

AND see MARRIED WOMAN.

2. *Guardianship — Family arrangement—Public policy.]—Where a widow, whose husband left no estate, agrees to give up her natural right of guardianship over her daughter and transfer the same to the latter's grandfather who, on his part, agrees to educate her, provide for her afterwards and allow as full intercourse as possible between her and her mother, the fact that the arrangement includes an allowance to the mother for her maintenance does not necessarily make it void as against public policy. *Idington and Duff, JJ.*, dissenting. *Chisholm v. Chisholm*, xl., 115.*

**PARLIAMENT.**

1. *Constitutional law—Legislative Assembly—Powers of Speaker—Precincts of House of Assembly—Expulsion*, xxxiv., 400.

See CONSTITUTIONAL LAW.

2. *Controverted election — Abatement of appeal—Dissolution of Parliament—Return of deposit—Practice*, *Cout. Cas.* 314.

See ELECTION LAW.

See CONSTITUTIONAL LAW.

**PARLIAMENTARY ELECTIONS.**

See ELECTION LAW.

**PARTIES.**

1. *New trial — Contradictory evidence — Wilful trespass—Rule in assessing damages — Practice—Adding party—Reversal on appeal*, xxxvi., 152.

See PRACTICE.

2. *Liquidation of insolvent corporation—Distribution and collocation — Practice — Ex parte inscription — Notice to interested parties*, xxxix., 318.

See COMPANY.

3. *Tramway—Contract with municipality — Limited tickets — Specific performance — Injunction—Right of action—Parties*, xxxix., 673.

See PRACTICE.

4. *Breach of trust—Interest on bonds — Unlawful acts by Crown officers — Ultra vires—Withholding interest from Crown — Necessity of impleading other interested parties—Practice*, *Cout. Cas.* 316.

See PRACTICE.

5. *Cross-appeal—Practice*, xlv., 543.

See PRACTICE.

6. *Carrier—Bill of lading—Loss of goods—Action—Dormant partner. Vipond v. Furness, Withy & Co., liv., 521.*

See SHIPPING.

### PARTITION.

1. *Construction of will—Usufruct—Substitution—Partition between institutes—Validating legislation—60 Vict. c. 95 (Q.)—Construction of statute—Restraint of alienation—Interest of substitutes—Devise of property held by institute under partition—Devolution of corpus of estate en nature—Accretion—Res judicata—Arts. 868, 948 C. C.]—The effect of the statute 60 Vict. c. 95 (Que.), respecting the will of the late Amable Prévost, read in conjunction with the provisions of the will and codicils therein referred to, is to declare the deed of partition between the beneficiaries thereunder final and definitive and not merely provisional; the judgment of the Court of Queen's Bench, on the appeal side, taken under that statute, has no other effect. Neither the statute nor the judgment referred to sanctions the view that the said will and codicils constitute more than one substitution created thereunder in favour of all the joint legatees and, consequently, accretion takes place among them within the meaning of article 868 of the Civil Code, in the event of any legacy lapsing, under the terms of the will, upon the death of an institute without issue prior to the opening of the substitution. In such case the share of the institute dying without issue devolves to the other joint legatees, as well in usufruct as in absolute ownership, and, consequently, none of the institutes or substitutes have the right of disposing of any portion of the testator's estate, by will or otherwise, prior to the date of the opening of the substitution.—Judgment appealed from (Q. R. 28 S. C. 257) reversed. *DeHertel v. Goddard* (66 L. J. P. C. 90) distinguished. (Appeal to Privy Council allowed, [1908] A. C. 541). *Prévost v. Lamarche*, xxxviii., 1.*

2. *Agreement for sale of lands—Construction of contract—Right of action—Administration by co-owners—Trust—Interim account—Partial discharge of trustees.]—A. and S., being holders of the entire capital stock of the C. and W. Ry. Co., agreed that they would cause a moiety of the company's lands to be vested in H. by a valid instrument to be executed by the company at the request of H. and in such form as he might require. During some years the lands were administered by A. and S., but H. never requested nor received any conveyance of his moiety, and the title to the lands, in so far as they had not been disposed of, remained in the company. In an action by the plaintiffs against H. for partition of the lands and to have an order for an interim account by and partial discharge of A. and S. as trustees:—*Held*, that as, at the time of action, the title to the lands was still vested in the railway company which was not a party to the agreement, the order for partition could not be granted, and that, independently of partition or other final determination of their trust, the plaintiffs were not entitled to the*

relief of an interim accounting and partial discharge as trustees.—Judgment appealed from (14 B. C. Rep. 157) affirmed. *Angus v. Heinze*, xlii, 416.

3. *Conveyance of land—Description of property—Partition—Petitory action—"Quebec Act, 1774"—Introduction of English criminal law—Champerly—Maintenance—Affinity and consanguinity—Parties interested in litigation—Litigious rights—Pacte de quotâ litis—Illegal consideration—Specific performance—Retrait successoral—Pleading, xxxiv., 24.*

See CHAMPERTY; TITLE TO LAND.

4. *Construction of will—Substitution—Trust—Death of grevé—Accretion—Apportionment in aliquot shares—Distribution of estate—Partial intestacy—Devolution, xlvii., 42.*

See WILL.

### PARTNERSHIP.

1. *Syndicate to promote joint stock company—Trust agreement—Construction of contract—Administration by majority of partners—Lapse of time limit—Specific performance.]—A syndicate consisting of seven members agreed to form a joint stock company for the development, etc., of properties owned by two of their number, the defendants, under patent rights belonging to two other members; the three remaining members, of whom plaintiff was one, furnishing capital, and all members agreeing to assist in the promotion of the proposed company. In the meantime the lands were acquired by the defendants and patent rights were assigned to them, in trust for the syndicate, and the lands and patent rights were to be transferred to the syndicate or to the company without any consideration save the allotment of shares proportionately to the interest of the parties. The stock in the proposed company was to be allotted, having in view the proprietary rights and moneys contributed by the syndicate members, in proportion as follows, 37½ per cent. to the defendants who held the property, 32½ per cent. to the owners of the patent rights, the other three members to receive each 10 per cent. of the total stock. A time limit was fixed within which the company was to be formed and, in default of its incorporation within that time, the lands were to remain the property of the defendants, the transfer of the patent rights were to become void and all parties were to be in the same position as if the agreement had never been made. The tenth clause of the agreement provided that, in case of difference of opinion, three-fourths in value should control. Owing to difference in opinion, the proposed company was not formed but, within the time limited, the plaintiff, and the other two members, holding together 30 per cent. interest in the syndicate, caused a company to be incorporated for the development and exploitation of the enterprise and demanded that the property and rights should be transferred to it under the agreement. This being refused the plaintiff brought action against the trustees for specific performance of the agreement to*

convey the lands and transfer the patent rights to the company, so incorporated, or for damages.—*Held*, that the tenth clause of the agreement controlled the administration of the affairs of the syndicate and that, as three-fourths in value of the members had not joined in the formation of a company, as proposed, within the time limited, the lands remained the property of the defendants, the patent rights had reverted to their original owners and the plaintiff could not enforce specific performance. *Hopper v. Hoctor*, xxxv., 645.

2. *Bills and notes—Material alterations—Forgery — Partnership — Mandate — Assent of parties—Liability of indorser—Construction of statute — “Bills of Exchange Act.”*—R. induced H. to become a party to and indorser of a demand note for the purpose of raising funds and agreed to give warehouse receipts as security to the bank on discounting the note. It was arranged that the goods covered by the warehouse receipts were to be held and sold on joint account, each sharing equally in the profits or losses on the transaction. Subsequently R. altered the note, without the knowledge or consent of H., by adding thereto the words “avec intérêt à sept par cent par an,” and falsely represented to the bank that H. held the warehouse receipts as collateral security for his indorsement. A couple of months later H., for the first time, became aware that the goods had never been purchased or placed in warehouse, that no warehouse receipt had been assigned to the bank and did not, until some months later, know that the alteration had been made in the note. There was some evidence that H. had asked for time to make a settlement of the amount due to the bank upon the note after he had become aware of the fraud and the alteration so made.—*Held*, by Idington, Macleannan and Duff, JJ., that the instrument was a forgery and could not be ratified by an *ex post facto* assent. *The Merchants Bank v. Lucas* (18 Can. S. C. R. 704; Cam. Cas. 275), and *Brook v. Hook* (L. R. 6 Ex. 89), followed.—*Per* Idington, J.—The circumstances of the case did not shew that there had been any assent to the alteration within the meaning of section 145 of the “Bills of Exchange Act.”—*Per* Macleannan, J.—The assent required to bring an altered bill within the exception provided by section 145 of the “Bills of Exchange Act.” R. S. C. (1906), c. 119, must be given by the party sought to be bound at the time of or before the making of the alteration.—*Held*, also, the Chief Justice and Davies, J., *contra*, that, in the special circumstances of the case, there was no partnership relation between the parties to the note for the purposes of the transaction in question and there could be no implied authorization for the making of the alteration in the note.—*Per* Fitzpatrick, C.J.—The transaction in question was a joint venture or particular partnership for the enterprise in contemplation of the parties and, consequently, R. had a mandate to make whatever agreement was necessary with the bank to obtain the funds and to provide for the payment of interest on the advances required to carry out the business.—Judgment appealed from (Q.R. 16 K.B. 191) reversed, the Chief Justice and Davies,

J., dissenting. *Hébert v. La Banque Nationale*, xl., 458.

3. *Separate business—Same firm name—Partners different—Member making note in firm name—Liability to bonâ fide holder.*—Action on a promissory note for \$1,260.40. The defendant, J. E. Dunham, carried on business in the City of Montreal as a dealer and importer in dye stuffs and chemicals under the name of J. E. Dunham & Co. In this company the defendant Park had no interest, and was in no way connected with it. While carrying on this business at Montreal the defendant Dunham entered into partnership with Park, on the 1st of May, 1886, for the purpose of carrying on the same business at Toronto under the name of J. E. Dunham & Co. On the 12th of August, while both these firms were thus carrying on business separately at Montreal and Toronto respectively, Dunham made the promissory note sued on. This was afterwards indorsed over to one Gardner, and by Gardner to the plaintiff. Upon the evidence it was held, by Rose, J., before whom the action was tried, that the note was given by Dunham with reference to the business carried on at Montreal, and came within the principle of *Standard Bank v. Dunham* (14 O. R. 67), which was an action brought on another note, given under the same circumstances and at the same time as the one sued on in the present case. On appeal to the Court of Appeal for Ontario this judgment was affirmed, and, on further appeal to the Supreme Court of Canada.—*Held*, that the appeal should be dismissed with costs.—*Held*, *per* Gwynne, J., that a person who was a member of two partnership firms having the same partnership name, but not composed of all the same members, giving a note in the partnership name which reaches a *bonâ fide* holder for value, it is a question of fact to be determined on the evidence what firm he intended to sign for, and the members of such firm only are liable on the note. *Danks v. Park*, Cam. Cas. 200.

4. *Sale of land — Principal and agent — Secret profit by broker — Participation in breach of trust — Implied partnership—Liability to account—Purchaser in good faith—Disclosure of suspicious circumstances.*—C., being aware that B. was an agent for the sale of certain lands, entered into an agreement with him for their purchase on joint account in his own name, upon the understanding that they should each be owners of one-half of the lands and share profits equally upon a re-sale. B. transferred one-half of his interest to M., who gave valuable consideration therefor with knowledge at the time of B.'s agency for the sale of the lands. Shortly after the conveyance of the lands by the owner, P., to C., they were re-sold to another person at a large profit, and P., having discovered the nature of the transactions, brought action against B., C. and M. to recover the amount of the profits which they had realized upon the re-sale of the lands.—*Held*, affirming the judgment appealed from (3 Sask. L. R. 417), Fitzpatrick, C.J., and Anglin, J., dissenting, that the agreement between B. and C. was a partnership transaction; that C. thereby became subject to the fiduciary relationship existing between B.

and P. in respect of the sale of the property; that he was disqualified as a purchaser of the lands which were the subject-matter of B.'s agency, and that he was equally responsible with B. to account to P. for the profits realized from the re-sale of the property.—In regard to M. it was held, also affirming the judgment appealed from, Idington, J., dissenting, that as the evidence did not shew that he was other than a *bonâ fide* purchaser for valuable consideration he was under no obligation to account for profits realized upon the sale of the interest in the lands acquired by him under the transfer from B. *Coy v. Pommerenke*, xlv., 543.

AND *see* BROKER.

5. *Principal and agent—Partnership funds—Third party—Banks and banking—Negotiable instrument—Notice—Inquiry.*—R., a member of the firm of R. M. & C., engaged on a contract for railway construction in Quebec, shortly before its completion went to Ontario, leaving his partners to finish the work, collect any balance due, pay the liabilities and divide the balance among them. M. and C. finished the work and received \$56,000 and over, went to Toronto and formed a new partnership of which R. was not a member. Having undertaken another contract in North Ontario, they arranged with the head office of the Imperial Bank to open an account with its branch at New Liskeard and the cheque payable to R. M. & C. was cashed at the branch in Toronto, and by instructions to the New Liskeard branch was placed to the credit of the new firm then and the whole sum was eventually drawn out by the latter firm. R., later, brought an action against M. and C. for winding up the affairs of their co-partnership and, pending that action took another against M. and C. and the bank claiming that the latter should pay the amount of the cheque with interest into court subject to further order.—*Held*, per Fitzpatrick, C.J., and Davies, J., affirming the judgment of the Court of Appeal (19 Ont. L. R. 584), Idington and Anglin, J.J., dissenting, that M. and C. had acted within their authority from R. by obtaining cash for the cheque; that there was nothing to shew that they had misapplied the proceeds or intended to do so by their dealing with the cheque; that in any case there was no notice to the bank of any intention to misapply the funds and nothing to put them on inquiry; and that the action against the bank must fail.—*Per* Duff, J.—The evidence establishes that M. and C. had authority to convert the cheque into an instrument transferable by delivery only and that it was acquired by the bank in good faith in the ordinary course of business. The bank, therefore, obtained a good title to the cheque and its proceeds as against the appellant. *Ross v. Chandler*, xlv., 127.

6. *Master and servant—Profit-sharing—Evidence—Statutes—R. S. B. C., 1911, c. 153, s. 3; c. 175, s. 4—Words and phrases—“Partnership.”*—The “Master and Servant Act,” R. S. B. C., 1911, c. 153, by s. 3, respecting profit-sharing by servants, declares that no agreement of that nature shall create any relationship in the nature of partnership. Section 4 of the “Partnership Act,” R. S. B. C., 1911, c. 175, provides

rules for determining partnership and, by s.-ss. 2 and 3, declares that the sharing of gross profits does not, of itself, create a partnership, that the receipt of a share of the profits of a business is *primâ facie* evidence of a partnership, that the receipt of such share or of a payment varying with the profits does not, of itself, make the person receiving the same a partner, and that a contract to remunerate a servant by a share of the profits does not, of itself, make him a partner. The plaintiff, an employee of the defendant, by the terms of his engagement was to receive as remuneration for his services a one-half share of the profits of defendant's business and conversations took place regarding an arrangement whereby plaintiff might have a “share in the business,” but no definite agreement was made. Plaintiff, claiming to have become a partner, wrote a letter to defendant asserting that he had an undivided interest in the business and asking him to execute articles of partnership. Defendant replied to this letter in an evasive and temporizing manner and the business continued to be conducted without any change. Later on, the defendant served upon the plaintiff a notice of dissolution of partnership and, in the notice as well as in the correspondence, made use of the word “partnership” in referring to the relations between them.—*Held*, reversing the judgment appealed from (18 B. C. Rep. 230) that, under the statutes referred to, the onus was upon the plaintiff to shew that he had been admitted as a partner in the business in the strict legal sense, and that the indefinite use of the term “partnership” in the correspondence and notice did not, in the circumstances, amount to evidence of an agreement that there should be a partnership. *Donkin v. Disher*, xlix., 60.

7. *Lease—Scope of authority—Resiliation—Form of action—Appropriate relief—Pleading—Practice.*—A partnership, consisting of H. and W., which was to expire by effluxion of time on 31st December, 1912, held a lease of warehouse property in Montreal, of which the term expired on the 30th April, 1913. During the absence of H., in September, 1912, and without authority from him to do so, W. obtained a renewal of the lease for three years, from the 1st of May then following, which was repudiated by H. on his return to Montreal. In action by H. to have the renewal lease declared null and void:—*Held* (the Chief Justice and Brodeur, J., dissenting), that the plaintiff had a sufficient interest to enable him to maintain the action and obtain a declaration that the lease was not binding upon the partnership or upon himself as a member of the firm.—*Per* Fitzpatrick, C.J., dissenting.—In the province of Quebec distinct and consistent pleading is essential and, as the plaintiff did not bring his action to obtain relief from his obligation under the renewal lease, but merely to have that lease declared null and void, he could not, in the action as brought, have a declaration that the lease was not binding upon him. *Forbes v. Atkinson* (Pyke K. B. 40) referred to.—*Per* Brodeur, J., dissenting.—As the partnership was benefited by the renewal of the lease it should be declared valid and binding on all

the partners. — Judgment appealed against (Q. S. 23 K. B. 1), reversed. *Hyde v. Webster*, l., 295.

8. *Shares in business—Associating third person—Good-will — Accounting between partners—Art. 1853 C. C.*—For a number of years the defendants had carried on, in partnership, the business of accountants and, as their operations expanded, they engaged assistants, who were called "junior partners," remunerating them by salaries and percentage rates on yearly profits and, in some years, with bonus additions. With the approval of the "junior partners," the defendants associated P. in a one-fourth share of the business, and the firm name was changed for the new organization which was carried on according to terms mentioned in an agreement which recited that it had been agreed between the defendants "that those at present constituting the firm" and "those for the time being constituting the firm of W. P. B. & Co." should arrange a partnership, etc. Upon making this arrangement the defendants received £20,000 from P. and, some time afterwards, in similar circumstances, £1,000 was received by them from G. The defendants retained these sums, as their own, and did not inform the "junior partners" that they had been paid. In an action by a "junior partner" for an account and a proportionate share of this £21,000: — *Held*, affirming the judgment appealed from (Q. R. 24 K. B. 321), that the moneys so received by the defendants were not paid for a share in the business to be taken wholly from their individual interests therein, but for a share in the assets and goodwill of the business itself; consequently, the plaintiff had an interest in the moneys so paid and was entitled to an account and a proportionate share thereof. *Marwick v. Kerr*, liii., 1.

9. *Dissolution—Death of partner — Survivor's right to purchase share—Good-will—Annual balance sheet.*—If the intention that a surviving partner should have a right to take over the interest of a deceased partner clearly appears from the terms of the partnership agreement, though it is not formally expressed, that right exists. Brodeur, J., dissented. Idington, J., dissented on the ground that such intention was not clearly manifested. — The partnership articles provided that at the end of each partnership year an account should be taken of the stock, liabilities and assets of the business, and a balance sheet struck for that year; that in case one partner died the co-partnership should continue to the end of the current financial year or, at the option of the survivor, for not more than twelve months from such death; that for twelve months from the death of his partner the survivor should not be required to pay over any part of the latter's capital in the business; and that any dispute between the survivor and representatives of the deceased as to the amount of debits against or credits to either in the balance sheet or the valuation of the assets should be referred to arbitration.—*Held*, Duff, J., dissenting, that the value of the interest of the deceased partner was not to be determined by the account taken and balance

sheet struck at the end of the financial year following his death, but the assets should be valued in the ordinary way.—*Held*, also, Davies and Duff, JJ., dissenting, that the goodwill of the business was to be included in said assets, though it had never formed a part of them in the annual balance sheets struck since the co-partnership began. — Judgment of the Appellate Division (34 Ont. L. R. 278) reversed in part. *Wood v. Gauld*, liiii., 51.

10. *Company law—Payment for shares — Transfer of business—Debt due partnership —Set-off—Counterclaim — Accord and satisfaction — Liability on subscription for shares—R. S. B. C. c. 44, ss. 50 and 51, xxxiv., 160.*

See COMPANY.

11. *Appointment of court official to act as receiver—Management of business — Supervision and control—Laches, xxxvi., 647.*

See RECEIVER.

12. *Partnership — Formation of limited company—Act of directors — Unauthorized expenditure—Liability of innocent directors, xxxvii., 32.*

See COMPANY.

13. *Account stated—Admission of liability — Promise to pay—Collateral agreement — Parol evidence, xxxvii., 315.*

See EVIDENCE.

14. *Account—Statute of Limitations — Agents or partners—Reference — Practice, xxxviii., 216.*

See ACCOUNT.

15. *Supply of electric light—Cancellation of contract—Condition for terminating service—Interest in premises ceasing—"Heirs" —"Assigns," xxxix., 567.*

See CONTRACT.

16. *Sale of goods—Set-off—Debtor and creditor—Evidence — Books of account — Practice—New trial—Reducing verdict on appeal, Cam. Cas. 282.*

See NEW TRIAL.

17. *Dissolution—New firm by continuing partner—Liability of new partnership — Rights of creditors—Trust—Novation, Cam. Cas. 323.*

See TRUSTS.

18. *Contract—Principal and agent—Misrepresentations—Pledging credit of owners of ship, Cout. Cas. 131.*

See SHIPS AND SHIPPING.

19. *Suit against firm—Surviving partner — Practice—Amending minutes of judgment, Cout. Cas. 384.*

See JUDGMENT.

20. *Division of profits—Collateral business affairs—Trust—Account—Findings of fact—Practice and procedure. Horne v. Gordon, xliii., 240.*

21. *Lease—Covenant not to assign—Assignment to co-partner—Right to renewal—Notice. Loveless v. Fitzgerald, xliii., 254.*

See LANDLORD AND TENANT.

## PARTY WALL.

*Servitude—Obligation of mitoyenneté — Exercise of party-rights—Contribution towards party-wall—Arts. 510 et seq. C. C.]*—The defendants erected their building against the plaintiffs' wall so that it served them in the way of exterior protection for the side of the new building; they connected the metal roof-flashing with the wall by nails, etc., but constructed the new works in such a manner as to avoid depending upon the plaintiffs' wall for support and without piercing recesses in it to receive joists, etc.—*Held*, reversing the judgment appealed from (Q. R. 20 K. B. 524), Fitzpatrick, C.J., dissenting, that the defendants had exercised party-rights in the plaintiffs' wall and utilized it as an external wall for their building, and that they were, consequently, obliged to treat it as a common wall and to pay half the value of the portion thereof so utilized by them. *Morgan v. Avenue Realty Co.*, xlv., 589.

## PATENT OF INVENTION.

1. *Infringement of patent of invention—Exchequer Court Act, ss. 51 and 52—Order postponing hearing of demurrer—Judgment—Leave to appeal.]*—Unless an order upon a demurrer be a decision upon the issues raised therein, leave to appeal to the Supreme Court of Canada cannot be granted under the provisions of the fifty-first and fifty-second sections of the Exchequer Court Act, as amended by 2 Edw. VII., c. 8. *Toronto Type Foundry Co. v. Mergenthaler Linotype Co.*, xxxvi., 593.

2. *Canadian patent—Infringement—Prior foreign patent.]*—In an action for infringement of a Canadian patent of invention for improvements in weather strips and guides for windows, it appeared that the defendants had manufactured weather strips in Canada more similar to those described in an American patent of a prior date than to any of the forms shewn and described in the Canadian patent. The court below in dismissing the action (9 Ex. C. R. 399), held that, if the plaintiffs' patent was good, it was good only for the forms of weather strips particularly specified therein of which the evidence failed to shew any infringement. This decision was affirmed by the Supreme Court of Canada. *Chamberlain Metal Weather Strip Co. v. Peace*, xxxvii., 530.

3. *Infringement of patent—Sale for a reasonable price—Use of patented device—Contract—"Patent Act," R. S. C. c. 61, s. 37—Evidence.]*—The patentee of a device for binding loose sheets sold the defendant H. binders subject to the condition that they should be used only in connection with sheets supplied by or under the authority of the patentee. H. used the binders with sheets obtained from the other defendants, contrary to the condition. In an action for infringement of the patent:—*Held*, that the condition in the contract with H. imposing the restriction upon the manner in which he should use the binders was not a con-

travention of the provisions of section 37 of the "Patent Act" R. S. C. c. 61, in respect to supplying the patented invention at a reasonable price to persons desiring to use it, and that the use so made of the binders by H. was in breach of the condition of the contract licensing him to make use of the patented device and an infringement of the patent. Judgment appealed from (10 Ex. C. R. 224), affirmed. *Hatton v. Copeland-Chaterson Co.*, xxxvii., 651.

4. *Infringement—Want of novelty—New and beneficial results—Subject matter of invention—Purchase of patented device—Estoppel.]*—The plaintiffs were patentees of a device intended to cheapen and simplify former methods of keeping and rendering statements of accounts by merchants and others, as was claimed, by providing for making entries and invoices by one and the same act on manifold sheets so folded as to occupy the entire platen of standard typewriters and, at the same time, without waste, to provide a hindering margin for the leaf with the bookkeeping entry to utilize it as a page in a permanently bound book. The sheets manufactured and sold by the plaintiffs accomplished these ends through being folded so as to form two or three leaves, as required; with two-leaf sheets, the upper leaf forming an original or invoice and the lower leaf the duplicate and bookkeeping entry; with three-leaf sheets, the third leaf serving either as a duplicate or to be used as an original duplicated on the reverse side of the centre leaf. In each case the leaves are connected together so as to form one integral sheet with vertical and transverse score lines enabling the invoices, etc., to be easily detached, leaving the permanently retained page and folded margin with perforations to fit binders. The specifications of the patented device succinctly described and illustrated various forms of folding the sheet to secure these advantages. An action for infringement by the defendants using, manufacturing and selling sheets similar to the above described device was dismissed in the Exchequer Court. On appeal to the Supreme Court of Canada: *Held*, affirming the judgment appealed from (10 Ex. C. R. 410) that there was neither subject matter nor novelty in the above device claimed as an invention and, consequently, that it was not patentable. *Copeland-Chaterson Co. v. Paquette*, xxxviii., 451.

5. *Patent law—Canadian Patent Act—R. S. C. 1906, c. 69, s. 38—Manufacture—Sale—Lease or license.]*—Under the Canadian Patent Act the holder of a patent is obliged, after the expiration of two years from its date, or an authorized extension of that period, to sell his invention to any person desiring to obtain it and cannot claim the right merely to lease it or license its use.—Judgment of the Exchequer Court (10 Ex. C. R. 378) affirmed. *Hildreth v. McCormick Mfg. Co.*, xxxix., 499.

6. *Patent law—Novelty—Combination of known elements—Infringement—Mechanical equivalents.]*—A device resulting in the first useful and successful application of certain known arts and processes in a



new combination for manufacturing purposes is not unpatentable for want of novelty merely because some of the elements so combined have been previously used with other manufacturing devices.—Judgment appealed from (11 Ex. C. R. 103) affirmed. *Dominion Fence Co. v. Clinton Wire Cloth Co.*, xxxix., 535.

7. *Appeal—Validity of patent—Matter in controversy.*—There can be no appeal to the Supreme Court of Canada in an action in respect to a patent of invention where the validity of the patent is not in question and it does not appear that the matter in controversy exceeds \$1,000, the amount limited by the Act, 60 & 61 Vict. c. 34 (D.), providing for appeals from the Province of Ontario. *McLaughlin v. Lake Erie and Detroit River Ry. Co.*, *Cout. Cas.* 297.

AND see APPEAL.

8. *Appeal—Jurisdiction—Matter in controversy—Validity of patent—Special leave.*—*R. S. C. c. 61, s. 46.*—Appeal from the Court of Appeal for Ontario quashed on a motion to quash the appeal for want of jurisdiction on the grounds that (1) the matter in controversy on the appeal, exclusive of costs, was less than \$1,000, (2) the validity of the patent was not affected, but a question involved merely as to the construction of a statute, and (3) that special leave to appeal had not been obtained. The appellants held letters patent of invention for a punching-bag, and respondents, before the patent issued, had purchased a bag and manufactured a number from it. After the issue of the patent action was brought for infringement in selling what was left of the goods so manufactured. The respondents relied on *R. S. C. (1886), c. 61, s. 46*, which provides that a person manufacturing the subject matter of the invention, before issue of patent, could sell what he had on hand after its issue, and that such sale would not affect the patent as to other persons unless done with the consent of the patentee. The appellants claimed that the consent referred to *bonâ fide* manufacture only and not to a case where the sample was procured fraudulently with the object of infringing the patent, which, to their knowledge, had been applied for. *Victor Sporting Goods Co. v. Harold A. Wilson Co.*, *Cout. Cas.* 330.

9. *Invention—Anticipation.*—Canadian patent No. 79392 for improvements in candy-pulling machines granted on February 17th, 1903, declared void for want of invention having been anticipated by earlier inventions in the United States.—Judgment of the Exchequer Court (10 Ex. C. R. 378), reversed on this point. *Hildreth v. McCormick Manufacturing Co.*, xli., 246.

10. *Account—Statute of Limitations—Agents or partners—Reference—Practice*, xxxviii., 216.

See ACCOUNT.

11. *Contract—Assignment of patent rights—Implied warranty—Privity—Validity of patent—Caveat emptor—Novelty—Combination—New and useful results*, xliii., 182.

See CONTRACT.

12. *Conflicting claims—Judgment of Exchequer Court—Appeal to Supreme Court.* *Burnett v. Hutchins Car Roofing Co.*, liv., 610.

See APPEAL.

## PAYMENT.

1. *Company law—Payment for shares—Transfer of business assets—Debt due partnership—Set-off—Counterclaim—Accord and satisfaction—Liability on subscription for shares.*—*R. S. B. C. c. 44, ss. 50 and 51.*—On the formation of a joint stock company to take over a partnership business, each partner received a proportionate number of fully paid-up shares, at their par value, in satisfaction of his interest in the partnership assets.—*Held*, reversing the judgment appealed from (9 B. C. Rep. 301), *Davies, J., dubitante*, that the transaction did not amount to payment in cash for shares subscribed by the partners within the meaning of ss. 50 and 51 of The Companies Act, *R. S. B. C. c. 44*, and that the debt owing to the shareholders as the price of the partnership business could not be set-off nor counterclaimed by them against their individual liability upon their shares. *Fothergill's Case* (8 Ch. App. 270), followed. *Turner v. Cowan*, xxxiv., 160.

2. *Life insurance—Condition of policy—Premium note—Payment of premium.*—When the renewal premium on a policy of life assurance became due, the assured gave the local agent of the insurance company a note for the amount of the premium, with interest added, which the agent discounted, placing the proceeds to his own credit in his bank account. The renewal receipt was not countersigned nor delivered to the assured, and the agent did not remit the amount of the premium to the company. When the note fell due, it was not paid in full and a renewal note was given for the balance which remained unpaid at the time of the death of the assured. The conditions of the policy declared that if any note given for a premium was not paid when due the policy should cease to be in force.—*Held*, affirming the judgment appealed from (38 N. S. Rep. 15), *Davies and MacLennan, J.J.*, dissenting, that the transactions that took place between the assured and the agent did not constitute a payment of the premium and that the policy had lapsed on default to meet the note when it became due. *The Manufacturers Accident Insurance Co. v. Pudsey* (27 Can. S. C. R. 374), distinguished; *London and Lancashire Life Assurance Co. v. Fleming*, ([1897] A. C. 499), referred to. *Hutchings v. National Life Assurance Co.*, xxxvii., 124.

3. *Mortgage—Money advanced to construct buildings—Lien for materials supplied—Payment to contractor—Transactions in fraud of mortgagor's rights—Redemption—Costs.*—A building and loan company advanced money to an illiterate woman for the purpose of aiding in the construction of a house to be erected upon lands mortgaged to it to secure the loan. The mortgage contained no provision for advances

to contractors, etc., as the work progressed, beyond the following: "And it is hereby agreed between the parties hereto, that the mortgagees, their successors and assigns, may pay any taxes, rates, levies, assessments, charges, moneys for insurance, liens, costs of suit, or matters relating to liens, or incumbrances on the said lands, and solicitors' charges in connection with this mortgage, and valuator's fees, together with all costs and charges which may be incurred by taking proceedings of any nature in case of default by the mortgagor, her heirs, executors, administrators or assigns, and shall be payable with interest, at the rate aforesaid, until paid and, in default, the power of sale hereby given shall be forthwith exercisable. And it is further agreed that monthly instalments in arrear shall bear interest at the rate aforesaid until paid."—In a suit for redemption: — *Held*, first, that the clause in the mortgage did not justify the mortgagees in making advances to contractors and persons supplying material, without the express order of the mortgagor.—Secondly, that the mortgagees ought not to have recognized an order in favour of the contractor for the total amount of the loan, when they knew that the contractor had not completed his contract and was, therefore, not entitled to the money when the order contained no name of a witness, and shewed that the mortgagor was unable to sign her name.—The payment having been made by the loan company to a lumber company supplying material to the contractors for the building, without the express authority of the mortgagor, and the lumber company having taken an assignment of the mortgage, and attempted to enforce it against the mortgagor, the transaction was declared fraudulent as against the mortgagor, and the payment to the lumber company disallowed.—*Held*, also, that the only costs the assignees of the mortgage were entitled to add to the mortgage debt were the costs of an ordinary redemption suit consented to by a mortgagee.—Judgment appealed from varied, and appeal dismissed with costs. *Black v. Hiebert*, xxxviii., 557.

4. *Insolvency — Preferential transfer of cheque — Deposit in private bank — Application of funds to debt due banker — Sinister intention — Payment to creditor*—*R. S. O. (1897), c. 147, s. 3 (1).*—*McG.*, a merchant in insolvent circumstances, although not aware of that fact, sold his stock-in-trade and deposited the cheque received for the price to the credit of his account with a private banker to whom he was indebted, at the time, upon an overdue promissory note that had been, without his knowledge, charged against his account a few days before the sale. Within two days after making the deposit, *McG.* gave the banker his cheque to cover the amount of the note. In an action to have the transfer of the cheque, so deposited, set aside as preferential and void: — *Held*, affirming the judgment appealed from (13 Ont. L. R. 232) that the transaction was a payment to a creditor within the meaning of the statute, *R. S. O. (1897), c. 147, s. 3, s.-s. 1*, which was not, under the circumstances, void as against creditors. *Robinson, Little & Co. v. Scott & Son*, xxxix., 281.

5. *Contract—Supply of material—Certificate of engineer—Condition precedent—Improper interference—Fraud—Hindering performance of condition—Monthly estimate—Final decision.* *Temiskaming and Northern Ontario Ry. Co. v. Wallace*, xxxvii., 696.

6. *Payment—Principal and agent—Satisfaction and discharge—Payment in advance—Custody of deeds—Notarial profession in Quebec—Art. 3665 R. S. O.—Attorney in fact—Implied mandate—Evidence—Parol—Commencement of proof in writing—Art. 1233 C. C.—Admissions—Art. 315 C. P. Q.—Practice—Adduction of evidence—Objections to testimony—Rule of public order*, xxxv., 14.

See PRINCIPAL AND AGENT.

7. *Debtor and creditor — Assignment of debt—Sheriff's sale—Equitable assignment—Statute of Limitations—Ratification—Principal and agent*, xxxv., 583.

See SHERIFF.

8. *Suretyship — Collateral deposit—Earmarked fund—Appropriation of proceeds—Set-off—Release of principal debtor—Constructive fraud—Discharge of surety—Right of action—Common counts — Equitable recourse*, xxxvii., 331.

See PRINCIPAL AND SURETY.

9. *Promissory note — Protest in London, England—Notice of dishonour to indorser in Canada—Knowledge of address—First mail leaving for Canada—Notice through agent—Agreement for time—Discharge of surety — Appropriation of payments — Evidence*, xxxix., 290.

See BILLS AND NOTES.

10. *Banks and banking—Forged cheque—Negligence—Responsibility of drawee—Mistake—Indorsement — Implied warranty—Principal and agent—Action—Money had and received—Change in position—Laches*, xl., 366.

See BANKS AND BANKING.

11. *Company—Sale of shares—Misrepresentation—Fraud—Action for deceit — Accord and satisfaction*, xl., 437.

See ACCORD AND SATISFACTION.

12. *Contract—Conditional sale — Guarantee—Rescission — Mortgagor and mortgagee — Power of sale—Creditor retaking possession—Continuing liability — Appropriation of money received by creditor—Release of debtor—Discharge of surety*, *Cout. Cas.* 217.

See CHATTEL MORTGAGE.

13. *Timber license—Crown lands in British Columbia—Real estate — Personality — Contract — Sale — Exchange—Consideration—Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof—Pleading and practice*, xlv., 458.

See LIEN.

14. *Construction of statute—N.-W. Terr. Ord., 1898, c. 34—Extra-judicial seizure — Chattel mortgage — Sale through bailiff —*

*Excessive costs*—Penalty—Waiver—"Bank Act," R. S. C. (1906), c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages, xliv., 473.

See CHÂTEL MORTGAGE.

15. *Vendor and purchaser*—Condition of agreement—Sale of land—Payment on account of price—Cancellation—Notice—Return of money paid—Rescission—Form of action—Practice, xlv., 338.

See VENDOR AND PURCHASER.

16. *Banking*—"Bills of Exchange Act"—Promissory note—Special indorsement—Condition—Pledge—Collateral security—Holder in due course—Payment and satisfaction—Liability on current account, xlvii., 564.

See BANKING.

17. *Vendor and purchaser*—Sale of land—Payment by instalments—Specified dates—Time of essence—Forfeiture—Penalty—Payment declared to be deposit, xlix, 360.

See VENDOR AND PURCHASER.

18. *Benevolent society*—Life insurance—Contract—Payment of assessments—Extension of time—Rules and regulations—Place of payment—Demand—Default—Suspension—Authority to waive conditions—Conduct of officials—Estoppel—Company law, xlix., 229.

See INSURANCE, LIFE.

19. *Local agent of railway company*—Collection of freight charges—Receipt delivered before payment. *Continental Oil Co. v. C. P. R.*, lii., 605.

See ESTOPPEL.

## PENAL CLAUSE.

*Pleading*—Cross-demand—Compensation—Arts. 3, 203, 215, 217 C. P. Q.—Practice—Damages—Construction of contract—Liquidated damages—Arts. 1076, 1173, 1188 C. C.—Estoppel—Waiver, xxxvii., 347.

See CONTRACT.

## PENALTY.

1. *Contract*—Breach of conditions—Liquidated damages—Penalty—Cumulative remedy—Operation of tramway—Construction and location of lines—Use of highways—Car service—Time-tables—Municipal control—Territory annexed after contract—Abandonment of monopoly—55 Vict. c. 99 (Ont.), xxxvii., 430.

See TRAMWAY.

2. *Canada Temperance Act*—Conviction—"Criminal case"—R. S. C. (1886), c. 135, s. 32—Habeas corpus—Penalty—"Not less than \$50"—Conviction for \$200—Imposition of fine for first offence—Powers of Supreme

*Court judge*—Reference of application to full court, xxxviii., 394.

See "CANADA TEMPERANCE ACT."

3. *Vendor and purchaser*—Sale of land—Payment by instalments—Specified dates—Time of essence—Forfeiture—Payment declared to be deposit, xlix., 360.

See VENDOR AND PURCHASER.

4. *Contract*—Delivery—Specified time—Default—Liquidated damages—Per-estimate—Inexecution—Compensation—Cross-demand—Practice. *Can. Gen. Elec. v. Can. Rubber*, lii., 349.

See CONTRACT.

## PENITENTIARY.

1. *Commitment*—Imprisonment in penitentiary—Form of warrant—Venue—Commencement of sentence.]—The certified copy of sentence is sufficient warrant for the imprisonment of a convict in the penitentiary and it is not necessary that it should contain every essential averment of a formal conviction.—Where the venue is mentioned in the margin of a commitment, in the case of an offence which does not require local description, it is not necessary that the warrant should describe the place where the offence was committed.—A warrant of commitment need not state the time from which the term of imprisonment shall begin to run, as, under the seventh sub-section of section 955 of the Criminal Code, terms of imprisonment commence on and from the day of passing of the sentence. *Ex parte Smitheman*, xxxv., 189.

2. *Commitment*—Sentence—Form of warrant.]—Under s. 42 of "The Penitentiary Act," R. S. C., 1886, c. 182, a copy of the sentence of the trial court certified by a judge or by the clerk or acting clerk of that court is a sufficient warrant for the commitment and detention of the convict. *Smitheman v. The King*, xxxv., 490.

AND see CRIMINAL LAW.

3. *Constitutional law*—Penitentiaries—Imprisonment of criminals—Expense of maintenance—B. N. A. Act, 1867—Legislative jurisdiction of Parliament—Provincial legislation.]—The legislative jurisdiction of the Parliament of Canada in respect to the establishment, maintenance and management of penitentiaries, cannot be in any way limited, restricted or affected by any provincial legislation in the Province of New Brunswick, either previous or subsequent to the confederation of the provinces under the British North America Act, 1867.—Where no Dominion statute authorizes the confinement in a penitentiary of certain classes of convicts, who, before the B. N. A. Act, 1867, came into force, might, under the laws then in force, have been sentenced to imprisonment and confined in the Saint John Penitentiary, there is no obligation upon the Government of Canada to make provision for their imprisonment and maintenance at the expense of the Dominion, in the penitentiary. *In re New Brunswick Penitentiary*, *Cout. Cas.*, 24.

AND see CONSTITUTIONAL LAW.

**PENSION.**

*Appeal—Jurisdiction — Life pension — Amount in controversy—Actuaries' tables.*—The action for \$62.50, the first monthly instalment of a life pension, at the rate of \$750 per annum claimed by the plaintiff, for a declaration that he was entitled to such annual pension from the society, payable by equal monthly instalments of \$62.50 each, during the remainder of his life, and for a condemnation against the society for such payment during his lifetime. On motion to quash the appeal, the appellant filed affidavits shewing that, according to the mortality tables used by assurance actuaries, upon the plaintiff's average expectation of life, the cost of an annuity equal to the pension claimed would be over \$7,000.—*Held*, following *Rodier v. Lapierre* (21 Can. S. C. R. 69) ; *Macdonald v. Gallivan* (28 Can. S. C. R. 258) ; *La Banque du Peuple v. Trotter* (28 Can. S. C. R. 422) ; *O'Dell v. Gregory* (24 Can. S. C. R. 661) ; and *Talbot v. Guilmarin* (30 Can. S. C. R. 482), that the only amount in controversy was the amount of the first monthly instalment of \$62.50 demanded and, consequently, that the Supreme Court of Canada had no jurisdiction to hear the appeal. *La-pointe v. Montreal Police Benevolent and Pension Society*, xxxv., 5.

See [1906] A. C. 535.

**PERJURY.**

*Criminal law—Form of oath—Practice—Voire dire*, li., 392.

See CRIMINAL LAW.

**PERSONALTY.**

*Timber license—Crown lands in British Columbia — Real estate—Personalty—Contract—Sale — Exchange — Consideration—Payment in joint stock shares — Vendor's lien—Evidence—Onus of proof — Pleading and practice*, xlv., 458.

See LIEN.

**PERSONA DESIGNATA.**

*Appeal — Expropriation — Application to appoint arbitrator—Amount in controversy—“Railway Act,” R. S. C., 1906, c. 37, s. 196—Jurisdiction of court—Practice.* *Can. Nor. Ont. R. R. Co. v. Smith*, l., 476.

See APPEAL.

**PETITION OF RIGHT.**

1. *Public work — Lands injuriously affected—Closing highway—Inconvenient substitute—Right of action*, xxxiv., 570.

See PUBLIC WORK.

2. *Constitutional law — Construction of statute—“Crown Procedure Act” — R. S. B. C. c. 57—Duty of responsible minister of*

*the Crown—Refusal to submit petition of right—Tort—Right of action—Damages — Pleading—Practice — Withdrawal of case from jury—New trial—Costs*, xxxix., 202.

See ACTION.

3. *Contract—Powers of Commissioners of the Transcontinental Railway—Liability of Crown — Construction of statute—3 Edw. VII., c. 71 (D.)*, xlv., 448.

See CROWN.

*Olmstead v. The King, Pigott v. The King*, liii., 450.

See CROWN.

**“PHEASANT HILLS BRANCH”  
CAN. PAC. RY.**

*Appeal — Jurisdiction — Discretion of Governor-in-Council — Stated case—Railway subsidies—Construction of statute—3 Edw. VII., c. 57—Conditions of contract—Estimating costs of constructing line of railway—Rolling stock and equipment*, xxxviii., 137.

See RAILWAYS.

**PILOTAGE.**

1. *Compulsory pilotage—Port of St. John, N.B.—Ships propelled wholly or in part by steam—Coal barges towed—R. S. C. c. 80, ss. 58, 59.*—Coal barges towed by steamers or tugs between the ports of Parrshoro', N.S., and St. John, N.B., are exempt from compulsory pilotage at the latter port, even though under favourable conditions they could be navigated as sailing ships.—Judgment appealed from (37 N. B. Rep. 406), affirmed. *Saint John Pilot Commissioners v. Cumberland Ry. and Coal Co.*, xxxviii., 169.

2. *Compulsory retirement of pilot—Judicial functions — Liability to action.*—The pilotage authority in a pilotage district of Canada has not absolute and arbitrary power to cancel a pilot's license, but can only do so after complaint and inquiry and proof on oath of incapacity.—If a pilotage authority, by resolution alone, without complaint, notice or investigation, declares a pilot to be dismissed “for neglect and incapacity,” and thus prevents him from performing a pilot's duties, inasmuch as it failed to observe the statutory requirements respecting the proceedings for such dismissal, it has not exercised judicial functions and is not protected from liability to an action by the pilot for damages. *Fitzpatrick, C.J.*, and *Davies, J.*, dissenting.—*Per Duff, J.*—A by-law of a pilotage authority purporting to provide for the forfeiture of pilot's licenses for incapacity could only have the effect, if at all, subject to the condition exacted by 433 (j) of the “Shipping Act” that such incapacity should be “proved on oath before the pilotage authority” and a resolution of a pilotage authority pretending to dismiss a licensed pilot for incapacity without such proof on oath was legally inoperative; but as the resolution was intended to have

and had the effect of preventing the pilot exercising his calling and since it was an act without justification or excuse it was actionable within the principle laid down by Bowen, L.J., in *Mogul Steam Ship Co. v. McGregor* (23 Q. B. D. 598).—*Per Duff, J.*—Section 433 (e) of the "Shipping Act" does not empower a pilotage authority to limit the term of a pilot's license to a period of one year.—Judgment of the Supreme Court of Nova Scotia (48 N. S. Rep. 280), reversed. *McGillivray v. Kimber*, lii., 146.

### PLAN.

1. *Crown lands—Mining lease—Trespass—Conversion—Title to lands—Evidence—Description in grant—Plan of survey—Certified copy.*—The provisions of s. 20 of "The Evidence Act," R. S. N. S. (1900) c. 163, do not permit the reception of a certified copy of a plan of survey deposited in the Crown Lands Office to make proof of the original annexed to the grant of lands from the Crown. *Nova Scotia Steel Co. v. Bartlett*, xxxv., 527.

2. *Mines and mining—Removal of ore—Boundary—Copy of plan—Evidence—Falsa demonstratio.* *Nova Scotia Steel Co. v. Bartlett*, *Cout. Cas.*, 268.

3. *Expropriation of land—Statutory authority—Manufacturing site—Survey—Location—Trespass*, xxxiv., 394.

See EXPROPRIATION.

4. *Highway—Road allowances—Reservations in township survey—General instructions—Model plan—Evidence*, xxxiv., 513.

See EVIDENCE.

5. *Practice—Pleading—Condition precedent—Construction of statute—59 Vict. c. 62, ss. 9, 25 (B.C.)—Mineral claim—Expropriation—Watercourses—Waterworks—Damages—Waiver—Injunction—Trespass*, xxxv., 309.

See EXPROPRIATION.

6. *Goat plan—Revdication—Fire insurance surveys—Mutilation by agent—Damages*, xxxvi., 7.

See EVIDENCE.

7. *Title to land—Servitude—Construction of deed—Plan of subdivision—Reservations—"Representatives"—Owners par indivis—Common lanes—Right of passage—Private wall—Windows and openings on line of lane—Arts. 533-538 C. C.*, xxxvi., 618.

See SERVITUDE.

8. *Municipal corporation—Railway aid—Construction of agreement—Expropriation—Description of lands—Reference to plans—R. S. N. S. 1900, c. 99—3 Edw. VII., c. 97 (N.S.)*, xxxvii., 75.

See CONTRACT.

9. *Public highway—Dedication by plan of sub-division*, xxxviii., 27.

See NEGLIGENCE.

10. *Title to land—Plan of survey—Evidence—Onus of proof—Findings of jury—Error—New trial*, xxxviii., 336.

See NEW TRIAL.

11. *Public work—Contract—Change in plans and specifications—Waiver by order in council—Powers of executive—Construction of statute—Directory and imperative clauses—Words and phrases—"Stipulations"—Exchequer Court Act, s. 33—Extra works—Engineer's certificate—Instructions in writing—Schedule of prices—Compensation at increased rate—Damages—Right of action—Quantum meruit*, xxxviii., 501.

See CONTRACT.

12. *Agreement for sale of land—Principal and agent—Estoppel—"Land Commissioner"—Specific performance*, xxxix., 169.

See SPECIFIC PERFORMANCE.

13. *Specific performance—Tender for land—Reference to surveyors—Reports and plans—Agreement for tender—One party to acquire and divide with other—Division by plan—Reservation of portion of land from Crown grant*, xxxix., 220.

See SPECIFIC PERFORMANCE.

14. *Boundary—Order for borinage—Evidence—Existing posts and blazing—Expertise—Costs in action en borinage*, xxxix., 680.

See BOUNDARY.

15. *Dedication of highway—Conditions in Crown grant—Access to beach—Plan of subdivision—Destination by owner—Limitation of user—Long usage by public—Acquisitive prescription—Recitals in deeds—Cadastral plans—References and notices—Evidence—Presumptions*, xli., 264.

See HIGHWAY.

16. *Railways—Construction and operation—Location plans—Delaying notice to treat—Action to compel expropriation—Compensation in respect of lands not acquired—Mandamus—Use of highway—Crossing public lane—Nuisance*, xli., 65.

See RAILWAYS.

17. *"Railway Act"—Expropriation—Municipal plan—Severance of lots—Injurious affection—Reference back to arbitrators—R. S. C., 1906, c. 37—(D.) 1 & 2 Geo. V., c. 22, s. 6. C. N. O. R. R. Co. v. Holditch*, 1, 265.

See ARBITRATIONS.

18. *Railways—Expropriation—Materials for construction—Notice to treat—Statute—"Railway Act," R. S. C., 1906, c. 37, ss. 180, 191, 192, 193, 194, 196—Compensation—Date of ascertainment of value—Order for possession—Deposit of plans—Approval of Board of Railway Commissioners. Sask. Land v. Calgary & Edmonton R. R.*, li., 1.

See RAILWAYS.

19. *Railways—Location—Registration of plans—Construction of line—Plan of subdivision subsequently filed—Dedication of highway—Rights of municipality—Priority—"Railway Act," R. S. C., 1906, c. 37—Dominion "Railway Act," 1903. Edmonton v. Calgary & Edmonton R. R.*, liii., 406.

See RAILWAYS.

## PLEADING.

1. *Action for account—Partition of estate—Requête civile—Amendment of pleadings—Supreme Court Act, s. 63—Order nunc pro tunc—Final or interlocutory judgment—Form of petition in revocation—Res judicata.*—On a reference to amend certain accounts already taken, a judgment rendered on 30th September, 1901, adjudicated on matters in issue between the parties and, on the accountant's report, homologated 25th October, 1901, judgment was ordered to be entered against the appellant for \$26,316, on 30th January, 1902. The appellant filed a *requête civile* to revoke the latter judgment, within six months after it had been rendered, but without referring to the first judgment in the conclusions of the petition. It was objected that the first judgment had the effect of *res judicata* as to the matter in dispute and was a final judgment *inter partes*.—*Held*, that whether the first judgment was final or merely interlocutory, the petition in revocation must be taken as impeaching both former judgments relating to the accounts upon which it was based; that it came in time as it had been filed within six months of the rendering of the said last judgment; and that it virtually raised anew all the issues relating to the taking of the accounts affected by the two former judgments.—A motion to amend the petition so as to include specifically any necessary conclusion against the judgment of 30th September, 1901, had been refused in the court below and was renewed on the appeal to the Supreme Court of Canada.—*Held*, that, as the facts set forth in the petition necessarily involved a contestation of the accountant's reports dealt with in the first judgment, the case was a proper one for the exercise of the discretion allowed by s. 63 of the Supreme Court Act and that the amendment to the conclusions of the petition should be permitted *nunc pro tunc*. *Hill v. Hill*, xxxiv., 13.

2. *Petitory action—Parties—Litigious rights—Pacte de quotâ litis—Illegal contract—Specific performance—Joinder of causes of action—Retrait successoral—Tiers détenteurs.*—There can be no objection to the *demande au pétitoire* being joined in the action for specific performance.—The defence of *retrait de droit litigieux* is an exception which can be set up only by the debtor of the litigious right in question. *Powell v. Watters* (28 Can. S. C. R. 133), referred to.—Where a conveyance affects a specified share of an immovable the exception of *retrait successoral* cannot be set up under art. 710 C. C.; *Baxter v. Phillips* (23 Can. S. C. R. 317), and *Leclerc v. Beaudry* (10 L. C. Jur. 20), referred to. Moreover, in the present case, the controversy did not relate to a succession and, in any event, the assignor could not exercise the *droit de retrait successoral*.—*Semble*, however, that the retention of a fractional interest in the property might have the effect of preserving the right to *retrait successoral*. [Leave to appeal to Privy Council refused.] *Meloche v. Déguire*, xxxiv., 24.

AND see CHAMPERTY.

AND see TITLE TO LAND.

3. *Practice—Pleading—B. C. Rule 168—New points raised on appeal—Condition precedent—Construction of statute—59 Vict. c. 62, ss. 9, 25 (B.C.)—Trespass—Damages—Waiver—Injunction.*—The B. C. Sup. Ct. Rule 168, provides that "any condition precedent, the performance of which is intended to be contested, shall be distinctly specified in his pleadings by the plaintiff or defendant (as the case may be), and, subject thereto, an averment of the performance or occurrence of all conditions precedent, necessary for the case of the plaintiff or defendant, shall be implied in his pleadings." In an action for trespass and a mandatory injunction, the defendants pleaded the right of entry under a private Act, and the consent or acquiescence of the plaintiffs. The plaintiffs replied setting up the failure of defendants to comply with certain conditions precedent to the exercise of the privileges claimed, but did not set up another condition precedent upon which the judgment appealed from proceeded, though it was not referred to at the trial.—*Held*, *Killam, J., contra*, that the rule refers rather to cases founded on contract than to those where statutory authority is relied upon and that the plaintiffs need not have replied as they did, but having done so without setting up the condition specially relied upon in appeal, thereby possibly misleading the defendants, they were properly punished by the court below by being deprived of their costs in appeal. *Sandon Water Works and Light Co. v. Byron N. White Co.*, xxxv., 309.

4. *Revendication—Statement of claim—Pleadings—Procedure—Arts. 110 and 339 C. P. Q.—Evidence—Judgment secundum allegata et probata—Ultra petita—Surprise.*—In an action for revendication of books, documents and records retained by a fire insurance agent after his dismissal and for damages in default of delivery thereof, several policy copy-books, which could not be found at the time of the seizure, were delivered up in a mutilated condition by the defendant during the pendency of the action, the defendant being unaware of such mutilation. Some time afterwards the answers to defendant's pleas were filed and contained no reference to the mutilated and incomplete condition in which these books were returned. At the trial plaintiffs were allowed to give evidence as to the cost of replacing these books in proper condition, although defendant objected to the adduction of such proof, and the trial court judge assessed damages in this respect at \$200, and at \$2,000 in respect of certain mutilated plans, at the same time declaring the revendication valid, etc. On appeal by the plaintiffs from the judgment of the King's Bench, reversing the trial court judgment in regard to the pecuniary condemnation:—*Held*, affirming the judgment appealed from, that, as the defendant had been surprised, in so far as the issues affecting the policy copy-books were concerned, he was entitled to relief as to the item of \$200 for damages in respect thereof. With regard to the item of \$2,000 damages, however, as the defendant could not have been taken by surprise, he himself having mutilated the plans, the Supreme Court of Canada reversed the judgment appealed from and restored the trial

court judgment as to that item of the damages assessed. *Norwich Union Fire Insurance Co. v. Kavanagh*, xxxvi., 7.

5. *Objections taken on appeal—Sale of land—Setting aside fraudulent conveyance—Defence nihil debet—Amendment of pleadings.*—In an action to set aside a conveyance as made in fraud of creditors, the defendant desiring to meet the action by setting up that there was no debt due and, consequently, that no such fraud could exist, must allege these objections in his pleadings. In the present case the defendant, having failed to plead such defence, was allowed to amend on terms, the Chief Justice dissenting. *Syndicat Lyonnais du Klondyke v. McGrade*, xxxvi., 251.

6. *Cross-demand—Compensation—Practice—Damages—Penal clause—Estoppel—Waiver.*—A debt which is not clearly liquidated and exigible cannot be set off in compensation of a claim upon a promissory note except by means of a cross-demand made under art. 217 of the Code of Civil Procedure of the Province of Quebec. Judgment appealed from affirmed. *Nesbitt and Idington, J.J.*, dissenting. *Ottawa N. & W. Railway Co. v. Dominion Bridge Co.*, xxxvi., 347.

AND see CONTRACT.

7. *Negligence—Common employment—Defence by Crown—Workmen's Compensation Act.*—The Manitoba Workmen's Compensation Act does not apply to the Crown. *Idington, J.*, dissenting.—In Manitoba the Crown as represented by the Government of Canada may, in an action for damages for injuries to an employee, rely on the defence of common employment. *Idington, J.*, dissenting. *Ryder v. The King*, xxxvi., 462.

8. *Controverted election—Personal corruption—Charge in petition—Judge's report—Adjudication—Amendment.*—On a charge of personal corruption by the respondent if the adjudication by the trial judges does not contain a formal finding of such corruption the Supreme Court of Canada, on an appeal, may insert it if the recitals and reasons given by the judges warrant it.—Allegations in the petition that respondent had himself given and procured, undertook to give and procure money and value to electors and others named, his agents, to induce them to favour his election and vote for him for the purpose of having such moneys and value employed in corrupt practices were sufficient to cover the offence of which the respondent was found guilty. *St. Ann's Election Case*, xxxvii., 563.

AND see ELECTION LAW.

9. *Subaqueous mining—Crown grants—Dredging lease—Breach of contract—Subsequent issue of placer mining licenses—Damages—Pleading and practice—Statement of claim—Demurrer—Cause of action.*—A statement of claim which alleges that the Crown, after granting a lease of areas for subaqueous mining and while that lease was in force, in derogation of the rights of the lessee to peaceable enjoyment thereof, interfered with the rights vested in him by transferring the leased area to placer miners who were put in possession of them by the Crown

to his detriment, discloses a sufficient cause of action in support of a petition of right for the recovery of damages claimed in consequence of such subsequent grants.—Judgment appealed from (10 Ex. C. R. 390) reversed. *Davies and Idington, J.J.*, dissenting.—*Davies, J.*, dissented on the ground that there was no sufficient allegation in the petition either of interference with the submerged beds or bars of the stream, which alone were included in the dredging lease, or of such active interference by the Crown as would justify an action. (Appeal to Privy Council dismissed, 10th July, 1908.) *McLean v. The King*, xxxviii., 542.

10. *Admiralty—Preliminary act—Amendment—Collision—Evidence.*—In an action in admiralty claiming damages for injury to plaintiffs' ship, the "Neepawah," through collision with the "Westmount" belonging to defendants, the preliminary act and statement of claim alleged that the port quarter of the latter struck the stern of the "Neepawah." The local judge, in his judgment, held that the evidence shewed a collision between the two ships stern to stern and against objection by defendants' counsel, of his own motion allowed the statement of claim to be amended to conform to such evidence, stating that its admission had not been objected to and that defendants were not misled.—*Held*, that such amendment should not have been made; that it set up a new case and one entirely different from that presented by the preliminary act and statement of claim and greatly prejudiced the defence; and that the local judge was wrong in stating that the evidence was admitted without objection as it was protested against at the trial.—*Held*, also, that errors in the preliminary act may be corrected by the pleadings, but, if not, the parties will be held most strongly to what is contained in their act.—*Held, per Davies, MacLennan and Duff, J.J.*—That the plaintiffs had not satisfactorily established that the collision, even that charged under the amendment, had actually occurred.—*Per Fitzpatrick, C.J.* That the evidence proved that no collision between the vessels took place.—*Idington, J.*, concurred in the judgment allowing the appeal. *Montreal Transportation Co. v. New Ontario S. S. Co.*, xl., 160.

11. *Purchase for value without notice—Onus—Evidence—Affirmative and negative evidence—Weight of evidence.*—The plea of purchase for value without notice must be proved in its entirety by the party offering it; it is not incumbent on the opposite party to prove notice after the purchase for value is established. Where a conversation over the telephone was relied on as proof of notice the evidence of the party asserting that it took place and giving the substance of it in detail must prevail over that of the other party who states only that he does not recollect it. *Union Bank of Halifax v. Indian and General Investment Trust*, xl., 510.

12. *Chattel mortgage—13 Eliz. c. 5—Approbating and reprobating transaction—Right to redeem—Oral evidence to vary deed—Sheriff's sale—Equity of redemption—Not salable under fl. ja.*—The appellants were judgment creditors of one H. and the

respondents grantees under a chattel mortgage made by H. The appellants levied on and sold part of the goods described in the mortgage and became purchasers from the sheriff. Respondent claimed goods under the mortgage. The appellants then filed a bill, alleging that the mortgage was made in fraud of creditors and was also paid off, and asked for a decree that it be set aside or declared satisfied.—*Held*, that the plaintiff had not made out a case of fraud and the judgment below should be affirmed; that the plaintiff was not entitled to approbate and reprobate the same transaction, and that a bill so framed was demurrable; that a bill to set aside a mortgage as fraudulent under 13 Eliz. and asking for an account should be coupled with an offer to redeem; that oral evidence to shew a different consideration from that expressed in the deed was admissible. *Halifax Banking Co. v. Mathew* (xvi., 71); *Cam. Cas.* 251.

13. *Lessor and lessee—Lease for years—Covenant to renew—Option of lessor—Ejectment—Equitable plea.*—A lease for years provided that on its termination the lessor, at his option, could renew or pay for improvements. When it expired the lessor notified the lessee that he would not renew, and that he had appointed a valuator of the improvements requesting her to do the same, which she did. The valuation was made and the amount thereof tendered to the lessee which she refused on the ground that valuable improvements had not been appraised, and refusing to give up possession when demanded the lessor brought ejectment. By her plea to the action the lessee set up the invalid appraisal and claimed that as the lessor's option could not be exercised until a valid appraisal had been made he was not entitled to possession. By a plea on equitable grounds she again set up the invalid appraisal and asked that it be set aside and the lessor ordered to specifically perform the condition in the lease for renewal and for other and further relief.—*Held*, affirming the judgment appealed against (38 N. B. Rep. 465), *Idington, J.*, dissenting, that though the appraisal was a nullity that fact did not defeat the action of ejectment; that the acts of the lessor in giving notice of intention not to renew, demanding possession and bringing ejectment, constituted a valid exercise of his option under the lease, and that the lessor was entitled to possession.—*Held*, also, *Idington, J.*, dissenting, that s. 289 of the "Supreme Court Act of New Brunswick" did not authorize that court to grant relief to the lessee under her equitable plea; that such a plea to an action of ejectment must state facts which would entitle the defendant to retain possession, which the plea in this did not do. *Porter v. Purdy*, xli., 471.

14. *New objections raised on appeal.*—*Per Idington and Anglin, J.J.*—Objections based upon provisions of enabling statutes which have not been set up in the pleadings nor relied upon in the courts below cannot be entertained upon an appeal to the Supreme Court of Canada. *Hamelin v. Bancerman* (31 Can. S. C. R. 534) followed. *Gale v. Bureau*, xlv., 305.

AND see RIVERS AND STREAMS.

15. *Practice—Amendment ordered by court—Married woman—Legal community—Right of action—Reprise d'instance—Arts. 78, 174, 176 C. P. Q.—R. S. C. c. 135, ss. 63, 64. North Shore Power Co. v. Duguay*, xxxvii., 624.

16. *Contract by municipal corporation—Powers—By-law or resolution—Right of action—Confession of judgment—Evidence—Admissions—Estoppel by record—Art. 1245 C. C.—Concurrent findings of fact—Practice on appeal*, xxxiv., 495.

See EVIDENCE.

17. *Appeal—Practice—Exception—Art. 1220 C. P. Q.—Acquiescence—Motion to quash—River improvements—Continuing damages—Contract—Protective works—Discretion of court below—Varying minutes of judgment—Costs*, xxxiv., 502.

See PRACTICE.

18. *Adding parties—Amendment ordered on appeal*, xxxvi., 152.

See PRACTICE.

19. *Title to land—Promise of sale—Entry in land-register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Possessory action—Compensation for improvements—Rents, issues and profits—Set-off—Tender of deed—Restrictive conditions—Evidence—Arts. 411, 412, 417, 419, 1204, 1233, 1476, 1478 C. C.*, xxxix., 47.

See ACTION; TITLE TO LAND.

20. *Appeal—Stated case—Provincial legislation—Assessment—Municipal tax—Foreign company—"Doing business in Halifax,"* xxxix., 174.

See ASSESSMENT AND TAXES.

21. *Title to land—Interest in mining areas—Sale by trustee—Recovery of proceeds of sale—Agreement in writing—Statute of Frauds—R. S. N. S. (1900) c. 141, ss. 4 and 7—Part performance—Acts referable to contract—Evidence—Pleading*, xxxix., 608.

See TITLE TO LAND.

22. *Malicious prosecution—Reasonable and probable cause—Bonâ fide belief in guilt—Burden of proof—Right of action—Damages—Art. 1053 C. C.*, xl., 128.

See MALICIOUS PROSECUTION.

23. *Negligence of fellow servant—Operation of railway—Defective switch—Indemnity and satisfaction—Public work—Tort—Liability of Crown—Right of action—Exchequer Court Act, s. 16 (c)—"Lord Campbell's Act"—Art. 1056 C. C.*, xl., 229.

See NEGLIGENCE.

24. *Damages—Trespass—Cutting timber—Sale to bonâ fide purchaser—Action by owner of land*, xl., 399.

See DAMAGES.

25. *Admiralty law—Jurisdiction of the Exchequer Court of Canada—Claim under mortgage on ship—Action in rem—Abate-*



ment of contract price—Defects in construction—Damages, xl., 418.

See SHIPS AND SHIPPING.

26. Title to land—Trespass—Conventional line—Boundary—Agreement at trial—Practice, Cam. Cas. 171.

See TRESPASS.

27. Sale of goods—Insolvency—Bonâ fides—Fraudulent preference—Interpleader—Res judicata—Estoppel—Pleading—Bar to action, Cam. Cas. 306.

See SALE.

28. Life insurance—Warranty—Mis-statements—Concealment of material facts—Questions at issue—Findings of fact—Amendment—Practice—Successful party moving against findings, Cam. Cas. 463.

See INSURANCE, LIFE.

29. Right of appeal—Special leave to appeal per saltum—Questions in controversy—Negligence—Workmen's Compensation for Injuries—Damages—Amendment to pleadings—Rule 615—Nonsuit—Verdict—Procedure, Cout. Cas. 326.

See APPEAL.

30. Appeal—Practice—Amendment of pleadings—Discretionary order—Final judgment, Cout. Cas. 386.

See APPEAL.

31. Appeal—Jurisdiction—Final judgment—Time for appealing—Exchequer Court Act, R. S. C. 1906, c. 140, s. 82—Exchequer Court Rules, xli., 1.

See APPEAL.

32. Conditional sale—Price payable before delivery—Execution against movables—Possession by judgment debtor—Ownership—Procedure by bailiff—Guardian to second seizure—Sale super non domino et non possedente—Adjudication upon invalid seizure—Title to goods—Rescission of sale—Action—Legal maxims, xli., 331.

See EXECUTION.

33. Libel—Privileged publications—Reports of judicial proceedings—Public policy—Pleadings in civil actions—Proceedings not in open court, xli., 339.

See LIBEL.

34. Practice—Future damages—Pleading—New objections raised on appeal—R. S. Q. 1888, xliv., 305.

See RIVERS AND STREAMS.

35. Timber license—Crown lands in British Columbia—Real estate—Personalty—Contract—Sale—Exchange—Consideration—Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof—Pleading and practice, xliv., 458.

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36. Practice and procedure—Expertise—Appointment of single expert—Submission of irrelevant questions—Arts. 392-409 C. P. Q. Cie. Pontbriand v. Cie. de Navigation Chateauguay et Beauharnois, xlvii., 603.

37. Gift—Money received—Evidence—Presumption—Proceeds of prostitution—Conversion—Lien. Johnston v. Desaulniers, xlvii., 620.

38. Negligence—Railway—Findings of jury—Volens. Grand Trunk Ry. Co. v. Brulot, xlvii., 629.

39. Company—Subscription for shares—Misrepresentation—Action for calls—Charge to jury—Misdirection—Objection. Boeckh v. Gowganda Mines, xlvii., 645.

40. Action against minor—Exception of minority—Practice—Irregularity in procedure—Waiver after majority—Ratification—Prejudice—Nullity—Review by appellate court, xlvii., 103.

See PRACTICE.

41. Action—Public officer—Notice—Notary public—Principal and agent—Mandate—Practice—New objections on appeal—Case on appeal—Notes of reasons by judges—Findings of fact—Art. 88 C. P. Q., xlvii., 382.

See PRACTICE.

42. Sale of land—Deceit—Misrepresentation—Honest belief—Amendment—Adding new cause of action, xlvii., 399.

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See PRACTICE AND PROCEDURE.

43. Covenant in mortgage—Married woman—Signature procured by fraud—Non est factum—Estoppel, l., 485.

See FRAUD.

44. Partnership—Lease—Scope of authority—Resiliation—Form of action—Appropriate relief—Practice. Hyde v. Webster, l., 295.

See PARTNERSHIP.

45. Recalling judgment—Defect—Correction of omission—Amendment of pleadings—Jurisdiction—Costs—Settlement of minutes, li., 629.

See JUDGMENT.

46. Construction of statute—Prohibitive sanction—Alberta "Land Titles Act"—Retrospective legislation—Illegality of contract—Rescission—Recovery of money paid—Right of action—Practice—Appeal. Boulevard Heights v. Veilleux, liii., 185.

See STATUTE.

AND see PRACTICE AND PROCEDURE.

### PLEDGE.

1. *Sale of goods—Suspensive condition—Term of credit—Delivery—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Banking—Bailee receipt—Brokers and factors—Principal and agent—Resiliation of contract—Revendication—Damages—Practice—Pleading—52 Vict. c. 30, ss. 64, 73.*]—The absence of the indorsement on bills of lading by the consignee therein named is notice of an outstanding interest in the goods represented by the bills and places persons proposing to make advances upon the security of those bills upon inquiry in respect to the circumstances affecting the bills. On failure to take proper measures in order to ascertain these facts and obtain a clear title to the bills and goods, any pledge thereof must be assumed to have been made subject to all rights of such consignee. The Chief Justice dissented. — *Held, per Taschereau, C.J., dissenting:*—Where a sale of goods has been completed by actual tradition and delivery the mere absence of the consignee's indorsement upon shipping bills representing the goods made in the name of the vendor cannot have the effect of reserving any right of property in the vendor. If the goods have been sold upon terms of credit, the unpaid vendor has no right to revendicate such goods after they have passed into the possession of a third person in the ordinary course of business, and, in the present case, on failure of the conservatory seizure and in the absence of any right of the plaintiff to revendicate the goods, the alternative relief prayed for by his action should not be granted. *Gosselin v. Ontario Bank*, xxxvi., 406.

2. *Broker—Stock—Purchase on margin—Pledge of stock by broker—Possession for delivery to purchaser.*]—C. instructed A. & Co., brokers, to purchase for him on margin 300 shares of a certain stock, paying them \$3,000, leaving a balance of \$6,225 according to the market price at the time. A. & Co. instructed brokers in Philadelphia to purchase for them 600 shares of the stock, paying \$9,000, nearly half the price, and pledged the whole 600 for the balance. The Philadelphia brokers pledged these shares with other securities to a bank as security for indebtedness and later drew on A. & Co. for the balance due thereon, attaching the script to the draft which was returned unpaid and 475 of the 600 shares were then sold and the remaining 125 returned to A. & Co. In an action by the latter to recover from C. the balance due on the advance to purchase the shares with interest and commission:—*Held*, reversing the judgment of the Court of Appeal (12 Ont. L. R. 435, affirming 10 Ont. L. R. 159), Fitzpatrick, C.J., dissenting, that the brokers had no right to hypothecate the shares with others for a greater sum than was due from C. unless they had an agreement with the pledgee whereby they could be released on payment of said sum; that there never was a time when they could appropriate 300 of the shares pledged for delivery to C. on paying what the latter owed; and that, therefore, they were not entitled to recover. — The bought note of the transaction contained this

memo.: "When carrying stock for clients we reserve the right of pledging the same or raising money upon them in any way convenient to us."—*Held, per Davies and Idington, J.J.*, that this did not justify the brokers in pledging the shares for a sum greater than that due from the customer. *Per Duff, J.*—That the shares were purchased before this note was delivered, and it could not alter the character of the authority conferred on the brokers; and that no custom was proved which would modify the common law right and duties of the brokers and their customer in the transaction. — (Leave to appeal to Privy Council refused. 19th July, 1907; 49 Can. Gaz. 391.) *Comtee v. Securities Holding Co.*, xxxviii., 601.

3. *Trust—Banking—Hypothecation of securities—Terms of pledge—Duty of pledgee.*]—B. sold property to the Syndicat and took as security for the price mortgages on real and personal property and a promissory note and transferred the securities to the bank to secure his present and future indebtedness to it. He signed a document authorizing the bank to realize on the same in its discretion, to grant extensions and give up securities, accept compositions, grant releases and discharges and otherwise deal with them as it might see fit without prejudice to B.'s liability. The note not being paid at maturity, the bank sued the Syndicat and B. upon it and on the covenants in the mortgages and obtained judgment against both. In the same action, the Syndicat, on counterclaim for damages for deceit, had judgment against B. which was eventually set aside, but, while it existed, the bank made a settlement with the Syndicat and discharged the latter from all liability on the judgment of the bank on payment of over \$20,000 less than the debt. B. was not a party to this settlement and the bank afterwards refused to give him any information about it or to give him a statement of his account with the bank itself. In an action by B. for an account and to have the bank enjoined from further dealings with the securities:—*Held*, that the power given to the bank to deal with the securities was to be exercised for the purpose of liquidating B.'s debt, and, as to the surplus, for B.'s benefit; that, the settlement having been made solely for the benefit of the bank and in sacrifice of B.'s interests, the bank violated its duty, and had not satisfied the onus upon it of shewing that, had the whole amount of the judgment been recovered from the Syndicat, B. would not have benefited thereby. *Canadian Bank of Commerce v. Barrette*, xli., 561.

4. *Broker—Stock carried on margin—Right to pledge.*]—A broker who carries stock on margin for a customer has a right to pledge it for his own purposes to the extent of the amount he has advanced.—If the broker pledges such stock as security for an amount greater than his advances, whereby he makes no profit and the client suffers no loss, he is not liable as for a conversion provided that on demand of his client he delivers to the latter the number of shares ordered and which he has been carrying for him. *Anglin, J., dissenting.*—*Per Duff, J.*—The broker is not liable under the above

conditions if he pledges the stock believing that his arrangement with his client so authorized.—*Per Duff, J.*—The dealings complained of were in accordance with the ordinary practice of brokers in Toronto in respect to stocks being carried "on margin," and the proper inference from all the evidence was that such dealings were authorized by the arrangement between the parties.—*Per Anglin, J.*—The broker must at all times be in a position to hand over the stock to his client and if, as the result of his pledging it, he puts himself in a position where he may not be able to do so, he is guilty of conversion. — Judgment of the Court of Appeal (20 Ont. L. R. 611), affirming that of the Divisional Court (19 Ont. L. R. 545) affirmed. *Conmee v. The Securities Holding Co.* (38 Can. S. C. R. 601) distinguished. (Leave to appeal to Privy Council was refused, 13th Dec., 1911.) *Clarke v. Baillie*, xlv., 50.

5. *Banking* — *Promissory note* — *Special indorsement* — *Condition* — *Pledge* — *Collateral security* — *Holder in due course* — *Payment and satisfaction* — *Liability on current account.*]—The bank having refused further loans to a trading company until its current liability to the bank was reduced, a note by the company in favour of its directors was specially indorsed to the bank by them and handed to the company's manager, who had charge of its financial affairs, with instructions to have the note discounted, but without authority to pledge it. Without informing the bank of his restricted power to deal with this note, the manager deposited it with the bank as collateral security for the company's current liability and, in consideration of the deposit, obtained fresh advances from the bank by discounts of the company's trade paper. At maturity of the note the trade paper had been retired and an overdraft on the company's account had been covered, but the general indebtedness of the company for former loans still subsisted. In a suit by the directors for the return of the note the bank counterclaimed for the amount thereof.—*Held*, affirming the judgment appealed from (21 Man. R. 1), that, so far as the bank was aware, the company's manager had ostensible authority to pledge the note as collateral security for the general indebtedness of the company on its current account, that re-payment of the fresh advances by retirement of the trade paper so discounted was not satisfaction of the debt for which the note was pledged, and that the bank was entitled to enforce payment of the note as holder in due course for valuable consideration within the meaning of the "Bills of Exchange Act," and to recover thereon the amount of the company's general indebtedness remaining unsatisfied. *Cox v. Canadian Bank of Commerce*, xlvi., 564.

6. *Mandate*—*Principal and surety*—*Negligence*—*Laches* — *Release of surety*—*Mortgage* — *Pledge*—*Construction of contract*—*Principal and agent*, xxxv., 663.

See PRINCIPAL AND SURETY.

7. *Ships and shipping* — *Material used in construction* — *Sale of goods* — *Contract*—*Principal and agent*—*Misrepresentations*—

*Mistake*—*Conversion* — *Trover* — *Evidence* — *Misdirection*—*New trial*—*Ship's husband* — *Pledging credit of owners*—*Necessary outfitting at home port*, *Cout. Cas.*, 131.

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8. *Privileges and hypothecs*—*Tramway*—*Operation of highway*—*Title to land*—*Immobilization by destination* — *Sale of tramway by sheriff as a "going concern"*—*Unpaid vendor*—*Lien on price of cars*—*Contract*—*Construction of statute*, 3 *Edu. VII. c. 91 (Que.)* — *Priority of claim*—*Collocation and distribution*—*Arts. 379, 2000 C.C.* — *Art. 752 Mun. Code. Ahearn & Soper v. N. Y. Trust*, xlii., 267.

See PRIVILEGES AND HYPOTHECS.

## POLICE MAGISTRATE.

1. *General sessions of the peace*—*Jurisdiction of magistrate*—*Constitution of criminal courts*, xxxiv., 621.

See CRIMINAL LAW.

2. *Summary trial*—*Jurisdiction of magistrate*—*Offence beyond limits*, xli., 5.

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## POLICE REGULATIONS.

*Construction of statute*—*Quebec "Sunday Act"* — *Prohibition of theatrical performances*—*Local, municipal and police regulations*—*Criminal law* — *Legislative jurisdiction* — *Validation by federal legislation* — "Lord's Day Act," xlii., 502.

See CONSTITUTIONAL LAW.

## POSSESSION.

1. *Crown land* — *Adverse possession* — *Grant during* — 21 *Jac. I. c. 14 (Imp.)*—*Information for intrusion.*]—Though there has been adverse possession of Crown lands for more than twenty years the Act, 21 *Jac. I. c. 14*, does not prevent the Crown from granting the same without first re-establishing title by information of intrusion. Judgment appealed from (36 N. B. Rep. 260) reversed, *Davies, J.*, dissenting. (Appeal to Privy Council dismissed, 47 *Can. Gaz.* 424.) *Maddison v. Emmerson*, xxxiv., 533.

2. *Title to land*—*Colourable title*—*Possession of part of land*—*Statute of limitations*—*Evidence.*]—The possession of a part of land claimed under colour of title is constructive possession of the whole which may ripen into an indefeasible title if open, exclusive and continuous for the whole statutory period.—Carrying on lumbering operations during successive winters with no acts of possession during the remainder of each year does not constitute continuous possession. And it is not exclusive where other parties lumbered on the land continuously or at intervals, during any portion of such period. *Wood v. LeBlanc*, xxxiv., 627.

3. *Title to land—Sea beaches—Servitude—Possession annale—Possessory action.*]—The possession necessary to entitle a plaintiff to maintain a possessory action (in Quebec) must be continuous and uninterrupted, peaceable, public and as proprietor for the whole period of a year and a day immediately preceding the disturbance complained of. *Couture v. Couture*, xxxiv., 716.

4. *Trespass—Possession—Evidence—Expropriation—Railways.*]—The casual use of land for pasturing cattle in common with other persons does not constitute evidence of possession sufficient to maintain an action for trespass—Judgment appealed from (1 East. L. R. 524) reversed. *Temiscouata Ry. Co. v. Clair*, xxxviii., 230.

AND see APPEAL.

5. *Sale of goods—Owner not in possession—Authority to sell—Secret agreement—Estoppel*, xxxiv., 429.

See SALE.

6. *Title to lands—Crown grant—Description—Implied reservations—Navigable waters—Floatable streams—Inlet of navigable river—Crown domain—Public law—Construction of deed—Evidence—Estoppel—Waiver—Adverse occupation*, xxxiv., 603. See RIVERS AND STREAMS; TITLE TO LANDS.

7. *Title to land—Trespass—Possession—Right of action—Enclosure by fencing*, xxv., 185.

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8. *Title to land—Conveyance in fee—Reservation of life estate—Ejectment*, xxxvi., 231.

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9. *Limitation of actions—Unregistered deed—Subsequent registered mortgage—Right of entry*, xxxvi., 455.

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10. *Statute of limitations—Possession of land—Constructive possession—Colourable title—Effect of sheriff's sale*, xxxvii., 157.

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11. *Title to land—Ownership—Artificial watercourse—Canal banks—Trespass—Possessory action—Borinage—Practice*, xxxvii., 668.

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12. *Title to land—Promise of sale—Entry in land register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Possessory action—Compensation for improvements—Rents, issues and profits—Set-off—Tender of deed—Restrictive conditions—Evidence—Arts. 411, 412, 417, 419, 1204, 1233, 1476, 1478 C. C.*, xxxix., 47.

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13. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with watercourse—Agreement as to user—Expiration of license by non-use—Tacit renewal—Can-*

*cellation of agreement—Recourse for damages*, xxxix., 81.

See PRACTICE.

14. *Title to land—Room in building—Adverse possession—Statute of Limitations—Incidental rights—Implied grant—License or easement*, xl., 313.

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15. *Lessor and lessee—Covenant for renewal—Option of lessor—Second term—Possession by lessee after expiration of term—Construction of deed—Specific performance*, Cam. Cas. 486.

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16. *Appeal—Jurisdiction—Title to land—Action possessoire—Demolition of works—Matter in controversy*, Cout. Cas. 141.

See APPEAL.

17. *Title to land—Lease for years—Possession by sub-tenant—Purchase at sheriff's sale—Adverse occupation—Evidence—Conveyance of rights acquired—Compromise—Waiver—Estoppel*, Cout. Cas. 158.

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18. *Title to land—Prescription—Interruption of acknowledgment—Evidence*, xlv., 130.

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19. *Construction of statute—Fishery and game leases—Personal servitude—Possession—Use and occupation—Right of action—Action en complainte—Renewed leases—Priority—Watercourses—Works to facilitate lumbering operations—Driving logs—Storage dams—Penning back waters out of track of transmission—Damages—Rights of lessees—Injury to preserves—Injunction—Demolition of works*, xlv., 1.

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20. *Mortgage—Manitoba "Real Property Act"—Power of sale—Special covenant—Notice—Statutory supervision—Registered title—Equitable rights—Possession by mortgagee—Limitation of action—Construction of statute—R. S. M. 1902, c. 148, s. 75—"Real Property Limitation Act," R. S. M. 1902, c. 100, s. 20, xlv., 618.*

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21. *Title to land—Foreshore—Nature of possession—Nullum tempus Act. Tweedie v. The King*, lii., 197.

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1. *Municipal corporation — Sale of corporate property — Committee of council — Authority to sell — Ratification*, xxxix., 586.  
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2. *Trust — Company law — Extra remuneration — Ultra vires act of directors — Ratification — Recovery of moneys illegally paid — Mistake of law*, xxxix., 614.  
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14. JUDGMENTS, 251-281.
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16. NEW TRIAL, 324-346.
17. PARTIES, 347-351.
18. PAUPER SUITS, 352.
19. REFERENCES, 353-356.
20. RAILWAY BOARD, 357-361.
21. RULES OF PRACTICE, 362-374.
22. SERVICE OF PROCESS, 375-378.
23. STAY OF PROCEEDINGS, 379-388.
24. WRITS, 389-391.

**1. ACCOUNT AND INQUIRY.**

1. *Requête civile — Amendment — Supreme Court Act, s. 63 — Discretion — Order nunc pro tunc*.]—A motion to amend a petition in revocation of a final judgment so as to include specifically any necessary conclusions against a former judgment deciding the issue in part and as to accountant's report, had been refused in the court below and was

renewed on the appeal to the Supreme Court of Canada.—*Held*, that, as the facts set forth in the petition necessarily involved a contestation of the accountant's reports dealt with in the first judgment, the case was a proper one for the exercise of the discretion allowed by sec. 63 of the Supreme Court Act and that the amendment to the conclusions of the petition should be permitted *nunc pro tunc*. *Hill v. Hill*, xxxiv., 13.

AND see REQUÊTE CIVILE.

2. *Account — Statute of Limitations — Agents or partners — Reference*.]—On a reference to the master, the taking of the accounts was brought down to a time at which defendants claimed that the contract was terminated by notice. The Court of Appeal ordered that they should be taken down to the date of the master's report.—*Held*, that this was a matter of practice and procedure as to which the Supreme Court would not entertain an appeal. *Hamilton Brass Manufacturing Co. v. Barr Cash and Package Carrier Co.*, xxxviii., 216.

AND see ACCOUNT.

3. *Breach of trust — Accounts — Evidence — Nova Scotia "Trusts Act" — 2 Edw. VII. c. 13 — Liability of trustee — N. S. Order XXXII, r. 3 — Judicial discretion — Statute of Limitations*, xxxvii., 163.

See TRUSTS.

4. *Administration proceedings — Statute of Limitations — Champertous agreement*, Cam. Cas. 119.

See CHAMPERTY.

5. *Reference to master — Taking of accounts — Matter in controversy — Appeal — Discretionary order*, Cout. Cas. 382.

See PRACTICE.

**2. ACTIONS.**

6. *Tramway — Contract with municipality — Limited tickets — Specific performance — Injunction — Right of action — Parties*.]—An injunction granted by the judgment of Street, J. (8 Ont. L. R. 642), affirmed by the Court of Appeal for Ontario (10 Ont. L. R. 594) was affirmed by the Supreme Court of Canada for the reasons given in the courts below. The order of Street, J., restrained the company from operating tram-cars in which they did not provide "workmen's tickets" good for passenger fares during certain fixed hours of each day in virtue of an agreement with the city. The Court of Appeal held that the agreement was *intra vires*, that the company were obliged to provide such tickets, that it was not necessary to make the Attorney-General a party to the action and that specific performance could be enforced by injunction. *Hamilton Street Ry. Co. v. City of Hamilton*, xxxix., 673.

7. *Action against minor — Exception of minority — Irregularity in procedure — Waiver after majority — Ratification — Prejudice — Nullity — Review by appellate court — Arts. 246, 250, 304, 320, 323, 324, 987 C.O. — Arts. 78, 174, 176, 1039, 1263 C. P. Q.*—

An action for damages *ex delicto* was instituted against a minor without impleading a tutor to assist him, and the exception of minority was set up. Proceedings taken by the plaintiff to have a tutor appointed had not been concluded when the defendant became of age and an order, which was disregarded by the defendant, was then obtained requiring him to plead to the action. On a summons for his examination *sur faits et articles*, defendant appeared and certain objections to questions were made by counsel on his behalf. On an inscription for judgment *ex parte*, subsequently filed, judgment was entered against him.—*Held*, *per* Idington, Duff and Brodeur, JJ., that irregularities of procedure in a court of first instance are matters to be dealt with by the judges of that court and, unless some prejudice has resulted therefrom, the discretion exercised by such judges in respect thereto ought not to be disturbed by an appellate court.—*Per* Idington, Duff and Brodeur, JJ., Fitzpatrick, C.J., and Anglin, J., *contra*. In the circumstances the defendant suffered no prejudice within the meaning of article 174 of the Code of Civil Procedure. The exception resulting from minority is relative merely and may be waived by a defendant, sued during his minority, without the necessary assistance required by law, appearing after attaining majority and taking objections to subsequent proceedings in the action. He cannot, thereafter, complain of being treated as a defendant properly cited before the court nor of a judgment *ex parte* entered against him therein.—*Per* Idington, Duff and Brodeur, JJ.—Irregularity in inscription for judgment *ex parte* is not a reason for the dismissal of an action.—*Per* Fitzpatrick, C.J., and Anglin, J., dissenting.—The fact that the defendant was a minor at the time of the institution and service of the action and that no tutor or curator was made a party to the suit for the purpose of assisting him therein constitutes an absolute bar to the action which could not be validated in consequence of further proceedings therein after the defendant attained the age of majority. The action was a nullity *ab initio* and, consequently, the defendant suffered prejudice within the meaning of art. 174 C. P. Q. *Larue v. Poulin* (9 Que. P. R. 157). *Fairbanks v. Howley* (10 Que. P. R. 72), and *Robert v. Dufresne* (7 Que. P. R. 226), referred to. *Serling v. Levine*, xlvii., 103.

8. Action—Public officer—Notice—Notary public—Principal and agent—Mandate—Pleadings—New objections on appeal—Case on appeal—Notes of reasons by judges—Findings of fact—Art. 88 C. P. Q.—If a defendant has not, in the courts below, taken exception to want of notice of action, as required by article 88 of the Code of Civil Procedure of Quebec, it is doubtful whether the objection can be urged on an appeal to the Supreme Court of Canada. *Devine v. Holloway* (14 Moo. P. C. 290) referred to.—Where the defendant has not been sued in an action for damages by reason of an act done in the exercise of a public function or duty, the provision of article 88 C. P. Q., as to notice of action against a public officer, has no application.—The Supreme Court of Canada ought not, in ordi-

nary cases, to take into consideration the notes of reasons for judgments in the courts below which have not been delivered before the settling of the case on the appeal: *Mayhew v. Stone* (26 Can. S. C. R. 58) followed. In a proper case, however, when the non-delivery of such notes is satisfactorily accounted for, the court may permit them to be filed and made use of as part of the record on the appeal: *Canadian Fire Insurance Co. v. Robinson* (Cout. Dig. 1105) referred to.—The court refused to reverse the concurrent findings of fact by the courts below. *Dufresne v. Desforges*, xvii., 382.

9. Action—Damages—Timber on pre-empted lands—Rights of pre-emptor—B. C. "Land Act," R. S. B. C., 1911, c. 129, ss. 77 et seq. and 132—Issue on appeal—Negligence—Fire set by railway locomotive—Assessment of damages—Findings of trial judge.]—A pre-emptor of Crown lands, under the provisions of the British Columbia "Land Act," R. S. C., 1911, c. 129, who has not forfeited his rights, is entitled to maintain an action for such damages as he has sustained in consequence of the destruction of timber growing upon his pre-empted lands.—As to the quantum of damages, the trial judge, following *Schmidt v. Miller* (46 Can. S. C. R. 45), held that the respondent was entitled to recover the full value of the standing timber destroyed. All evidence bearing upon the question of respondent's interest was omitted in printing the case on appeal, and the point was not taken in the Court of Appeal or in the appellant's factum on the present appeal. The decision of the Supreme Court of Canada in *Schmidt v. Miller* was, subsequently, reversed on appeal to the Privy Council ([1914] A. C. 197), and the point was raised upon the hearing of the present appeal that the respondent's damages should be reduced in consequence of his limited interest in the timber destroyed.—*Held*, that, in these circumstances, the contention in respect to the pre-emptor's limited interest in the property destroyed (the evidence bearing upon it having been omitted from the appeal case) was not open for consideration in the Supreme Court of Canada.—The court refused to disturb findings of the trial judge, based upon sufficient evidence, or the assessment of damages made by him as limited by s. 298 of the "Railway Act," R. S. C., 1906, c. 37. The judgment appealed from (12 D. L. R. 425) was affirmed. *Canadian Pacific Ry. Co. v. Kerr*, xlix., 33.

10. Action by dependents—B. C. "Families Compensation Act"—Release by deceased—Defence to action—Reputation—Fraud—Setting aside release—Personal representative—Right of action—Return of money paid—Limitation of action—General statutory provision—Carriers—Private Act—B. C. "Consolidated Railway Co.'s Act"—Statute—R. S. B. C., 1911, c. 82—"Lord Campbell's Act"—(B.C.) 59 Vict., c. 55, s. 60.—Where a release by the deceased is relied upon by the defendants in an action for damages by his dependents, under the provisions of the "Families Compensation Act," R. S. B. C., 1911, c. 82, the plain-

tiffs may take exception to the release on the ground that it was fraudulently procured, although the personal representative of the deceased has not been made a party to the action. The judgment appealed from (18 B. C. Rep. 132), was affirmed.—Such an exception may be entertained by a court of equity notwithstanding that the money paid as consideration for the release is neither tendered back to the defendants nor brought into court to abide the issue of the action. *Lee v. Lancashire and Yorkshire Ry. Co.* (6 Ch. App. 527); *Read v. Great Eastern Ry. Co.* (L. R. 3 Q. B. 555); *Robinson v. Canadian Pacific Ry. Co.* ((1892) A. C. 481); *Rideal v. Great Western Ry. Co.* (1 F. & F. 706); *Clough v. London and North Western Ry. Co.* (L. R. 7 Ex. 26); *Seward v. The "Vera Cruz"* (10 App. Cas. 59); *Pym v. Great Northern Ry. Co.* (2 B. & S. 759; 4 B. & S. 396); *Williams v. Mersey Docks and Harbour Board* ((1905), 1 K. B. 804); *Erdman v. Walkerton* (20 Ont. App. R. 444), and *Johnson v. Grand Trunk Ry. Co.* (21 Ont. App. R. 408), referred to.—By s. 60 of the "Consolidated Railway Company's Act" (B.C.), 59 Vict., c. 55, actions for damages or injury sustained by reason of a tramway or railway, or the works or operations of the company, are subject to a limitation of six months.—*Held*, that the limitation thus provided for the protection of a private corporation had not the effect of altering the general limitation of twelve months provided by the fifth section of the "Families Compensation Act," R. S. B. C., c. 82. *Green v. British Columbia Electric Ry. Co.* (12 B. C. Rep. 199); *Canadian Northern Ry. Co. v. Robinson* (43 Can. S. C. R. 387); *Zimmer v. Grand Trunk Ry. Co.* (19 Ont. App. R. 693); *Marvey v. Tolworth Joint Isolation Hospital District* ((1900) 2 K. B. 454), and *Williams v. Mersey Dock and Harbour Board* ((1905) 1 K. B. 804), referred to.—*Per Duff, J.*—Section 60 of the "Consolidated Railway Company's Act," (B.C.) 59 Vict. c. 55, has no application to an action brought against the company for breach of duty as a carrier. *Sayers v. British Columbia Electric Ry. Co.* (12 B. C. Rep. 102), referred to. (Leave to appeal to Privy Council refused, 2nd July, 1914.) *British Columbia Electric Ry. Co. v. Turner*, xlix., 470.

11. *Appeal—Expropriation—Application to appoint arbitrator—Persona designata—Amount in controversy—"Railway Act," R. S. C. 1906, c. 37, s. 196—Jurisdiction of court.*—A railway company served notice of expropriation of land on the owner, offering \$25,000 as compensation. It later served a copy of said notice on S., lessee of said land for a term of ten years. On application to a Superior Court judge for appointment of arbitrators S. claimed to be entitled to a separate notice and an independent hearing to determine his compensation. The judge so held and dismissed the application, and his ruling was affirmed by the Court of King's Bench. The company sought to appeal to the Supreme Court of Canada.—*Held, per Fitzpatrick, C.J.* and *Idington, J.*, following *Canadian Pacific Railway Co. v. Little Seminary of St. Thérèse* (16 Can. S. C. R. 606), and *St. Hilaire v. Lambert* (42 Can. S. C. R. 264),

that the Superior Court judge was *persona designata* to hear such applications as the one made by the company; that the case, therefore, did not originate in a Superior Court and the appeal would not lie.—*Per Duff, J.*—The judge, under s. 196 of the "Railway Act" acts as *persona designata* and no appeal lies from his orders under that section;—in this case, the application having been made to and the parties having treated the contestation as a proceeding in the Superior Court, which had no jurisdiction, the Court of King's Bench rightly dismissed the appeal from the order refusing to appoint arbitrators; and the appeal to the Supreme Court of Canada being obviously baseless should for that reason be quashed.—*Held, per Davies, Duff, Anglin and Brodeur, J.J.*, that as there was nothing in the record to shew that the amount in dispute was \$2,000 or over, and no attempt had been made to establish by affidavit that it was, the appeal failed. *Canadian Northern Ontario Railway Co. v. Smith*, l., 476.

12. *Company—Dominion corporation—Provincial registration—Juristic disability—Right of action—Contract—Carrying on business within province—Legislative jurisdiction—R. S. Sask. 1909, c. 73, ss. 3, 10—Non-compliance with S. C. Rule—Factum.*—A company, having its chief place of business in the Province of Quebec, and incorporated under the Dominion statute with power to trade and carry on its business throughout the Dominion of Canada, did not comply with the provisions of the "Foreign Companies Act," R. S. Sask., 1909, c. 73, requiring registration previous to carrying on business within the Province of Saskatchewan. In the ordinary course of its business, it sold and brought certain machinery into the province, and did the work of installing it therein for a price which included setting it up and starting it working. An action for the contract price was dismissed by the judgment of the trial court (6 West. W. R. 1159), and this judgment was affirmed by the Supreme Court of Saskatchewan, on the ground that the unregistered extra-provincial company was denied the right of action in the courts of the province by the tenth section of the "Foreign Companies Act."—On appeal to the Supreme Court of Canada, the judgment appealed from (7 West. W. R. 89), was reversed.—*Per Idington, J.*—The mere setting up and starting the working of the machinery by the extra-provincial company did not constitute the carrying on of business in the Province of Saskatchewan within the meaning of the "Foreign Companies Act." *Per Anglin, J.*—The installation of the plant was a substantial part of the consideration of the contract and, consequently, the unregistered extra-provincial company would be denied the right of enforcing its claim by action in the courts of the province under the provisions of the tenth section of the "Foreign Companies Act," but, inasmuch as the legislation in question had the effect of depriving the extra-provincial company of the status, capacities and powers which were the natural and logical consequences of its incorporation by the Dominion Government, it is *ultra vires* of the provincial legislature

and inoperative for the purpose of depriving the company of its right to maintain the action in the provincial courts. *John Deere Plow Company v. Wharton* ([1915] A. C. 330), applied. — Costs were refused the appellant, on the allowance of the appeal, in consequence of non-compliance with Supreme Court Rule No. 30 in respect of the printing of the statutes regarding which questions were raised. *Linde Canadian Refrigerator Co. v. Saskatchewan Creamery Co.*, li., 400.

13. *Contract by municipal corporation — By-law or resolution — Right of action—Pleading—Estoppel*, xxxiv., 495.

See EVIDENCE.

14. *Agreement for the sale of land—Falsa demonstratio — Position of vendor's signature—Specific performance*, xxxv., 282.

See SPECIFIC PERFORMANCE.

15. *Mineral claim — Expropriation — Watercourses — Trespass — Damages — Waiver—Injunction*, xxxv., 309.

See PRACTICE.

16. *Sale of goods—Suspensive condition—Term of credit—Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer — Insolvency—Banking—Bailee receipt — Brokers and factors—Principal and agent—Resiliation of contract—Revendication — Damages—Pleading*, xxxvi., 406.

See SALE.

17. *Signification of assignment—Acceptance by debtor—Right of action*, xxxvi., 686.

See ACTION.

18. *Tenant by sufferance—Use and occupation of lands—Art. 1608 C. C.—Promise of sale—Vendor and purchaser—Reddition de compte—Actio ex vendito*, xxxvii., 627.

See ACTION.

19. *Title to land—Ownership—Artificial watercourse—Canal banks—Trespass—Possessory action—Borndage*, xxxvii., 668.

See TITLE TO LAND.

20. *Crown—Banks and banking—Forged cheque — Payment — Representation by drawee—Implied guarantee—Estoppel—Acknowledgment of bank statements—Liability of indorsers—Mistake—Action—Money had and received*, xxxviii., 258.

See BANKS AND BANKING.

21. *Possessory action — Trouble de possession—Right of action — Actio negatoria servitutis — Trespass — Interference with watercourse—Agreement as to user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages*, xxxix., 81.

See PRACTICE.

22. *Title to land—Trespass—Conventional line—Boundary—Agreement at trial—Pleading*, Cam. Cas., 171.

See TRESPASS.

23. *Chattel mortgage — Fraudulent conveyance—Pleading — Approbating and reprobating transaction—Right to redeem — Oral evidence to vary deed—Sheriff's sale—Equity of redemption — Execution*, Cam. Cas., 251.

See PLEADING.

24. *Action by divorced wife—Authorization—Decree by foreign court—Jurisdiction — Comity of nations—Arts. 176, 178 C. C.—Art. 14 C. C. P.*, Cam. Cas. 392.

See DIVORCE.

25. *Appeal—Jurisdiction—Title to land—Action possessoire—Demolition of works—Matter in controversy*, Cout. Cas. 141.

See PRACTICE.

26. *Construction of sewers—Nuisance — Injunction—Damages — Right of action*, Cout. Cas., 162.

See PRACTICE.

27. *Breach of trust—Interest on bonds—Unlawful acts by Crown officials—Withholding interest from Crown—Necessity of impleading other interested parties*, Cout. Cas. 316.

See PRACTICE.

28. *Appeal—Jurisdiction—Alberta Liquor License Act—Cancellation of license—Persona designata—Curia nominatim—"Originating summons"—Court of superior jurisdiction. St. Hilaire v. Lambert*, xlii., 264.

See APPEAL.

29. *Misjoinder—Common law liability — Different causes of action. Grand Trunk Pacific v. White*, xliii., 627.

See STATUTE.

30. *Jurisdiction—Service out of jurisdiction—Attachment—Manitoba King's Bench Rules 201, 202—Non-resident foreigner — Detention of goods pending suit—Substitutional service—Consolidating appeals to Supreme Court of Canada—Questions of practice. Emperor of Russia v. Proskouria-koff*, xliii., 226.

31. *Appeal—Jurisdiction—Matter in controversy—Stare decisis—Municipal by-law — Injunction—Contract—Collateral effect of judgment—Construction of statute—"Supreme Court Act," R. S. C. (1906), c. 139, ss. 36, 39 (c), 46. Shawinigan Hydro-Electric Co. v. Shawinigan Water, etc.*, xliiii., 650.

See APPEAL.

32. *Vendor and purchaser—Price of land sold—Payment on account — Condition of agreement—Notice—Cancellation — Return of money paid—Rescission—Form of action*, xlv., 338.

See VENDOR AND PURCHASER.

33. *Arbitration—Award — Procedure — Prolonging date for award—Special circumstances—"Railway Act," R. S. C., 1906, c. 37, s. 204. Can. Nor. Que. R. R. v. Naud*, xlvi., 242.

See ARBITRATION AND AWARD.



34. Statute—"Colonial Courts of Admiralty Act, 1890," (Imp.) 53 & 54 Vict., c. 27 — "Public Authorities Protection Act, 1892," (Imp.) 56 & 57 Vict., c. 61—Limitation of actions—Effect of statutes—Jurisdiction, xlix., 627.

See STATUTE.

35. Appeal—Expropriation — Application to appoint arbitrator—*Persona designata* — Amount in controversy — "Railway Act," R. S. C. 1906, c. 37, s. 196—Jurisdiction of Court. C. N. O. R. R. Co. v. Smith, l., 476.

See APPEAL.

36. Appeal—Case originating in Superior Court—"Supreme Court Act," s. 37 (b) — Concurrent jurisdiction—"Mechanics' Lien Act" (B.C.) — Action to enforce lien. *Champion v. World Bldg. Co.*, l., 382.

See APPEAL.

37. Company — Dominion corporation — Provincial registration—Juristic disability—Right of action—Contract — Carrying on business within province—Legislative jurisdiction—R. S. Sask. 1909, c. 73, ss. 3, 10 — Non-compliance with S. C. Rules—Costs. *Linde Refrig. v. Sask. Creamery*, li., 400.

See COMPANY.

38. Right of action—Status of plaintiff—Shareholder in joint-stock company—Ratepayer—Special injury — Public interest — Prosecution by Attorney-General—Practice—Art. 978 C. P. Q. *Robertson v. Montreal*, lii., 30.

See MUNICIPAL CORPORATION.

39. Action by dependent — Injury sustained outside province—Right of action in Manitoba—Evidence — Answers by jury. *Lewis v. G. T. P. R. R.*, lii., 227.

See NEGLIGENCE.

40. Pilotage authority — Compulsory retirement of pilot—Judicial function—Liability to action. *McGillivray v. Kimber*, lii., 146.

See PILOTS.

41. Construction of statute — Retrospective legislation—Illegality of contract—Rescission—Recovery of money paid—Right of action — Practice — Pleading — Appeal. *Boulevard Heights v. Veilleux*, lii., 185.

See STATUTE.

42. Appeal—Jurisdiction—Matter originating in inferior court—Transfer to superior court—Extension of time for appealing — Special leave—"Supreme Court Act," R. S. C., 1906, c. 139, ss. 37c, 71, liii., 15.

See APPEAL.

### 3. ADMISSIONS.

43. Contract by municipal corporation — Powers—By-law or resolution—Right of action—Confession of judgment—Evidence — Admissions—Pleading—Estoppel by record

—Art. 1245 C. C.—Concurrent findings of fact—Practice on appeal, xxxiv., 495.

See EVIDENCE.

44. Principal and agent—Satisfaction and discharge—Payment in advance—Custody of deeds—Notarial profession in Quebec—Art. 3665 R. S. Q.—Attorney in fact—Implied mandate — Evidence — Parol—Commencement of proof in writing—Art. 1253 C. C. — Admissions—Art. 316 C. P. Q.—Practice — Adduction of evidence — Objections to testimony—Rule of public order, xxxv., 14.

See PRINCIPAL AND AGENT.

### 4. AMENDMENT.

45. Appeal—Discretion — Amendment — Formal judgment.]—The Supreme Court should not interfere with the exercise of discretion by a provincial court in refusing to amend its formal judgment.—Such amendment is not necessary in a mining case where the mining regulations operate to give the judgment the same effect as it would have if amended. *Creese v. Fleischman*, xxxiv., 279.

46. Pleading—Amendment ordered by the court—Married woman—Legal community—Right of action—Reprise d'instance—Arts. 78, 174, 176 C. P. Q.—R. S. C. c. 135, ss. 63, 64. *North Shore Power Co. v. Duguay*, xxxvii., 624.

47. Requête civile—Amendment—Supreme Court Act, s. 63—Discretion—Order nunc pro tunc, xxxiv., 13.

See PRACTICE.

48. Controverted election—Personal corruption—Charge in petition—Judge's report — Adjudication — Amendment — Evidence, xxxvii., 563.

See PRACTICE.

49. Life insurance — Warranty — Misstatements—Concealment of material facts—Pleading — Questions at issue—Findings of fact—Amendment—Successful party moving against findings, *Cam. Cas.*, 463.

See INSURANCE, LIFE.

50. Questions in controversy—Damages—Amendment of pleadings — Verdict, *Cout. Cas.*, 326.

See PRACTICE.

51. Amendment of pleadings—Discretionary order—Final judgment—Appeal, *Cout. Cas.*, 386.

See PRACTICE.

### 5. APPEALS.

52. Time for appealing — Expiration of time limit—Extending time.]—The time for bringing an appeal cannot be extended after the expiration of the sixty days from the pronouncing or entry of the judgment appealed from to permit of an application for

special leave which must be made within the sixty days. *Canadian Mutual Loan & Investment Co. v. Lee*, xxiv., 224.

AND see APPEAL.

53. *Appeal—Order for new trial—Weight of evidence—Discretion—New grounds on appeal.*—Where the court whose judgment is appealed from ordered a new trial on the ground that the verdict was against the weight of evidence:—*Held*, that this was not an exercise of discretion with which the Supreme Court of Canada would refuse to interfere, and the verdict at the trial was restored.—The argument of an appeal to the Supreme Court of Canada must be based on the facts and confined to the grounds relied on in the courts below. *Confederation Life Association v. Borden*, xxiv., 338.

54. *Appeal—Exception—Pleading—Acquiescence—Art. 1220 C. P. Q.—Varying minutes of judgment—Costs.*—Where a respondent, on an appeal to the court below, has failed to set up the exception resulting from acquiescence in the trial court judgment, as provided by article 1220 of the Code of Civil Procedure, he cannot, afterwards, take advantage of the same objection by motion to quash a further appeal to the Supreme Court of Canada.—On an application to vary the minutes of judgment, as settled by the registrar, for reasons which had not been mentioned at the hearing of the appeal, the motion was granted, but without costs. *Chambly Mfg. Co. v. Willett*, xxiv., 502.

AND see CONTRACT.

55. *Court of equity—Title to land—Declaratory decree—Cloud on title—Injunction—New grounds on appeal.*—A court of equity will not grant a decree confirming the title to land claimed by possession under the statute of limitations nor restrain by injunction a person from selling land of another.—The Chief Justice took no part in the judgment on the merits and Sedgewick, J., dissented from the judgment of the majority of the court.—*Per Taschereau, C.J.*—Where leave to appeal *per saltum* has been granted on the ground that the court of last resort in the province had already decided the questions in issue the appellant should not be allowed to advance new grounds to support his appeal. *Miller v. Robertson*, xxv., 80.

56. *Foreclosure of mortgage—Redemption—Assignment pending suit—Practice—Procedure in court below—Costs.*—This action was one of several suits affecting the title to lands under circumstances stated by Mr. Justice Moss in 2 Ont. L. R., at pages 500-504. The Supreme Court refused to interfere with the decision of the provincial court on matters of procedure, but, under the special circumstances of the case, the court dismissed the appeal without costs. *Gibson v. Nelson*, xxv., 181.

57. *Appeal—Security for costs—Waiver—Consent.*—The case on appeal to the Supreme Court of Canada cannot be filed unless security for the costs of the appeal

is furnished as required by s. 46 of the Act. The giving of such security cannot be waived by the respondent nor can the amount fixed by the Act be reduced by his consent. *Holsten v. Cockburn*, xxv., 187.

58. *Appeal—Special leave—60 & 61 Vict. c. 34, s. 1 (D.)*—Special leave to appeal from a judgment of the Court of Appeal for Ontario (60 & 61 Vict. c. 34, s. 1 (D.)), may be granted in a case involving matters of public interest, important questions of law, construction of imperial or Dominion statutes, a conflict between Dominion and provincial authority, or questions of law applicable to the whole Dominion. Though a case is of great public interest and raises important questions of law, leave will not be granted if the judgment complained of is plainly right. *Lake Erie and Detroit River Ry. Co. v. Marsh*, xxv., 197.

59. *Appeal per saltum—Time limit—Pronouncing or entry of judgment.*—To determine whether the sixty days, within which an appeal to the Supreme Court must be taken, runs from the pronouncing or entry of the judgment from which the appeal is taken no distinction should be made between common law and equity cases. The time runs from the pronouncing of judgment in all cases except those in which there is an appeal from the registrar's settlement of the minutes or such settlement is delayed because a substantial question affecting the rights of the parties has not been clearly disposed of by such judgment. *County of Elgin v. Robert*, xxvi., 27.

60. *Reversing on appeal—Concurrent finding in courts below.*—It is the duty of the Supreme Court, if satisfied that the judgment in appeal is erroneous, to reverse it even when it represents the concurring view of three, or any number of, successive courts before which the case has been heard. *Hood v. Eden*, xxvi., 476.

AND see COMPANY.

61. *Appeal per saltum—Winding-up Act—Application under s. 76—Defective proceedings.*—Leave to appeal *per saltum*, under s. 26 of the Supreme Court Act, cannot be granted in a case under the Dominion Winding-up Act.—An application under s. 76 of the Winding-up Act, for leave to appeal from a judgment of the Supreme Court of New Brunswick was refused where the judge had made no formal order on the petition for a winding-up order and the proceedings before the full court were in the nature of a reference rather than of an appeal from his decision. *In re Cushing Sulphite Fibre Co.*, xxvi., 494.

62. *Comments in factum—Irrelevancy—Costs.*—Comments in the appellants' factum relating to a judgment of the Wreck Commissioner's Court, which did not form any part of the record, were ordered to be struck out, with costs to the respondents. (Appeal to Privy Council dismissed, [1907] A. C. 112). *SS. "Cape Breton" v. Riche-lieu and Ontario Navigation Co.*, xxvi., 564.

AND see ADMIRALTY LAW.

63. *Remitting case to court below—Motion while case pending for judgment—New evidence.*—A motion made, while the case was standing for judgment, to have the case remitted back to the courts below for the purpose of the adduction of newly-discovered evidence as to the refusal of Parliament to make a declaration in the preamble of a statute was refused with costs. *Hewson v. Ontario Power Co.*, xxxvii., 596.

AND see CONSTITUTIONAL LAW.

64. *Appeal to Privy Council — Colonial Courts of Admiralty Act, 1890 (Imp.) — Right of appeal de plano—Bail for costs.*—Upon the application of the appellants (30th March, 1906), for an order to fix bail on a proposed appeal direct to His Majesty in Council, under the rules established by the Colonial Courts of Admiralty Act, 1890 (Imp.), the Supreme Court of Canada, sitting *in banco*, after hearing counsel for and against the application, made an order *pro formâ* (without expressing any opinion as to the right of appealing *de plano*), that the appellants should give bail to answer the costs of the proposed appeal in the sum of £300 sterling, to the satisfaction of the registrar of the Supreme Court of Canada, on or before the 4th of April, 1906.—[NOTE.—In *The "Cape Breton" v. Richelieu and Ontario Nav. Co.* (36 Can. S. C. R. 592) a similar order was made by a judge in chambers, and the appeal was heard by the Judicial Committee without an order for leave, 48 Can. Gaz., 279.] *The "Albano" v. The "Parisian,"* xxxvii., 301.

65. *Equal division of opinion—Appeal dismissed without costs.*—Upon an equal division of opinion among the judges who heard the arguments, the appeal stood dismissed without costs. *Côté v. The James Richardson Co.*, xxxviii., 41.

66. *Appeal—Jurisdiction — Discretion of Governor in Council—Stated case—Railway subsidies—Construction of statute—3 Edw. VII. c. 57—Conditions of contract—Estimating cost of constructing line of railway—Rolling stock and equipment.*—Where the jurisdiction of the Supreme Court of Canada to entertain an appeal was in doubt, but it was considered that the appeal should be dismissed on the merits, the court heard and decided the appeal accordingly. (Cf. *Bain v. Anderson & Co.* (28 Can. S. C. R. 481). *Canadian Pacific Ry. Co. v. The King; Re Pheasant Hills Branch*, xxxviii., 137.

67. *Shipping — Collision — Violation of rules not affecting accident—Steering wrong course.*—The Supreme Court will not set aside the finding of a nautical assessor on questions of navigation adopted by the local judge unless the appellant can point out his mistake and shew conclusively that the judgment is entirely erroneous. *The Picton* (4 Can. S. C. R. 648), followed. *SS. "Arranmore" v. Rudolph*, xxxviii., 176.

AND see SHIPS AND SHIPPING.

68. *Criminal law—Crown case reserved—Appeal—Extension of time for notice of appeal—"Criminal Code" s. 102—Order after*

*expiration of time for service of notice—Jurisdiction.*—The power given by s. 1024 of the "Criminal Code" (R. S. C. (1906), c. 146), to a judge of the Supreme Court of Canada to extend the time for service on the Attorney-General of notice of an appeal in a reserved Crown case may be exercised after the expiration of the time limited by the code for the service of such notice. *Banner v. Johnston* (L. R. 5 H. L. 157) and *Vaughan v. Richardson* (17 Can. S. C. R. 703), followed. *Gilbert v. The King*, xxxviii., 207.

69. *Appeal—Order extending time—Jurisdiction—R. S. C. (1886) c. 135, s. 42 — Practice.*—The court refused to entertain a motion to quash the appeal on the ground that it had not been taken within the sixty days limited by the statute and that an order by a judge of the court appealed from after the expiration of that time was *ultra vires* and could not be permitted under s. 42 of the Supreme and Exchequer Courts Act, R. S. C. c. 135. *Temiscouata Ry. Co. v. Clair*, xxxviii., 230.

AND see TRESPASS.

70. *Appeal — Findings of fact.*—The judgment appealed from was reversed, on the ground of captation and undue influence, but the Supreme Court of Canada refused to interfere with the concurrent findings of both courts below against the contention as to the testator's unsoundness of mind. *Mayrand v. Dussault*, xxxviii., 460.

AND see WILL.

71. *Appeal—Amount in controversy—Creditor's action—Transfer of cheque—Preference.*—An action was brought by creditors, on behalf of themselves and all other creditors, of an insolvent to set aside the transfer of a cheque for \$1,172.27, made by the insolvent to S. & Son, as being a preference and therefore void. At the trial the action was dismissed and this judgment was affirmed by the Divisional Court (12 Ont. L. R. 91), and by the Court of Appeal (13 Ont. L. R. 232). On appeal to the Supreme Court of Canada:—*Held*, Girouard, J., dissenting, that the only matter in controversy was the property in the sum represented by the cheque and such sum being more than \$1,000 the appeal would lie. *Robinson, Little & Co. v. Scott & Son*, xxxviii., 490.

72. *Criminal law—Stated case—Dissent in Court of Appeal—Practice—Special leave for appeal—R. S. C. (1906) c. 139, s. 37 (c).*—In an appeal from the judgment of the Supreme Court of the North-West Territories, *in banco*, whereby the conviction of the respondent was quashed, two of the judges dissenting, special leave for the appeal was granted on motion before the full court, under the provisions of R. S. C. (1907), c. 139, s. 39 (c) on the 19th of February, 1907. *Lafferty v. Lincoln*, xxxviii., 620, 625.

AND see CONSTITUTIONAL LAW.

73. *Appeal to the Court of King's Bench—Time limit—Appeal by opposite party to Court of Review—Arts. 957, 1203, 1209 C. P. Q.—Pleading and practice—Injunction—*

*Discretionary order—Reversal on appeal — Possessory action—Trouble de possession — Right of action—Actio negatoria servitutis—Trespass—Interference with watercourse — Agreement as to user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages—Appeal as to question of costs only.*—An appeal from a judgment of the Superior Court, rendered on the trial of a cause, will lie to the Court of King's Bench, appeal side, if taken within the time limited by article 1209 of the Code of Civil Procedure of Quebec, notwithstanding that, in the meantime, on an appeal by the opposite party, the Court of Review may have rendered a judgment affirming the judgment appealed from.—Although the granting of an order for injunction, under article 957 of the Code of Civil Procedure of Quebec, is an act dependent on the exercise of judicial discretion, the Supreme Court of Canada, on an appeal, reversed the order on the ground that it had been improperly made upon evidence which shewed that the plaintiff could, otherwise, have obtained such full and complete remedy as he was entitled to under the circumstances of the case. *Davies and Idington, JJ.*, dissenting, were of opinion that the order had been properly granted.—A possessory action will not lie in a case where the *trouble de possession* did not occur in consequence of the exercise of an adverse claim of right or title to the lands in question, and is not of a permanent or recurrent nature. *Davies and Idington, JJ.*, dissenting, were of opinion that, under the circumstances of the case, a possessory action would lie.—*P.* brought an action *au possessoire* against the company for interference with his rights in a stream, for damages and for an injunction against the commission or continuance of the acts complained of. On service of process, the company ceased these acts, admitted the rights and title of *P.*, alleged that they had so acted in the belief that a verbal agreement made with *P.* some years previously gave them permission to do so, that this license had never been cancelled, but was renewed from year to year and that, although the privilege had not been exercised by them during the two years immediately preceding the alleged trespass in 1904, it was then still subsisting and in force, and tendered \$40 in compensation for any damage caused by their interference with *P.*'s rights.—*Held*, reversing the judgment appealed from, *Davies and Idington, JJ.*, dissenting, that, as there had been no formal cancellation of the verbal agreement or withdrawal of the license thereby given, it had to be regarded, notwithstanding non-user, as having been tacitly renewed, that it was still in force in 1904, at the time of the acts complained of and that *P.* could not recover in the action as instituted. The Chief Justice, on his view of the evidence, dissented from the opinion that the agreement had been tacitly renewed for the year 1904.—*Per Davies and Idington, JJ.* (dissenting). As the appeal involved merely a question as to costs, it should not be entertained. *Chicoutimi Pulp Co. v. Price*, xxxix., 81.

74. *Record on appeal — Supreme Court Rules—Decree or order of court below.*

See remarks on absence from the record of the decree of the court of original jurisdiction, *per Davies, J.*, at page 136. *Re Daly; Daly v. Brown*, xxxix., 122.

AND see EXECUTORS AND ADMINISTRATORS.

75. *Evidence—Provincial laws in Canada —Judicial notice—Conflict of laws—R. S. C. (1906) c. 145, s. 17.*—As an appellate tribunal for the Dominion of Canada, the Supreme Court of Canada requires no evidence of the laws in force in any of the provinces or territories of Canada. It is bound to take judicial notice of the statutory or other laws prevailing in every province or territory in Canada, even where they may not have been proved in the courts below, or although the opinion of the judges of the Supreme Court of Canada may differ from the evidence adduced upon those points in the courts below. *Cooper v. Cooper* (13 App. Cas. 86), followed.—NOTE.—*Cf. R. S. C. (1906) c. 145, s. 17. Logan v. Lee*, xxxix., 311.

AND see NEGLIGENCE.

76. *Appeal—Special leave to proceed in formâ pauperis—Dispensing with security for costs — Mode of bringing appeal—Construction of statute—38 Vict. c. 11 (D.) ss. 24, 28, 31 and 79—Right of appeal.*—The approval of security for costs is the proper mode of granting leave to the Supreme Court of Canada. Neither the Supreme Court of Canada, nor a judge thereof, has power to grant leave to bring an appeal *in formâ pauperis* or to dispense with security for costs.—The powers given under section 24 of the Supreme and Exchequer Courts Act, 38 Vict. c. 11 (D.), are restricted to proceedings taken subsequently to the institution of the appeal, where the statute and existing rules do not apply; the procedure may be in conformity with that followed by the Judicial Committee of the Privy Council, but the right of appeal arises solely under the statute, which can give no power respecting the exercise of prerogative rights such as may be advised by the Judicial Committee. — (*Cf. Cartridge Co. v. McArthur*, *Cout. Dig.* 124; *Fraser v. Abbott*, *Cout. Dig.* 111.) *In re Fraser*, *Cout. Cas.* 6.

77. *Appeal — Jurisdiction — Expiration of time for appealing.*—Where the time limited for bringing an appeal to the Supreme Court of Canada has expired, there is no jurisdiction in the Supreme Court of Canada or a judge thereof to approve a bond of security for the costs of appeal.—*Cf. The News Printing Company of Toronto v. Macrae* (26 Can. S. C. R. 695); *Canadian Mutual Loan & Investment Company v. Lee* (34 Can. S. C. R. 224.) *Fournier v. Leger*, *Cout. Cas.* 100.

78. *Appeal — Jurisdiction—Title to land —Trespass—Action possessoire—Demolition of works—Matter in controversy—R. S. C. c. 135, s. 29.*—The plaintiff's action was for trespass against a neighbour in constructing a roof projecting over the plaintiff's land, for the demolition of the projecting portion of the roof, and a declaration that the plaintiff was proprietor of the land on which the trespass had been

committed. On motion for the approval of security for the costs of an appeal from the judgment dismissing the action:—*Held*, that, as the title to the land was not in issue nor future rights therein affected, and as it did not appear that the matter in controversy amounted to the sum of value of \$2,000, there could be no appeal to the Supreme Court of Canada.—(NOTE.—*Cf. The Emerald Phosphate Co. v. The Anglo-Continental Guano Works* (21 Can. S. C. R. 422); *Delorme v. Cusson* (28 Can. S. C. R. 66); *Parent v. The Quebec North Shore Turnpike Road Trustees* (31 Can. S. C. R. 556); *Davis v. Roy* (33 Can. S. C. R. 345); *Delisle v. Arcand* (36 S. C. R. 23). *Macdonald v. Brush*, *Cout. Cas.* 141.

79. *Appeal per saltum*—*Expiration of time for appealing*—*Supreme Court Act, s. 40.*—Leave to appeal *per saltum* cannot be granted after the expiration of the time limited by s. 40 of the Supreme and Exchequer Courts Act. *Stewart v. Sculthorpe*, *Cout. Cas.* 152.

80. *Municipal corporation*—*Construction of sewers*—*Nuisance*—*Injunction*—*Damages*—*Right of action*—*Practice.*—An application for leave to appeal *per saltum* was based principally upon the grounds that the case was distinguishable from the case of *Lewis v. Alexander* (24 Can. S. C. R. 551); that the evidence showed that the sewer in question had been constructed as a general sewer, and that the statute referred to by the judge in the court below (*R. S. O. 1887, c. 184, s. 489, s.-s. 47*), had been cited and commented upon in the case before the Supreme Court of Canada above referred to. The application was dismissed. *City of London v. Lewis*, *Cout. Cas.* 162.

81. *Appeal per saltum*—*Special leave*—*Discretion*—*Review of whole case on application for leave*—*Verbal proceedings*—*Want of merits*—*Expiration of time for appealing.*—Where it appeared that an appeal was utterly without merits, leave to appeal *per saltum* was refused, and it was declared that, in such a case, the circumstances could not justify an order extending the time for appealing. *Kilmer v. Warden*, *Cout. Cas.* 188.

82. *Appeal*—*Special leave*—*Matter in controversy.*—The judgment recovered was for \$600. An appeal stood dismissed on an equal division of opinion of the judges, and on the same division, leave for an appeal to the Supreme Court of Canada was refused. The latter court also refused on the ground that no special circumstances had been shown for granting special leave to appeal. *Toronto Street Railway Co. v. Robinson*, *Cout. Cas.* 260.

83. *Extension of time for appealing*—*Lapse of order*—*Refusal to approve*—*Security bond.*—Judgment was pronounced on 12th April, 1902, and the time for appealing was extended until 30th June, 1902. By an arrangement between the parties the application for allowance of the security bond was not heard until January, 1903, and, on 31st January, 1903, the application was refused in the court appealed from.—*Held*, that upon the delivery of the judg-

ment, in January, 1903, the order extending the time for appealing lapsed and, no further extension having been obtained, there was no jurisdiction in the Supreme Court of Canada to entertain an appeal brought after the expiration of the sixty days limited by section 40 of the Supreme and Exchequer Courts Act. *MacLaughlin v. Lake Erie & Detroit River Ry. Co.*, *Cout. Cas.* 297.

AND see APPEAL.

84. *Special leave to appeal*—*Discretion*—*Matter in controversy.*—Motion for special leave to appeal was refused when applied for in regard to a mandatory order respecting the running of cars and extensions of the tramway, the questions not being of a character to warrant the exercise of discretion in giving special leave. *London Street Ry. Co. v. City of London*, *Cout. Cas.* 322.

85. *Right of appeal*—62 *Vict. c. 11, s. 27 (Ont.)*—*Special leave to appeal per saltum*—*Questions in controversy*—*Negligence*—*Damages*—*Amendment of pleadings*—*Rule 615*—*Nonsuit*—*Verdict*—*Procedure.*—Since the enactment of the 27th section of chapter 11 of the statutes of Ontario, 62 *Vict.* (1899), a party appealing to a Divisional Court of the High Court, in a case where an appeal lies to the Court of Appeal for Ontario, has no right of appeal from the judgment of such Divisional Court to the Supreme Court of Canada, without special leave. *Farquharson v. The Imperial Oil Co.* (30 Can. S. C. R. 188), distinguished.—In the present case, as the findings of the jury, upon which a verdict was entered, made it apparent that there was no necessity for amending the statement of claim or for any additional finding of a controversial fact, the Divisional Court was justified in permitting an amendment claiming damages as well under the Ontario Workmen's Compensation for Injuries Act as at common law. *Dick v. Gordaneer*, *Cout. Cas.* 326.

86. *Appeal*—*Extension of time*—*Order by single judge*—*Jurisdiction*—*Order by court appealed from*—*Municipal by-law.*—An appeal from the judgment of the Court of Appeal for Ontario, reversing the judgment of the Chancellor, which dismissed a motion to quash a by-law for borrowing money for the construction of a sewer, was entered under an order made by one of the judges of the court appealed from, extending the time for bringing the appeal. The court, *suo motu*, quashed the appeal with costs as of a motion to quash, for want of jurisdiction, on the ground that the order should have been made by the court, and not by a single judge. *Village of Brussels v. McCrea*, *Cout. Cas.* 336.

87. *Railways*—*Negligence*—*"Fatal Accidents Act"*—*R. S. O. (1897) c. 129, s. 10.*—A re-hearing was ordered, the court intimating that the re-hearing should be upon the whole case, but drawing the attention of counsel specially to the case of *Mason v. Town of Peterborough* (20 *Ont. App. R.* 683), and to the combined effect of the "Fatal Accidents Act," and of s. 10. c. 129,

R. S. O. (1897)—the questions being as to whether the two actions can now be maintained, or, if not, which one must fail. The parties made a settlement, out of court. *Grand Trunk Ry. Co. v. Speers*, Cout. Cas. 347.

88. *Appeal—Special leave — Matter in controversy — Discretionary order.*]—The appellants were to manufacture and sell carriers and divide the net profits with the respondents, who were patentees of the articles. Profits were divided up to August, 1895, when appellants, claiming a breach of the conditions, treated the contract as ended, but continued to manufacture and sell.—In an action for account, they pleaded termination of the contract; account stated and settled; statute of limitations, and breach by the respondents. The master, on taking the accounts, held appellants were licensees; that the account should only go back to 1901; that it should be taken to the time of the issue of the writ, and that the contract was terminated by notice after the judgment on which the reference was made.—This report was affirmed by Street, J., but the Court of Appeal held that appellants were grantees and not licensees; that the statute of limitations could not be invoked; that the master should take the account to the date of his report, and that it was beyond the scope of his functions to decide that the contract was at an end, and even if not, he was wrong, as the facts did not shew a termination.—A motion for special leave to appeal was refused on the ground that the questions in controversy would not justify the exercise of such judicial discretion. — NOTE.—Subsequently an appeal *de plano* was heard and allowed in part without costs. (38 Can. S. C. R. 216.) *Hamilton Brass Manufacturing Co. v. Barr Cash and Package Co.*, Cout. Cas. 382.

89. *Appeal—Findings of fact—Reversing on appeal.*]—Unless the appellant adduces clear proof that there was error in concurrent findings on questions of fact in the courts below, the Supreme Court of Canada ought not to interfere.—*Cf. Whitney v. Joyce* (95 L. T. 74.) *DeGalindez v. Owens*, Cout. Cas. 393.

90. *Appeal — Postponement pending appeal to Privy Council.*]—When the appeal came on for hearing, counsel for the respondent suggested to the court that the city had taken an appeal from the same judgment direct to the Judicial Committee of His Majesty's Privy Council and moved for a stay of all proceedings.—The court ordered that until the decision of the appeal to the Privy Council all proceedings should be stayed and suspended. *Ottawa Electric Co. v. City of Ottawa*, Cout. Cas. 409.

91. *Reviewing questions of fact on appeal — Findings of trial judge.*]—The findings of the trial judge who heard the witnesses and had an opportunity of appreciating their demeanour ought not to be disturbed on appeal.—The judgment appealed from was reversed and the judgment at the trial restored. *Robb v. Stafford*, Cout. Cas. 411.

92. *Partnership—Evidence — Concurrent findings.*]—The Supreme Court refused to

interfere with concurrent findings as to facts by the courts below. *Leighton v. Hale*, Cout. Cas. 417.

93. *Appeal — Expiration of time for appeal—Special leave — R. S. C. c. 135, s. 29—Jurisdiction.*]—After the expiration of the sixty days limited for bringing an appeal there is no jurisdiction in the Supreme Court of Canada to grant special leave for appealing. *Canadian Mutual Loan and Investment Co. v. Lee* (34 Can. S. C. R. 224), and *Connell v. Connell* (Cam. S. C. Prac. 224), followed. *C. Beck Manufacturing Co. v. Ontario Lumber Co.*, Cout. Cas. 422.

94. *Matter in controversy on appeal — Satisfaction of claim—Change in position of parties—Question of costs only—Quashing appeal.*]—It appeared that the claim of the appellant, an intervenant, had been settled, while proceedings were pending, and that the only remaining dispute between the parties was as to costs incurred.—On motion by the respondent, the appeal was quashed with costs. *Angers v. Duggan*, Cout. Cas. 425.

95. *Hearing of appeals—Practice in Quebec cases—Opening by senior counsel.*]—The court referred to the practice, in cases on appeal from the Province of Quebec, of allowing junior counsel to open the argument, senior counsel following, and that, during the winter sessions of the court, the Chief Justice speaking for the court, had remarked upon the inconvenience of this course. It was intimated that it was desirable in future that the opening should be by senior counsel on appeals from Quebec in conformity with the practice prevailing in respect to appeals from all the other provinces of the Dominion. *Dumphy v. Martineau*, (10th June, 1908), Cam. Prac., 542.

96. Although appeals are by statute and rules to be heard on a case settled in the court below, and no additional material in ordinary cases will be looked at, the court is not precluded in a proper case from receiving reasons for judgment which have been delivered after the appeal is launched. *Dufresne v. Desforges*, Cam. Prac. xiv.

97. The fact that counsel in an appeal is a candidate at an approaching Dominion election is a good ground for postponing for a reasonable time the hearing of his appeal. *S.S. Tordinskjold v. Horn Joint Stock Co.*, Cam. Prac. xv.

98. In *Halifax City Ry. Co. v. The Queen*, Cout. Dig. 1118, the court refused to hear a member of the Bar of the State of New York who desired to appear on behalf of the appellants.—In the *Steamship Calvin Austin v. Lovitt*, on February 27th, 1905, counsel for the respondent called the attention of the court to the fact that a member of the Massachusetts Bar had been heard in this appeal in the Admiralty Court below, and requested that he be heard by the Supreme Court. Counsel for the appellant not objecting, the court granted the application, and counsel was called

within the bar, and took part in the argument of the appeal on behalf of the respondent, Cam. Prac. 68.

99. *Admissions of counsel.*—At the opening of his argument, counsel for appellant pointed out that the trial judge had in his reasons for judgment stated that appellant's counsel had made an admission that no proper notice of dishonour had been given as to certain notes in issue. This statement did not appear in the record nor in the stenographer's notes, and was controverted by the appellant's counsel. Counsel then proceeding to argue against his being bound under the circumstances by the judge's reasons, the court stopped him, stating that as there was nothing on the record establishing the admission, and no evidence of any entry in the judge's minute book appearing, the appellant could not be held bound by the statement in the judge's reasons delivered some time after the conclusion of the trial, as it was quite possible he had misunderstood the position taken by counsel. *Fleming v. McLeod*, Supreme Court, May 10th, 1907, Cam. Prac. 69.

100. In this case an application was made on consent for leave to appeal from the judgment of the Court of Appeal for Ontario in a reference by the Lieutenant-Governor in Council.—The motion was refused, the court holding that it had no jurisdiction, and was bound by its decision in the *Union Colliery Co. v. The Attorney-General of British Columbia*. Subsequently an appeal was taken directly to the Judicial Committee of the Privy Council (1907) A. C. 69.—For the jurisdiction of the Supreme Court in disputed matters of jurisdiction between the Dominion of Canada and any province, *vide notes to s. 67. In re Teachers in Roman Catholic Schools*, February 20th, 1906, Cam. Prac. 74.

101. This appeal was quashed on the ground that since the judgment against the appellant in the Superior Court, his interest in the lands in question under a deed of sale *à réméré* had ceased by payment and by a deed of retrocession, executed by him to the party entitled to reclaim. It was further held that, following *Schlomann v. Dowker*, 30 Can. S. C. R. 323, a motion to quash was a convenient way of disposing of the appeal before further costs had been incurred. *Angers v. Duggan*, February 19th, 1907, Cam. Prac. 89.

102. In this case it was held that it was the duty of the registrar not to allow a bond as security for costs, however unimpeachable in form, if he was of the opinion there was no jurisdiction in the court to hear the appeal.—By the term "proper security," security with proper sureties is to be understood. *Powell v. Washburn*, 2 Moo. P. C. C. 199, but if security for costs be taken by the court appealed from upon notice to the respondent and without objection upon his part, it cannot afterwards be questioned by him, unless new circumstances arise, and not even in that case, if he does not object on the first opportunity. *Ibid.*—It is a common practice now to accept as security the bond of a guarantee company (Annual Prac-

tice, 1912, p. 827). In the Supreme Court only companies licensed by the Government of Canada are accepted unless by consent of parties.—It has not been the practice in the case of a bond furnished by a security company to require that the appellant should be a party. *McLaughlin v. Lake Erie & Detroit River Ry. Co.*, Cout. S. C. Cas. 297; Cam. Prac. 448.

103. *The provisions of the statute must be strictly complied with.*—In this case the appellants, on consent of the respondents, had a bond for \$250 allowed by a judge of the court below as security for their appeal to the Supreme Court. On the case reaching the registrar he referred the matter to the Chief Justice to determine whether or not such a bond was a sufficient compliance with section 46, now section 75. The bond was disallowed, the Chief Justice in his judgment, saying:—"Though it would seem that as a general rule the giving of security is an enactment in favour of the adverse party, and that consequently the adverse party may waive it expressly or impliedly, yet, under the Supreme Court Act, that is not so. Under sections 40, 43 and 46 (now sections 69, 72 and 75 respectively), the case is taken out of the jurisdiction of the Provincial Court only by the approval of the security. It is only by that Act that the Supreme Court acquires jurisdiction. That is why rule 6 requires that the case contain a certificate that the security has been given. *Fraser v. Abbott*, Cass. Dig. 695; *In re Cahen*, 21 Can. S. C. R. 100. *Whitman v. The Union Bank*, 16 Can. S. C. R. 410, might be read as opposed to that view. But the statute is, to my mind, clear, and the clerk of the Provincial Court has no authority whatever, as a general rule, to certify a case (rule 1) when no security has been given. Our registrar should, therefore, refuse to receive such a case. The security, of course, must be as required by the statute."—Subsequently, a case was certified to the registrar from the Court of Appeal for Ontario in which the Grand Trunk Ry. Co. were appellants, and the security allowed by a judge of the Court of Appeal was the undertaking of the appellant's solicitor. On the strength of the decision in *Holsten v. Cockburn*, the registrar refused to receive the case until the security required by the statute had been given. *Holsten v. Cockburn*, 1904, Cam. Prac. 449.

104. *Stare decisis.*—The subject of *stare decisis* is exhaustively discussed by Mr. Justice Anglin in *Stuart v. Bank of Montreal*, 41 Can. S. C. R. 516 at page 541 *et seq.*, where after reviewing all the Canadian and English authorities applies the principle of *stare decisis*, and holds himself bound to follow a previous decision of the Supreme Court.—*Vide also Shawinigan v. Shawinigan*, 43 Can. S. C. R. 650, Cam. Prac. 8.

105. *Criminal law—Refusal of reserved case—Appeal to Supreme Court of Canada—Conviction in Yukon Territory—Admission of evidence—Procedure at trial. Labelle v. The King*, Cout. Cas. 282.

106. *Concurrent findings of lower courts—Duty of second appellate court*, xxxiv., 145.

See APPEAL.

107. *Discretionary order — Costs—Exemplary damages—Interference by court of appeal*, xxxiv., 153.

See APPEAL.

108. *Appeal — Jurisdiction — Amount in controversy—Future rights*, xxxiv., 274.

See APPEAL.

109. *Right of action—Confession of judgment — Evidence — Admissions—Estoppel by record—Concurrent findings of fact — Practice on appeal*, xxxiv., 495.

See EVIDENCE.

110. *Opposition *afin de charge*—Order for security—Interlocutory judgment—Res judicata—Subsequent final order — Revision of merits on appeal—Practice*, xxxv., 1.

See APPEAL; COSTS.

111. *Judicial notice — Evidence — Objections taken on appeal*, xxxv., 14.

See PRINCIPAL AND AGENT.

112. *Appeal — Jurisdiction — Amount in controversy—Conditional renunciation—Reservations—Costs on appeal in court below — Costs of enquête — Nuisance—Statutory powers—Negligence — Legal maxim*, xxxv., 255.

See APPEAL; DAMAGES.

113. *Pleading—B. C. Rule 168 — New points raised on appeal—Condition precedent — Construction of statute — Mineral claim — Easpropiation — Watercourses — Trespass—Damages—Waiver — Injunction*, xxxv., 309.

See PRACTICE.

114. *Special leave to appeal — Terms imposed*, xxxv., 478.

See APPEAL.

115. *Sheriff's sale of lands — Opposition *afin de charge* — Discretionary order—Default in furnishing security—Res judicata—Estoppel by record—Fivolous and venacious proceedings—Quashing appeal—Jurisdiction of Supreme Court of Canada — R. S. C. c. 135, ss. 27, 59 — Arts. 65I, 726 C. P. Q.*, xxxvii., 613.

See OPPOSITION.

116. *Contradictory evidence — Assessment of damages — Reversal on appeal*, xxxvi., 152.

See PRACTICE.

117. *Declinatory exception — Interlocutory judgment — Appeal — Jurisdiction — Review of judgment on exception*, xxxvii., 535.

See APPEAL.

118. *Controverted election—Trial of petition—Evidence — Corrupt acts at former election—Agency — System of corruption*, xxxvii., 604.

See PRACTICE.

119. *Appeals from Ontario—Jurisdiction — New trial—Discretionary order*, xxxvii., 672.

See APPEAL.

120. *Account — Statute of limitations—Agent or partners—Reference*, xxxviii., 216.  
See PRACTICE.

121. *Crown case reserved—Reserved questions—Dissent from affirmation of conviction — Appeal—Jurisdiction*, xxxviii., 284.

See PRACTICE.

122. *Vacating judgment—Appeal—Jurisdiction—Matter in controversy—Tierce opposition—Arts. 1185-1188 C. P. Q.—R. S. C. (1886) c. 135, s. 29, xxxviii., 236.*

See OPPOSITION.

123. *Appeal — Railway Act—Easpropiation—Appeal from award — Jurisdiction — Choice of forum—Curia designata*, xxxviii., 511.

See APPEAL.

124. *Mechanics' lien—Completion of contract—Time for filing claim—Construction of statute—R. S. M. (1902) c. 110, ss. 20, 36—Right of appeal*, xxxix., 258.

See LIEN.

125. *Landlord and tenant — Negligence—Master and servant—Acts in course of employment—Alterations in plumbing—Damage by steam, etc.—Responsibility of contractors—Control of premises—Cross-appeal between respondents*, xxxix., 265.

See LANDORD AND TENANT.

126. *Charge by judge—Findings of jury—New evidence on appeal—New trial*, xxxix., 390.

See PRACTICE.

127. *Appeal—Demurrer—Final judgment — Jurisdiction*, xl., 139.

See JUDGMENT.

128. *Alternative relief—New trial granted — Final judgment—Appeal*, xl., 270.

129. *Appeal — Criminal law — Reserved case — Application for "during trial" — Criminal Code, s. 1014 (3)—Construction of statute*, xl., 272.

See CRIMINAL LAW.

130. *Appeal—Delay in approval of security—Jurisdiction—Extension of time—Stay of execution*, xl., 455.

See APPEAL.

131. *Mandamus—Driving timber — Order to fix tolls—Past user of stream—Appeal — R. S. O. (1897) c. 142, s. 13, xl., 523.*

See MANDAMUS.

132. *Life insurance—Deduction from damages—Appeal—Equal division of opinion—Costs*, Cam. Cas. 228.

See NEGLIGENCE.

133. *New trial or reduction of verdict*, Cam. Cas. 282.

See NEW TRIAL.

134. *Appeal — Jurisdiction — Discretionary order*, Cout. Cas. 119.

See APPEAL.



135. *Appeal per saltum—Jurisdiction — Trespass—Boundary—Mines and minerals*, *Cout. Cas.* 281.

See MINES AND MINING.

136. *Controverted election—Abatement of appeal—Dissolution of Parliament—Return of deposit*, *Cout. Cas.* 314.

137. *Appeal — Jurisdiction — Amount in controversy—Adding interest to judgment—Construction of statute*, *Cout. Cas.* 318.

See APPEAL.

138. *“Winding-up Act”—Leave to appeal —Discretion—Construction of statute*, *Cout. Cas.* 341.

See APPEAL.

139. *Discretionary order — Amendment of pleadings—Final judgment*, *Cout. Cas.* 386.

140. *Assessment of damages—Concurrent findings—Practice in appellate court*, *Cout. Cas.* 409.

141. *Appeal per saltum — Jurisdiction. Armour v. Town of Onondaga*, xlii., 218.

See APPEAL.

142. *Appeal—Special leave — “Supreme Court Act,” R. S. C. 1906, c. 139, s. 37c—Interests involved—Construction of statute —“Alberta Local Improvement Act”—Assessment and taxation—Constitutional law*, xlv., 170.

See STATUTE.

143. *Appeal—Jurisdiction — Matter in controversy—Damning watercourse—Flooding of lands—Servitude—Damages—Objection to jurisdiction—Costs*, xlv., 292.

See APPEAL.

144. *Appeal — Jurisdiction — Provincial tribunal — Consent — Estoppel — Assessment. Township of Cornwall v. Ottawa & N. Y. R. R.*, lii., 466.

See ASSESSMENT AND TAXES.

145. *Title to land — Vente à réméré—Security for loan—Time for redemption—Promise of re-sale—Condition—Equitable relief —Pleading—Waiver—New points on appeal —Practice—Arts. 1549, 1550 C. C.*, liii., 204.

See TITLE TO LAND.

146. *Appeal—Title to land — Fraudulent conveyance—Statute of Elizabeth*, liii., 145.

See JURISDICTION; APPEAL.

147. *Appeal—Jurisdiction — Winding-up proceedings—Time for appealing—Amount in controversy — Construction of statute — “Supreme Court Act,” R. S. C. 1906, c. 139, ss. 46, 69, 71—“Winding-up Act,” R. S. C. 1906, c. 144, ss. 104, 106—Affirming jurisdiction—Motion in court—Discretionary order by judge*, liii., 128.

See APPEAL.

148. *Appeal from Court of Review—Jurisdiction — Amount in controversy — Addition of costs of exhibits*, liii., 390.

See APPEAL.

149. *Appeal—Jurisdiction — Court of Review—Arts. 68 and 69 C.P.Q.—“Supreme Court Act,” R. S. C. 1906, c. 139, s. 40, liii., 353.*

See APPEAL.

150. *Appeal—Jurisdiction — Action in county court—Concurrent jurisdiction with superior court — Construction of statute—R. S. C. 1906, c. 139, ss. 37b, 70, “Supreme Court Act”—R. S. B. C. 1911, c. 51, “Court of Appeal Act” — R. S. B. C. 1911, c. 53, “County Courts Act”—Motion for new trial —Re-hearing on appeal*, liv., 26.

See APPEAL.

## 6. COSTS.

151. *Appeal—Equal division of opinion—Dismissal without costs.*]—Upon an equal division of opinion among the judges, the appeal stood dismissed without costs. *Côté v. The James Richardson Co.*, xxxviii., 41.

AND see APPEAL.

152. Plaintiff's action was dismissed by the trial judge. On appeal the Supreme Court of Nova Scotia, consisting of four judges, was equally divided and accordingly the appeal was dismissed without costs. The defendant appealed to the Supreme Court of Canada, when the appeal was dismissed with costs. On settling the minutes of judgment, after bringing the point before the Court, the registrar provided that the respondent should have his costs as well in the Supreme Court of Nova Scotia as in the Supreme Court of Canada. *Ross v. Ganon*, Feby. 19th, 1907. *Cam. Prac.* 296.

153. *Costs out of estate.*]—Upon application of counsel for unsuccessful appellant, counsel appearing for respondent and also for executors not parties to the appeal and not objecting, it is ordered that the costs in the Supreme Court be paid out of the estate. *Marks v. Marks*, June 16th, 1908. *Cam. Prac.* 296.

154. In this case the respondent promptly moved to quash, but the Court directed that the motion should stand to be heard and disposed of when the appeal came on to be argued on the merits. The merits were argued by the appellants for one day, and respondent's counsel raised the question of jurisdiction in opening his argument on the merits. The Court quashed the appeal without hearing respondent on merits, and reserved judgment as to costs, and subsequently ordered that the respondent should have his costs of the appeal and not merely the costs of motion. *Genereau v. Bruneau*, Dec. 9th, 1910. *Cam. Prac.* 294.

155. *Election case — Counsel fee. Montmorency Election Case*, *Cout. Cas.* 16.

156. *Discretionary order — Costs—Exemplary damages—Interference by court of appeal*, xxxiv., 153.

See APPEAL.

157. *Varying minutes of judgment—Refusal of costs*, xxxiv., 502.  
See PRACTICE.

158. *Security for costs—Waiver—Consent*, xxxv., 187.

See PRACTICE.

159. *Withdrawal of case from jury—New trial—Costs*, xxxix., 202.

See PRACTICE.

160. *Measure of damages—Loss of primary and secondary profits—Discretionary order as to costs*, xxxix., 575.

See CONTRACT.

161. *Appeal—Equal division of opinion—Costs*, Cam. Cas. 228.

See NEGLIGENCE.

162. *Appeal—Jurisdiction—Demurrer—Final judgment*, Cout. Cas. 11.

See APPEAL.

163. *Taxation of costs—Stay of execution—Setting off costs in court below—Amending minutes of judgment*, Cout. Cas. 19.

See PRACTICE.

164. *Appeal—Equal division of opinion—Dismissal with costs*, Cout. Cas. 271.

See TITLE TO LAND.

165. *Mines and minerals—Trespass—Boundary—Hill-side claim—Jurisdiction—Appeal per saltum*, Cout. Cas. 281.

See MINES AND MINING.

166. *Non-prosecution of motion—Dismissal with costs*, Cout. Cas. 323.

See PRACTICE.

167. *Equal division of opinion—Appeal dismissed with costs*, Cout. Cas. 284.

See NEGLIGENCE.

168. *Operation of tramway—Negligence—Dangerous way—Removal of snow and ice—Right of way—Equal division of opinion—Costs*, Cout. Cas. 309.

See NEGLIGENCE.

169. *Judgment on appeal—Equal division in opinion—Costs*. *Maclaren v. Attorney-General for Quebec*, Cam. Prac. 548.

## 7. CRIMINAL APPEALS.

170. *Criminal Code—6 & 7 Edw. VII. c. 8—Procedure—Alberta and Saskatchewan—Indictable offence—Preliminary inquiry—Preferring charge—Consent of Attorney-General—Powers of deputy—“Lord’s Day Act,” s. 17. In re Criminal Code*, xliiii., 434.  
See CRIMINAL LAW.

171. *Criminal law—Indictment for murder—Trial—Evidence—Criminal intent—Provocation—“Heat of passion”—Charge to jury—Misdirection—Reducing charge to*

*manslaughter—New trial—“Substantial wrong”—Criminal Code, ss. 261, 1019—Appeal—Questions to be reviewed*, xlvii., 1.  
See CRIMINAL LAW.

## 8. DAMAGES.

172. *Revendication—Statement of claim—Pleadings—Procedure—Arts. 110 and 339 C. P. Q.—Evidence—Judgment secundum allegata et probata—Ultra petita—Surprise.*—In an action for revendication of books, documents and records retained by a fire insurance agent after his dismissal and for damages in default of delivery thereof, several policy copy-books, which could not be found at the time of the seizure, were delivered up in a mutilated condition by the defendant during the pendency of the action, the defendant being unaware of such mutilation. Some time afterwards the answers to defendant’s pleas were filed and contained no reference to the mutilated and incomplete condition in which these books were returned. At the trial plaintiffs were allowed to give evidence as to the costs of replacing these books in proper condition, although defendant objected to the adduction of such proof, and the trial judge assessed damages in this respect at \$200, and at \$2,000 in respect of certain mutilated plans, at the same time declaring the revendication valid, etc. On appeal by the plaintiffs from the judgment of the Court of King’s Bench, reversing the trial court judgment in regard to the pecuniary condemnation:—*Held*, affirming the judgment appealed from, that, as the defendant had been surprised, in so far as the issues affecting the policy copy-books were concerned, he was entitled to relief as to the item of \$200 for damages in respect thereof. With regard to the item of \$2,000 damages, however, as the defendant could not have been taken by surprise, he himself having mutilated the plans, the Supreme Court of Canada reversed the judgment appealed from and restored the trial court judgment as to that item of the damages assessed. *Norwich Union Fire Insurance Co. v. Kavanagh*, xxxvi., 7.

173. *New trial—Contradictory evidence—Wilful trespass—Rule in assessing damages—Adding party—Reversal on appeal.*—In an action for damages for entry upon a placer mining claim and removing valuable gold bearing gravel and dirt, the trial judge found the defendants guilty of gross carelessness in their work, held that they should be accounted wilful trespassers, and referred the case to the clerk of the court to assess the damages. The referee adopted the severer rule applicable in cases of fraud in assessing the damages. The Territorial Court in *banco* reversed the trial judge in his findings of facts upon the evidence.—*Held*, reversing the judgment appealed from, that the trial judge’s findings should be sustained with a slight variation, but that the referee had erred in adopting the severer rule against the defendant in assessing the damages, and that his report should be amended in view of such error.—*Semble*, that the record and pleadings should be

amended by adding the plaintiff's partner as co-plaintiff.—*Held, per Taschereau, C.J.*, dissenting, that although not convinced that there was error in the judgment of the trial judge which the court *in banco* reversed, while at the same time it did not appear that there was error in the judgment *in banco*, yet the latter judgment should stand, as the court *in banco* should not be reversed unless the Supreme Court, on the appeal, be clearly satisfied that it was wrong. (Leave to appeal to Privy Council refused, 4th Aug., 1905). *Kirkpatrick v. McNamee*, xxxvi., 152.

174. *Assessment of damages — Concurrent findings—Practice on appeal.*—Where the judge at the trial had heard and seen the witnesses and had, on proper principles, assessed damages according to his appreciation of the evidence, his decision being adopted by the court *in banco*, the court refused to interfere on appeal. *Wood v. Leblanc*, Cout. Cas. 409.

175. *Exemplary damages — Discretionary order — Costs — Interference by court of appeal*, xxxiv., 153.

See APPEAL.

176. *Pleading—Cross-demand—Compensation—Arts. 3, 203, 215, 217 C. P. Q.—Construction of contract—Liquidated damages—Penal clause—Arts. 1076, 1187, 1188 C. C.—Estoppel—Waiver*, xxvii., 347.

See PLEADING.

177. *Assessment of damages—Funeral expenses*, xxxviii., 327.

See NEGLIGENCE.

178. *Tort—Right of action—Withdrawal of case from jury—New trial*, xxxix., 202.

See PRACTICE.

179. *Negligence—Concurrent findings — Damages—Common fault*, xxxix., 332.

See NEGLIGENCE.

180. *Breach of contract—Measure of damages—Loss of primary and secondary profits—Discretionary order as to costs*, xxxix., 575.

See CONTRACT.

181. *Sale of goods—Set-off—Debtor and creditor—Partnership — Evidence — Books of account—New trial—Reducing verdict on appeal*, Cam. Cas. 282.

See NEW TRIAL.

182. *Life insurance — Deduction from damages—Appeal—Equal division of opinion—Costs*, Cam. Cas. 228.

See NEGLIGENCE.

183. *Damages—Negligence—Physical injuries—Mental shock — Severance of damages*, xlv., 268.

See DAMAGES.

184. *Rivers and streams—Industrial improvements — Penning back waters—Permanent works—Damages—Measure of damages—Expertise—Arbitration — Repara-*

*tion—Loss of water-power — Future damages—Compensation once for all—Right of action—Statute—R. S. Q. 1909, arts. 7295, 7296, xlix., 344.*

See RIVERS AND STREAMS.

185. *Contract — Default — Liquidated damages—Pre-estimate — Penalty — Inexecution—Compensation—Cross-demand. Can. Gen. Elec. v. Can. Rubber*, lii., 349.

See CONTRACT.

186. *Damages — Verdict — Excessive award—Personal injuries — Complete reparation—Loss of earnings—Pain and suffering—Evidence—Mortuary tables — New trial. C. P. R. v. Jackson*, lii., 281.

See DAMAGES.

## 9. DEFAULT PROCEEDINGS.

187. *Appeal—Dismissing for non-prosecution.*—On motion for dismissal of an application for special leave to appeal from the Court of Appeal for Ontario (25 Ont. App. R. 88), in the matter of an arbitration between the parties, no one appeared to support the motion on the day for which notice had been given, and the motion was dismissed with costs.—Subsequently, on motion before the registrar, in chambers, the application for special leave to appeal was dismissed with costs. *Birely v. Toronto, Hamilton & Buffalo Ry. Co.*, Cout. Cas. 184.

188. *Non-prosecution of motion—Dismissal with costs.*—Counsel for respondent informed the court that he appeared pursuant to the notice of motion for special leave to appeal. The appellants did not appear to support the motion, and it was dismissed with costs, fixed at \$50. *Algoma Central & Hudson Bay Ry. Co. v. Fraser*, Cout. Cas. 323.

189. *Controverted election—Dismissal on default of appearance—Reinstating appeal*, Cout. Cas. 109.

See PRACTICE.

## 10. DISCRETIONARY ORDERS.

190. *Appeal — Amendment of pleadings—Discretionary order — Procedure — Final judgment.*—Where no injustice has been done in the refusal of leave to amend pleadings, the court refused to interfere with the orders made by the courts below in the exercise of judicial discretion and quashed the appeals. *Cass v. Couture; Cass v. McCutcheon*, Cout. Cas. 386.

191. *Appeal—Jurisdiction — R. S. C. o. 195, ss. 40, 42—60 & 61 Vict. c. 34 (D.)—Matter in controversy—Extension of time for appealing—Lapse of order—Practice in office of registrar—Refusal to approve security bond.*—Approval of a bond of security for costs of appeal will be refused in cases where it appears that the court would not have jurisdiction to entertain the appeal.

*MacLaughlin v. Lake Erie & Detroit River Ry. Co.*, Cout. Cas. 297.

AND see APPEAL.

192. *Appeal—Leave by judge—Jurisdiction of Railway Board—Doubt as to decision of Board.*—A judge of the Supreme Court of Canada will not grant leave to appeal from the decision of the Board of Railway Commissioners on a question of jurisdiction if he has no doubt that such decision was correct. *Halifax Board of Trade v. Grand Trunk Ry. Co.*, xlv., 298.

193. *Requête civile—Amendment—Order nunc pro tunc*, xxxiv., 13.

See PRACTICE.

194. *Discretionary order—Costs—Exemplary damages—Interference by court of appeal*, xxxiv., 153.

See APPEAL.

195. *Appeal—Discretion—Amendment—Formal judgment*, xxxiv., 279.

See PRACTICE.

196. *Appeal—Order for new trial—Weight of evidence—New grounds on appeal*, xxxiv., 338.

See PRACTICE.

197. *Will—Devise—Discretion of executors—Withholding income—Reasonable time—Failure of object of devise—Cy-pres—Costs*, xxxv., 182.

See WILL.

198. *Judicial sale of railways—Interested bidder—Disqualification as purchaser—Counsel and solicitors—Art. 1484 C. C.—Construction of statute—Discretionary order—Review by appellate court—4 & 5 Edw. VII. c. 158 (D.)—Public policy*, xxxvii., 303.

See APPEAL.

199. *Pleading and practice—Injunction—Discretionary order—Reversal on appeal*, xxxix., 81.

See PRACTICE.

200. *Breach of contract—Measure of damages—Loss of primary and secondary profits—Order as to costs*, xxxix., 575.

See CONTRACT.

201. *Appeal—Jurisdiction—Discretionary order*, Cout. Cas. 119.

See APPEAL.

202. *Matter in controversy—Special leave to appeal—Exercise of discretionary power*, Cout. Cas. 322.

See PRACTICE.

203. *“Winding-up Act”—Leave to appeal—Discretionary order—Construction of statute—Appeal de plano*, Cout. Cas. 341.

See APPEAL.

204. *Marine insurance—Abandonment—Repairs—Boston clause—Findings of jury—New trial—Practice—Evidence taken by*

*commission—Judicial discretion. Ins. Co. of North America v. McLeod; Western Ass. Co. v. McLeod; Nova Scotia Marine Ins. Co. v. McLeod*, Cout. Dig. 214.

See APPEAL; PRACTICE.

205. *“Winding-up Act”—Insolvent bank—Appointment of liquidators—Appointing another bank—Discretion of judge—Appeal (xviii., 70); Cam. Cas. 209.*

See WINDING-UP ACT.

206. *Appeal—Special leave—Matter in controversy—Discretionary order—Practice*, Cout. Cas. 382.

See APPEAL.

207. *Appeal—Practice—Amendment of pleadings—Discretionary order—Final judgment*, Cout. Cas. 386.

See APPEAL.

208. *Appeal—Jurisdiction—Special leave—“Judicial proceeding”—Discretionary order—Matter of public interest—“Alberta License Ordinance”—“Originating summons.” Finseth v. Ryley Hotel Co.*, xliii., 646.

See APPEAL.

209. *Appeal—Jurisdiction—Special leave—“Judicial proceeding”—Discretionary order—Matter of public interest—“Alberta Liquor License Ordinance.” s. 57—“Originating summons”—R. S. C. 1906, c. 139, s. 37—8 Edw. VII. (Alta.), c. 7, ss. 1, 2, 6, xliii., 646.*

See APPEAL.

210. *Appeal—Jurisdiction—Time for appealing—Amount in controversy—Affirming jurisdiction—Motion in court—Discretionary order by judge. Re Great Northern Construction Co., Ross v. Barry*, liii., 128.

See APPEAL.

## 11. ELECTIONS.

211. *Controverted elections—Service of petition—Service out of jurisdiction—Second service on agent—Nova Scotia Election Court Rules.*—Under the Dominion Elections Act service of an election petition cannot be made outside of Canada, Idington, J., dissenting.—By rule 10 of the Nova Scotia rule under the Election Act, a candidate returned at an election may by written notice deposited with the clerk of the court, appoint an attorney to act as his agent in case there should be a petition against him. — *Held*, that an agent so appointed is only authorized to act in proceedings subsequent to the service of the petition, and service of the petition itself on him is a nullity. *King's (N.S.) Election Case*, xxxvi., 520.

212. *Controverted election—Practice—Service of petition abroad—Subsequent service in Canada.*—Service of an election petition out of Canada being void, does not invalidate a subsequent legal service in Canada. *Shelburne-Queen's Election Case*, xxxvii., 537.

213. *Controverted election—Preliminary objection—Status of petitioner—Corrupt acts—Dominion Elections Act, 1900, s. 113.*—Section 113 of the Dominion Elections Act, 1900, provides that any person hiring a conveyance for a candidate at an election, or his agent, for the purpose of conveying any voter to or from a polling place shall, *ipso facto*, be disqualified from voting at such election.—*Held*, that the right of an elector to present a petition against the return of a candidate at an election may be questioned, by preliminary objection, on the ground that he is disqualified under the above section and that on the hearing of the preliminary objection evidence may be given of the corrupt act which caused such disqualification. *Beauharnois Election Case*, [31 Can. S. C. R. 447] distinguished. *Cumberland Election Case; Pictou Election Case; North Cape Breton-Victoria Election Case*, xxxvi., 542.

AND see ELECTION LAW.

214. *Controverted election—Petition—Preliminary objections—Status of petitioner—Evidence—Premature service—Return of member.*—A petition alleging "an undue election" or "undue return" of a candidate at an election for the House of Commons cannot be presented and served before the candidate has been declared elected by the returning officer. *Girouard and Idington, J.*, dissenting. *Yukon Election Case*, xxxvii., 495.

215. *Controverted election—Personal corruption—Charge in petition—Judge's report—Adjudication—Amendment—Evidence.*—On a charge of personal corruption by the respondent if the adjudication by the trial judges does not contain a formal finding of such corruption the Supreme Court of Canada, on an appeal, may insert it if the recitals and reasons given by the judges warrant it.—Allegations in the petition that respondent had himself given and procured, undertaken to give and procure money and value to electors and others named, his agents, to induce them to favour his election and vote for him, for the purpose of having such moneys and value employed in corrupt practices, were sufficient to cover the offence of which the respondent was found guilty. *St. Ann's Election Case*, xxxvii., 563.

216. *Controverted election—Commencement of trial—Extension of time.*—An order fixing the time for the trial of an election petition at a date beyond the time prescribed under the Act operates as an enlargement of the time. *St. James Election Case* (33 Can. S. C. R. 137); *Beauharnois Election Case* (32 Can. S. C. R. 111), followed. *Halifax Election Cases*, xxxvii., 601.

217. *Controverted election—Trial of petition—Evidence—Corrupt acts at former election—Agency—System of corruption.*—A petition against the return of a member for the House of Commons at a general election in 1904 contained allegations of corrupt acts by respondent at the election in 1900 which were struck out on preliminary objections. On the trial of the petition evidence of payments by respondents of accounts in connection with the former elec-

tion was offered to prove agency and a system and was admitted on the first ground. A question as to the amount of one account so paid was objected to and rejected.—*Held*, that such rejection was proper; that the question was not admissible to prove agency for agency was admitted or proved otherwise; nor as proof of a system which could not be established by evidence of an isolated corrupt act.—*Held*, also, that where evidence is tendered on one ground other grounds cannot be set up in a court of appeal. *Shelburne and Queen's Election Case*, xxxvi., 604.

218. *Controverted election—Dismissal on default of appearance—Reinstating appeal—Practice.*—When the case came on for hearing, no counsel appeared, and the appeal was dismissed with costs. A motion to reinstate the appeal and stay entry of judgment was dismissed, and a certificate of the judgment dismissing the appeal was transmitted to the Speaker of the House of Commons. *Hargraff v. Gravely; West Northumberland Election Case*, *Cout. Cas.* 109.

219. *Controverted election—Abatement of appeal—Dissolution of Parliament—Return of deposit.*—When the appeal came on for hearing there had been a dissolution of the Parliament in which the respondent had been returned as elected. It was declared that the petition had abated and that the petitioners were entitled to be repaid the deposit with accrued interest. *Lisgar Election Case; Woods v. Stewart*, *Cout. Cas.* 314.

220. It is in the public interest that election appeals should be placed at the head of the list of appeals at each session and disposed of as speedily as possible. *Re Halifax Election*, *Can. Prac.* xv.

221. *Practice—Costs—Counsel fee. Montmorency Election Case; Valin & Langlois*, *Cout. Cas.* 16.

222. *Controverted election—Appeal to Supreme Court of Canada—Jurisdiction—Practice—37 Vict. c. 10, ss. 35, 56 (D.), 38 Vict. c. 11, s. 48 (D.). In re John Stewart; The Kingston Election Case*, *Cout. Cas.* 21.

223. *Amending minutes of judgment—Further proceedings in election court—Commencement of trial—Cross-petitions*, *Cout. Cas.* 401.

See ELECTION LAW.

224. *Controverted election—Service of petition—Extension of time—Substitutional service—R. S. C. 1906, c. 7, ss. 17, 18, xli.*, 410.

See ELECTION LAW.

225. *Controverted election—Preliminary objections—Interlocutory motions*, xlvii., 211.

See APPEAL.

## 12. EVIDENCE.

226. *C. T. W. Piper*, one of the respondents in this appeal, was the plaintiff in a

damage action against some of the present appellants. The judgment at the trial in this action was subject to objection admitted as evidence on the trial of the present case. This judgment was appealed to the Full Court in British Columbia. When the case for the present appeal was settled in British Columbia, the respondents asked to have included in the record the judgment of the full court in the other case. This was refused by Mr. Justice Gallagher. The respondents then applied to the Supreme Court for leave to add this judgment to the case but the application was refused. *Roberts v. Piper*, Oct. 6, 1910, not reported, Cam. Prac. 443.

227. A certain agreement — a plan and some photographs were used at the trial but not filed or made exhibits, and were not part of the case on appeal to the full court. An application to have these documents made part of the record in the appeal to the Supreme Court was refused after argument. *Bing Kee v. Yick Chong*, May 3rd, 1910, Cam. Prac. 444.

228. An application having been made to the Supreme Court to add to the case in appeal, a map or plan on file in the Dominion Department of Railways and Canals, which was not known of when cause was argued in the courts below, and which plan, if admitted, would conclusively conclude the rights of the parties, the Supreme Court held that under the well settled jurisprudence of the Court there was no power to add to the case what was not before the court below. On appeal to the Judicial Committee of the Privy Council, without expressing an opinion on the power of the Supreme Court of Canada, held that the committee had such power and this evidence being admitted the appeal was allowed. (1909) H. C. 361. *Red Mountain Ry. Co. v. Blue*, 39 Can. S. C. R. 390, C. R. [1909] A. C. 210, Cam. Prac. 444.

229. An application was made to the registrar sitting as a judge in Chambers for an order granting commission to take evidence in Wales to be used upon a pending appeal to the Supreme Court of Canada from the Supreme Court of Alberta. The motion was refused on the merits, and as to the power to grant a commission the registrar said:—"I am not prepared to hold in view of the recent decision of the Judicial Committee in the *Red Mountain v. Blue* case (1909), A. C. 361, C.R. [1909] A. C. 210, that the Supreme Court will not now under certain circumstances, allow evidence to be used in this court which was not tendered in the courts below, but it appears to me that the application must be dismissed on the ground that the evidence which the defendant now desires to use should have been obtained in the courts below, and that having elected to go down to trial without such evidence, and further having elected to prosecute an appeal from the judgment against him at the trial to the full court the application which he now makes cannot be granted." On application to Mr. Justice Anglin, the registrar's order was affirmed. *Evans v. Evans*, Oct., 1912, Cam. Prac. 446.

230. *British Columbia Railway Act—Fire on right-of-way — Combustible matter on berm—Origin of fire—Damage to adjoining property — Negligence — Evidence — New points raised on appeal.*—In an action against a railway company subject to the British Columbia Railway Act, if there is no evidence that the company had knowledge or notice of the existence of a fire on their right-of-way, not caused by the operation of the railway, the fact that the condition of the right-of-way facilitated the spread of the fire to adjoining property which was destroyed by it does not amount to actionable negligence.—Where a matter relied upon to support the action was not urged at the trial nor asserted on an appeal to the provincial court it is too late to put it forward for the first time on an appeal to the Supreme Court of Canada. — Judgment appealed from (14 B. C. Rep. 169) affirmed, Idington, J., dissenting. *Laidlaw v. Crownest Southern Railway Co.*, xlii., 355.

231. *Adduction of evidence — Cross-examination at trial—Vexatious and irrelevant questions—Discretionary order — Propriety of review.*—The judge presiding at the trial of a cause has a necessary discretion for the protection of witnesses under cross-examination and, where it does not appear that he has exercised that discretion improperly, his order ought not to be interfered with on an appeal. Hence, an appellate court is not justified in ordering a new trial on the ground that counsel has been unduly restricted in cross-examination by a question being disallowed which did not, at the time it was put to the witness, have relevancy to the issues.—Idington, J., dissented on the ground that, under the circumstances of the case, counsel was entitled to have the question answered. *Brownell v. Brownell*, xlii., 368.

232. *Criminal law — Trial for murder — Improper admission of evidence—New trial —Substantial wrong or miscarriage—Criminal Code, s. 1019.*—By section 1019 of the "Criminal Code" it is provided that "no conviction shall be set aside or any new trial directed, although it appears that some evidence was improperly admitted or rejected or that something not according to law was done at the trial, . . . unless, in the opinion of the court of appeal, some substantial wrong or miscarriage was thereby occasioned on the trial."—*Held*, reversing the judgment appealed from (16 B. C. Rep. 9), Davies and Idington, JJ., dissenting, that where evidence has been improperly admitted or something not according to law has been done at the trial which may have operated prejudicially to the accused upon a material issue, although it has not been and cannot be shewn that it did, in fact, so operate, and although the evidence which was properly admitted at the trial warranted the conviction, the court of appeal may order a new trial. *Allen v. The King*, xliiv., 331.

233. *Sale of lands—Contract—Agreement for re-sale—Novation—Rescission—Specific performance—Defence to action—Evidence—Statute of Frauds—Principal and agent—Agent purchasing—Disclosure—Findings of*

*fact.*]—In a suit for specific performance of a contract for the sale of lands an agreement for the re-sale of the lands may be set up as a defence notwithstanding that such re-sale agreement does not satisfy the requirements of the 4th section of the Statute of Frauds. Judgment appealed from (10 D. L. R. 765) affirmed.—Such an agreement for re-sale affords a sufficient reason for refusing a decree for specific performance of the original contract for sale.—The Supreme Court of Canada refused to review the finding of the courts below that the defendants, while agents for the sale of the property in question, when purchasing it themselves under the contract for re-sale, had discharged their duty towards the plaintiff in regard to disclosure of material facts relating to the value of the property. *Frith v. Alliance Investment Co.*, xlix., 384.

234. *Conviction in Yukon Territory—Admission of evidence—Procedure at trial—Refusal to reserve case—Appeal to Supreme Court of Canada. Labelle v. The King*, Cout. Cas. 282.

235. *Contract by municipal corporation—Powers—By-law or resolution—Right of action—Confession of judgment—Admissions—Pleading—Estoppel by record—Art. 1245 C. C.*, xxxiv., 495.

See EVIDENCE.

236. *Expert testimony—Examination of over five witnesses without objection—2 Edw. VII. c. 9, s. 1, xxxviii.*, 149.

See EXPROPRIATION.

237. *Pleading—Purchase for value without notice—Onus of proof—Affirmation and negative evidence—Weight of evidence*, xl., 510.

See EVIDENCE.

238. *Evidence—Improper admission—Un-corroborated testimony of plaintiff—Contradictory evidence—Verdict against weight of evidence—New trial*, Cam. Cas. 214.

See EVIDENCE.

239. *Oral evidence to vary deed—Equity of redemption—Sheriff's sale—Execution*, Cam. Cas. 251.

See PLEADING.

240. *Admiralty law—Navigation—Negligence—Overtaking vessel—Findings of fact—Cause of collision*, Cout. Case. 405.

See ADMIRALTY LAW.

241. *Evidence—Impeachment of testimony—Notice of imputations—Promissory note—Fraud—Suspicious circumstances—Transfer of negotiable instrument—Jury. Peters v. Perras*, xlii., 244.

242. *Arbitration and award—Expropriation—Form of award—View of property—Proceeding on wrong principle—Disregarding evidence. Calgary & Edmonton Ry. Co. v. MacKinnon*, xliii., 379.

See ARBITRATION AND AWARD.

243. *Evidence—Burden of proof—Admission by counsel—Shifting of onus—Sale of bank stock—Allotment to shareholders—*

*Shares refused or relinquished—Sale to public—Authority—R. S. C. (1906) c. 29, s. 34, xliv.*, 157.

See EVIDENCE.

244. *Employer and employee—Compensation for injury—Contributory negligence—Construction of statute—"Workmen's Compensation Act"—2 Edw. VII., c. 74, s. 2—Remedial legislation—Refusal of damages—Right of appeal—Evidence*, xliv., 106.

See APPEAL.

245. *Timber license—Crown lands in British Columbia—Real estate—Personalty—Contract—Sale—Exchange—Consideration—Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof—Pleading and practice*, xliv., 458.

See LIEN.

246. *Malicious prosecution—Probable cause—Evidence—Onus—Honest belief—Questions for jury*, xlvii., 393.

See MALICIOUS PROSECUTION.

247. *Bill of sale—Transfer between near relatives—Preferential assignment—Suspicious circumstances—Corroborative evidence—Bona fides—Practice. Koop v. Smith*, li., 564.

See EVIDENCE.

248. *Title to land—Conveyance in fraud of creditors—Husband and wife—Advancement—Trustee—Equitable relief—Restitution—Evidence—Statute of Frauds. Scheuerman, etc.*, lii., 625.

See TITLE TO LAND.

249. In this case a lease which was not put in evidence at the trial, was referred to in a mortgage which formed part of the documentary evidence in the case. The court thought the lease should be before it for the purpose of properly determining the issues in question on the appeal. Counsel for the respondent consented, to avoid the case being sent back for new trial, that the court should treat the lease as part of the record. *Mineral Products Co. v. Continental Trust Co.*, May, 1906, Cam. Prac. 490.

### 13. HABEAS CORPUS.

250. *Habeas corpus—Criminal law—Jurisdiction of judge of Supreme Court of Canada—Issue of writ out of jurisdiction of provincial courts—Concurrent jurisdiction—R. S. C. (1886) c. 135, s. 32—Construction of statute—Constitutional law—Powers of Parliament—"Inland Revenue Act"—"Selling and delivering a still and worm"—Cumulative charge—Summary conviction—Adjournment—Conviction in absence of accused*, Cout. Cas. 110.

See HABEAS CORPUS.

### 14. JUDGMENTS.

251. *Settling minutes of judgment—Amending judgment after entry.*]—The

minutes of judgment as settled by the registrar directed that the appellants' costs should be paid out of certain moneys in court, and in this form the judgment was duly entered and certified to the clerk of the court below. Subsequently it was made to appear that there were no moneys in court available to pay these costs, and upon the application of the appellants the court amended the judgment, directing that the costs of the appellants should be paid by the respondents forthwith after taxation. *Letourneau v. Carboneau*, xxxv., 701.

252. *Revising minutes of judgment—Miscellaneous—Costs of abandoned defences—Reference to trial judge.*—The plaintiffs' action was maintained with costs in the courts below, but on appeal, it was dismissed with costs by the Supreme Court of Canada (37 Can. S. C. R. 546), 'no reference being made to certain costs incurred by the plaintiffs in respect of several defences which the defendant had abandoned in the trial court. On motion to vary the minutes, the matter was referred to the judge of the trial court to dispose of the question of the costs on the abandoned defences. *Rutledge v. United States Savings and Loan Co.*, xxxviii., 103.

253. *Taxation of costs—Stay of execution—Setting-off costs in court below—Amending minutes of judgment.*—Ordered that the costs which had been previously allowed to the appellant in the Supreme Court of Canada should be set off against whatever costs might be taxed and allowed to the respondent in the court below, and should be satisfaction *pro tanto* of said last mentioned costs when so set off, and that all proceedings upon the execution should, in the meantime, be stayed. [Cf. *Rutledge v. United States S. & L. Co.*, No. 171, ante (38 Can. S. C. R. 103.)] *North Ontario Election Case; Wheeler v. Gibbs*, Cout. Cas. 19.

254. *Appeal—Jurisdiction—Order for stay of proceedings—Matter of procedure—Judgment delivered out of court.*—In appeals from judgments ordering stay of proceedings in actions by the appellants, motions were made to quash, on the ground that the orders were merely matters of procedure, and not in the nature of final judgments, and judgments reserved to admit of the filing of written arguments by the parties.—It appeared, later on, that there was urgent necessity for pronouncing judgment upon the motions at an early date, and on 22nd Sept., 1886, the Chief Justice and judges who had heard the arguments, transmitted opinions to the registrar of the court, by mail and telegraph, the majority being of opinion that the appeals should be quashed for want of jurisdiction. Fournier, J., dissented.—On 2nd October, 1888, on motion, *in banco*, for the entry of judgment in conformity with the opinions so expressed, it was ordered that formal judgments should be entered quashing the appeals with costs for want of jurisdiction. *The Canadian Pacific Railway Co. v. Conmee & McLennan*, Cout. Cas. 66.

255. *Varying order for judgment—Settling terms more definitely.*—A stay of proceed-

ings was ordered pending an appeal to the Privy Council and, after dismissal of that appeal the case was again inscribed, heard upon the merits, and allowed with costs, the majority of the court being of opinion that a sum of \$5,000 paid to the respondent, on 10th June, 1895, should be included in the judgment entered against him, with costs in all the courts.—Subsequently the parties applied to the court, for a more definitive order, and by consent, judgment was ordered to be entered for \$8,739.24, with interest as given by the judgment of the Superior Court and costs.—(Cf. *The Queen v. Demers* [1900] A. C. 103.) *Bank of Montreal v. Demers*, Cout. Cas. 196.

256. *Varying minutes of judgment—Costs of former trials—Issues on appeal.*—Motion to vary minutes, by adding directions in respect to two former trials, refused on the ground that there had been no issue in question on the appeal touching the two previous trials. *Dunsmuir v. Lowenberg, Harris & Co.*, Cout. Cas. 270.

257. *Varying minutes of judgment—Repayment of costs—Jurisdiction.*—A motion to vary minutes of judgment as settled under the decision allowing the appeal (34 Can. S. C. R. 160), by adding a direction that the respondents should repay to appellant costs paid them, under threat of execution, pending the appeal, was dismissed and it was stated that the matter in question could be dealt with only in the court from which the appeal had been taken. *Turner v. Cowan*, Cout. Cas. 306.

258. *Amending minutes of judgment—Correcting error—Suit against partnership—Special leave for motion to full court—Practice.*—Motion to vary minutes of judgment allowing the appeal was made (on special leave) by providing that appellant should recover the amount sued for with costs "against the said respondents," instead of "against H. Dallas Helmcken, the surviving defendant."—The action was against a partnership, and on the appeal, they were represented by the surviving partner only. In allowing the appeal (37 Can. S. C. R. 315, at pages 319-320), the court inadvertently directed that judgment should be entered for the plaintiff against the surviving defendant only.—The court ordered that the amendment should be allowed as applied for, without costs. *Jackson v. Drake, Jackson & Helmcken*, Cout. Cas. 384.

259. *Varying minutes of judgment.*—A motion to vary the minutes of judgment (37 Can. S. C. R. 464) as settled, to conform to the intention of the court, was allowed without costs. *Leahy v. Town of North Sydney*, Cout. Cas. 404.

260. *Appeal—Nature of action—Equitable relief—"Supreme Court Act," s. 38(c)—Appeal from referee—Final judgment.*—Where a statement of claim discloses only a common law cause of action and the cause was so dealt with at the trial the facts that the indorsement on the writ indicates a claim for equitable relief and that the trial judge, in ordering a reference to assess the damages, reserved further directions, do not



make it a judicial proceeding in the nature of a suit in equity within the meaning of s. 38(c) of the "Supreme Court Act."—The judgment of the Court of Appeal varying the report of the referee directed to assess the damages for the plaintiff in an action is not a final judgment from which an appeal lies to the Supreme Court of Canada. *Clarke v. Goodall*, xlii., 284.

261. *Appeal—Final judgment—Action for commissions—Reference — Reservation of further directions and costs.*—In an action against an insurance company for agent's commissions on policies and renewals the trial judge gave judgment for the plaintiff, ordered an account to be taken and reserved further directions and costs. His judgment was affirmed by the Court of Appeal.—*Held*, Fitzpatrick, C.J., dissenting, that the decision of the Court of Appeal was not a final judgment from which an appeal would lie to the Supreme Court of Canada. *Crown Life Ins. Co. v. Skinner*, xlii., 616.

262. *Appeal — Final judgment—Further directions—Master's report.*—On the trial before the Chancellor of Ontario of an action claiming damages for breach of contract judgment was given for the plaintiffs with reference to the Master to ascertain the amount of damages, further directions being reserved. This judgment was affirmed by the Court of Appeal. The Master then made his report which, on appeal to the Chief Justice of the Common Pleas, was varied by reduction of the amount awarded. The Chancellor then pronounced a formal judgment on further directions in favour of the plaintiff for the damages as reduced. The defendants appealed from the judgments of the Chief Justice and the Chancellor and the two appeals were, by order, heard together, but not formally consolidated. Both judgments were affirmed by the Court of Appeal, and the defendants sought to appeal from the judgment affirming them and also from the original judgment sustaining the decision at the trial, having applied without success to the court below for an extension of time to appeal from the latter judgment. See *Nelles v. Hesseitine* (27 Ont. L. R. 97).—*Held*, Brodeur, J., dissenting, that the only judgment from which an appeal would lie was that affirming the judgment of the Chancellor on further directions; that the Chancellor could not review the original judgment of the Court of Appeal nor that varying the Master's report and the Court of Appeal was equally unable to review them on the appeal from the Chancellor's decision, and the Supreme Court being required by statute to give the judgment that the Court of Appeal should have given was likewise debarred from reviewing these earlier decisions. *Hesseitine v. Nelles*, xlvii., 230.

263. *Pleadings—Judgment of court below—Amendment on appeal—Married woman—Legal community—Right of action.* *North Shore Power Co. v. Duguay*, xxxvii., 624.

264. *Appeal—Discretion — Formal judgment in court below*, xxxiv., 279.

See PRACTICE.

265. *Appeal—Exception — Pleading—Acquiescence—Art. 1220 C. P. Q. — Varying minutes of judgment—Costs*, xxxiv., 502.

See PRACTICE.

266. *Judgment pronounced in absence of disqualified judge — Quorum—Jurisdiction*, xxxv., 330.

See COURTS.

267. *Pleadings — Procedure — Arts. 110, 339 C. P. Q.—Evidence—Judgment secundum allegata et probata—Ultra petita—Surprise*, xxxvi., 7.

See PRACTICE.

268. *Pronouncing or entry of judgment—Appeal—Time limit*, xxxvi., 27.

See PRACTICE.

269. *Order for new trial—Reasons for judgment—Decree entered by registrar—Assessment of damages*, xxxvi., 159.

See JUDGMENT.

270. *Certiorari — Limitation of time for granting writ—Delays occasioned by judge—Legal maxim—Order nunc pro tunc*, xxxvii., 79.

See ASSESSMENT AND TAXES.

271. *Appeal—Jurisdiction — Declinatory exception—Interlocutory judgment—Review of judgment on exception*, xxxvii., 535.

See APPEAL.

272. *Divorce—Decree by foreign tribunal—Comity of nations—Art. 14 C. C. P.*, Cam. Cas. 392.

See DIVORCE.

273. *Appeal — Jurisdiction — Supreme Court Act, 1875, 38 Vict. c. 11—Demurrer—Final judgment—Costs*, Cout. Cas. 11.

See APPEAL.

274. *Controverted election — Reinstating appeal—Stay of entry of judgment*, Cout. Cas. 109.

See PRACTICE.

275. *Criminal law—Cumulative charge — Summary conviction in the absence of accused—Adjournment—"Selling and delivering a still and worm"*, Cout. Cas. 110.

See HABEAS CORPUS.

276. *Appeal—Amendment of pleadings — Discretionary order—Final judgment*, Cout. Cas. 386.

See PRACTICE.

277. *Action—Damages—Rescission of contract—Reference — Final judgment*, xlvi., 205.

See APPEAL.

278. *Recalling judgment — Defect—Correction of omission—Amendment of pleadings—Jurisdiction—Costs — Settlement of minutes*, li., 629.

See JUDGMENT.

279. "Expropriation Act," R. S. C., 1906, c. 143, ss. 8, 23, 31—Abandonment of proceedings—Compensation— Allowance of interest—Construction of statute—Taxation of costs—Solicitor and client—Reimbursement of expenses—Interpretation of formal judgment—Reference to opinion of judge. *Quebec Jacques Cartier v. The King*, li., 594.  
See EXPROPRIATION.

280. Appeal—Final judgment— Substantive right—"Supreme Court Act," s. 2 (e)—3 & 4 Geo. V., c. 51—Procedure—Service out of jurisdiction — Costs—Jurisdiction, liii., 310.  
See APPEAL.

281. Contract—Sale of lands — Exchange—Specific performance — Foreign lands — Jurisdiction of courts of equity—Mutuality of remedy — Relief in personam — Discretionary order — Appeal—Jurisdiction — "Final judgment." *Jones v. Tucker*, liii., 431.  
See SPECIFIC PERFORMANCE.

#### 15. JURY TRIALS AND FINDINGS OF FACT.

282. Charge to jury—New trial—Misdirection—Report by judge.]—One ground of a motion for a new trial was misdirection in the charge to the jury. The trial judge reported to the full court that he had not made the remarks claimed to be misdirection and stated what he actually did say.—*Held*, that this proceeding was not objectionable and moreover it was a matter to be dealt with by the court appealed from whose ruling was not open to review. Judgment of the Supreme Court of Nova Scotia (36 N. S. Rep. 40), affirmed. *Dickie v. Campbell*, xxxiv., 265.

283. Jury trial—Findings as to negligence—Questions as to special grounds—Judge's charge—Non-direction — Misdirection—Application of law to facts—New trial.]— Upon a trial by jury, the judge in directing the jury as to the law is bound to call their attention to the manner in which the law should be applied by them according to their findings as to the facts, the extent to which he should do so depending on the circumstances of the case he is trying, and, where the form of the charge was defective in this respect and, consequently, left the jury in a confused state of mind as to the questions in issue, there should be a new trial.—Judgment appealed from (10 B. C. Rep. 473), affirmed, *Davies, J.*, dissenting.—*Held*, *per Nesbitt, J.*—That in an action founded on negligence it is advisable that specific questions should be submitted to the jury to enable them to state the special grounds on which they find negligence or no negligence. *Spencer v. Alaska Packers Association*, xxxv., 362.

284. Negligence—Employer and workman—*Volenti non fit injuria*—Finding of jury.]—In an action claiming compensation for personal injuries caused by negligence the defendant who invokes the doctrine *volenti non fit injuria* must have a finding by the jury that the person injured voluntarily incurred the risk unless it so plainly appears

by the plaintiff's evidence as to justify the trial judge in withdrawing it from the jury and dismissing the action. *Sedgewick and Nesbitt, JJ.*, dissenting. *Canada Foundry Co. v. Mitchell*, xxxv., 452.

285. Negligence—Trial—Finding of jury—Exercise of statutory privilege.]—Where on the trial of an action based on negligence questions are submitted to the jury they should be asked specifically to find what was the injury and general findings of negligence will not support a verdict unless the same is shewn to be the direct cause of the injury. *Mader v. Halifax Electric Tramway Co.*, xxxvii., 94.

286. Jury trial—Judge's charge—Practical withdrawal of case — Evidence—New trial.]—On trial of an action against a surety, the defence was that he had been discharged by the plaintiff's dealings with his principal. The trial judge directed the jury that the facts proved in no way operated to discharge him; and that while, if they could find any evidence to satisfy them that he was relieved from liability they could find for defendant, he knew of no such evidence, and it was not to be found in the case.—*Held*, that the disputed facts were practically withdrawn from the jury, and as there was evidence proper to be submitted and on which they might reasonably find for defendant there should be a new trial. *Wood v. Rockwell*, xxxviii., 165.

287. Criminal law—Crown case reserved—Reserved questions—Dissent from affirmation of conviction—Appeal—Jurisdiction — Criminal Code, 1892, ss. 742, 743, 744, 750—R. S. C. (1906), c. 146, ss. 1013, 1015, 1016, 1024—Admission of evidence—*Res gestæ*.]—Evidence of statements made by a person, since deceased, immediately after an assault upon him under apprehension of further danger, and requesting assistance and protection, is admissible as part of the *res gestæ*, even though the person accused of the offence was absent at the time when such statements were made. *Reg v. Beddingfield* (14 Cox 341); *Rea v. Foster* (6 C. & P. 325), and *Aveson v. Kinnaird* (6 East 188), followed.—Statements not coincident, in point of time, with the occurrence of the assault, but uttered in the presence and hearing of the accused and under such circumstances that he might reasonably have been expected to have made some explanatory reply to remarks in reference to them, are admissible as evidence.—On the trial of an indictment for murder the evidence was that the deceased had been killed by a gun-shot wound inflicted through the discharge of a gun in the hands of the accused and the defence was that the gun had been discharged accidentally. — *Held*, that in view of the character of the defence and the evidence in support of it, there could be no objection to a charge by the trial judge to the jury that the offence could not be reduced by them from murder to manslaughter, but that their verdict should be either for acquittal or one of guilty of murder.—Two questions were reserved by the trial judge for the opinion of the court of appeal, but he refused to reserve a third question, as to the correctness of his charge on the ground that no

objection to the charge had been taken at the trial. The Court of Appeal took all three questions into consideration and dismissed the appeal, there being no dissent from the affirmation of the conviction on the first and third questions, but one of the judges being of opinion that the appeal should be allowed and a new trial ordered upon the second question reserved. On an appeal to the Supreme Court of Canada.—The majority of the court, being of opinion that the appeal should be dismissed, declined to express any opinion as to whether or not an appeal would lie upon questions as to which there had been no dissent in the court appealed from, but it was held,—*per Girouard, J.*—That the Supreme Court of Canada was precluded from expressing an opinion on points of law as to which there had been no dissent in the court appealed from. *McIntosh v. The Queen* (23 Can. S. C. R. 180), followed. *Viau v. The Queen* (29 Can. S. C. R. 90); *The Union Colliery Company v. The Queen* (31 Can. S. C. R. 81), and *Rice v. The King* (32 Can. S. C. R. 480), referred to. *Gilbert v. The King*, xxxviii., 284.

AND see CRIMINAL LAW.

288. *Tort—Right of action—Damages—Withdrawal of case from jury—New trial—Costs.*—In a case where it would be open to a jury to find that an actionable wrong had been suffered and to award damages, the withdrawal of the case from the jury is improper and a new trial should be had.—The Supreme Court of Canada reversed the judgment appealed from (12 B. C. Rep. 476), which had affirmed the judgment at the trial withdrawing the case from the jury and dismissing the action and allowing the plaintiff his costs up to the time of service of the statement of defence, costs being given against the defendant in all the courts and a new trial ordered. *Davies and Macleannan, JJ.*, dissented and, taking the view that the refusal, though illegal, had not been made maliciously, considered that, on that issue, the plaintiff was entitled to nominal damages, that, in other respects, the judgment appealed from should be affirmed and that there should be no costs allowed on the appeal to the Supreme Court of Canada. (Appeal to Privy Council dismissed, 9th July, 1908.) *Norton v. Fulton*, xxxix., 202.

AND see ACTION.

289. *Finding of jury—Questions of fact—Duty of appellate court.*—Where the question was one of fact, and the jury, on evidence properly submitted to them, accepted the evidence on one side and rejected that adduced upon the other, the Supreme Court of Canada refused to disturb their findings. *Windsor Hotel Co. v. Odell*, xxxix., 336.

290. *Negligence—Employer and employee—Dangerous machinery—Want of proper protection—Voluntary exposure—Findings of jury—Charge of judge—Assignment of facts—Assessment of damages.*—An experienced master mechanic, who was familiar with the machinery in his charge and had instructions to take the necessary precautions for the protection of dangerous places, in attempting to perform some necessary work, lost his balance and fell upon an un-

protected gearing which crushed him to death. In an action by his widow for damages, questions were submitted to the jury without objection by the parties and no objection was raised to the judge's charge, at the trial. The jury were not asked to specify the particular negligence which caused the injury and, by their answers found that deceased was acting under the instruction and guidance of the company's officers who were his superiors, at the time of the accident; that he had control of the work to be done, but had not full charge, control and management of the machinery generally; that there was fault on the part of the company, and that he had not unnecessarily or negligently assumed any risk.—*Held*, affirming the judgment appealed from (Q. R. 31 S. C. 273), *Davies, J.*, dissenting, that as there was evidence from which the jury could reasonably draw inferences and come to these conclusions, as to the facts, and as there was no objection to the questions put to them and to the charge of the judge, at the trial, their findings ought not to be interfered with on appeal. *Royal Paper Mills Co. v. Cameron*, xxxix, 365.

291. *Operation of railway—Unnecessary combustibles left on right of way—“Railway Act, 1903,” ss. 118 (j) and 239—R. S. C. (1906) c. 37, ss. 151 (j) and 297—Damages by fire—Point of origin—Charge by judge—Finding by jury—New trial—New evidence on appeal—Supreme Court Act, ss. 51 and 73.*—The question for the jury was, whether or not the place of the origin of the fire which caused the damages was within the limits of the “right of way” which the defendants were, by the “Railway Act, 1903,” obliged to keep free from unnecessary combustible matter, and their finding was that it did, but the charge of the judge was calculated to leave the impression that any space where trees had been cut, under the powers conferred by s. 118 (j) of that Act, might be treated as included within the “right of way,” and, in effect, made a direction, on issues not raised by the pleadings or at the trial, as to negligent exercise of the privilege conferred by that section.—*Held*, that, in consequence of the want of more explicit directions to the jury on the question of law and the misdirection as to the issues, the defendants were entitled to a new trial.—The court refused an application by the respondents, on the hearing of the appeal, for leave to supplement the appeal case by the production of plans of the right of way which had not been produced at the trial, as being contrary to the established course of the court. (Leave to appeal to Privy Council granted, 24th February, 1908; 50 Can. Gaz. 544). *Red Mountain Ry. Co. v. Blue*, xxxix., 390.

292. *Operation of railway—Yard siding—Sloping station platform—Private passage—Dangerous way—Negligence—Procedure at trial—Misdirection—Objections to charge to jury—Practice.*—Where, on a specific objection to his charge, the trial judge recalled the jury and directed them as requested, the contention that the directions thus given were erroneous should not be entertained on appeal. *Can. Pac. Ry. Co. v. Hansen*, xl., 194.

293. *Negligence*—“*Lord Campbell's Act*”—*Findings of jury*—*Verdict*—*Damages*.]—Where there is evidence in support of a verdict, upon proper directions to the jury by the trial judge, a court of appeal ought not to interfere with the assessment of damages unless they appear to be so excessive that no reasonable men, upon such evidence, would have awarded such an amount.—Judgment appealed from affirmed. *Grand Trunk Ry. Co. v. Depencier*, *Cout. Cas.* 343.

294. *Operation of tramway*—*Negligence*—*Evidence*—*Findings of jury*.]—Where there was some evidence to support the verdict the Supreme Court of Canada refused to reverse the findings. *Toronto Ry. Co. v. Mitchell*, *Cout. Cas.* 349.

295. *Negligence*—*Operation of railways*—*Highway crossings*—*Inconsistent findings*—*Questions to jury*—*Mistrial*.]—Where the findings of the jury were conflicting and inconsistent to such a degree as to satisfy the court that there had been a mistrial, a new trial was directed.—Judgment appealed from reversed. *Idington, J.*, dissenting. *Grand Trunk Ry. Co. v. Moore*, *Cout. Cas.* 401.

296. *Marine insurance*—*Abandonment*—*Repairs*—“*Boston clause*”—*Findings of jury*—*Evidence taken by commission*—*New trial*. *Ins. Co. of North America v. McLeod*, *Cout. Cas.* 214.

297. *Appeal*—*Concurrent findings of fact*.]—The Supreme Court of Canada will not interfere with concurrent findings on questions purely of fact unless satisfied that the conclusions appealed from are clearly wrong. *Weller v. McDonald-McMillan Co.*, *xliii.*, 85.

298. *Appeal*—*Concurrent findings of fact*—*Negligence*—*Shipping*—*Action for damages*—*Personal injury*—*Evidence*—*Res ipsa loquitur*—*Limitation of liability*—“*Canada Shipping Act*,” *R. S. C.*, 1906, *c. 113*, *s. 921*.]—Concurrent findings on questions of fact in the courts below ought not to be disturbed on appeal unless a mistake is clearly shewn.—A ship lying at her dock caught fire during the night and was destroyed. The officers of the ship failed to arouse passengers in time to permit them to escape in safety and, in an action to recover damages for injuries sustained in consequence by a passenger, the owners adduced no evidence to explain the origin of the fire.—*Held*, affirming the judgment appealed from (19 *Man. R.* 430), that, in the circumstances, the only inference to be drawn was that the owners were grossly negligent.—In such an action the owners of the ship cannot invoke the limitation provided by *s. 921* of the “*Canada Shipping Act*,” *R. S. C.*, 1906, *c. 113*. *The “Orwell”* (13 *P. D.* 80), and *Roche v. London and South-Western Ry. Co.* ([1899] 2 *Q. B.* 502), referred to. *Dominion Fish Co. v. Isbester*, *xliiii.*, 637.

299. *Employer's liability*—*Negligence*—*Answers by jury*—“*Volenti non fit injuria*”—*Issue undecided*—*B. C. Sup. Ct. Rules*, *O. 58, r. 4*—*New trial*.]—On the defence of “*volens*,” in an action for damages by an

employee on account of injuries sustained in the course of his employment, the question which has to be considered is whether the plaintiff agreed that, if injury should befall him, the risk was to be his and not his master's. *Smith v. Baker & Sons* ([1891] *A. C.* 325), referred to.—In an action to recover damages for injuries sustained by the engineman in charge of the company's steam-shovel in use on the construction of their works, questions were submitted to the jury to which they gave answers negating contributory negligence by the plaintiff and finding the company negligent in failing to provide a guard on part of the gearing and in leaving it uncovered, but they did not answer one of the questions submitted to them, *viz.*: “Did the plaintiff know and appreciate the risk and danger and did he voluntarily encounter them?” The defence resting upon this issue was duly presented at the trial and evidence submitted to support it.—*Held*, that, although the Court of Appeal for British Columbia, under Order 58, rule 4, of the “*Supreme Court Rules, 1906*,” has power to draw inferences of fact and to give any judgment and make any order which ought to have been made in the trial court, and to make such further or other order as the case in appeal may require, nevertheless, it should not undertake the functions of a jury where it may be reasonably open to them to come to more than one conclusion on the evidence. Therefore, in the circumstances of the present case, there should be an order for a new trial to have the issue of *volens* decided. *Paquin v. Beauclerk* ([1906] *A. C.* 148) and *Skeate v. Slaters* (30 *Times L. R.* 290), referred to.—Judgment appealed from reversed. *McPhee v. Esquimalt and Nanaimo Ry. Co.*, *xlix.*, 43.

300. *Findings of fact*—*Inferences by jury*—*Determining cause of accident*—*Evidence to support verdict*.]—Where the jury, drawing inferences, adopted one of several theories respecting the determining cause of the accident through which the plaintiff's injuries were sustained, and there was evidence to support their finding, the court refused to disturb the verdict. *Winnipeg Electric Ry. Co. v. Schwartz*, *xlix.*, 80.

301. *Procedure*—*Trial by jury*—*Personal wrongs*—*Appeal*—*Taking new objection*—*Art. 1056 C. C.*—*Arts. 421 et seq. C. P. Q.*—“*Lord Campbell's Act*”—*Charge to jury*—*Opinion on questions of fact*.]—*Per curiam*.—Where an order has been made for trial with a jury, according to the provisions of articles 422 *et seq.* of the Code of Civil Procedure of Quebec, and both parties have acquiesced in that form of trial, objection to the right to trial, by jury cannot be urged for the first time on an appeal to the Supreme Court of Canada.—An action for damages, under article 1056 of the Civil Code, brought by dependents of a person whose death was caused in consequence of *délit* or *quasi-délit* is an action resulting from personal wrongs within the meaning of articles 421 *et seq.* of the Code of Civil Procedure of Quebec in which there may be trial by jury. *Fitzpatrick, C.J.*, *contra*.—*Per Fitzpatrick, C.J.*, dissenting.—The right of action given to the dependents, under article 1056 of the Civil Code, is purely

statutory, and not a representative right (see *Robinson v. Canadian Pacific Railway Co.* (1892) A. C. 481); consequently, the dependents, who have suffered no personal wrongs, are not entitled to trial by jury under the provisions of c. 21 of the Code of Civil Procedure of Quebec.—*Per* Idington, Duff and Anglin, JJ.—In his charge to the jury, the judge is entitled to express his opinion on questions of fact if he does so in such a manner as will not lead the jury to think that they are being given a direction which it would be their duty to follow. *Montreal Tramways Co. v. Seguin*, lii., 644.

302. Evidence — Verdict — New trial, xxxv., 266.

See EVIDENCE.  
See NEW TRIAL.

303. Negligence — Railway company — Proximate cause—Imprudence of person injured, xxxv., 296.

See NEGLIGENCE.

304. Negligence—Findings by jury — Evidence, xxxvii., 1.

See NEGLIGENCE.

305. New trial—Judgment in court below on motion—Equal division—Appeal—Jurisdiction — Charge to jury—Misdirection—Bias, xxxvii., 532.

See APPEAL.  
See NEW TRIAL.

306. Negligence—Street railway — Excessive speed — Gong not sounded—Contributory negligence—Funeral expenses — Damages, xxxviii., 327.

See NEGLIGENCE.

307. Title to land — Plan of survey — Evidence — Onus of proof—Findings of jury — Error—New trial, xxxviii., 336.

See NEW TRIAL.

308. Life insurance—Wagering policy — Misrepresentations — Questions for jury — Amendment at trial—Arts. 424, 427 C. P. Q., xxxix., 323.

See INSURANCE, LIFE.

309. Negligence — Operation of tramway — Approaching cross-street — Rules of company—Charge of judge — Contributory negligence—Findings of jury., xl., 540.

See NEW TRIAL.

310. Unfair trial — Misdirection—Judge's charge—Bias — Prejudice — New trial — Disposing of whole case, Cam. Cas. 112.

See NEW TRIAL.

311. Evidence of party—Improper admission—Uncorroborated testimony—Contradictory evidence — Verdict against weight of evidence—New trial, Cam. Cas. 214.

See EVIDENCE.

312. Sale of goods—Set-off — Debtor and creditor — Partnership — Evidence—Books

of account—New trial—Reducing verdict on appeal, Cam. Cas. 282.

See NEW TRIAL.

313. Negligence — Damages — Statement of claim—Findings of jury—Questions in controversy — Amendment of pleadings — Non-suit, Cout. Cas. 326.

See PRACTICE.

314. Appeal—Court of Review—Appeal to Privy Council—Appealable amount—Amendment to statute—Application—Notice of appeal—Trial by jury—Misdirection, xli., 639.

See NEW TRIAL.

315. Appeal—Findings of fact—Division of partnership profits—Collateral business affairs—Trust. *Horne v. Gordon*, xlii., 240.

See PARTNERSHIP.

316. Partnership—Division of profits — Collateral business affairs—Trust—Account — Findings of fact. *Horne v. Gordon*, xlii., 240.

317. Concurrent findings of fact—Review on appeal.]—Concurrent findings of fact in the courts below ought not to be disturbed on appeal unless a mistake is clearly shewn *Dominion Fish Co. v. Isbester*, xliii., 637.

AND see NEGLIGENCE.

318. Promissory note—Signature in blank — Discount—Principal and agent—Condition as to use of note—Bonâ fide holder—"Bills of Exchange Act," R. S. C., 1906, c. 199, ss. 31, 32—Findings of fact, xlv., 401.

See BILLS AND NOTES.

319. Expertise—Appointment of single expert—Submission of irrelevant questions—Arts. 392-409 C. P. Q. *Cie Pontbriand v. Cie de Navigation Chateauguay et Beauharnois*, xlvi., 603.

AND see PLEADING.

320. Appeal—Findings of jury — Review of appellate court, xlvi., 542.

See APPEAL.

321. Negligence—Dangerous works — Defective system—Findings of jury — Sufficiency of answers—Discontinuance against co-defendant — Release of joint tortfeasor. *Waugh-Milburn Construction Co. v. Slater*, xlviii., 609.

See NEGLIGENCE.

322. Railways—Operation — Transfer of cars—Interswitching—Negligent coupling — Duty of train crew—Scope of employment — Employer's liability—Jury — Findings of fact—Evidence. *G. T. P. R. R. Co. v. Pickering*, l., 393.

See RAILWAYS.

323. Findings of jury—Defence of common employment—Legislation in province of cause of action—Conflict of laws. *Phelan v. G. T. P. R. Co.*, li., 113.

See RAILWAYS.

## 16. NEW TRIAL.

324. *Application in court below — New trial—Alternative relief.*]—Where the plaintiff obtains a verdict at the trial and the defendant moves the Court of Appeal to have it set aside and judgment entered for him or in the alternative for a new trial, he cannot appeal to the Supreme Court if a new trial be granted. *Mutual Reserve Fund Life Association v. Dillon*, xxxiv., 141.

325. *Railways — Negligence — Free pass — Consideration for transportation—Misdirection — Finding of jury — New trial—Excessive damages—Art. 503 C. P. Q.*]—Where there was misdirection as to the assessment of damages merely and it appeared to the court that the damages assessed by the jury were grossly excessive, the Supreme Court of Canada made a special order, applying the principle of article 503 of the Code of Civil Procedure, directing that the appeal should be allowed and a new trial had to assess damages, unless the plaintiff consented that the damages should be reduced to an amount mentioned. *Central Vermont Ry. Co. v. Franchère*, xxxv., 68.

326. *Appeal — Alternative relief—Judgment granting one — Final judgment.*]—Where the party failing at the trial moves the court of last resort for the province for judgment or, in the alternative, a new trial be cannot appeal to the Supreme Court of Canada from the judgment granting the latter relief. *Mutual Ins. Co. v. Dillon* (34 Can. S. C. R. 141) followed. *Ainslie Mining and Railway Co v. McDougall*, xl., 270.

327. *Marine insurance — Abandonment—Repairs — Boston clause—Findings of jury —New trial—Practice—Evidence taken by commission—Judicial discretion.* *Ins. Co. of North America v. McLeod*, Cout. Cas. 214.

328. A motion for non-suit was made at the close of the plaintiff's case. This was reserved and evidence given on behalf of the defendant. The trial judge granted judgment of non-suit. In appeal a new trial was ordered on the ground that there was evidence which ought to have been imparted to a jury. On appeal to the Supreme Court the judgment of the trial judge was restored. — Mr. Justice Anglin, with whom Mr. Justice Davies concurred, said:—"As a matter of trial practice, where, after motion for non-suit, evidence for the defence has been heard, it is, as a general rule, desirable that findings of the jury should be taken subject to a reservation of the defendant's motion. But it is quite within the power of the trial judge at any subsequent stage of the proceedings to withdraw the case from the jury upon the reserved motion for a non-suit, or to direct a verdict for the defendant. Where either of these courses has been taken, to support the judgment of dismissal the defendant must satisfy the appellate court that there was no reasonable evidence of negligence, for which they should be held responsible, to submit to the jury." *C. P. R. v. Wood*, Cam. Prac. 113.

329. *Rejection of evidence—Memorandum by witness—Withdrawing case from jury—New trial—Negligence—Operation of tramway—"Block and Staff" system—Disregard of rules—Defective system.*]—On the trial of a case it is permissible for a witness to consult a copy of a memorandum respecting circumstances attending the occurrence of an accident, which was made by himself at the time, in order to refresh his memory. The refusal of the trial judge to permit him to do so is ground for ordering a new trial. —The trial judge is not justified in withdrawing a case from the jury on the ground that the evidence establishes contributory negligence on the part of a plaintiff unless no other conclusion can be drawn from it.—A motorman in the defendants' employ was injured in a collision with the car ahead of that upon which he was performing his work. The company's operation rules provided that cars operated in the same direction, as "double-headers," unless block signals were in use, should be kept at least five minutes apart, except in closing up at stations; also that, when the view ahead was obscured, cars should be kept under such control that they might be stopped within the range of vision, but the rule was not enforced. The plaintiff, one of the company's motormen, on a foggy night, ran his car into the rear of another car standing at the station he was entering, and sustained injuries for which he claimed damages, alleging a defective system. The defence set up contributory negligence on the part of the motorman, but made no allusion to the breach of these regulations. A judgment, entered on the verdict of the jury in favour of the plaintiff, was set aside by the Court of Appeal on the ground that the injury had resulted in consequence of the plaintiff's disregard of the rules. — *Held*, that as the rules had not been enforced by the defendants nor set up in their pleadings they could not be relied upon in support of the charge of contributory negligence. — Judgment appealed from (17 B. C. Rep. 498) reversed and a new trial ordered. *Daynes v. British Columbia Electric Ry. Co.*, xlix., 518.

330. *Charge of jury — Misdirection—Report by judge*, xxxiv., 265.

See PRACTICE.

331. *Appeal — Order for new trial — Weight of evidence — Discretion — New grounds on appeal*, xxxiv., 338.

See PRACTICE.

332. *Evidence—Verdict*, xxxv., 266.

See NEW TRIAL.

333. *Judge's charge to jury—Findings as to negligence — Questions as to special grounds — Non-direction — Misdirection — Application of law to facts*, xxxv., 362.

See PRACTICE.

334. *Admission of evidence — Harmless error—New trial*, xxxvi., 612.

See NEW TRIAL.

335. *Judgment on motion in court below—Equal division — Appeal — Jurisdiction—*

*New trial—Charge to jury—Misdirection—Bias*, xxxvii., 532.

See NEW TRIAL.

336. *Appeals from Ontario—Jurisdiction—New trial—Discretionary order—R. S. C. c. 135, s. 27—60 & 61 Vict. c. 24 (D.)*, xxxvii., 672.

See APPEAL.

337. *Charge to jury—Partial withdrawal of case—Evidence*, xxxviii., 165.

See PRACTICE.

338. *Evidence—Onus of proof—Findings of jury—Error*, xxxviii., 336.

See NEW TRIAL.

339. *Charge to jury—Findings of fact—New trial—New evidence on appeal*, xxxix., 390.

See PRACTICE.

340. *Unfair trial—Misdirection—Charge to jury—Bias—Prejudice—Disposing of whole case*, Cam. Cas. 112.

See NEW TRIAL.

341. *Improper admission of evidence—Uncorroborated testimony—Contradictory evidence—Verdict against weight of evidence—New trial*, Cam. Cas. 214.

See EVIDENCE.

342. *Assignment—Insolvency—Fraud—Right of action—Misdirection—New trial—Accounts*, Cam. Cas. 245.

See NEW TRIAL.

343. *Partnership—Debtor and creditor—Set-off—Evidence—Books of account—Reducing verdict on appeal*, Cam. Cas. 282.

See NEW TRIAL.

344. *Title to land—Easement appurtenant—User of lane—Prescription—Agreement for right of way—Construction of contract*, Cam. Cas. 352.

See EASEMENT.

345. *Inconsistent findings—Questions for jury—Mistrial*, Cout. Cas. 401.

See PRACTICE.

346. *Negligence—Dangerous works—Defective system—Careless management—Fault of fellow servant—Efficient superintendence—Employer's duty—Evidence—Action—Liability at common law—"B. C. Employers' Liability Act"—Pleading—Charge to jury—New trial. *Bergklint v. West. Can. Power Co.*, 1, 39.*

See NEGLIGENCE.

## 17. PARTIES.

347. *Ex parte inscription—Parties—Notice.*]—When the appeal first came on for hearing upon inscription *ex parte*, on suggestion by one of the creditors, not made a party to the appeal, the court ordered the postponement of the hearing in order that

all interested parties might be notified. *McDougall v. Banque d'Hachelaga*, xxxix., 318.  
AND see COMPANY.

348. *Breach of trust—Interest on bonds—Unlawful acts by Crown officials—Ultra vires—Withholding interest from Crown—Necessity of impleading other interested parties.*]—On the arguments it appeared that, while some interest had been paid to other bondholders, the trustees had, for a number of years, ceased to pay any interest upon the bonds held by the Crown, but had applied the whole of the funds available for dividends to the payment of interest on the other bonds. The hearing was stopped by the court until the other bondholders were made parties to the cause. The responsibility of having them added was laid upon the Crown, and it was ordered:—"That the appeal should not now be heard, but that the judgment appealed from should be opened and the matter remitted to the Exchequer Court of Canada for the purpose of having representation therein of all necessary parties according to the due practice of the said court, before final judgment should be given by the court therein." *Quebec North Shore Turnpike Rd. Trustees v. The King*, Cout. Cas. 316.

349. *Pleading—Adding parties*, xxxvi., 152.

See PRACTICE.

350. *Crown—Breach of trust—Purchase of debentures out of Common School Fund—Knowledge of misappropriation of moneys—Payment of interest—Statutory prohibition—Evasion of statute—Estoppel against Crown—Action—Adding parties*, xxxviii., 62.

See QUEBEC NORTH SHORE TURNPIKE ROAD TRUST.

351. *Contract with municipality—Limited tickets on tramway—Injunction—Right of action—Parties*, xxxix., 673.

See PRACTICE.

## 18. PAUPER SUITS.

352. *Leave to appeal in formâ pauperis—Dispensing with security for costs—Mode of bringing appeal—Right of appeal—Construction of statute*, Cout. Cas. 6.

See PRACTICE.

## 19. REFERENCES.

353. *Canada Temperance Act—Conviction—"Criminal case"—R. S. C. c. 135, s. 32—Habeas corpus—Penalty—"Not less than \$50"—Conviction for \$200.*]—A commitment on conviction for an offence against Part II. of the Canada Temperance Act is a commitment in a criminal case under s. 32 of R. S. C. c. 135 (R. S. C. 1906, c. 139, s. 62) which gives a judge of the Supreme Court of Canada power to issue a writ of *habeas corpus*.—By 4 Edw. VII. c. 41 (R. S. C. 1906, c. 152, s. 127) for a first offence

against Part II. of the Canada Temperance Act a fine may be imposed of "not less than \$50" and for a second offence of "not less than \$100."—*Held*, that for a first offence the justice cannot impose a fine of more than \$50. *Idington and MacLennan, JJ.*, dissenting.—*Per MacLennan, J.*, dissenting. — On application to a judge for a writ of *habeas corpus* he may refer the same to the court which has jurisdiction to hear and dispose of it. *In re Richard*, xxxviii., 394.

354. *Appeal per saltum*—*Winding-up Act*—*Application under s. 76*—*Defective proceedings*, xxxvi., 494.

See PRACTICE.

355. *Specific performance*—*Title to land*—*Division by plea*—*Reference to Master*—*Mode of division*, xxxix., 220.

See SPECIFIC PERFORMANCE.

356. *Constitutional law*—*Penitentiaries*—*Imprisonment of criminals*—*Expense of maintenance*—*B. N. A. Act, 1867*—*Legislative jurisdiction of Parliament*—*Provincial legislation*—*Practice on references by Governor-General in Council*, *Cout. Cas.* 24.

CONSTITUTIONAL LAW.

## 20. RAILWAY BOARD.

357. *Appeal*—*Setting down for hearing*—*Form of submission*—*Defining questions of law*.]—The Supreme Court of Canada will not entertain an appeal under section 56 (3) of "The Railway Act," R. S. C. (1906), c. 37, unless some specific question is stated, or otherwise defined, in the order granting leave to appeal made by the Board of Railway Commissioners for Canada which, in its opinion, is a question of law. *Canadian Pacific Ry. Co. v. Regina Board of Trade*, xlv., 328.

358. *Appeals from Board of Railway Commissioners*—*References*—*Form of order by Supreme Court of Canada*.]—On motion for directions as to the settlement of the minutes of the judgment by the Supreme Court of Canada on an appeal under section 56 (3) of "The Railway Act," by leave of the Board, with questions referred, the court directed that the registrar should certify the opinion of the court in answer to the question submitted. *Canadian Pacific Ry. Co. v. Regina Board of Trade*, xlv., 321.

AND see RAILWAYS.

359. *Appeal*—*Limitation of time*—*Jurisdiction of Board of Railway Commissioners*—*Leave by judge*—*Powers of Board*—*Completed railway*—*Order to provide station*. *G. T. R. v. Dept. Agriculture of Ont.*, xlii., 557.

AND see NEW TRIAL.

360. *Railways*—*Carriers*—*International through traffic*—*Reduction of joint rate*—*Jurisdiction of Board of Railway Commissioners*—*Want of parties*—*Refusal of costs*. *Niagara, St. Catharines & Toronto Ry. Co. v. Davy*, xliii., 277.

See RAILWAYS.

361. *Board of Railway Commissioners*—*Appeals on questions of law*—*Stated case*—*Submission of specific questions*—*Construction of statute*—*R. S. C. 1906, c. 37, ss. 55, 56, s.-s. 3. C. P. R. v. Ottawa*, xlviii., 257.

See APPEAL.

## 21. RULES OF PRACTICE.

362. *Pleading*—*B. C. Rule 168*—*New points raised on appeal*—*Condition precedent*—*Construction of statute*—*58 Vict. c. 62, ss. 9, 25 (B.C.)*—*Mineral claim*—*Expropriation*—*Watercourses*—*Trespass*—*Damages*—*Waiver*—*Injunction*.]—The B. C. Sup. Ct. Rule 168, provides that "any condition precedent, the performance of which is intended to be contested, shall be distinctly specified in his pleadings by the plaintiff or defendant (as the case may be), and, subject thereto, an averment of the performance or occurrence of all conditions precedent, necessary for the case of the plaintiff or defendant, shall be implied in his pleadings."—In an action for trespass and a mandatory injunction, the defendants pleaded the right of entry under a private Act, and the consent or acquiescence of the plaintiffs. The plaintiffs replied setting up the failure of defendants to comply with certain conditions precedent to the exercise of the privileges claimed but did not set up another condition precedent upon which the judgment appealed from proceeded though it was not referred to at the trial.—*Held*, Killam, J., *contra*, that the rule refers rather to cases founded on contract than to those where statutory authority is relied upon and that the plaintiffs need not have replied as they did, but having done so without setting up the condition specially relied upon in appeal, thereby possibly misleading the defendants, they were properly punished by the court below by being deprived of the costs in appeal.—*Per Killam, J.* It was improper for the court appealed from to allow the absence of proof to be set up for the first time on the appeal.—Where a trespasser, by taking proper steps to that effect, would have the right to expropriate the lands in dispute, an injunction should be withheld in order to enable the necessary proceeding to be taken and compensation made. *Goodson v. Richardson* (9 Ch. App. 221), and *Cowper v. Laidler* ([1903] 2 Ch. 357) applied. But where there has been acquiescence equivalent to a fraud upon the defendant the injunction ought not to be granted, even where the legal right of the plaintiff has been proved. *Gerrard v. O'Reilly* (3 Dr. & War. 414); *Wilmot v. Barber* (15 Ch. D. 96); *Johnson v. Wyatt* (2 DeG. J. & S. 17); and *Smith v. Smith* (L. R. 20 Eq. 500). referred to.—By the defendants' charter (59 Vict. c. 62, ss. 9, 25 (B.C.)), it was provided that the powers to enter, survey, ascertain, set out and take, hold, appropriate and acquire lands should be subject to the making of compensation and that the powers, other than the powers "to enter, survey, set out and ascertain," should not be exercised or proceeded with until approval of the plans and sites by the Lieutenant-Governor in Council. The defendants entered upon lands of the plaintiffs,



made surveys and constructed works thereon without making compensation or obtaining such approval. Some time after entry the defendants obtained the necessary order in council approving of the plans and sites of the lands to be expropriated.—*Held*, that making of compensation was not a condition precedent to making the survey and taking possession of the land, and as the said order in council was not dealt with at the trial the rights of the parties could not properly be determined on the material presented; the injunction should, therefore, be refused and the parties left to take proceedings as they should respectively see fit.—*Per* Sedgewick and Killam, J.J. That as approval of the plans had not been obtained till some time after the defendants had taken possession and appropriated the land, there was a trespass for which the plaintiffs were entitled to recover, but after the approval had been obtained the defendants remained rightfully in possession and could not be compelled by a mandatory injunction to replace the land in its former position. Judgment appealed from (10 B. C. Rep. 361) varied. *Sandon Water Works and Light Co. v. Byron N. White Co.*, xxxv., 309.

363. *Appeal—Stated case—Provincial legislation—N. S. Order XXXIII., r. 1.*]—*Per* Davies, J.—In the case under consideration, the Supreme Court of Nova Scotia had jurisdiction under Order xxxiii., rule 1, of the Judicature Act.—*Per* Idington, J.—If the case was stated under the Judicature Act rules, the appeal would lie, but not if it was a submission under the charter of the City of Halifax for a reference to a judge at request of a ratepayer. *The City of Halifax v. McLaughlin Carriage Co.*, xxxix., 174. AND see APPEAL.

364. *Appeal — Jurisdiction—Final judgment—Time for appealing—Exchequer Court Act, R. S. C. (1906) c. 140, s. 82—Exchequer Court rules.*]—Notwithstanding that no appeal has been taken from the report of a referee within the fourteen days mentioned in sections 19 and 20 of the General Rules and Orders of the Exchequer Court of Canada (12th December, 1899), an appeal will lie to the Supreme Court of Canada from an order by the judge confirming the report, as required by the said sections, within the thirty days limited by section 82 of the Exchequer Court Act, R. S. C. (1906) c. 140. *Re Atlantic & Lake Superior Ry. Co.; North-Eastern Banking Co. v. Royal Trusts Co.*, xli., 1.

365. *Hearing of appeals—Practice in Quebec cases — Opening by senior counsel.*]—The court referred to the practice, in cases on appeal from the Province of Quebec, of allowing junior counsel to open the argument, senior counsel following, and that, during the winter sessions of the court, the Chief Justice, speaking for the court, had remarked upon the inconvenience of this course. It was intimated that it was desirable in future that the opening should be by senior counsel on appeals from Quebec in conformity with the practice prevailing in respect to appeals from all the other provinces of the Dominion. *Dumphy v. Martineau* (10th June, 1908). Cam. Prac. 542.

366. The acting Chief Justice calls the attention of appellants' counsel to the fact that the type in the printed case is smaller than that provided by the new rules and that he is scarcely able to read it, and that hereafter the rule will be strictly enforced, and that in no case must the registrar receive the case when it does not conform thereto unless the leave of the Court or a judge is obtained.—Some solicitors persistently ignore the provisions as to the size of the case, namely, eleven inches by eight and one-half inches, and accept from their printers a case which is perhaps ten and one-half inches by eight. The provisions in this regard will be enforced hereafter with greater strictness, as the matter is of considerable moment when the cases are bound up in a volume. Where the cases are of different sizes it is impossible to retain any uniformity in the binding of the volumes. *Beatty v. Mathewson*, June 4th, 1908, Cam. Prac. 497.

367. The Court ordered the exhibits in case to be rebound in chronological order and that the registrar refuse hereafter to accept case or factum which fails to comply with new rules. Minute book, p. 58.—Non-compliance with this provision has frequently resulted in the appellant being compelled to reprint a large part of his case. Even when the non-compliance appears to be of slight importance, the solicitor's fee for supervising printing has been disallowed in whole or in part. This provision is not a mere unnecessary technicality, but is of a very considerable importance. Where exhibits refer to one another, e.g., letters, time is saved in reading the case by the judges if the documents follow one another in chronological order. *Glindinning v. McLeod*, May 29th, 1908, Cam. Prac. 498.

368. The Court announces that the practice of printing by consent of solicitors only such part of the settled case as they think necessary and by the same consent providing that the original record be sent to the Supreme Court and used on the appeal, is *entirely irregular*, and that in the absence of an order of this Court dispensing with printing, the Court will hereafter look only at the printed case. *Robb v. Stafford*, Oct. 11th, 1906, Cam. Prac. 575.

369. When the trial judge gave judgment against two defendants and the appellate court set this aside as against one defendant, the unsuccessful defendant appealed to the Supreme Court and in addition by his notice of appeal asked in the alternative relief over against his co-defendant, who was not before the Supreme Court as a party to this appeal, but filed a factum, although he contended by counsel that he should not have been brought before the Court by cross-appeal but only by a substantive appeal. The Court held the cross-appeal was regular. *McNichol v. Malcolm*, Cam. Prac. 590; discussed in *Coy v. Pommerenke*, Cam. Prac. 592.

370. *Appeal — Parties — Quere.* — On the appeal by C. against the judgment declaring him liable to account for illegitimate profits on the transactions

in question, had the Supreme Court of Canada jurisdiction to entertain a cross-appeal by P. to obtain recourse against M., who had been exonerated in the court below and was not made a party to the appeal taken by C.? *McNichol v. Malcolm* (39 Can. S. C. R. 365) discussed. *Coy v. Pommerenke*, xlv., 543.

AND see BROKER.

371. *Gambling on margins — Action for advances — Defence — Ont. Jud. Act, rule 271, xxxv., 380.*

See BROKER.

372. *Breach of trust — Accounts — Evidence — Nova Scotia "Trustee Act" — N. S. Order XXXII., r. 3 — Judicial discretion — Limitation of action, xxxvii., 163.*

See ACCOUNT.

373. *Amendment of pleadings — Ont. Jud. Rule 615 — Nonsuit — Verdict, Cont. Cas. 326.*

See APPEAL.

374. *Quashing appeal — Refusal of costs — Supreme Court Rule 4. Lachance v. Cauchon, lii., 223.*

See APPEAL.

## 22. SERVICE OF PROCESS.

375. *Controverted election — Service of petition — Party out of jurisdiction — Second service on agent — Nova Scotia Election Court rules, xxxvi., 520.*

See PRACTICE.

376. *Controverted election — Service of petition abroad — Subsequent service in Canada, xxxvi., 537.*

See PRACTICE.

377. *Controverted election — Petition — Preliminary objections — Status of petitioner — Evidence — Premature service — Return of member, xxxvii., 495.*

See PRACTICE.

378. *Crown case reserved — Extension of time for notice of appeal — Order after expiration of time for service — Jurisdiction, xxxviii., 207.*

See PRACTICE.

## 23. STAY OF PROCEEDINGS.

379. *Appeal — Stay of proceedings — Power of court appealed from.] — The Court of Appeal for Ontario has no jurisdiction to stay proceedings pending an application for leave to appeal to the Supreme Court of Canada. *Royal Templars v. Hargrove* (2 Ont. L. R. 126), Masters' S. C. Prac. 107.*

380. *Held, that a Judge in Chambers of the Supreme Court will not entertain an application to stay proceedings pending an appeal from the judgment of the Court to the Judicial Committee of the Privy Council. — In the first edition of this work it was said: "I do not find that this Rule, although*

then in force as part of General Order No. 85, was called to the attention of the Court either in this or in any other case where applications were made to stay proceedings pending an appeal to the Judicial Committee." — In *Union Investment Co. v. Elliott*, May 5th, 1908, the point was taken, and *Adams & Burns v. Bank of Montreal* was overruled. In this and some other later cases the order was made after the judgment had been transmitted to the court below, but in *Peters v. Perras*, 42 Can. S. C. R. 361, it was expressly held "that where the judgment has been certified to the court below the Supreme Court has no jurisdiction to grant a stay of execution." — A stay was granted in *Standard Fire Ins. Co. v. Thompson*, May 10th, 1909; *Byron White v. Star Milling Co.*, April, 1909; *Montreal Light, Heat & Power Co. v. Regan*, Oct. 20th 1908; *Re Southern Counties Ry. Co. v. Hodge v. White Claims*, March 4th, 1910. *Vide xli., 244.* — Stay was refused in *Attorney-General v. Standard Trust*, as the judgment had been certified to the court below. — In *Larin v. Lapointe*, Dec. 30th, 1901, the Chief Justice made an order staying execution for five days within which security was agreed to be furnished to the satisfaction of the Registrar, and upon this being complied with a further stay was ordered until the application for leave was disposed of by the Privy Council, the application to be brought on at the earliest date possible. For form of order *vide* the next following case. *Adams & Burns v. Bank of Montreal*, 31 Can. S. C. R. 223, Cam. Prac. 607.

381. In *St. Anne Fish & Game Club v. Riviere-Ouelle Company*, Duff, J., made the following order: "Upon the application of counsel for the respondent, in presence of counsel for the appellant, and upon hearing read the affidavit filed herein and what was alleged by counsel aforesaid: It is ordered that upon the above named respondent giving within one week from this date security sufficient to indemnify the appellant for the judgment debt, interest and costs herein to the satisfaction of the registrar of this court, that all proceedings herein be stayed for a period of thirty days, except the settlement of the minutes of judgment, to afford the respondent an opportunity of applying to the Judicial Committee of the Privy Council for leave to appeal. — And it is further ordered that the respondent have leave to apply to this court for an extension of the said period of thirty days if substantial grounds for the delay in making the said application for leave to appeal arise or in the event of judgment upon the said application not being pronounced within the said thirty days — And it is further ordered that the costs of this application be costs to the appellant in any event." *St. Anne Fish & Game Club v. Riviere-Ouelle Company*, Cam. Prac. 607.

382. *Jurisdiction — Appeal to Privy Council — Stay of proceedings.] — When, as provided by s. 58 of the "Supreme Court Act," a judgment of the court has been certified by the registrar to the proper officer of the court of original jurisdiction, and the latter has made all proper entries thereof, the Supreme Court of Canada has no power to*

stay proceedings for the purpose of an appeal from said judgment to the Judicial Committee of the Privy Council. *Union Investment Co. v. Wells* (41 Can. S. C. R. 244) overruled. *Peters v. Perras*, xlii., 361.

383. *Delay in approval of security for costs—Extension of time—Sufficiency of security—Stay of execution—Jurisdiction*, xl., 455.

See APPEAL.

384. *Set-off—Application of judgments—Equitable assignment—Stay of execution*, Cam. Cas. 99.

See SET-OFF.

385. *Taxation of costs—Stay of execution—Setting off costs in court below—Amending minutes of judgment*, Cout. Cas. 19.

See PRACTICE.

386. *Controverted election—Reinstating appeal—Stay of entry of judgment*, Cout. Cas. 109.

See PRACTICE.

387. *Appeal by respondent to Privy Council—Postponement of appeal to Supreme Court of Canada pending decision*, Cout. Cas. 409.

See APPEAL.

388. *Appeal—Jurisdiction—Amount in controversy—Addition of interest—Amount of verdict—Stay of execution. Toronto R. Co. v. Milligan*, xlii., 238.

See APPEAL.

## 24. WRITS.

389. *Refusal to approve security—Execution for costs—Levy by sheriff of district.]—Motions to have security approved and for leave to appeal were refused with costs.—Writs of *fi. fa.* were issued on 13th November, 1891, directed to the sheriff of the District of Iberville, on præcipe filed by solicitors for the respondents. *Black v. Huot*, Cout. Cas. 106.*

390. *Construction of statute—“Marsh Act”—R. S. N. S. 1900, c. 66, ss. 22, 66—Jurisdiction of Marsh Commissioners—Assessment of lands—Certiorari—Limitation for granting writ—Expiration of time limit—Delays occasioned by judge—Legal maxim—Order nunc pro tunc*, xxxvii., 79.

See CERTIORARI.

391. *Habeas corpus—Jurisdiction of judge of Supreme Court of Canada—Issue of writ out of jurisdiction of provincial courts—Concurrent jurisdiction—Construction of statute—R. S. C. (1886) c. 135 s. 82—Constitutional law—Powers of Parliament—“Inland Revenue Act”—“Selling and delivering a still and worm”—Cumulative charge—Summary conviction—Adjournment—Conviction in absence of accused*, Cout. Cas. 110.

See HABEAS CORPUS.

## PRAIRIE FIRES.

*Railways—Constitutional law—Legislative jurisdiction—Application of statute—“The Prairie Fires Ordinance”—Con. Ord. N. W. T. (1898) c. 87, s. 2—N. W. Ord. 1903 (1st sess.) c. 25 and c. 30 (2nd sess.)—Works controlled by Parliament—Operation of Dominion railway*, xxxix., 476.

See RAILWAYS.

## PREFERENTIAL ASSIGNMENTS.

1. *Yukon Ordinance (1902) c. 38—Pressure—Knowledge of insolvency*, xxxvi., 120.

See ASSIGNMENTS.

2. *Construction of statute—“Creditors’ Relief Act,” 9 Edw. VII. c. 48, s. 6, s.-s. 4 (Ont.)—Contesting creditor’s lien—“Assignments and Preferences Act,” 10 Edw. VII. c. 64, s. 14 (Ont.)*, xlvii., 119.

See STATUTE.

3. *Debtor and creditor—Agreement for extension—Advantage to one creditor. Hochberger v. Rittenberg*, liv., 480.

See DEBTOR AND CREDITOR.

## PRESCRIPTION.

1. *Dedication of highway—Conditions in Crown grant—Access to beach—Plan of sub-division—Destination by owner—Limitation of user—Long usage by public—Acquisitive prescription—Recitals in deeds—Cadastral plans, references and notices—Evidence—Presumptions.]—A strip of land, extending from a public road to the River St. Lawrence, formed part of a beach lot granted by the Crown, in 1854, on condition that, in case of subdivision into building lots, “a sufficient number of cross-streets shall be left open so as to afford easy communication between the public highroad, in rear of the said beach lot, and low water mark in front thereof.” Prior to 1865 the lot was subdivided and, on the plan of sub-division, the strip of land was shewn as a lane or passage. Reference to this lane or passage was made in a deed of sale executed by the owner, in 1865, and the cadastral plan of the municipality made in 1879, for registration purposes, shewed it as a public road. In 1881, in connection with the registration of charges on the land, the owner made a statutory declaration and gave a notice to the registrar of deeds, as required by the “Cadastral Act,” describing the strip of land in question as “a road 20 feet wide.” It was also shewn that, during more than thirty years prior to the action, the strip of land had been used as a lane or passage by the general public. — *Held*, affirming the judgment appealed from (Q. R. 17 K. B. 60), Idington, J., dissenting, that these circumstances constituted complete, clear and unequivocal evidence of the intention of the owners of the beach lot to dedicate the strip*

of land in question for the purposes of a public highway, that no formal acceptance of such dedication by the corporation of the municipality was necessary to render such dedication effective in favour of the general public, and that, even if there had originally been any limitation reserved as to the use thereof by a special class of persons only, it had become a public highway by reason of long user as such.—Although no right of ownership can be affected by cadastral plans, they must, in view of their publicity, be considered as having some probative effect in respect to persons having interests in the lands described therein. *Rhodes v. Perusse*, xli., 264.

2. *Title to land—Possession—Interruption acknowledged—Evidence.*] — The company claimed prescriptive title to a part of the bed of a small river on which D., the respondents' *auteur*, had been a riparian owner. D. had leased lands on the banks of the river to the company which, it was alleged, included the property in dispute. The only evidence as to interruption of prescription consisted of a letter by the company to D. enclosing a cheque in payment for "use of your interest in Cap Rouge River this year," with an indorsement by D. acknowledging receipt of the funds "with the understanding that the navigation of the river is not to be prevented.—*Held*, reversing the judgment appealed from (13 Ex. C. R. 116). *Girouard and Idington, J.J.*, dissenting, that the memorandum was too vague to serve as an interruptive acknowledgment sufficient to defeat the title claimed by the company. *Cap Rouge Pier, Wharf and Dock Co. v. Duchesnay*, xli., 130.

AND see LIMITATION OF ACTIONS.

3. *Fire insurance—Contract of re-insurance—Trade custom—Conditions of contract—"Rider" to policy—Limitations of actions—Commencement of prescription—Art. 2235 C. C., xxxv., 208.*

See INSURANCE, FIRE.

4. *Municipal corporation—Montreal city charter—Construction of statute—"Current year"—Assessment and taxes—Local improvements—Special tax, xxxix., 151.*

See MUNICIPAL CORPORATION.

5. *Title to land—Easement appurtenant—User of lane—Agreement for right of way—Construction of contract—Practice, Cout. Cas. 352.*

See EASEMENT.

AND see LIMITATIONS OF ACTIONS.

6. *Action in wrong jurisdiction—Transfer to court of competent jurisdiction—Expiration of time—Pleading prescription after transfer of action. Connolly v. Grenier, xlii., 242.*

See SHIPS AND SHIPPING.

See LIMITATIONS OF ACTIONS, xliii., 637.

7. *Easement—Trespass—Public way—Dedication—User—Estoppel—"Law and Transfer of Property Act," R. S. O. 1897, c. 119, xlviii., 57.*

See HIGHWAY.

## PRESSURE.

*Contract—Security for debt—Promissory note—Husband and wife—Parent and child, xxxv., 393.*

See CONTRACT.

## PRESUMPTION.

*Title to land—Injunction—Boundary—Riparian rights. City of Hull v. Scott, Cout. Cas. 264.*

AND see EVIDENCE.

## PRINCIPAL AND AGENT.

1. LIABILITY FOR CONTRACT BY AGENT, 1-5.
2. LIABILITY FOR ACTS OF AGENT, 6-17.
3. RIGHTS AND LIABILITIES BETWEEN PRINCIPAL AND AGENT, 18-38.
4. OTHER CASES, 39-49.

### 1. LIABILITY FOR CONTRACT BY AGENT.

1. *Broker selling on grain exchange—Contract in broker's name—Liability of principal—"Futures"—"Options"—"Margins"—Board rules—Indemnity.*] — On 14th August, 1907, the defendant, who resided in the State of Nebraska, wrote the following letter to the plaintiffs, grain dealers at Winnipeg, Man.: "Yours of recent date enclosing market report rec'd. I shall be North in about four weeks to look after the new crop and, if you can sell No. 2 oats for 37c. or better, in store Fort William, you had better sell 4,000 bus. for me, and I will be up at Snowflake then so I can look after the loading of them, and I will send the old oats then." The plaintiffs, who were also brokers on the Winnipeg Grain Exchange, sold the oats at 38½ cents on the "Board," without disclosing the name of their principal, for October delivery, becoming personally liable for the performance of the contract according to the rules of the Exchange. Upon defendant refusing to deliver the oats, the plaintiffs purchased the quantity of oats so sold at an advance in price in order to make the delivery, and brought the action to recover the amount of their loss thus sustained.—*Held*, reversing the judgment appealed from (18 Man. R. 111), that the authority so given did not authorize the plaintiffs to make a sale under the Grain Exchange Rules binding upon their principal; that no contract binding on the principal outside of these rules had been entered into, and consequently, that he was not liable to indemnify them for any loss sustained by reason of their contract. *Butler v. Murphy*, xli., 618.

2. *Joint stock company—Subscription for shares—Authority of agent—Conditional agreement.*]—S. signed a subscription for shares in a company to be formed and a promissory note for the first payment, both of which documents he delivered to the promoter of the company to which they were

transferred after incorporation. In an action for payment of calls S. swore that the stock was to be given to him in part payment for the good will of his business which the company was to take over. The promoter testified that the shares subscribed for were to be an addition to those to be received for the goodwill. — *Held*, that, though S. could, before incorporation, constitute the promoter his agent to procure the allotment of shares for him and give his note in payment, yet the possession by the promoter did not relieve the company from the duty of inquiring into the extent of his authority and, whichever of the two statements at the trial was true, the promoter could not bind S. by an unconditional application. *Ottawa Dairy Co. v. Sorley*, xxxiv., 508.

3. *Agreement for sale of land—Principal and agent—Estoppel—“Land Commissioner”—Specific performance.*—The plaintiffs, as assignees, claimed specific performance of an alleged agreement for the sale of lands based upon the following letter: “Ferne, B.C., June 5th, 1900.—D. V. Mott, Esq., Ferne, B.C.:—*Re sale to you of mill site.*—Dear Sir: — The Crow’s Nest Pass Coal Company hereby agree to sell to you a piece of land at or near Hosmer Station, on the Crow’s Nest line, to contain at least one hundred acres of land, at the price of \$5.00 per acre; payable as follows: When title issued to purchaser, title to be given as soon as the company is in a position to do so. Purchaser to have possession at once. The land to be as near as possible as shewn on the annexed sketch. Yours truly, W. Ferne, Land Commissioner.” — The lands claimed were not those shewn on the sketch plan, but other lands alleged to have been substituted therefor by verbal agreement with another employee of the defendant company, at the time of survey.—*Held*, affirming the judgment appealed from (12 B. C. Rep. 433), but on different grounds, that specific performance could not be decreed in the absence of any proof of authority of the agent to sell the lands of the defendant company, and that the mere fact of investing their employee with the title of “Land Commissioner” did not estop the defendants from denying his power to sell lands. *Elk Lumber Co. v. Crow’s Nest Pass Coal Co.*, xxxix., 169.

4. *Company—Powers — Sale of business premises—Seal—Agreement signed by officer*, li., 374.

See COMPANY.

5. *Fire insurance—Bawdy house — Im-moral contract—Legal maxim — “Ex turpi causa non oritur actio” — Cancellation of policy—Statutory condition—Notice to insured—Return of premium*, liii., 294.

See FIRE INSURANCE.

## 2. LIABILITY FOR ACTS OF AGENT.

6. *Sale of land—Authority to make contract—Specific performance.*—The defendant gave a real estate agent the exclusive right, within a stipulated time, to sell, on

commission, a lot of land for \$4,270 (the price being calculated at the rate of \$40 per acre on its supposed area), an instalment of \$1,000 to be paid in cash and the balance, secured by mortgage, payable in four annual instalments. The agent entered into a contract for sale of the lot to the plaintiff at \$40 per acre, \$50 being deposited on account of the price, the balance of the cash to be paid “on acceptance of title,” the remainder of the purchase money payable in four consecutive yearly instalments and with the privilege of “paying off the mortgage at any time.” This contract was in the form of a receipt for the deposit and signed by the broker as agent for the defendant.—*Held*, affirming the judgment appealed from (15 Man. Rep. 205), that the agent had not the clear and express authority necessary to confer the power of entering into a contract for sale binding upon his principal.—*Held*, further, that the term allowing the privilege of paying off the mortgage at any time was not authorized and could not be enforced against the defendant. *Gilmour v. Simon*, xxxvii., 422.

7. *Partnership—Partnership funds—Third party—Banks and banking—Negotiable instrument—Notice—Inquiry.*—R. a member of the firm of R. M. & C., engaged on a contract for railway construction in Quebec, shortly before its completion went to Ontario, leaving his partners to finish the work, collect any balance due, pay the liabilities and divide the balance among them. M. and C. finished the work and received \$56,000 and over, went to Toronto and formed a new partnership of which R. was not a member. Having undertaken another contract in North Ontario, they arranged with the head office of the Imperial Bank to open an account with its branch at New Liskeard and the cheque payable to R. M. & C. was cashed at the branch in Toronto, and by instructions to the New Liskeard branch was placed to the credit of the new firm then, and the whole sum was eventually drawn out by the latter firm. R., later, brought an action against M. and C. for winding up the affairs of their co-partnership and, pending that action took another against M. and C. and the bank, claiming that the latter should pay the amount of the cheque with interest into court subject to further order.—*Held*, per Fitzpatrick, C.J. and Davies, J., affirming the judgment of the Court of Appeal (19 Ont. L. R. 584), Idington and Anglin, J.J., dissenting, that M. and C. had acted within their authority from R. by obtaining cash for the cheque; that there was nothing to shew that they had misapplied the proceeds or intended to do so by their dealing with the cheque; that in any case there was no notice to the bank of any intention to misapply the funds and nothing to put them on inquiry; and that the action against the bank must fail.—*Per* Duff, J.—The evidence establishes that M. and C. had authority to convert the cheque into an instrument transferable by delivery only, and that it was acquired by the bank in good faith in the ordinary course of business. The bank, therefore, obtained a good title to the cheque and its proceeds as against the appellant. *Ross v. Chandler*, xlv., 127.

8. *Promissory note — Signature to blank note—Authority to use—Condition — Bond fide holder—Bills of Exchange Act, ss. 31 and 32.]* — W., residing at Newmarket, owned property in Port Arthur and signed some promissory note forms which he sent to an agent at the latter place to be used under certain circumstances for making repairs to such property. The agent filled in one of the blank notes and used it for his own purposes. In an action by the holder W. swore, and the trial judge found as a fact, that the notes were not to be used until he had been notified and authorized their use. He also found that the circumstances attending the discount of the note by the agent were such as to put the holder on inquiry as to the latter's authority. The first finding was affirmed by the Court of Appeal.—*Held*, affirming the judgment of the Court of Appeal (24 Ont. L. R. 122), Fitzpatrick, C.J., *aditante*, that ss. 31 and 32 of the "Bills of Exchange Act" did not apply and the holder could not recover.—*Held*, per Davies and Anglin, J.J.—The finding of the trial judge that the circumstances never arose upon which the agent had authority to use the note was not so clearly wrong as to justify a second appellate court in setting it aside.—*Held*, per Idington, J.—The finding of the trial judge that the holder was put on inquiry as to the agent's authority was justified by the evidence and bars the right to recover.—*Held*, per Duff, J.—The evidence establishes that the agent had no authority to use the note. *Ray v. Willson*, xlv., 401.

9. *Life insurance—Endowment policy — Surrender—Cash value — Action for rescission—Representation by agent—Inducement to insure.]*—The life of S. was insured by a twenty-year endowment policy which provided that at the end of the term he could exercise one of three options including that of surrender of the policy on receipt of a sum to be ascertained in a specified manner. About ten months before the policy expired he wrote to the company asking for the amount payable on surrender which was promptly furnished, and more than a year later he brought action for a larger cash payment, and in the alternative for rescission of the contract for insurance and return of the premium paid with interest, alleging that when he applied for the insurance he was informed by the agent of the company that the cash value of the policies surrendered would be the larger amount claimed. The trial judge directed rescission and return of the premiums as prayed. His judgment was reversed by the Court of Appeal.—*Held*, affirming the judgment of the Court of Appeal (23 Ont. L. R. 559) that as S. did not swear nor the evidence he adduced establish that he was induced to enter into the contract by the representations of the agent as to the sum payable on surrender, and it might fairly be inferred that had he been given the true figures he would still have taken the policy, his action must fail. *Shaw v. Mutual Life Ins. Co.*, xlvi., 606.

10. *Fire insurance—Removal of goods — Consent—Binder—Authority of agent.]*—K. Bros. & Co., through the agents in New York of the respondent company, obtained

insurance on a stock of tobacco in a certain building in Quincy, Flo., and afterwards obtained the consent of the company to its removal to another building. Later, again, they wished to return it to the original location, and an insurance firm in New York was instructed to procure the necessary consent. This firm, on January 14th, 1909, prepared a "binder," a temporary document intended to license the removal until formally authorized by the company, and took it to the firm which had been agents of respondents when the policy issued, but had then ceased to be such, where it was initiated by one of their clerks on his own responsibility entirely. On March 19th, 1909, the stock was destroyed by fire in the original location, and shortly after a formal consent to its removal back was indorsed on the policy, the respondents then not knowing of the loss. In an action to recover the insurance:—*Held*, affirming the judgment of the Court of Appeal (25 Ont. L. R. 534) that the "binder" was issued without authority; that even if the insurance firm by whose clerk it was initiated had been respondents' agents at the time they had, under the terms of the policy, no authority to execute it, and authority would not be presumed in favour of the insured as it might be in case of an original application for a policy; and that it was not ratified by the indorsement on the policy as the company could not ratify after the loss. *Kline Bros. & Co. v. Dominion Fire Ins. Co.*, xlvii., 252.

11. *Vendor and purchaser — Agreement for sale — Agent to procure purchaser — Agent joining in purchase — Non-disclosure to co-purchaser—Payment of commission—Rescission of contract.]*—H. was owner of mining land and offered S. a commission of ten per cent. for finding a purchaser thereof. H. afterwards wrote to S. stating that the mine was very rich, and urging him to induce some of his friends to join in a syndicate or company to purchase and work it. S., without disclosing his agency, induced W. to take up the matter and they agreed to join in the purchase and divide the profits. A contract was entered into with H. and W. paid \$20,000 on account of the purchase price on which S. was paid his commission. Default having been made in the further payments H. brought action claiming possession of the property and the right to retain the amount paid. W. counter-claimed for rescission of the contract and return of the money paid with interest, and on the trial swore that he knew nothing of S.'s agency for several months after the contract was signed.—*Held*, affirming the judgment of the Appellate Division (29 Ont. L. R. 6), Fitzpatrick, C.J., dissenting, that it was the duty of H., on becoming aware that S. was a co-purchaser with W., to satisfy himself that the latter was aware of the agency of S.; and that W. was entitled to the relief asked by his counterclaim.—*Held*, per Davies and Anglin, J.J. (Duff, J., *contra*), that S. by concealing from W. the fact that he was to receive a commission from the vendor was guilty of a fraud for which H. was responsible as agent. (Leave to appeal to Privy Council refused, 23rd July, 1914.) *Hitchcock v. Sykes*, xlix., 403.

12. *Estoppel* — Receipt delivered before payment.]—The local agent of the railway company received the personal cheque of the defendants' agent in settlement of freight charges due by the defendants and thereupon receipted the freight bills. By means of these receipted bills the defendants' agent was enabled to obtain the amount of the freight charges from his employers and absconded, leaving no funds to meet his cheque which was dishonoured. In an action for the recovery of the amount of the freight charges.—*Held*, reversing the judgment appealed from (8 Alta. L. R. 363), Duff and Brodeur, JJ., dissenting, that the delivery of the receipts in advance of payment afforded means of inducing the defendants to pay over the amount represented by them to their agent and, consequently, the plaintiffs were estopped from denying actual receipt of payment of the freight charges.—*Per* Duff, J., dissenting. — In the circumstances disclosed by the evidence in the case the principle of estoppel could not be applied. *Genies v. Canadian Pacific Railway Co.* (14 Ont. L. R. 286), distinguished. *Continental Oil Co. v. Canadian Pacific Railway Co.*, lii., 605.

13. *Agreement for sale of land—Principal's duty and interest—Fiduciarly relationship—Specific performance*, xli., 445.

See SPECIFIC PERFORMANCE.

14. *Vendor and purchaser—Sale of land—Condition—Approval of assignments—Equitable estate or interest — Priority between transferees—Fraudulent and criminal practices—Notice of previous transfer—Implied knowledge.* *MacLeod v. Sawyer-Massey Co.*, xli., 622.

15. *Sale of land—Commission.* *Langley v. Rowlands*, xli., 626.

16. *Fire insurance—Blank application — General agent — Misrepresentation—Knowledge of company—Over-valuation—"Dwelling-house"—"Lodging-house."* *Mahomed v. Anchor Fire, etc.*, xlviii., 546.

See INSURANCE, FIRE.

17. *Fire insurance—Statutory condition—R. S. Q., 1909, arts. 7034, 7035, 7036—Notice—Conditions of application—Conditions endorsed on policy—Keeping and storing coal oil—Agent's knowledge — Waiver—Adjustment of claim—Offer of settlement by adjuster—Estoppel—Transaction*, liii., 296.

See INSURANCE.

### 3. RIGHTS AND LIABILITIES BETWEEN PRINCIPAL AND AGENT.

18. *Agent's commission—Breach of duty—Secret profit.*] — D. represented to the manager of a land corporation that he could obtain a purchaser for a block of its land, and was given the right to do so up to a fixed date. He negotiated with a purchaser who was anxious to buy, but wanted time to arrange for funds. D. gave him time for which the purchaser agreed to pay \$500. The sale was carried out, and D. sued for

his commission, not having then received the \$500.—*Held*, reversing the judgment appealed from (14 Man. L. R. 233), that the consent of D. to accept the \$500 was a breach of his duty as agent for the corporation which disentitled him from recovering the commission. *Manitoba & Northwest Land Corporation v. Davidson*, xxxiv., 255.

19. *Satisfaction and discharge—Payment in advance—Custody of deeds—Notarial profession in Quebec—Art. 3665 R. S. Q.—Attorney in fact—Implied mandate — Evidence—Parol—Commencement of proof in writing—Art. 1233 C. C.—Admissions—Art. 316 C. P. Q.—Practice—Adduction of evidence—Objections to testimony — Rule of public order.*] — A notary public, in the Province of Quebec, has not any actual or ostensible authority to receive moneys invested for his clients under instruments executed before him and remaining in his custody as a member of the notarial profession of that province.—Admissions made to the effect that a notary had invested moneys and collected interest on loans for the plaintiff do not constitute evidence of agency on the part of the notary, nor could they amount to a commencement of proof in writing as required by art. 1233 of the Civil Code, read in connection with art. 316 of the Code of Civil Procedure, to permit the adduction of parol testimony as to the authorization of the notary to receive payment of the capital so invested or as to the repayment thereof alleged to have been made to him as the mandatary of the creditor.—The prohibition of parol testimony, in certain cases, by the Civil Code is not a rule of public order which must be judicially noticed, and, where such evidence has been improperly admitted at the trial without objection, the adverse party cannot take objection to the irregularity on appeal. *Gervais v. McCarthy*, xxxv., 14.

20. *Broker—Sale of land — Commission for procuring purchaser—Company law — Commercial corporation—Contract—Powers of general manager.*]—A land broker volunteered to make a sale of real estate owned by a trading corporation and obtained, from the general manager, a statement of the price, and other particulars with that object in view. He brought a person to the manager who was able and willing to purchase at the price mentioned and who, after some discussion, made a deposit on account of the price and proposed a slight variation as to the terms. They failed to close and the manager sold to another person on the following day. The broker claimed his commission as agent for the sale of the property, having found a qualified purchaser at the price quoted.—*Held*, affirming the judgment appealed from (14 Man. Rep. 650), *Taschereau, C.J. and Girouard, J., dubitante*, that the broker could not recover a commission as he had failed to secure a purchaser on the terms specified. Under the circumstances, as the owner did not accept the purchaser produced and close the deal with him, there could be no inference of the request necessary in law as the basis of an obligation to pay the plaintiff a commission.—*Per* *Taschereau, C.J. and Girouard, J.* That the general manager of a commercial corporation could not make a

binding agreement for the sale of its real estate without special authorization for that purpose. *Calloway v. Stobart Son and Co.*, xxxv., 301.

21. *Broker—Gambling on margins—Advances by agent—Criminal Code, s. 201.*—P. speculated on margin in stocks, grain, etc., through C. & Sons, brokers in Toronto, and in March, 1901, directed them to buy 30,000 bushels of May wheat at stated prices. The order was placed with a firm in Buffalo, and the price going down C. & Son forwarded money to the latter to cover the margins. P. having written the brokers to know how he stood in the transaction received an answer stating that "no doubt the wheat was bought and has been carried, and whether it has or not, our good money has gone to protect the deal for you," on which he gave them his note for \$1,500 which they represented to be the amount so advanced. Shortly after the Buffalo firm failed and P. became satisfied that they had only conducted a bucket shop and the transaction had no real substance. He accordingly repudiated his liability on the note, and S. & Son sued him for the amount of the same.—*Held*, Davies and Killam, JJ., dissenting, that the evidence shewed that the transaction was not one in which the wheat was actually purchased; that C. & Son were acting therein as agents of the Buffalo firm; that the transaction was not completed until the acceptance by the firm in Buffalo was notified to P. in Toronto; and being consummated in Toronto it was within the terms of s. 201 Crim. Code, and plaintiff could not recover.—*Held*, also, Davies and Killam, JJ., dissenting, that assuming C. & Son to have been agents of P. in the transaction they were not authorized to advance any money for their principal beyond the sums deposited with them for the purpose.—*Held*, per Davies and Killam, JJ., that the transaction was completed in Buffalo and in the absence of evidence that it was illegal by law there the defence of illegality could only be raised by plea under rule 271 of the Judicature Act of Ontario. *Pearson v. Carpenter*, xxxv., 380.

22. *Breach of contract—Breach of trust—Assessment of damages—Sale of mining areas—Promotion of company—Failure to deliver securities—Account—Evidence—Salvage—Indemnity for necessary expenses—Laches—Estoppel.*—The plaintiffs transferred certain mining areas to the defendant in order that they might be sold together with other areas to a company to be incorporated for the purpose of operating the consolidated mining properties, the defendants agreeing to give them a proportionate share of whatever bonds and certificates of stock he might receive for these consolidated properties upon the flotation of the scheme then being promoted by him and other associates. In order to hold some of the areas it became necessary to borrow money and the lender exacted a bonus in stock and bonds which the defendant gave him out of those he received for conveyance of the properties to the company. After deducting a ratable contribution towards his bonus, the defendant delivered to the plaintiffs the remainder of their proportion of stock and bonds, but did not then inform them that

such deductions had been made, and they, consequently, made no demand upon him for the balance of the shares and bonds until some time afterwards when they brought the action to recover the securities or their value.—*Held*, affirming the judgment appealed from, that whether the defendant was to be regarded as a trustee or as the agent of the plaintiffs, he was not entitled, without their consent, to make the deductions, either by way of salvage or to indemnify himself for expenses necessarily incurred in the preservation of the properties; and that, under the circumstances, their failure to demand delivery of the remainder of the securities before action did not deprive the plaintiffs of their right to recover.—If the defendant is to be considered a trustee wrongfully withholding securities which he was bound to deliver, he is liable for damages calculated upon the assumption that they would have been disposed of at the best price obtainable. If, however, he is to be regarded as a contractor who has failed to deliver the securities according to the terms of his agreement, he is liable for damages based on the selling price of the securities at the time when his obligation to deliver them arose. *Nant-Y-Glo and Blaina Ironworks Co. v. Grave* (12 Ch. D. 738); *The Steamship Carrisbrooke Co. v. The London and Provincial Marine and General Ins. Co.* ((1901) 2 K. B. 861) and *Michael v. Hart & Co.* ((1902) 1 K. B. 482), followed. *McNeil v. Fultz*, xxxviii., 198.

23. *Secret profit—Trust—Clandestine transactions by broker—Sham purchaser—Commission—Quantum meruit.*—H., a broker, undertook to obtain two lots for F., as an investment of funds supplied by F. for that purpose, at prices quoted and on the understanding that any commission or brokerage chargeable was to be got out of the vendors. H. purchased one of the lots at a price lower than that quoted, receiving, however, the full amount quoted from F., and, by representing a sham purchase of the other lot, got an advance from F. in order to secure it.—*Held*, affirming the judgment appealed from, that H. was the agent of F. and could not make any secret profits out of the transactions, nor was he entitled to any allowance by way of commission or brokerage in respect of either of the lots so purchased. *Hutchinson v. Fleming*, xl., 134.

24. *Ships and shipping—Material used in construction—Sale of goods—Contract—Principal and agent—Misrepresentations—Mistake—Conversion—Trover—Evidence—Misdirection—New trial—Ship's husband—Pledging credit of owners—Necessary outfitting at home port.*—While a three-masted schooner was in course of construction, E. obtained goods on credit from the plaintiffs (appellants) falsely representing that his co-defendants were interested in the ship. The materials were built into the ship and used in rigging and equipping her; she was launched and registered in the name of E. as sole owner, and, subsequently, these co-defendants became *bonâ fide* purchasers of certain shares in the ship, E. was registered as her managing owner, and she was sent to sea.—*Held*, that sending the ship to sea was not such a conversion of



the materials worked into the ship as could support an action in trover against the subsequent purchasers of shares in her.—After the purchasers of the above mentioned shares were registered as co-owners, E. obtained, on a further credit, metal sheathing and other goods from the plaintiffs which were used in sheathing and further outfitting the vessel, at the port where she had been built, and where the owners resided, before sending her out to sea.—*Held*, that the managing owner had power to pledge the credit of the owners for such necessary purposes. *The "Huntsman,"* ((1894) P. D. 214), followed.—The judgment appealed from (32 N. B. Rep. 147), which ordered a new trial on the ground of misdirection, was affirmed. *Troop v. Everett*, *Cont. Cas.* 131.

25. *Broker—Commission on sale of land—Introduction of purchaser—Efficient cause of sale—Completion of contract by owner on altered terms.*—An agent, instructed to secure a purchaser for lands, introduced a prospective purchaser who associated himself with other persons, whose identity was unknown to the agent, to carry out the purchase of the property. The individual thus introduced and his associates subsequently carried on negotiations with the owner personally which resulted in the purchase, on altered terms, of the property in question, together with other lands, by his associates alone while he retired from the transaction. The owner refused to pay the agent any commission on the sale on the ground that he had not been the efficient cause of the sale which was finally made as above stated. *Held*, reversing, in part, the judgment appealed from (3 Sask. L. R. 286), that as the steps taken by the agent had brought the owner into relation with the persons who finally became purchasers he was entitled to recover the customary commission upon the price at which the property in question had been sold. *Burchell v. Gowrie and Blockhouse Collieries* ([1910] A. C. 614), applied. *Straton v. Vachon*, *xlv.*, 395.

26. *Broker—Sale of land—Principal and agent—Disclosing material information—Secret profit—Vendor and purchaser—Agent's right to sell or purchase—Specific performance.*—A broker being informed by the owners that they would sell certain lands entered a description of the property in his list of lands for sale through his agency. The lands being still unsold about three months later, the broker, in consideration of a payment of \$50, obtained an exclusive option from the owners for the sale or purchase by himself, within 30 days, of the lands at a price named, which was to include his commission in the event of his effecting a sale, but without disclosing information of which he was then possessed that there was a probability of the lands selling within a short time at an increased price. Within a few days after the date of the option he effected a sale, in his own name, of the lands for double the price named therein, notified the owners that he exercised his option to purchase and demanded a conveyance. In an action for specific performance, brought by the broker

on refusal of such conveyance.—*Held*, per Fitzpatrick, C.J.—That by the terms of the written agreement the broker became an agent for the sale of the lands with the option of purchasing them for himself; that he could not become purchaser until he had divested himself of his character as agent; that he was, as agent, bound to disclose to his principals the knowledge he had acquired respecting the improved prospects of a sale at enhanced value, and his exercise of the option to purchase did not relieve him of this obligation. He was, therefore, not entitled to a decree for specific performance. *Per Davies*, Idington, Anglin and Brodeur, J.J.—That the broker was an agent for the sale of the lands at the time he procured the option and, having failed in his duty to disclose to his principals all material information he had as to the probability of the lands selling at a higher price than that mentioned, specific performance of the agreement to sell to him should be refused.—The judgment appealed from (16 B. C. Rep. 308), was reversed. *Bentley v. Nasmith*, *xlvi.*, 477.

27. *Company—Subscription for treasury stock—Contract—Misrepresentation—Fraud—Transfer of shares—Rescission—Return of payments—Want of consideration.*—V. entered into an agreement to purchase for re-sale the unsold treasury stock of a foreign joint stock company, "subscriptions to be made from time to time as sales were made"; it was therein provided that the company should fill all orders for stock received through V. at \$15 for each share; that V. should sell the stock for \$20 per share; that V. should "pay for the stock so ordered with the proceeds of sales made by him or through his agency," and that the contract should continue in force so long as the company had unsold treasury stock with which to fill such orders. The company also gave V. authority to establish agencies in Canada in connection with its casualty insurance business and to appoint medical examiners there. At the time the company had no license to carry on the business of insurance in Canada, nor any immediate intention of making arrangements to do so, and V. was an official of the company and was aware of these facts. V. appointed T. the sole medical examiner of the company for Vancouver, B.C., assuring him that the company would commence to carry on its casualty insurance business there within a couple of months, and then obtained from him a subscription for a number of shares of the company's treasury stock which were paid for partly by T.'s cheques, payable to the company, and the balance by a series of promissory notes falling due from month to month following the date of the subscription and made payable to V. A number of shares equal to those so subscribed for by T. were then transferred to him by V. out of the allotment made to him by the above mentioned agreement, the certificates therefor being obtained by V. in the name of T. from the company, but the company did not formally accept T.'s subscription nor issue any treasury stock to him thereunder. The company did not commence business in Vancouver within the time speci-

ried by V. nor did it obtain a license to carry on the business of insurance in Canada until many months later. In an action by T. against the company and V. to recover back the money he had paid and for the cancellation and return of the notes.—*Held*, affirming the judgment appealed from (7 D. L. R. 944; 2 West. W. R. 658), Davies and Anglin, J.J., dissenting, that, in the transaction which took place, V. was the company's agent; that the company was, consequently, responsible for the deceit practised in procuring the subscription from T.; that there had been no contract for the purchase of treasury stock completed between the company and T.; that the object of T.'s subscription was not satisfied by the transfer of V.'s shares to him, and that he was entitled to recover back the money he had paid and to have the notes returned for cancellation as having been paid over and delivered without consideration, and in consequence of the fraudulent representations made by V. *International Casualty Co. v. Thompson*, xlvi., 167.

28. *Crown lands—Location—Public policy—Evasion of statute—B. C. "Land Act," 8 Edw. VII. c. 30, ss. 34, 36—Sale of Crown lands—Commission on sales—Quantum meruit—Tainted contract.*—B., who had laid out and inspected Crown lands as a Government surveyor, furnished information to the defendant and an associate which enabled them to secure choice locations, comprising over 7,000 acres of these lands, in the names of a number of persons nominated by them and employed as "stakers." Subsequently B. assisted in the disposal of the lands thus secured to innocent purchasers under an arrangement with the defendant and his associate that he was to participate in any profits which should be obtained on such sales. In an action by B. to recover compensation for the services he had rendered in regard to these sales:—*Held*, that the circumstances disclosed a scheme concocted in opposition to the policy of the British Columbia "Land Act," and in violation of its provisions respecting the disposal of Crown lands; consequently, the agreement, being tainted with the character of the scheme, ought not to be enforced by the courts.—*Per* Idington and Anglin, J.J.—The plaintiff's claim fails for want of evidence of any request by the defendant that he should render the services in respect of which remuneration is claimed nor an agreement to remunerate him for assistance in effecting the sales in question.—The judgment appealed from (3 D. L. R. 725; 23 West. L. R. 30; 9 D. W. R. 400), stood affirmed. *Brownlee v. McIntosh*, xlvi., 588.

29. *Sale of lands—Contract—Agreement for re-sale—Novation—Rescission—Specific performance—Defence to action—Practice—Evidence—Statute of Frauds—Agent purchasing—Disclosure—Findings of fact.*—In a suit for specific performance of a contract for the sale of lands an agreement for the re-sale of the lands may be set up as a defence notwithstanding that such re-sale agreement does not satisfy the requirements of the 4th section of the Statute of Frauds. Judgment appealed from (10 D. L. R. 765), affirmed.—Such an agreement for re-sale affords a sufficient reason for

fusing a decree for specific performance of the original contract for sale.—The Supreme Court of Canada refused to review the finding of the courts below that the defendants, while agents for the sale of the property in question, when purchasing it themselves under the contract for re-sale, had discharged their duty towards the plaintiff in regard to disclosure of material facts relating to the value of the property.—*Per* Davies and Idington, J.J.—Where the parties to a contract come to a fresh agreement of such a kind that the two cannot stand together the effect of the second agreement is to rescind the first. *Frith v. Alliance Investment Co.*, xlix., 384.

30. *Broker—Dealings "on Change"—Speculative options—Liability for contracts by agent in his own name—Privity of contract—Purchases and sales on "margin"—Settlements through clearing house—Wagering contract—Malum prohibitum—Criminal Code, s. 231.*—B. entered into speculative transactions, on "margin," by instructing the plaintiffs, members of a "Grain Exchange" to buy and sell for him on the Exchange, from time to time, quantities of grain for future delivery in accordance with the rules, regulations and customs of the Exchange, and a number of purchases and sales were made on commission for him. He was not, however, informed of the names of any sellers or purchasers, the brokers carrying out the transactions in their own names. There was a "clearing house" association connected with the Grain Exchange of which the brokers dealing on the Exchange were members and through which all transactions were settled daily by setting off purchases against sales, liability for the same being assumed by the clearing house and the brokers released upon a settlement for the resulting balances instead of for every separate transaction reported. It was not proved that B. was aware of this practice as to settlements, although he, from time to time, had paid "margins" to the brokers when required to do so by them in order to protect them against losses on his account. B. became in arrears for "margins" and, in an action against him, the brokers recovered the amount of their claim.—*Held*, reversing the judgment appealed from (23 Man. R. 306), the Chief Justice and Duff, J., dissenting, that, as the evidence failed to shew that, by the manner in which the transactions were made, the amounts claimed had been expended in carrying out the commissions according to the instructions the brokers had received from B., they were not entitled to recover the balance so claimed from him.—*Held*, further, *per* Idington and Brodeur, J.J., and *semble per* Anglin, J.—Where, in such transactions, neither party intends that there should be actual delivery made or received of the commodities to which the purchases or sales relate the contracts are illegal and prohibited by the terms of s. 231 of the Criminal Code. *Beamish v. Richardson & Sons*, xlix., 595.

31. *Commission on sales—"Accepted orders"—Contract for sale—Construction—Words and phrases.*—A paper manufacturing company in Quebec agreed to give W.

a commission of five per cent. on all "accepted orders" obtained by him in Ontario, to be payable as soon as an order was shipped. Through W.'s agency a contract was entered into whereby a company in Toronto agreed to purchase from the Quebec company during one year paper of a specified kind to the extent of not less than \$35,000, to be furnished from time to time on receipt of specifications and directions as to destination. When paper to the value of over \$5,000 had been shipped under this contract the Toronto company refused to furnish further specifications on the ground that said paper was not satisfactory and the contract was not further performed.—*Held, per Fitzpatrick, C.J. and Idington, J. (Duff, J., contra)*, that the contract with the Toronto company constituted an "accepted order" within the terms of the agreement with W., who, as it was through the fault of his principals that the contract was not performed, was entitled to the balance of his commission on the contract price of \$35,000.—*Per Davies and Anglin, J.J.*—If under the contract the only "accepted orders" were those filled from time to time on receipt of specifications and directions from the purchasers the discontinuance of their sending in the same was due to the failure of the vendors to furnish satisfactory paper and W. was entitled to damages for being prevented by such failure from earning his commission. As the evidence shewed that he had done all that could be incumbent upon him to have the contract performed the measure of his damages would be his commission on the contract price.—*Per Duff, J., dissenting.*—The only "accepted orders" under the contract were those to be filled from time to time on receipt of specifications. As his case under the pleadings was confined to recovery of the commission on the basis of the contract with the Ontario company being an "accepted order" and as no claim was put forward (or investigated) at the trial on the basis of the appellant having wrongfully been prevented earning his commission by procuring "accepted orders" or advanced by the appellant at any stage of the proceedings, the judgment could not be sustained on that basis unless it was clear that all the evidence bearing upon such a claim was to be found in the record. *Whyte v. National Paper Co., li., 162.*

32. *Broker—"Real estate agent"*—*Sale of land—"Listing" on broker's books—Authority to make contract.*—Where the principal has merely instructed a broker to place lands on his list of properties for sale, such "listing" does not of itself constitute an authorization to the broker to enter into a contract for the sale of the lands on behalf of his principal.—*Judgment appealed from (7 West. W. R. 85), affirmed. Peacock v. Wilkinson, li., 319.*

33. *Sale of land — Commission for procuring purchaser — Sale to person introduced by broker. Bridgman v. Hepburn, xliii., 228.*

34. *Action — Public officer — Notice — Notary public — Mandate—Pleading—Practice—New objections on appeal—Case on ap-*

*peal—Notes of reasons by judges—Findings of fact—Art. 88 C. P. Q., xviii., 382.*

See PRACTICE.

35. *Crown lands—Location—Public policy—Evasion of statute—B. C. "Land Act," 8 Edw. VII., c. 30, ss. 34, 36—Sale of Crown lands—Commission on sales — Quantum meruit — Tainted contract. Brownlee v. McIntosh, xlviii., 588.*

See CROWN LANDS.

36. *Broker—Sale of land—Commission — General employment—Introduction of purchaser—Interference by principal—Quantum meruit—Variation of written contract—Evidence—(Alta.) 6 Edw. VII., xlix., 1.*

See BROKER.

37. *Sale of chattels—Public auction—Disclosure of principal—Liability of auctioneer — Giving credit—Post-dated cheque. Prescott v. Trapp & Co., l., 263.*

See AUCTION.

38. *Broker — Transactions of change—Sale of goods — Action—Evidence—Parol testimony—Arts. 1206, 1233, 1235 C. C., liv., 131.*

See BROKER.

#### 4. OTHER CASES.

39. *Ownership—Lease — Sheriff's sale—Title to land—Insurable interest—Fire insurance—Trust—Beneficiary — Fraudulent contrivances—Estoppel, xxxiv., 1.*

See LEASE.

40. *Debtor and creditor—Assignment of debt—Sheriff's sale—Equitable assignment—Statute of limitations—Payment—Ratification, xxxv., 533.*

See SHERIFF.

41. *Sale of goods—Suspensive condition—Term of credit — Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer — Insolvency—Banking—Bailee receipt — Brokers and factors—Resiliation of contract—Revendication—Damages — Practice — Pleading, xxxvi., 406.*

See SALE.

42. *Sale of goods — Contract by correspondence—Statute of Frauds—Delivery by agent—Statutory prohibition — Illicit sale of intoxicating liquors—Knowledge of seller — Validity of contract, xxxvii., 55.*

See CONTRACT.

43. *Election petition — Trial—Corruption at former election—Evidence to prove agency xxxvii., 604.*

See ELECTION LAW.

44. *Vendor and purchaser—Sale of land—Formation of contract—Conditions—Acceptance of title—New term—Statute of Frauds — Secret commission—Avoidance of contract — Fraud — Specific performance, xxxviii., 588.*

See CONTRACT.

45. *Broker — Stock—Purchase on margin—Pledge of stock by broker—Possession for delivery to purchaser, xxxviii., 601.*

See **BROKER.**

46. *Insurance—Sprinkler system — Damage from leakage or discharge—Injury from frost—Application—Interim receipt, xxxix., 558.*

See **INSURANCE, ACCIDENT.**

47. *Banks and banking—Forged cheque—Negligence — Responsibility of drawee — Payment—Mistake—Indorsement — Implied warranty—Action—Money had and received—Change in position—Laches, xl., 366.*

See **BANKS AND BANKING.**

48. *Broker — Sale of mining land—Commission — Change of purchaser—Continued transaction, xl., 414.*

See **BROKER.**

49. *Bills and notes—Material alteration—Forgery—Partnership — Mandate — Assent of parties—Liability of indorser—Construction of statute—"Bills of Exchange Act," xl., 458.*

See **BILLS AND NOTES.**

## PRINCIPAL AND SURETY.

1. *Mandate — Negligence — Laches—Release of surety — Mortgage — Pledge—Construction of contract—Principal and agent — Arts 1570, 1959, 1966, 1973, C. C.] —* Upon the execution of a deed of obligation and hypothec, the plaintiffs became sureties for the debtor and, for further security, the debtor assigned and delivered to the mortgagee, by way of pledge, a policy of assurance upon his life for the amount of the loan. One of the clauses of the deed provided "for further securing the repayment of the said loan, interest and accessories and premiums of insurance on the said life policy" that the debtor and sureties "by way of pledge à titre d'antichrèse, transferred and made over unto the said lender" certain constituted rents and seigniorial dues. The deed further provided that the actual agent of the seignior should remain agent until the loan should be repaid with interest and insurance premiums disbursed by the creditor, and that the creditor should have the right to dismiss said agent should he fail to make out of the revenues of the seignior and remit to the creditor the amount necessary for the payment of such interest and insurance premiums. It further provided that the lender should not be responsible to the debtor and sureties for the agent's acts, the debtor and sureties assuming responsibility therefor. The judgment appealed from found, as facts, that the sureties had made a provision in the hands of the creditor for the purpose of payment of the premiums out of the revenues assigned, that, for such purpose, the creditor had become the mandatary of the sureties and responsible for the due fulfilment of such mandate, and that there were sufficient funds, derived from such revenues, to pay a renewal premium which fell due shortly before the death of the debtor, and of which

payment had been omitted to be made though some neglect or fault of the creditor in obtaining the funds therefor from the agent. In consequence of this failure to pay the premium the benefit of the policy was lost.—*Held*, affirming the judgment appealed from (Q. R. 13 K. B. 329), Idington, J., dissenting, that the deed contemplated the payment of the premiums by the creditor out of the funds assigned; that the creditor had failed to use proper diligence in respect to the payment of the premium and that the sureties were, therefore, entitled to be discharged *pro tanto* and the property pledged released accordingly. *Trust and Loan Co. of Canada v. Wurtele, xxxv., 663.*

2. *Suretyship — Collateral deposit—Earmarked fund—Appropriation of proceeds — Set-off — Release of principal debtor—Constructive fraud — Discharge of surety — Right of action—Common counts — Equitable recourse.] —* K. owed the corporation \$33,527.94 on two judgments recovered on notes for \$10,000 given by him to R., and a subsequent loan to him and R. for \$20,000. M., at the request of and for the accommodation of R., had indorsed the notes for \$10,000 and deposited certain shares and debentures as collateral security on his indorsement. K. and R. deposited further collateral securities on negotiating the second loan, but K. remained in ignorance of M.'s indorsements and collateral deposit until long after the release hereinafter mentioned. These judgments remained unsatisfied for over six years, but, in the meantime, the corporation had sold all the shares deposited as collateral security, and placed the money received for them to the credit of a suspense account, without making any distinction between funds realized from M.'s shares and the proceeds of the other securities and without making any appropriation of any of the funds towards either of the debts. On 28th February, 1900, after negotiations with K., to compromise the claims against him, the agent of the corporation wrote him a letter offering to compromise the whole indebtedness for \$15,000, provided payment was made some time in March or April following. This offer was not acted upon until November, 1901, when the corporation carried out the offer and received the \$15,000, having a few days previously appropriated the funds in the suspense account, applying the proceeds of M.'s shares to the credit of the notes he had indorsed. The negotiations and the final settlement with K. were not made known to M., and K. was not informed of his continuing liability towards M. as a surety.—*Held, per Sedgewick, Girouard, Davies and Idington, JJ.* (reversing the judgment appealed from (11 B. C. Rep. 402)) that the secret dealings by the corporation with K. and with respect to the debts and securities were, constructively, a fraud against both K. and M.; that the release of the principal debtor discharged M. as surety, and that he was entitled to recover the surplus of what the corporation received applicable to the notes indorsed by him as money had and received by the corporation to and for his use. — *Held, by MacLennan, J.*, that, on proper application of all the money received, the corporation had got more than sufficient to satisfy the amount

for which M. was surety and that the surplus received in excess of what was due upon the notes was, in equity, received for the use of M. and could be recovered by him on equitable principles or as money had and received in an action at law. *Milne v. Yorkshire Guarantee Corporation*, xxxvii., 331.

3. *Promissory note — Protest in London, England—Notice of dishonour to indorser in Canada—Knowledge of address—First mail leaving for Canada—Notice through agent—Agreement for time—Discharge of surety—Appropriation of payments—Evidence.*—Notes made in St. John, N.B., were protested in London, England, where they were payable. The indorser lived at Richibucto, N.B. Notice of dishonour of the first note was mailed to the indorser at Richibucto, and, at the same time, the protest was sent by the holders to an agent at Halifax, N.S., instructing him to take the necessary steps to obtain payment. The agent, on the same day that he received the protest and instructions, sent, by post, notice of dishonour to the indorser at Richibucto. As the other notes fell due, the holders sent them and the protests, by the first packet from London to Canada, to the same agent, at Halifax, by whom the notices of dishonour were forwarded to the indorser, at Richibucto.—*Held*, Idington and Duff, JJ., dissenting, that the sending of the notices of dishonour of the first note direct from London to Richibucto, with the precaution of also sending it through the agent, was an indication that the holders were not aware of the correct address of the indorser and the fact that they used the proper address was not conclusive of their knowledge or sufficient to compel an inference imputing such knowledge to them. Therefore, the notices in respect to the other notes, sent through the agent, were sufficient.—*Per* Idington and Duff, JJ., dissenting, that the holders had failed to shew that they had adopted the most expeditious mode of having the notices of dishonour given to the indorser.—The maker of the note gave evidence of an offer to the holders to settle his indebtedness, on certain terms and at a time some two or three years later than the maturity of the last note, and that the same was agreed to by the holders. The latter, in their evidence, denied such agreement and testified that, in all the negotiations, they had informed the maker that they would do nothing whatever in any way to release the indorser.—*Held*, that the evidence did not shew that there was any agreement by the holders to give time to the maker and the indorser was not discharged. If the existence of an agreement could be gathered from the evidence, it was without consideration and the creditors' rights against the sureties were reserved.—*Per* Idington and Duff, JJ., that a demand note given in renewal of a time note and accepted by the holders is not a giving of time to the maker by which the indorser is discharged.—Judgment of the Supreme Court of New Brunswick (37 N. B. Rep. 630), reversed. *Fleming v. McLeod*, xxxix., 290.

4. *Company law—Insolvency of debtor — Action by liquidator against principal creditor—Compromise — Agreement not to rank*

—*Payment by sureties—Right of sureties to rank.*—By a contract of suretyship C. and others guaranteed payment to a bank of advances to a company by discount of negotiable securities and otherwise, the contract providing that it was to be a continuing guarantee to cover any number of transactions, the bank being authorized to deal or compound with any parties to said negotiable securities and the doctrines of law and equity in favour of a surety not to apply to its dealings. The company became insolvent and its liquidator brought action against the bank to set aside some of its securities, which action was compromised, the bank receiving a certain amount, reserving its rights against the sureties and agreeing not to rank on the insolvent estate. The sureties were obliged to pay the bank and sought to rank for the amount.—*Held*, affirming the judgment of the Appellate Division (28 Ont. L. R. 481), that they were not debarred by the compromise of said action from so ranking. *Brown v. Coughlin*, l., 100.

5. *Company law — Trading company — Powers—Contract of suretyship—R. S. O. [1897] c. 191.*—An industrial company incorporated under, and governed by the "Ontario Companies Act," R. S. O. [1897] c. 191, has no power to guarantee payment of advances by a bank to another company whose sole connection with the guarantor is that of a customer, for the general purposes of the latter's business, and such a contract of suretyship is *ultra vires* and void.—Judgment appealed against (30 Ont. L. R. 87) affirmed. *Union Bank v. McKillop*, li., 518.

6. *Jury trial — Judge's charge—Practical withdrawal of case—Evidence—New trial*, xxxviii., 165.

See NEW TRIAL.

7. *Contract—Conditional sale—Guarantee — Rescission—Mortgagor and mortgagee — Power of sale—Creditor retaking possession — Continuing liability — Appropriation of money received by creditor — Release of debtor—Discharge of surety*, Cout. Cas. 217.

See CHATTEL MORTGAGE.

8. *Cancellation of contract — Expelling contractor—Condition precedent — Possession of plant—Waiver—Seizure in execution — Interpleader — Insolvency — Abandonment of works. Uplands, Limited v. Goodacre*, l., 75.

See CONTRACT.

## PRIORITY.

1. *Assignment by mortgagor for benefit of creditors—Priorities—Assignment of claims of execution creditors — Redemption—Assignments and Preferences Act, s. 11 (Ont.)*, xxxix., 229.

See MORTGAGE.

2. *Privileges and hypothecs—Tramway — Operation on highway—Title to land—Immobilization by destination—Sale of tram-*

way by sheriff as a "going concern"—Unpaid vendor—Lien on price of cars—Pledge—Construction of statute, 3 Edw. VII. c. 91 (Que.)—Priority of claim—Collocation and distribution—Arts. 379, 2000 C. C.—Art. 752 Mun. Code. *Ahearn & Soper v. N. Y. Trust*, xlii., 267.

See PRIVILEGES AND HYPOTHECS.

### PRIVILEGE.

1. *Libel—Privileged publications—Reports of judicial proceedings—Public policy—Pleadings filed in civil actions—Proceedings not in open court.*—The publication of the statements contained in a pleading filed in the course of a civil action, merely because such statements form part of such a pleading, is not a privileged publication within the rule which throws the protection of privilege about fair reports of judicial proceedings.—The judgment appealed from (Q. R. 17 K. B. 309), reversing the judgment of the Superior Court (Q. R. 31 S. C. 338), was affirmed. *Gazette Printing Co. v. Shallow*, xli., 339.

2. *Constitutional law—Legislative Assembly—Powers of Speaker—Precincts of House of Assembly—Expulsion*, xxxiv., 400.

See CONSTITUTIONAL LAW.

3. *Liquidation of insolvent corporation—Distribution and collocation—Privileged claim—Expenses for preservation of estate—Fire insurance premiums—Practice—Ex parte inscription—Notice—Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2009, C. C., xxxix., 318.*

See COMPANY.

4. *Shipping—Material men—Supplies furnished for "last voyage"—Privilege of dernier équipier—Round voyage—Charter-party—Personal debts of hirers—Seizure of ship—Arts. 2383, 2391 C. C.—Art. 931 C. P. Q.—Construction of statute—Ordonnances de la Marine, 1631, xl., 45.*

See SHIPS AND SHIPPING.

5. *Crown lands—Holders of location ticket—Prior right to mining rights—Privilege reserved to "proprietor of the soil"—Construction of statute—R. S. Q. (1888) ss. 1269, 1440, 1441; 55 & 56 Vict. c. 20 (Que.), xl., 647.*

See CROWN LANDS.

AND see LIEN; MORTGAGE; RENT CHARGE.

6. *Sale of standing timber—Registration of real rights—Ownership—Distinction of things—Movables and immovables—Priority of title*, xli., 105.

See REGISTRY LAWS.

7. *Tramway—Operation on highway—Title to land—Immobilization by destination—Sale of tramway by sheriff as "going concern"—Unpaid vendor—Lien on price of cars—Pledge—Contract—Construction of statute, 3 Edw. VII. c. 91 (Que.)—Priority of claim—Collocation and distribution—Arts*

379, 2000 C. C.—Art. 752 Mun. Code, xlii., 267.

See LIEN.

### PRIVY COUNCIL.

Cases affirmed, reversed or otherwise dealt with on appeal from the Supreme Court of Canada, see APPENDIX.

1. *Appeal to Privy Council—Admiralty cases—Order for bail.*—In an action in the Vice-Admiralty Court, an appeal was allowed by the Supreme Court of Canada. On application in chambers for an order under the rules established by the Colonial Courts of Admiralty Act, 1890 (Imp.), fixing bail to be given upon an appeal to the Privy Council to answer the costs of such appeal, after hearing both parties, it was ordered that bail to answer such costs, in the sum of £300 sterling to the satisfaction of the registrar of the Supreme Court of Canada, should be given within a time stated; costs of the application to be costs in the cause. (The appeal was argued before the Judicial Committee without objection as to this procedure; 48 Can. Gaz. 279. See also [1907] A. C. 112). *SS. "Cape Breton" v. Richelieu and Ontario Navigation Co.*, xxxvi., 592 note.

2. *Appeal to Privy Council—"Colonial Courts of Admiralty Act," 1890 (Imp.)—Right of appeal de plano—Bail for costs—Practice.*—Upon the application of the appellants (30th March, 1906), for an order to fix bail on a proposed appeal, direct to His Majesty in Council, under the rules established by the "Colonial Courts of Admiralty Act," 1890 (Imp.), the Supreme Court of Canada, sitting *in banco*, after hearing counsel for and against the application, made an order *pro forma* (without expressing any opinion as to the right of appealing *de plano*), that the appellants should give bail to answer the costs of the proposed appeal in the sum of £300 sterling, to the satisfaction of the registrar of the Supreme Court of Canada, on or before the 4th of April, 1906. *The "Albano" v. The "Parsian"*, xxvii., 301.

3. *Practice—Appeal to Privy Council—Stay of execution—Security.*—Where after judgment on appeal to the Supreme Court of Canada the losing party proposes to appeal to the Judicial Committee of the Privy Council the court will order proceedings on such judgment in the court of original jurisdiction to be stayed on satisfactory security being given for the debt, interest and costs. *Union Investment Co. v. Wells; Montreal Light, Heat & Power Co. v. Regan; B. N. White Co. v. Star Mining & Milling Co.*, xli., 244.

4. The Judicial Committee of the Privy Council refused leave to appeal from a judgment of the Supreme Court of Canada in accord with a long series of decisions in the Dominion. *Armstrong Case* referred to by the Chief Justice. *The King v. Desrosiers*, xli., 71.

AND see NEGLIGENCE.

5. *Varying judgment in terms of decision on appeal to Privy Council in another case in pari materia*, *Cout. Cas.* 196.

See JUDGMENT.

6. *Appeal—Practice—Appeal by respondent to Privy Council—Stay of proceedings*, *Cout. Cas.* 409.

See APPEAL.

7. *Appeal—Court of Review—Appeal to Privy Council—Applicable amount—Amendment to statute—Application—Notice of appeal*, xli., 639.

See APPEAL.

8. *Appeal from Court of Review—Amount in controversy — Jurisdiction of Supreme Court. Beauvais v. Genge*, liii., 353.

See APPEAL.

### PROBABLE CAUSE.

*Malicious prosecution — Reasonable and probable cause—Bonâ fide belief in guilt—Burden of proof—Right of action—Damages—Art. 1053 C. C. — Pleading and practice*, xl., 128.

See MALICIOUS PROSECUTION.

### PROBATE COURT.

*Appeal—Surrogate Court—R. S. C. 1906, c. 139, s. 37 (d)*, lii., 114.

See APPEAL.

### PROCEDURE.

See PRACTICE; PLEADING.

### PROCES-VERBAL.

1. *Appeal—Jurisdiction — Annulment of procès-verbal—Injunction — Matter in controversy—Art. 560 C. C.—Servitude*, xxxvii., 321.

See APPEAL.

2. *Municipal corporation—Reservation for highway—Opening first front road—Appropriation — Indemnity — Award — Description of lands and owners—Formal defects—Quebec Municipal Code, arts. 16, 903, 906, 914, 918, xli., 585.*

See MUNICIPAL CORPORATION.

### PROFIT SHARING.

*Master and servant — Partnership — Evidence—Statute—R. S. B. C. 1911, c. 3, s. 3; c. 175, s. 4—Words and phrases—“Partnership,” xlix., 60.*

See PARTNERSHIP.

### PROHIBITION.

*Extradition—Prohibition against proceedings — Appeal — Jurisdiction — Supreme Court Act, s. 24 (g)—54 & 55 Vict. c. 25, s. 2—Construction of statute—Public policy.] —A motion for a writ of prohibition to restrain an extradition commissioner from investigating a charge of a criminal nature upon which an application for extradition has been made is a proceeding arising out of a criminal charge within the meaning of s. 24 (g) of the Supreme Court Act, as amended by 54 & 55 Vict. c. 25, s. 2, and in such case, no appeal lies to the Supreme Court of Canada. *In re Woodhall* (20 Q. B. D. 832) and *Hunt v. The United States* (16 U. S. R. 424) referred to. (A petition for leave to appeal to Privy Council was abandoned and dismissed, 26th July, 1905.) *Gaynor and Greene v. United States of America*, xxxvi., 247.*

### PROMISSORY NOTE.

*Peters v. Perras*, xlii., 244, 361.

*John Deere Plow Co. v. Agnew*, xlviii., 208.

See BANKS AND BANKING — BILLS AND NOTES.

*Banking — Purchase of company's assets — Bill of sale—Description of chattels—B.C. “Bills of Sale Act,” R. S. B. C. 1911, c. 20—Registration—Recital in bill of sale—Consideration—Defeasance — Reference to unregistered note—Collateral security—Loan by bank—“Bank Act,” (D.) 3 & 4 Geo. V. c. 9, s. 76. *Ball v. Royal Bank*, lii., 254.*

See BILL OF SALE.

### PROTEST.

*Promissory note—Protest in London, England — Notice of dishonour to indorser in Canada—Knowledge of address—First mail leaving for Canada—Notice through agent—Agreement for time—Discharge of surety—Appropriation of payments — Evidence*, xxxix., 290.

See BILLS AND NOTES.

### PROVIDENT SOCIETY.

*Railways—Negligence — Braking apparatus—Sand valves—Defects in machinery—Employer's liability—Condition of indemnity — Lord Campbell's Act — Right of action*, xxxiv., 45.

See NEGLIGENCE.

### PROVINCIAL ACCOUNTS.

*Arbitration and award — Statutory arbitrators—Jurisdiction — Awards “from time to time”—Res judicata. *Quebec v. Ontario**, xlii., 161.

See ARBITRATION AND AWARD.

**PROVINCIAL LEGISLATION.**

See CONSTITUTIONAL LAW.

**PUBLIC AUTHORITIES.**

Statute—"Colonial Courts of Admiralty Act, 1890" (Imp.) 53 & 54 V. c. 27—"Public Authorities Protection Act, 1892" (Imp.) 56 & 57 V. c. 61—Limitation of actions—Effect of statutes—Practice and procedure—Jurisdiction, xlix., 627.

See STATUTE.

**PUBLIC DOCUMENT.**

Crown lands—Lands vesting in Crown—Constitutional law—"B. N. A. Act, 1867," ss. 91 (24), 109-117—Title to "Indian lands"—Surrender—Sale by Commissioner—Property in Canada and the provinces—"Indian Act," 39 V. c. 18; R. S. C. 1906, c. 43, s. 42—Evidence—Legal maxim. Attorney-Gen. v. Giroux, liii., 172.

See INDIANS.

**PUBLIC DOMAIN.**

Title to land—Rivers and streams—Navigable or floatable waters—Crown grant—Riparian rights—Title to bed of river—Erection of townships—Description of area included—Costs. Maclaren v. Attorney-General for Quebec, xlvi., 656.

**PUBLIC HARBOUR.**

1. Municipal corporation—Aid to civil power—Pay of militia—Legislative jurisdiction—Civil rights and obligations—Constitutional law, Cont. Cas. 343.

See CONSTITUTIONAL LAW.

2. Racing upon ice in public harbour—Intruder upon track—Negligence, xxxviii., 226.

See RACE-COURSE.

**PUBLIC HEALTH.**

Construction of statute—"Quebec Public Health Act"—R. S. Q. 1909, art. 3913—Inspection of food—Duty of health officers—Quality of food—Condemnation—Seizure—Notice—Effect of action by health officers—Controlling power of courts—Evidence—Injunction—Appeal—Jurisdiction—Question in controversy.]—Per Fitzpatrick, C.J.—In the Province of Quebec, in order to constitute a valid seizure of movable property there must be something done by competent authority which has the effect of dispossessing the person proceeded against of the prop-

erty; notice thereof must be given; an inventory made and a guardian appointed. Where these formalities have not been observed there can be no valid seizure. *Brook v. Booker* (41 Can. S. C. R. 331), referred to.—Per Fitzpatrick, C.J.—Extraordinary powers, conferred by statute, authorizing interference with private property must be exercised in such a manner that the rights of the owners may not be disregarded. *Bonanza Creek Hydraulic Concession v. The King* (40 Can. S. C. R. 281), and *Riopelle v. City of Montreal* (44 Can. S. C. R. 579), referred to.—Per Fitzpatrick, C.J., and Davies and Idington, J.J.—The authority conferred upon health officers by the "Quebec Public Health Act" respecting the condemnation, seizure and disposal of food, as being deleterious to the public health, is not final and conclusive in its effect, but it is to be exercised subject to the superintending power, orders and control of the Superior Court and the judges thereof.—Per Anglin and Brodeur, J.J.—The protection afforded by the Quebec "Public Health Act" to an executive officer of a local board of health cannot be invoked when the officer has apparently not acted under its provisions, but has condemned food, not as the result of his own independent judgment upon its quality, but in carrying out instructions given him by municipal officials purporting to act under other statutory provisions.—In the result the finding of the trial judge that the food in question was fit for human consumption (Q. R. 39 S. C. 520), being supported by evidence, was not disturbed, and the effect of the judgment appealed from (1 D. L. R. 160) was affirmed with a variation of the order making absolute the injunction against the defendant interfering therewith. *City of Montreal v. Layton & Co.*, xlvi., 514.

**PUBLIC INTEREST.**

1. Dedication of lands for highway—Opening of street—Construction of agreement, xlix., 621.

See MUNICIPAL CORPORATION.

2. Municipal corporation—Powers of council—Highways—Exclusive privilege—Necessity of by-law—Validity of contract—Right of action—Status of plaintiff—Shareholder in joint stock company—Ratepayer—Special injury—Public interest—Prosecution by Attorney-General—Practice—Art. 978 C. P. Q. *Robertson v. Montreal*, lii., 30.

See MUNICIPAL CORPORATION.

**PUBLIC LAW.**

Title to lands—Grant from Crown—Implied reservations—Description—Navigable waters—Floatable streams—Inlet of navigable river—Crown domain—Construction of deed—Possession—Estoppel—Evidence—Waiver, xxxiv., 603.

See RIVERS AND STREAMS.



**PUBLIC OFFICER.**

1. *Notary public—Principal and agent—Notice of action* — Art. 88 C. P. Q.]—Where the defendant has not been sued in an action for damages by reason of an act done in the exercise of a public function or duty, the provision of article 88 C. P. Q., as to notice of action against a public officer, has no application. *Dufresne v. Desforbes*, xlviii., 382.

AND see PRACTICE.

2. *Negligence — Navigation of inland waters—Collision—Government ships and vessels—"Public work"* — "The *Eschequer Court Act*," s. 16—*Construction of statute—Right of action*, xxxviii., 126.

See NEGLIGENCE.

3. *Subaqueous mining—Crown grants — Dredging lease—Breach of contract—Subsequent issue of placer mining licenses—Damages—Pleading and practice—Statement of claim—Demurrer—Cause of action*, xxxviii., 542.

See MINES AND MINING.

4. *Taxing costs to Crown—Fees to counsel and solicitor—Salaried officer representing the Crown*, xxxix., 621.

See COSTS.

5. *Mines and mining—Hydraulic regulations — Application for mining location — Duties imposed on Minister of the Interior — Status of applicant—Vested rights—Contract binding on the Crown*, xl., 258.

See MINES AND MINING.

6. *Constitutional law—Municipal taxation—Official of Dominion Government—Taxation on income—B. N. A. Act, 1867, ss. 91, 92*, xl., 597.

See CONSTITUTIONAL LAW.

AND see CROWN.

**PUBLIC ORDER.**

1. *Debtor and creditor—Agreement for extension of time—Preference—Advantage to creditor—Security for debt—Conflict of laws—Lex loci.*]—Where a debtor obtains the assent in writing of his creditors to an extension of time for payment of their respective debts, upon an undertaking that he will not "give a preference" without their consent, a prior secret arrangement by which one of such creditors obtains security and more favourable terms of payment than that provided in the agreement is void as a fraud against the other creditors and as against public order.—The debtor carried on his business in Toronto where the deed granting the extension of time was drawn and executed. H., a New York creditor, obtained security by means of the debtor's promissory notes, drawn up and made payable in Toronto and indorsed by the defendant, residing in Montreal. The action on the notes was brought, in Quebec, against the indorser. — *Held, per Idington and Anglin, JJ.*, that the case should be decided according to the law of Ontario, if there

is any difference between it and the Quebec law on the subject-matter.—Judgment appealed from (Q. R. 25 K. B. 421), affirmed. *Hochberger v. Rittenberg*, liv., 480.

2. *Custody of deeds—Notarial profession in Quebec—Art. 3665 R. S. Q.—Attorney in fact—Implied mandate—Evidence—Parol—Commencement of proof in writing — Art. 1233 C. C.—Admissions—Art. 316 C. P. Q.—Practice—Adduction of evidence—Objections to testimony—Rule of public order*, xxxv., 14.

See PRINCIPAL AND AGENT.

**PUBLIC POLICY.**

1. *Parent and child — Guardianship — Family arrangement — Public policy.*] — Where a widow, whose husband left no estate, agrees to give up her natural right of guardianship over her daughter and transfer the same to the latter's grandfather who, on his part, agrees to educate her, provide for her afterwards and allow as full intercourse as possible between her and her mother, the fact that the arrangement includes an allowance to the mother for her maintenance does not necessarily make it void as against public policy. *Idington and Duff, JJ.*, dissenting. *Chisholm v. Chisholm*, xl., 115.

2. *Libel—Privileged publications—Reports of judicial proceedings — Public policy — Pleadings filed in civil actions—Proceedings not in open court.*]—The publication of the statements contained in a pleading filed in the course of a civil action, merely because such statements form part of such a pleading, is not a privileged publication within the rule which throws the protection of privilege about fair reports of judicial proceedings.—The judgment appealed from (Q. R. 17 K. B. 309), reversing the judgment of the Superior Court (Q. R. 31 S. C. 338), was affirmed, *Girouard, J.*, dissenting.. *Gazette Printing Co. v. Shallow*, xli., 339.

3. *Municipal corporation — Member of council—Interest in municipal contract — Legal maxim—Money received under prohibited contract—Recovery of funds—Right of action—Statute—(Que.) 58 Vict. c. 42, ss. 1, 2, 11—Arts. 989, 1047 C. C.]—A contractor with a municipality applied to the mayor thereof for financial assistance in carrying out works he had agreed to construct and obtained the necessary financial aid from him upon an understanding that the mayor should receive a bonus in consideration of the financial assistance to be rendered. On the completion of the works, but prior to the dates when the corporation was obliged to make payment, a promissory note was obtained from the municipality which was indorsed by the contractor, delivered to the mayor as collateral security for the amount owing to him, and, by the latter, was discounted at a bank. The mayor retained the proceeds of the note for the purpose of satisfying the amount of the bonus promised to him and some other charges which he claimed in connection with his services in financing the con-*

tractor. In an action by the contractor to recover the funds.—*Held*, that the arrangement so made had the effect of giving the mayor an interest in the contract incompatible with his duty as a member of the municipal council, contrary to public policy and in violation of the provisions of ss. 1 and 2 of the Quebec statute, 58 Vict. c. 42, and that he was not entitled to retain the moneys. (Leave to appeal to Privy Council granted, 7th July, 1914.) *Lapointe v. Messier*, xlix., 271.

AND see MUNICIPAL CORPORATION.

4. *Title to land—Conveyance in fraud of creditor—Husband and wife—Advancement—Trustee—Equitable relief—Restitution—Evidence—Statute of Frauds.*]—Lands which, at the time of the transaction, would be exempted from seizure and sale under execution by the Alberta "Exemptions Ordinance" were purchased by S. and, with the intention of protecting them from pursuit by his judgment creditor, he caused them to be conveyed to his wife, on a parol agreement with her that the title should remain in her name until the judgment debt was satisfied. The debt was subsequently paid by S. and he brought suit against his wife for a declaration that she held the lands in trust for him and for reconveyance.—*Held per curiam*.—That the court should not grant relief to the husband against the consequence of his unlawful attempt to delay and hinder his creditor, although the illegal purpose had not been carried out. *Mucklestone v. Brown* (6 Ves. 68); *Taylor v. Chester* (L. R. 4 Q. B. 309); followed. *Rochevoucauld v. Bousted* (1897). 1 Ch. 196, referred to. Judgment appealed from (8 Alta. L. R. 417), reversed, Anglin, J., dissenting, on the ground that the conveyance of exempted lands could not prejudice the rights of creditors and, although it had been made with fraudulent intent, it was not fraudulent as against them. *Mundell v. Tinkis* (6 O. R. 625); *Mathews v. Feaver* (1 Cox 278); *Rider v. Kidder* (10 Ves. 360); *Day v. Day* (17 Ont. App. R. 157); *Symes v. Hughes* (L. R. 9 Eq. 475), and *Taylor v. Bowers* (1 Q. B. D. 291), referred to.—*Per Duff, J.*—In the absence of proof that his creditor had not been prejudiced in consequence of the conveyance being taken in the name of his wife, the plaintiff was not entitled to relief. *Scheurman v. Scheurman*, lii., 625.

5. *Construction of railway—Injunction—Interested party—Public corporations—Franchises in public interest—Lapse of chartered powers—"Railway" or "Tramway"—Agreement as to local territory—Invalid contract—Public policy—Dominion Railway Act—Work for general advantage of Canada—Quebec Railway Act—Municipal Code—Limitation of powers*, xxxv., 48.

See RAILWAYS.

6. *Special leave to appeal—"Railway Act, 1903"—Order of Board of Railway Commissioners—Use of public streets—Removal of tracks—Constitutional law—Property and civil rights—Jurisdiction of Board—Imposing terms—Practice*, xxxv., 478.

See RAILWAYS.

7. *Extradition—Prohibition—Appeal—Supreme Court Act—Construction of statute—Public policy—Criminal proceedings*, xxxvi., 247.

See EXTRADITION.

8. *Judicial sale of railways—Interested bidder—Disqualification as purchaser—Counsel and solicitors—Art. 1484 C. C.—Construction of statute—Review by appellate court—Discretionary order—4 & 5 Edw. VII., c. 158 (D.)*, xxxvii., 303.

See RAILWAYS.

9. *Contract—Restraint of trade—Combination—Conspiracy—Construction of statute—"Criminal Code," s. 498—Words and phrases, "unduly" preventing competition, etc.*, xlvii., 1.

See CONTRACT.

## PUBLIC ROAD.

See HIGHWAY.

## PUBLIC STREETS.

*Special leave to appeal—"Railway Act, 1903"—Order of Board of Railway Commissioners—Use of public streets—Removal of tracks—Constitutional law—Property and civil rights—Jurisdiction of Board—Imposing terms—Practice*, xxxv., 478.

See RAILWAYS.

AND see HIGHWAY—MUNICIPAL CORPORATION.

## PUBLIC WAY.

See HIGHWAY.

*Peters v. Sinclair*, xlviii., 57.

## PUBLIC WORK.

1. *Lands injuriously affected—Closing highway—Inconvenient substitute—Right of action.*]—The owner of land is not entitled to compensation where, by construction of a public work, he is deprived of a mode of reaching an adjoining district and obliged to use a substituted route which is less convenient.—The fact that the substituted route subjects the owner at times to delay does not give him a claim to be compensated as it arises from the subsequent use of the work and not its construction and is an inconvenience common to the public generally.—The general depreciation of property because of the vicinage of a public work does not give rise to a claim by any particular owner.—Where there is a remedy by indictment mere inconvenience to an individual or loss of trade or business is not the subject of compensation. Judgment appealed from (8 Ex. C. R. 245), reversed. *The King v. MacArthur*, xxxiv., 570.

2. *Lease—Canal — Water-power — Improvements on canal — Temporary stoppage of power—Compensation — Total stoppage—Measure of damages—Loss of profits.*—A mill was operated by water-power taken from the surplus water of the Galops Canal under a lease from the Crown. The lease provided that in case of a temporary stoppage in the supply caused by repairs or alterations in the canal system the lessee would not be entitled to compensation unless the same continued for six months, and then only to an abatement of rent.—*Held*, Idington, J., *dubitante*, that a stoppage of the supply for two whole seasons necessarily and *bonâ fide* caused by alterations in the system was a temporary stoppage under this provision.—The lease also provided that in case the flow of surplus water should at any time be required for the use of the canal or any public purpose whatever, the Crown could, on giving notice to the lessee, cancel the lease, in which case the lessee should be entitled to be paid the value of all the buildings and fixtures thereon belonging to him with ten per cent. added thereto. The Crown unwatered the canal in order to execute works for its enlargement and improvement, contemplating at the time only a temporary stoppage of the supply of water to the lessee, but later changes were made in the proposed work which caused a total stoppage, and the lessee, by petition or right, claimed damages.—*Held*, Girouard, J., dissenting, that as the Crown had not given notice of its intention to cancel the lease the lessee was not entitled to the damages provided for in case of cancellation.—*Held*, also, that the lessee was not entitled to damages for loss of profits during the time his mill was idle owing to the water being out of the canal. Judgment of the Exchequer Court (9 Ex. C. R. 287), affirmed, Girouard and Idington, J.J., dissenting. *Beach v. The King*, xxxvii., 259.

3. *Negligence — Navigation of inland waters—Collision — Government ships and vessels—"Public work" — "The Exchequer Court Act," s. 16—Construction of statute—Right of action.*—His Majesty's steam-tug "Champlain," while navigating the River St. Lawrence, at some distance from a place where dredging was being carried on by the Government of Canada, and engaged in towing an empty mud-scow, owned by the Government, from the dumping ground back to the place where the dredging was being done, came in collision with the suppliant's steam barge, which was also navigating the river, and the barge sustained injuries. — *Held*, affirming the judgment of the Exchequer Court of Canada, that there could be no recovery against the Crown for damages suffered in consequence of negligence of its officers or servants, as the injury had not been sustained on a public work within the meaning of the sixteenth section of the "Exchequer Court Act." *Chambers v. Whitehaven Harbour Commissioners* ([1899] 2 Q. B. 132); *Hall v. Snowden, Hubbard & Co.* ([1899] 2 Q. B. 136); *Louth v. Ibbotson* ([1899] 1 Q. B. 1003); *Farnell v. Bowman* (12 App. Cas. 643), and *The Attorney-General of the Straits Settlements v. Weymss* (13 App. Cas. 192), referred to. *Paul v. The King*, xxxviii., 126.

4. *Contract—Change in plans and specifications — Waiver by order in council — Powers of executive—Construction of statute—Directory and imperative clauses—Words and phrases — "Stipulations"—Exchequer Court Act, s. 33—Batra works—Engineer's certificate — Instructions in writing — Schedule of prices — Compensation at increased rates—Damages—Right of action — Quantum meruit.*—The suppliants, appellants, were contractors with the Crown for the widening and deepening of a canal and, by their petition or right, contended that there were such changes from the plans and specifications and in the manner in which the works were obliged to be executed as made the provisions of their contract inapplicable and that they were, consequently, entitled to recover upon a *quantum meruit*. In order to afford relief, an order in council was passed waiving certain conditions, provisoes and stipulations contained in the contract. By the judgment appealed from the judge of the Exchequer Court held (10 Ex. C. R. 248), that there had been no such changes as would entitle the contractors to recover on the *quantum meruit*, as in the case of *Bush v. The Trustees of the Town and Harbour of Whitehaven* (52 J. P. 392; 2 Hudson on Building Contracts (2nd ed.) 121); that the words "shall decide in accordance with the stipulations in such contract" in the thirty-third section of "The Exchequer Court Act" might be treated as directory only and effect given to the waiver in respect to the absence of written directions or certificates by the engineer in regard to works done, but that the remaining clauses of the section were imperative, and there could be no valid waiver whereby a larger sum than the amount stipulated in the contract could be recovered, *e.g.*, on prices for the classes of work, so as to give the contractors a legal claim for higher rates of compensation without a new agreement under proper authority and for good consideration. On appeal to the Supreme Court of Canada:—*Held*, per Girouard, Davies and MacLennan, J.J., that the decision of the judge of the Exchequer Court was correct.—*Per* Idington and Duff, J.J.—That the word "stipulations" in the first part of the section referred to, should be construed as having relation entirely to the second part of the section and as applying to the rates of compensation fixed by the contract; that, on either construction, the result would be the same in so far as the circumstances of the case were concerned; that it did not warrant an implication that the executive could, without proper authority, exceed its powers in relation to a fully executed contract or confer the power to dispense with the requirements of the statute, and that, consequently, there could not be a recovery upon *quantum meruit*. *Pigott & Ingles v. The King*, xxxviii., 501.

5. *Government railway — Operation over other lines—Agreement for running rights—Extensions and branches—Construction of statute—"Government Railways Act" — R. S. C., 1906, c. 36, s. 80—"Exchequer Court Act"—R. S. C., 1906, c. 140, s. 20 (c).*—The agreement between the Government of Canada and the Grand Trunk Railway Company, made under the provisions of the

Dominion statute, 43 Vict., c. 8, giving the Government running rights and power over a portion of the Grand Trunk Railway, from Levis to Chaudière, between two sections of the Intercolonial Railway, constitutes that portion of the Grand Trunk Railway a part of the Intercolonial Railway under the provision of "The Government Railways Act," as amended by 54 & 55 Vict., c. 50 (D.), and, consequently, a public work within the meaning of the "Exchequer Court Act," 50 & 51 Vict., c. 16, s. 16 (c), (D.); [R. S. C. 1906, c. 140, s. 20 (c)]. (11 Ex. C. R. 252, affirmed). (Leave to appeal was refused by the Privy Council, 18th July, 1908.) *The King v. Lafrançois*, xl., 431.

6. *Crown—Negligence—Injury on public work—Government railway—Fire from engine—R. S. [1906] c. 140, s. 20(c)—Words and phrases.*—The words "on a public work" in sub-sec. (c) of R. S. [1906] c. 140, s. 20 (The Exchequer Court Act), are descriptive of locality and to make the Crown liable for injury to property under that sub-section, such property must be situated on the work when injured. *Chamberlin v. The King*, xlii., 350.

7. *Negligence—Injury on public work—Public Works Health Act—Construction of statute—R. S. C. 1906, c. 135, s. 3—Regulations by order-in-council—Breach of statutory duty—Action—Misjoinder.*—The provisions of s. 3 of the "Public Works Health Act," R. S. C., 1906, c. 135, do not impose on a Government Department or a company constructing a public work the obligation to provide hospitals and surgical attendance for the treatment of personal injuries sustained by employees, whether of themselves or of their contractors or sub-contractors, in the construction of such work. *Grand Trunk Pacific Ry. Co. v. White*, xliii., 627.

8. *Work dehors contract—Acceptance by Crown—Payment—Fair value.*—W. was contractor with the Crown for constructing a car and locomotive repair plant at Moncton, N.B., and was subject to the orders of the Government engineer. By order of the engineer and with no contract in writing therefor he constructed sewers and a water system in connection with said works, and on completion of his contract the Crown accepted the additional work and agreed to pay its fair value, but not the amount claimed, which was deemed excessive. The Department of Railways referred the claim to the Exchequer Court and, by consent, it was referred to the Registrar of the court to have the damages assessed, the order of reference providing that "the amount to be ascertained shall be the fair value or price thereof allowed on a quantum meruit." The Registrar fixed the amount at \$53,205, as the fair value of the work reasonably executed on a somewhat different plan. The judge of the Exchequer Court added \$39,000 to this amount, holding that the Crown had admitted the authority of the engineer to order the work to be done, and that W. was entitled to the actual cost plus a percentage for profit. On appeal by the Crown:—*Held*, Anglin, J., dissenting, that the judgment appealed against (13 Ex. C. R. 246), was not warranted; that the Crown had not

admitted the authority of the engineer, but expressly denied it by pleadings and otherwise; that all W. was entitled to be paid was the fair value of the work to the Crown and the amount allowed by the referee substantially represented such value. (Leave to appeal to Privy Council refused, 11th July, 1911). *The King v. Wallberg*, xli., 208.

9. *Damage to adjacent lands—Negligence—Liability of Crown—"Exchequer Court Act," s. 20—Litigious rights—Bar to action—"Rideau Canal Act," 8 Geo. IV., c. 1 (U.C.)—Limitation of actions.*—The Crown is not liable, under s. 20, s.-s. (c) of the "Exchequer Court Act" (R. S. C., [1906] c. 140), for injury to property by negligence of its servants unless the property is on a public work when injured. *Chamberlin v. The King* (42 Can. S. C. R. 350), and *Paul v. The King* (38 Can. S. C. R. 126), followed. — *Per Fitzpatrick, C.J.*—Where property is purchased for the purpose of enforcing a claim against the Crown for injury thereto, such purpose constitutes a bar to the prosecution of the claim.—*Per Brodeur, J.*—Section 26 of the "Rideau Canal Act," 8 Geo. IV., c. 1 (U.C.), providing that any plaint brought against any person or persons for anything done in pursuance of said Act must be commenced within six months next after the act committed, applies to proceedings against the Crown though the Crown was not mentioned and no claim against it founded on tort could then be prosecuted. *Idington, J., contra. Anglin, J., dubitante. Olmstead v. The King*, liii., 450.

10. *Incorporation of company—Construction of canal—Governor-in-Council—Approval of plans—Discretion—Refusal to approve—Right of action—Crown.*—The statute 61 Vict., c. 107 (D.) incorporated a company for the purpose of constructing and operating a canal between the St. Lawrence and Richelieu Rivers. Section 22 provided that before the work of constructing the canal was begun, the plans, etc., were to be approved by the Governor-in-Council.—*Held*, affirming the judgment appealed from (16 Ex. C. R. 125), *Fitzpatrick, C.J.* and *Brodeur, J.*, dissenting, that the refusal of the Governor-in-Council to approve plans submitted did not give the company a claim for damages which could be enforced against the Crown.—*Per Duff, J.*, that the refusal to consider the plans did not give birth to a claim for which a petition of right lies.—*Held, per Fitzpatrick, C.J., and Anglin and Brodeur, JJ.*, that the Governor-in-Council had no discretionary power to refuse approval of the plans on the ground that the undertaking authorized by Parliament was opposed to public policy. *Lake Champlain & St. Lawrence Ship Canal Co. v. The King*, liv., 461.

11. *Negligence—Employee of Crown—Common employment—Defence by Crown—Workmen's Compensation Act, xxxvi., 462.*

See NEGLIGENCE.

12. *Expropriation of land—Payment—Market value—Potential value—Evidence, xxxviii., 149.*

See EXPROPRIATION.

13. *Navigation—Trent canal crossing — Swing bridge—Cost of construction—Maintenance—Order in council, xxxviii., 211.*

See RAILWAYS.

14. *Negligence of fellow servant—Operation of railway—Defective switch—Tort — Liability of Crown—Right of action—Eschequer Court Act, s. 16 (c)—“Lord Campbell’s Act”—Art. 1056 C. C., xl., 229.*

See NEGLIGENCE.

15. *Negligence—Injury on public work—“Public Works Health Act”—Construction of statute—Regulations by Order-in-Council—Breach of statutory duty—Action—Misjoinder. G. T. P. Ry. Co. v. White, xliii., 627.*

See STATUTE.

16. *Expropriation of land—Water lots — Expectation of enhanced value—Crown grant — Statutory authority. Cunard v. The King, xliii., 88.*

See EXPROPRIATION.

17. *Expropriation — Eminent domain — Public work—Abandonment—Revesting of land taken — Compensation — Estimating damages—Construction of statute—Jurisdiction of Eschequer Court—“National Transcontinental Railway Act”—“Railway Act,” R. S. C. 1906, c. 37—“Eschequer Court Act”—“Expropriation Act”—“Railways and Canals Act.” Gibb v. The King, lii., 402.*

See EXPROPRIATION.

18. *Damage to adjacent lands — Negligence — Liability of Crown—“Eschequer Court Act,” s. 20—Litigious rights—Bar to action—“Rideau Canal Act,” 8 Geo. IV., c. 1 (U.C.)—Limitation of actions. Olmstead v. The King, liii., 450.*

See CROWN.

19. *Injury to property “on public work” — Negligence—Liability of Crown. Pigott v. The King, liii., 626.*

See CROWN.

## PUBLISHERS.

*Contract—Literary work—Publisher and author—Obligation to publish, xlv., 95.*

See CONTRACT.

## QUANTUM MERUIT.

1. *Public work—Contract — Change in plans and specifications—Waiver by order in council—Powers of executive—Construction of statute—Directory and imperative clauses—Words and phrases—“Stipulations”—Eschequer Court Act, s. 33—Extra works — Engineer’s certificate — Instructions in writing—Schedule of prices — Compensation at increased rate—Damages—Right of action—Quantum meruit, xxxviii., 501.*

See PUBLIC WORK.

2. *Public work—Work dehors contract — Acceptance by Crown — Payment — Fair value, xlv., 208.*

See PUBLIC WORK.

3. *Builders and contractors — Breach of contract—Action for quantum meruit—Rescission—Cross-action for damages — Appropriate relief—Waiver. Favreau et al. v. Rochon, xlvi., 647.*

4. *Company law—Agreement by directors — Onerous contract — Non-disclosure to shareholders—Breach of contract—Damages — Settlement of accounts—Appeal—Jurisdiction—Reference to master—Final judgment. Denman v. Clover Bar Coal Co., xlviii., 318.*

See COMPANY LAW.

5. *Broker—Commission—General employment—Variation of written contract—Principal and agent—Interference by principal. xlix., 1.*

See BROKER.

## “QUEBEC ACT, 1774.”

The laws relating to champerty were introduced into Lower Canada by the “Quebec Act, 1774,” as part of the criminal law of England and as a law of public order the principles of which and the reasons for which apply as well to the Province of Quebec as to England and the other provinces of the Dominion of Canada. *Price v. Mercier* (18 Can. S. C. R. 303) referred to. (Leave to appeal to Privy Council refused.) *Meloche v. Déguire*, xxxiv., 24.

AND see CHAMPERTY.

## “QUEBEC LICENSE LAW.”

*Appeal — Jurisdiction — “Supreme Court Act,” ss. 36, 37, 46 — Judge in chambers — Originating petition — Arts. 71, 72, 875, 876 C. P. Q. — Liquor laws — Property in license — Agreement — Ownership in persons other than holder — Invalidity of contract — Public policy. Turgeon v. St. Charles. xlviii., 473.*

See LIQUOR LAWS.

## QUEBEC NORTH SHORE TURNPIKE ROAD TRUST.

1. *Crown—Breach of trust — Purchase of debentures out of Common School Fund— Knowledge of misapplication of moneys — Payment of interest — Statutory prohibition — Evasion of statute—Estoppel against the Crown—Action—Adding parties—Practice.] — In an action by the Crown against the Quebec North Shore Turnpike Road Trustees to recover interest upon debentures purchased from them by the Government of the late Province of Canada (with trust funds held by them belonging to the Common School Fund), the defendants pleaded that the Crown was estopped from recovery inasmuch as, at the time of their purchase, the*

advisers of the Crown were aware that these debentures were being issued in breach of a trust and with the intention of misapplying the proceeds towards payment of interest upon other debentures due by them in violation of a statutory prohibition.—*Held*, affirming the judgment appealed from (8 Ex. C. R. 390) that, as there was statutory authority for the issue of the debentures in question, knowledge of any such breach of trust or misapplication by the advisers of the Crown could not be set up as a defence to the action. *Quebec North Shore Turnpike Road Trustees v. The King*, xxxviii., 62.

2. *Breach of trust—Interest on bonds—Unlawful acts by Crown officers—Ultra vires—Withholding interest from Crown—Necessity of impleading other interested parties—Practice*, *Cout. Cas.* 316.

See PRACTICE.

## QUEBEC SOUTHERN RAILWAY.

See RAILWAYS.

## QUORUM.

*Appeals to Court of King's Bench—Art. 1241 C. P. Q.—Practice—Quorum of judges—Judgment pronounced in absence of disqualified judge—Jurisdiction.*—Art. 1241 C. P. Q. permits four judges of the Court of King's Bench to give judgment in a cause heard before five, when the remaining judge, after hearing the case argued, recused himself as disqualified. *Davies and Neshitt, JJ., contra. Angers v. Mutual Reserve Fund Life Association*, xxxv., 330.

## QUO WARRANTO.

*Appeal—Action by ratepayer—Municipal corporation—Payment of money—Carelessness—Procedure—Matter of form—"Montreal City Charter"—Construction of statute. Larin v. Lapointe*, xlii., 521.

See MUNICIPAL CORPORATION.

## RACE-COURSE.

1. *Negligence—Trespass—Horse racing—Intruder upon race-track—Carelessness.*—After the first heat of a trotting match in which N. had been a competitor he was seated in his sleigh and walking his horse upon his proper side of one of the tracks, laid out by the ploughing away of the snow on the ice of a public harbour, while waiting to be called for the next heat. M., who had not been a competitor in that race, came along the same track, from an opposite direction to that in which N. was going, driving his vehicle at excessive speed and, in attempting to pass in a narrow space between the ridge formed by the snow and N.'s sleigh, collided with it, causing injuries to N. and damaging his sleigh and harness.—*Held*, affirming the judgment appealed from (39 N.

S. Rep. 133) that even if M. was lawfully upon the track in question he was responsible for damages as the accident was solely attributable to his improvident carelessness and want of judgment. *Manning v. Naas*, xxxviii., 226.

2. *Criminal law—Disorderly house—Common betting-house—Place for betting—Betting booth—Race-course of incorporated association—Crim. Code, 1892, ss. 197, 204—Crim. Code, 1906, ss. 227, 235.*—A perambulating booth used on the race-course of an incorporated racing association for the purpose of making bets is an "office" or "place" used for betting between persons resorting thereto as defined in s. 197 of the Criminal Code, 1892 (Crim. Code, 1906, s. 227).—Sub-section 2 of s. 204 of the former Code (now s. 235) which exempts from the provisions of the main section (dealing with the recording or registering of bets, etc.), bets made on the race-course of an incorporated association does not apply to the offence of keeping a common betting-house. *Girouard and Davies, JJ.*, dissenting.—Judgment of the Court of Appeal (12 Ont. L. R. 615) affirmed, *Girouard and Davies, JJ.*, dissenting. *Saunders v. The King*, xxxviii., 382.

## RAILWAY COMMISSIONERS.

See RAILWAYS.

## RAILWAY COMMITTEE OF THE PRIVY COUNCIL.

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## RAILWAYS.

1. BOARD OF RAILWAY COMMISSIONERS FOR CANADA, 1-38.
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1. BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

1. *Appeal—Special leave—"Railway Act, 1903"—Order of Board of Railway Commissioners—Use of public streets—Removal of tracks—Constitutional law—Property and civil rights—Jurisdiction of board—Imposing terms.*—Where the judge entertained

doubt as to the jurisdiction of the Board of Railway Commissioners for Canada to make the order complained of and the questions raised were of public importance, special leave for an appeal was granted, on terms, under the provisions of s. 44 (3) of "The Railway Act, 1903." *Montreal Street Ry. Co. v. Montreal Terminal Ry. Co.*, xxxv., 478.

2. *Branch lines — Canadian Pacific Railway Co.'s charter—44 Vict. c. 1 (D.), and schedules—Construction of contract—Limitation of time—Interpretation of terms—"Lay out," "Construct," "Acquire" — "Territory of Dominion" — Hansard debates — Construction of statute — "The Railway Act, 1903."*]—The charter of the Canadian Pacific Railway Company (44 Vict. c. 1 (D.)) and schedules thereto appended, impose limitations neither as to time nor point of departure in respect of the construction of branch lines;—they may be constructed from any point on the main line of the Canadian Pacific Railway between Callender Station and the Pacific seaboard, subject merely to the existing regulations as to approval of location, plans, etc., and without the necessity of any further legislation.—On a reference concerning an application to the Board of Railway Commissioners for Canada for the approval of deviations from plans of a proposed branch line under s. 43 of "The Railway Act, 1903," it is competent for objections as to the expiration of limitation of time to be taken by the Board of its own motion, or by any interested party. *In re Branch Lines, Canadian Pacific Railway Co.*, xxxvi., 42.

3. "Railway Act, 1903," ss. 23, 184—*Construction, etc., of street railway or tramway—Removal of tracks, etc.—Board of Railway Commissioners for Canada—Jurisdiction—Condition precedent—Use of highways in cities and towns—Consent by municipal authority—Approval of by-law—Quebec Municipal Code, arts. 464, 481.*]—In the case of a street railway or tramway or of any railway to be operated as such upon the highways of any city or incorporated town, the consent of the municipal authority required by s. 184 of the "Railway Act, 1903," must be by a valid by-law approved and sanctioned in the manner provided by the provincial municipal law, and, in the absence of evidence of such consent having been so obtained, the Board of Railway Commissioners for Canada have no jurisdiction to enforce an order in respect to the construction and operation of any such railway. The order appealed from was reversed and set aside, the Chief Justice and Girouard, J., dissenting. *Montreal Street Railway Co. v. Montreal Terminal Railway Co.*, xxxvi., 369.

4. *Farm crossing — Jurisdiction of Board of Railway Commissioners for Canada—Statutory contract—Railway Clauses Act, 1851—Grand Trunk Railway Act, 1852—"Railway Act, 1883" — "Railway Act, 1903" — Appeal — Controversy involved — Jurisdiction.*]—Orders directing the establishment of farm crossings over railways subject to "The Railway Act, 1903," are exclusively within the jurisdiction of the Board of Railway Commissioners for Canada.—The right claimed by the plaintiff's action, instituted in

1904, to have a farm crossing established and maintained by the railway company, cannot be enforced under the provisions of the Act, 16 Vict. c. 37 (Can.) incorporating the Grand Trunk Railway of Canada. Judgment appealed from reversed, Idington, J., dissenting in regard to damages and costs. *Grand Trunk Railway Co. v. Perrault*, xxxvi., 671.

5. *Constitutional law — Parliament — Power to legislate — "Railway Act," 1888, ss. 187, 188—Protection of crossings—Party interested—Railway committee — Board of Railway Commissioners — "Railway Act, 1903."*]—Sections 187 and 188 of "The Railway Act, 1888," empowering the Railway Committee of the Privy Council to order any crossing over a highway of a railway subject to its jurisdiction to be protected by gates or otherwise, are *intra vires* of the Parliament of Canada. Idington, J., dissenting.—(Sections 186 and 187 of "The Railway Act, 1903," confer similar powers on the Board of Railway Commissioners.) These sections also authorize the committee to apportion the cost of providing and maintaining such protection between the railway company and "any person interested."—*Held*, Idington, J., dissenting, that the municipality in which the highway crossed by the railway is situated is a "person interested" under said sections. *City of Toronto v. Grand Trunk Ry. Co.*, xxxvii., 232.

6. *Board of Railway Commissioners—Jurisdiction — Construction of subway — Apportionment of cost — Person interested or affected—Street railway—Agreement with municipality.*]—The power of the Board of Railway Commissioners, under s. 186 of the "Railway Act, 1903," to order a highway to be carried over or under a railway is not restricted to the case of opening up a new highway, but may be exercised in respect to one already in existence.—The application for such order may be made by the municipality as well as by the railway company. — The Board, on application by the City of Ottawa, ordered a subway to be made under the track of the Canada Atlantic Railway Co. where it crosses Bank Street, the cost to be apportioned among the city, the C. A. Ry. Co. and the Ottawa Electric Ry. Co. By an agreement between the Electric Ry. Co. and the city the company was given the right to run its cars along Bank Street and over the railway crossing, paying therefor a specific sum per mile. The company appealed from that portion of the order, making them contribute to the cost of the subway, contending that the city was obliged to furnish them with a street over which to run their cars and they could not be subjected to greater burdens than those imposed by the agreement. — *Held*, that the Electric Ry. Co. was a company "interested or affected" in or by the said work within the meaning of s. 47 of the said Railway Act, and could properly be ordered to contribute to the cost thereof.—*Held*, further, that there was nothing in the agreement between said company and the city to prevent the Board making said order or to alter the liability of the company so to contribute. *Ottawa Electric Ry. Co. v. City of Ottawa and Canada Atlantic Ry. Co.*, xxxvii., 354.

7. *Appeal from Board of Railway Commissioners—Want of jurisdiction—Railway Act, 1903.*]—The judge entertained some doubt as to the jurisdiction of the Board of Railway Commissioners for Canada, and, consequently, granted leave for an appeal. Cf. *The Montreal Street Railway Co. v. The Montreal Terminal Railway Co.*, [No. 1 ante] (35 Can. S. C. R. 478.) *Canadian Northern Railway Co. v. T. D. Robinson & Son*, *Cout. Cas.* 394.

8. *Board of Railway Commissioners—Jurisdiction—Appeal to Supreme Court.*]—The Board of Railway Commissioners granted an application of the James Bay Railway Co. for leave to carry their line under the track of the G. T. Ry. Co. but, at the request of the latter, imposed the condition that the masonry work of such under crossing should be sufficient to allow of the construction of an additional track on the line of the G. T. Ry. Co. No evidence was given that the latter company intended to lay an additional track in the near future or at any time. The James Bay Ry. Co., by leave of a judge, appealed to the Supreme Court of Canada from the part of the order imposing such terms, contending that the same was beyond the jurisdiction of the Board.—*Held*, that the Board had jurisdiction to impose said terms.—*Held, per* Sedgewick, Davies and MacLennan, J.J., that the question before the court was rather one of law than of jurisdiction and should have come up on appeal by leave of the Board or been carried before the Governor-General in Council. *James Bay Ry. Co. v. Grand Trunk Ry. Co.*, xxxvii., 372.

9. *Board of Railway Commissioners—Jurisdiction—Traffic accommodation—Restoring connections—3 Edw. VII. c. 58, ss. 176, 214, 253.*]—On an application to the Board of Railway Commissioners for Canada, under the provisions of the "Railway Act, 1903," for a direction that a railway company should replace a siding, where traffic facilities had been formerly provided for the respondents with connections upon their lands, and for other appropriate relief for such purposes:—*Held*, that, under the circumstances, the Board had jurisdiction to make an order directing the railway company to restore the spur-track facilities formerly enjoyed by the applicants for the carriage, despatch and receipt of freight in car-loads over, to and from the line of railway. *Canadian Northern Ry. Co. v. Robinson*, xxxvii., 541.

10. *Board of Railway Commissioners—Jurisdiction—Location of railway—Consent of municipality—Crossing—Leave of Board—Discretion.*]—On 12th August, 1905, the Township of Sandwich West passed a by-law authorizing the W., E., etc., Ry. Co. to construct its line along a named highway in the municipality, but the powers and privileges conferred were not to take effect unless a formal acceptance thereof should be filed within thirty days from the passing of the by-law. Such acceptance was filed on 12th September, 1905. This was too late and on 20th July, 1907, the council of Sandwich West and that of Sandwich East respectively passed by-laws containing the

necessary authority.—In April, 1906, the location of the line of the E. T. Ry. Co. was approved by the Board. In June, 1906, the Board made an order allowing the W. E., etc., Ry. Co. to cross the line of the C. P. Ry. In March, 1907, another order respecting said crossing was made and also an order approving the location of the W. E.] Ry. Co., the municipal consent being obtained three months later.—The E. T. Ry. Co. applied to the Board to have the orders of June, 1906, and March 1907, rescinded and for an order requiring the W. E. Ry. Co. to remove its track from the highway at the point where the applicant proposed to cross it, to discontinue its construction at such point, or in the alternative, for an order allowing it to cross the line of the W. E. Ry. Co. on said highway. The applicants claimed to be the senior road and that the W. E. Ry. Co. had never obtained the requisite authority for locating its line. On a case stated to the Supreme Court by the Board.—*Held*, that the Board had power to refuse to set aside the said orders; that the by-laws passed in July, 1907, were sufficient to legalize the construction of the W. E. Ry. Co.'s line on said highway; and that the Board can now lawfully authorize the latter Co. to maintain and operate its railway thereon.—*Held*, further, that leave of the Board is necessary to enable the E. T. Ry. Co. to lay its tracks across the railway of the W. E. Ry. Co. on said highway.—*Held*, also that the Board, in exercise of its discretion, has power by order to authorize the maintenance and operation of the W. E. Ry. Co. along said highway and to give leave to the E. T. Ry. Co. to cross it and the line of the C. P. Ry. near the present crossing and to apportion the cost of maintaining such crossing equally between the two companies instead of imposing two-thirds thereof upon the E. T. Ry. Co., as was done by a former order not acted upon; and to order that if the E. T. Ry. Co. finds it necessary in its own interest to have the points of crossing differently placed it should bear the expense of removing the line of the W. E. Ry. Co. to the new point of crossing. (*See* 7 Can. Ry. Cas. 109). *Essex Terminal Ry. Co. v. Windsor & Essex & Lake Shore Rapid Ry. Co.*, xl., 620.

11. *Board of Railway Commissioners—Jurisdiction—Railway crossing—Contribution to cost—Party interested—Municipality—Distance from work.*]—A municipality may be a "party interested" in works for the protection of a railway crossing over a highway though such works are neither within or immediately adjoining its bounds and the Board of Railway Commissioners has jurisdiction to order it to pay a portion of the cost of such work. *County of Carleton v. City of Ottawa*, xli., 552.

12. *Fencing—Uninclosed lands—Jurisdiction of Board of Railway Commissioners—Construction of statute—"The Railway Act." R. S. C. 1906, c. 37, ss. 30, 254.*]—Under the provisions of "The Railway Act" the Board of Railway Commissioners for Canada does not possess authority to make a general order requiring all railways subject to its jurisdiction to erect and maintain fences on the sides of their railway lines



where they pass through lands which are not inclosed and either settled or improved; it can do so only after the special circumstances in respect of some defined locality have been investigated and the necessity of such fencing in that locality determined according to the exigencies of the case. Duff, J., *contra*.—The "Railway Act" empowers the Board to order that, upon lines of railway not yet completed or open for traffic or in course of construction, where they pass through inclosed lands, the railway companies should construct and maintain such fences or take such other steps as may be necessary to prevent cattle and other animals from getting upon the right-of-way. Idington, J., *contra*. *Canadian Northern Railway Co.*, xlii., 443.

13. *Appeal—Limitation of time—Railway Commissioners—Question of jurisdiction—Leave by judge—Powers of Board—Completed railway—Order to provide station—R. S. [1906] c. 37 ss. 26, 151, 158-9, 166-7, and 253.*—Except in the case mentioned in Rule 59 there is no limitation of the time within which a judge of the Supreme Court may grant leave to appeal under s. 56 (2) of the "Railway Act," on a question of the jurisdiction of the Board of Railway Commissioners.—The Board of Railway Commissioners has power to order a railway company whose line is completed and in operation to provide a station at any place where it is required to afford proper accommodation for the traffic on the road. Idington and Duff, J.J., dissenting. *Grand Trunk Railway Co. v. Department of Agriculture*, xlii., 557.

14. *Jurisdiction of Board of Railway Commissioners—Deviation of tracks—Separation of grades—"Highway"—Dedication—User—Public way or means of communication—Access to harbour—Navigable waters—Construction of statute—"Special Act"—R. S. C. 1906, c. 37, ss. 2 (11), (23), 3, 237, 238, 241; 56 V. c. 48 (D.).*—Prior to 1888, the Grand Trunk Railway Company operated a portion of its railway upon the "Esplanade," in the City of Toronto, and, in that year, the Canadian Pacific Railway Company obtained permission from the Dominion Government to fill in a part of Toronto Harbour lying south of the "Esplanade" and to lay and operate tracks thereon, which it did. Several city streets abutted on the north side of the "Esplanade," and the general public passed along the prolongations of these streets, with vehicles and on foot, for the purpose of access to the harbour. In 1892, an agreement was entered into between the city and the two railway companies respecting the removal of the sites of terminal stations, the erection of overhead traffic bridges and the closing or deviation of some of these streets. This agreement was ratified by statutes of the Dominion and provincial legislatures, the Dominion Act (56 Vict. c. 48), providing that the works mentioned in the agreement should be works for the general advantage of Canada. To remove doubts respecting the right of the Canadian Pacific Railway Company to the use of portions of the bed of the harbour on which they had laid their tracks across the

prolongations of the streets mentioned, a grant was made to that company by the Dominion Government of the "use for railway purposes" on and over the filled-in areas included within the lines formed by the production of the sides of the streets. At a later date the Dominion Government granted these areas to the city in trust to be used as public highways, subject to an agreement respecting the railways, known as the "Old Windmill Line Agreement," and excepting therefrom strips of land 66 feet in width between the southerly ends of the areas and the harbour, reserved as and for "an allowance for a public highway." In June, 1909, the Board of Railway Commissioners, on application by the city, made an order directing that the railway companies should elevate their tracks on and adjoining the "Esplanade" and construct a viaduct there.—*Held*, Girouard and Duff, J.J., dissenting, that the Board had jurisdiction to make such order; that the street prolongations mentioned were highways within the meaning of the "Railway Act"; that the Act of Parliament validating the agreement made in 1892 was not a "special Act" within the meaning of "The Railway Act," and did not alter the character of the agreement as a private contract affecting only the parties thereto, and that the Canadian Pacific Railway Company, having acquired only a limited right or easement in the filled-in land, had not such a title thereto as would deprive the public of the right to pass over the same as a means of communication between the streets and the harbour. *Grand Trunk Ry. Co. v. City of Toronto*, xlii., 613.

15. *Tramway—Provincial railway—"Through traffic"—Constitutional law—Legislative jurisdiction—Powers of Board of Railway Commissioners—Construction of statute—R. S. C. (1906) c. 37, s. 3 (b)—"B. N. A. Act," 1867, ss. 91, 92.*—The "Railway Act" R. S. C. (1906) c. 37, does not confer power on the Board of Railway Commissioners for Canada to make orders respecting through traffic over a provincial railway or tramway which connects with or crosses a railway subject to the authority of the Parliament of Canada. Davies and Anglin, J.J., *contra*.—*Per* Fitzpatrick, C.J., and Girouard and Duff, J.J.—The provisions of sub-section (b) of section 3 of the "Railway Act" are *ultra vires* of the Parliament of Canada. *Montreal Street Railway Co. v. City of Montreal*, xliii., 197.

16. *Board of Railway Commissioners—Consideration of complaints—Evidence—Rejection—Agreement as to special rates—Unjust discrimination.*—A company operating subject to Dominion authority, a tramway through several municipalities adjacent to the city of Montreal, and having connections and traffic arrangements with a provincial tramway in that city, entered into an agreement under statutory authority with one of the municipalities whereby, in consideration of special privileges conceded in regard to the use of streets, etc., lower rates of passenger fares were granted to persons using the tramway therein, for transportation to and from the city, than to denizens of the

adjoining municipality with which there was no such agreement. On the hearing of a complaint, alleging unjust discrimination in respect to fares, the Board of Railway Commissioners for Canada refused to take the agreement into consideration when tendered in evidence to justify the granting of the special rates and ordered the company, appellants, to furnish the service to persons using the tramway in both municipalities at the same rates of fare. On an appeal, by leave of the Board, in respect of the propriety of overlooking the contract, submitted as a question of law:—*Held*, Davies and Anglin, J.J., dissenting, that, as the existence of the contract was one of the elements bearing upon the decision of the question of substantial similarity in circumstances, the Board should have admitted the evidence so tendered in regard to the agreement in consideration of which the special rates of fares had been granted. *Montreal Park and Island Railway Co. v. City of Montreal*, xliii., 256.

17. *Carriers—International through traffic—Reduction of joint rate—Jurisdiction of Board of Railway Commissioners—Practice—Parties—Costs.*—On a complaint in respect to a joint tariff, between the appellant company and the Michigan Central Railroad Company, under which a rate of three cents per hundred pounds was charged on pulpwood in car-lots for carriage from Thorold, in Ontario, to Suspension Bridge, in the State of New York, the Board of Railway Commissioners for Canada decided that the rate should be reduced and ordered the appellants to restore a joint rate which had previously existed of two cents per hundred pounds for carriage of such goods between the points mentioned. The Michigan Central Railroad Company, over whose railway the goods had to be carried from the point where the appellants' railway made connection with it at the international boundary to the foreign destination, was not made a party to the proceedings before the Board. On appeal by leave of a judge to the Supreme Court of Canada.—*Held*, per Fitzpatrick, C.J., and Idington and Duff, J.J., that the Board had no jurisdiction to make the order.—*Per* Girouard, Davies and Anglin, J.J.—As the Michigan Central Railroad Company was not a party to the proceedings, it was not competent for the Board to make the order.—The appeal was allowed without costs. *Niagara, St. Catharines and Toronto Railway Co. v. Davy*, xliii., 277.

18. *Construction of statute—R.S.C. 1906, c. 37, ss. 335, 336—Through traffic—Joint international tariffs—Filing by foreign company—Assent of domestic company—Tariffs "duly filed"—Jurisdiction of Board of Railway Commissioners.*—Under section 336 of "The Railway Act," R. S. C. 1906, ch. 37, tariffs filed by foreign railway companies for rates on through traffic originating in foreign territory, to be carried by continuous routes owned or operated by two or more companies from foreign points to destinations in Canada, are effective and binding upon all Canadian companies participating in the transportation, although not expressly assented to by the latter, and may be enforced by the Board of Railway Commis-

sioners for Canada against such Canadian companies. Anglin, J., *contra*.—*Per* Anglin, J. (dissenting).—"The Railway Act" requires concurrence by the several companies interested as in other joint tariffs on through traffic mentioned in the Act. *Grand Trunk Railway Co. v. British American Oil Co.*, xliii., 311.

19. *Board of Railway Commissioners—Jurisdiction—Municipal corporation—Railway upon or along highway—Leave to construct—Approval of location—Condition imposed—Payment of damages to abutting landowners—Construction of statute—R.S.C. (1906) c. 37, ss. 47, 155, 159, 235, 237.*—Having obtained the consent of the municipality to use certain public streets for that purpose, the G. T. P. Ry. Co. applied to the Board of Railway Commissioners for Canada for leave to construct and approval of the location of the line of their railway upon and along the highways in question. None of the lands abutting on these highways were to be appropriated for the purposes of the railway, nor were the rights or facilities of access thereto to be interfered with except in so far as might result from inconvenience caused by the construction and operation of the railway upon and along the streets. In granting the application the Board made the order complained of subject to the condition that the company should "make full compensation to all persons interested for all damage by them sustained by reason of the location of the said railway along any street." On appeal to the Supreme Court of Canada:—*Held*, Davies and Duff, J.J., dissenting, that, under the provisions of section 47 of the "Railway Act," R. S. C. (1906), ch. 37, the Board had, on such application, the power to impose the condition directing that compensation should be made by the company in respect of the damages which might be suffered by the proprietors of the lands abutting on the highways of the municipality upon and along which the line of railway so located was to be constructed. *Grand Trunk Pacific Railway Co. v. City of Fort William*, xliii., 412.

20. *Board of Railway Commissioners—Jurisdiction—Private siding—Construction of statute—"Railway Act," R.S.C. (1906), c. 37, ss. 222, 226, 317—Branch of railway—Estoppel—Res inter alios.*—The Board of Railway Commissioners for Canada has not the power (except on expropriation or consent of the owner), to order that a private industrial spur-track or siding, constructed and operated under an agreement between a railway company and the owner of the land upon which it is laid and used only in connection with the business of such owner, shall be also used and operated as a branch of the railway with which it is connected. *Blackwoods v. Canadian Northern Ry. Co.*, xliiv., 92.

21. *Construction of statute—"The Railway Act," R. S. C. (1906), c. 37, ss. 77, 315, 318 (2), 323—(D.) 1 Educ. VII. c. 53—(Man.) 52 V. c. 2; 53 V. c. 17; 1 Educ. VII., c. 39—Board of Railway Commissioners—Complaints—Evidence—Agreement for special rates—Unjust discrimination—*

*Practice—Form of order on reference.*—In virtue of an agreement with the Government of Manitoba, validated by statutes of that province and of the Parliament of Canada, the Canadian Northern Railway Company established special rates for the carriage of freight, etc., to points in Manitoba, and the Canadian Pacific Railway Company reduced its rates, which had been in force prior to the agreement, in order to meet the competition resulting therefrom. The complaint made to the Board of Railway Commissioners for Canada by the respondents was, in effect, that as similar proportionate rates were not provided in respect of freight, etc., to points west of the province of Manitoba there was unjust discrimination operating to the prejudice of shippers, etc., to and from the western points. On questions submitted for the consideration of the Supreme Court of Canada:—*Held*, that the facts mentioned are circumstances and conditions, within the meaning of the "Railway Act," to be considered by the Board of Railway Commissioners in determining the question of unjust discrimination in regard to both railways; that such facts and circumstances are not, in law, conclusive of the question of unjust discrimination, but the effect, if any, to be given to them is a question of fact to be considered and decided by the Board in its discretion. (*Cf. The Montreal Park and Island Railway Co. v. The City of Montreal* (43 Can. S. C. R. 256).) *Canadian Pacific Railway Co. v. Board of Trade of Regina*, xlv., 321.

22. *Jurisdiction — Private siding — Construction of statute*—"Railway Act," R. S. C., 1906, c. 37, ss. 26a, 226—(D.) 8 & 9 *Edw. VII. c. 32, s. 1.*—Notwithstanding provisions in an agreement under which a private industrial spur or siding has been constructed entitling the railway company to make use of it for the purpose of affording shipping facilities for themselves and persons other than the owners of the land upon which it has been built, the Board of Railway Commissioners for Canada, except on expropriation and compensation, has not the power, on an application under s. 226 of the "Railway Act," (R.S.C. 1906, c. 37), to order the construction and operation of an extension of such spur or siding as a branch of the railway with which it is connected. *Blackwoods Limited v. The Canadian Northern Railway Co.* (44 Can. S. C. R. 91), applied, Duff, J., dissenting. *Clover Bar Coal Co. v. Humberstone*, xlv., 346.

23. *Joint tariff—Power to supersede—Declaratory decree—Jurisdiction.*—In January, 1907, certain railway companies in the United States, in connection with the appellant companies, filed through freight tariffs ("joint tariffs") with the Board of Railway Commissioners for Canada fixing the rates of carriage for shipments of goods from United States into Canada. The tariffs so filed for the first time established a fixed rate for the carriage of petroleum and its products. In October, 1907, and in May, 1908, supplementary tariffs were filed by the foreign companies and concurred in by the Canadian carriers, but they were not sanctioned by the Board. These substituted for the fixed

rate on petroleum a variable rate made up of the sum of the local rates on each side of the border. The respondent companies, in 1910, applied to the Canadian Board for an order declaring that the appellants had overcharged them by exacting the variable rate for carriage of petroleum, and an order was made by the Board declaring that the rates chargeable were those fixed by the "joint tariff" of January, 1907. The Canadian carriers appealed from this order to the Supreme Court of Canada by leave of the Board on the question of law whether or not this order was right and by leave of a judge on a question of jurisdiction claiming that the Board could not make a declaratory order and grant no consequential relief, and that it could not declare in force a tariff which had ceased to exist:—*Held*, that ss. 26 and 318 of the "Railway Act" authorized the Board to make an order merely declaratory.—*Held*, also, that the tariff of January, 1907, had not ceased to exist, but was still in force, never having been superseded.—*Held, per Davies and Duff, JJ.*, that if the initiating company, or the companies jointly, had power to supersede a joint tariff duly filed they had not in this case taken the proper steps to effect that purpose.—*Per Idington and Anglin, JJ.*, that such a tariff could only be superseded by the action, or with the sanction, of the Board.—The order appealed from was, therefore, affirmed.—(Leave to appeal to the Privy Council was granted, 13th December, 1912). *Canadian Pacific Ry. Co. v. Canadian Oil Cos., Ltd.*, xlvii., 155.

24. *Constitutional law—Provincial tramway — Jurisdiction of Board of Railway Commissioners — Highways — Overhead crossings—Apportionment of cost—Legislative jurisdiction—Ancillary powers—"Interested parties" — Construction of statute — "Railway Act," R. S. C., 1906, c. 37, ss. 8, 59, 237, 238—(B.C.) 8 & 9 Edw. VII., c. 32—"B. N. A. Act, 1867," s. 92, item 10.*—On an application by the City of Vancouver, the Board of Railway Commissioners for Canada authorized the Corporation of the City of Vancouver to construct overhead bridges across the tracks of a Dominion railway company, which had been laid down during the years 1909 and 1910 on certain streets in the city, and ordered that a portion of the cost of construction of two of these bridges and of the depression of the tracks at the crossings thereof by the Dominion railway should be borne by a tramway company which derived its powers through provincial legislation, and an agreement with the city pursuant to such legislation under which it operated its tramways upon these streets. By the agreement the tramway company became entitled to use the city streets with reciprocal obligations by the city, and the company respecting their grading, repair and maintenance, and it was provided that the city should receive a share of the gross earnings of the tramway company. On appeal to the Supreme Court of Canada from the order of the Board:—*Held*, Duff and Brodeur, JJ., dissenting, that, in virtue of ss. 8(a), 59, 237 and 238 of the "Railway Act," R. S. C., 1906, c. 37, as amended by c. 32 of 8 & 9 *Edw. VII.*, the Board of Railway Commis-

sioners for Canada had jurisdiction to determine the "interested parties" in respect of the proposed works and to direct what proportion of the cost thereof should be borne by each of them. The *City of Toronto v. Canadian Pacific Railway Co.* ((1908) A. C. 54); *Canadian Pacific Railway Co. v. Parish of Notre Dame de Bonsecours* ((1899) A. C. 367); *City of Toronto v. Grand Trunk Railway Company* (37 Can. S. C. R. 232); *County of Carleton v. City of Ottawa* (41 Can. S. C. R. 552), and *Re Canadian Pacific Railway Co. and York* (25 Ont. App. R. 65), followed.—*Per Duff and Brodeur, JJ.*, dissenting.—(1) The Parliament of Canada, when it assumes jurisdiction, under the provisions of item 10 of s. 92 of the "British North America Act, 1867," in respect of a provincial railway, *quod* railway, must assume such jurisdiction over the work or undertaking "as an integer." (2) The order of the Board cannot be sustained as being made in the exercise of the Dominion power of taxation. (3) As there is no Dominion interest concerned in the provisions of the order under appeal, and the Dominion Parliament has no power to compel the provincial company to assume the burden of the cost of the proposed works, or any portion thereof, the Board of Railway Commissioners had no jurisdiction to assess a proportion of their cost upon the tramway company. (4) The cases cited above must be distinguished as they do not sustain, as a valid exercise of ancillary power by Dominion authority, any enactment professing to control a provincial railway company.—(NOTE.—Leave to appeal to the Privy Council was granted on 14th July, 1913.) *British Columbia Electric Railway Co. v. Vancouver, Victoria Railway Co.*, xlviii., 98.

25. *Location plans—Width of right-of-way—Subsequent alteration—Substituted plans—Approval of new plans—Order having ex post facto effect—Jurisdiction of Board of Railway Commissioners—Construction of statute—"Railway Act," R. S. C., 1906, c. 37, ss. 162, 167.*—The Board of Railway Commissioners for Canada has no jurisdiction by an order permitting a railway company to file a new location plan, to be substituted for and as of the date of a former location plan previously approved by it, to authorize the company to alter, retrospectively, the former location of its railway. The proper method of effecting any such alteration is by proceedings under s. 162 or s. 167 of the "Railway Act," R. S. C., 1906, c. 37. *Chambers v. Canadian Pacific Railway Co.*, xlviii., 162.

26. *Construction—Route and location plans—Approval—Obstruction to navigation—Demolition of works—Jurisdiction of Board of Railway Commissioners—"Railway Act," R. S. C., 1906, c. 37, ss. 30(h), (i), 230, 233.*—Where a railway company in the professed exercise of its powers as a railway company and without the approval of the route by the Minister and of the location plans and works by the Board of Railway Commissioners for Canada, has constructed a solid filling across navigable waters, the Board, under the provisions of ss. 230 and 233 coupled with sub-sections

(h) and (i) of s. 30 of the "Railway Act," R. S. C., 1906, c. 37, has jurisdiction to order the demolition of the works so constructed. *Grand Trunk Pacific Railway Co. v. Rochester*, xlviii., 238.

27. *Board of Railway Commissioners—Appeals on questions of law—Stated case—Submission of specific question—Practice—Construction of statute—R. S. C., 1906, c. 37, s. 55 and s. 56, s.-s. 3.*—An appeal, under the provisions of s. 55, or s. 56, s.-s. 3, of the "Railway Act," R. S. C., 1906, c. 37, should not be entertained by the Supreme Court of Canada until the Board of Railway Commissioners for Canada has stated the case in writing and submitted for the opinion of the court some question which, in the opinion of the board, is a question of law. (Cf. "*Regina Rates Case*," 44 Can. S. C. R. 328, where this case was followed by Anglin, J., and 45 Can. S. C. R. at pp. 323 to 328.) *Canadian Pacific Railway Co. v. City of Ottawa*, xlviii., 257.

28. *Board of Railway Commissioners—Jurisdiction—Constructed line of railway—Deviation—Application by municipality—"Special Act"—Stated case—Question of law—Statute—"Railway Act," R. S. C., 1906, c. 37, ss. 2(28), 3, 26, 28, 55, 167—(Ont.), 58 Vict., c. 68—(D.) 58 & 59, Vict., c. 66.]—Under the provisions of s. 55 of the "Railway Act," R. S. C., 1906, c. 37, the Board of Railway Commissioners for Canada may, of its own motion, state a case in writing for the opinion of the Supreme Court of Canada upon a question of jurisdiction which, in the opinion of the Board, involves a question of law.—The Board of Railway Commissioners for Canada has no power under s. 167 of the "Railway Act," R. S. C., 1906, c. 37, to order deviations, changes or alterations in a constructed line of railway, of which the location has been definitely established, except upon the request of the railway company. Anglin, J., *contra*.—*Per Fitzpatrick, C.J. and Idington, J.*—The Dominion statute 58 & 59 Vict., c. 66, confirming the municipal by-law by which the location of the portion of the railway in question was definitely established constitutes a "special Act" within the meaning of the "Railway Act," R. S. C., 1906, c. 37, ss. 2(28) and 3.—*Per Anglin, J.*—The power of the Board of Railway Commissioners for Canada to order deviations, changes or alterations in a constructed line of railway is not limited to diversions within one mile from the line of railway as constructed. *Hamilton v. Toronto, Hamilton & Buffalo Railway*, l., 128.*

29. *Board of Railway Commissioners—Jurisdiction—Provincial crossing—Dominion railway—Change of grade—Elimination of level crossing—Substitution of subway—Public protection and safety—Power to order provincial railway to share in payment of cost—"Railway Act" ss. 8(a), 59 and 288.*—The provisions of the "Railway Act" empowering the Board of Railway Commissioners to apportion among the persons interested the cost of works or constructions which it orders to be done or made are *intra vires*.—On Avenue Road, Toronto, the tracks of the Toronto Ry. Co. crossed those

of the C. P. Ry. Co. at rail level. On report of its chief engineer that this crossing was dangerous, the Board, of its own motion, ordered that the street be carried under the C. P. Ry. tracks. This change of grade relieved the Toronto Ry. Co. from the expense of maintaining an interlocking plant and benefited it otherwise.—*Held*, that the order was made for the protection, safety and convenience of the public; that the Toronto Ry. Co. was a "company interested or affected by such order"; and that the Board had jurisdiction to direct that it should pay a portion of the cost of the subway. *British Columbia Electric Railway Co. v. Vancouver, Victoria and Eastern Railway Co.*, [1914] A. C. 1067, distinguished.—The agreement between the Toronto Ry. Co. and the City of Toronto by which the former was given the right to lay its tracks on certain streets, including Avenue Road, did not affect the power of the Board to make said order. *Toronto Railway Co. v. Toronto*, liii., 222.

30. *Board—Powers—"Railway Act" and amendments—Bell Telephone Co. — Use of long distance lines—Compensation—Loss of local business—Competing companies—Special toll.*—Under the provisions of the "Railway Act" and its amendment by 7 & 8 Edw. VII., c. 61, the Railway Board has power to authorize a charge in addition to the established rates of the Bell Telephone Co. as compensation for the use of its long distance lines. *Idington, J., contra.*—By said Acts the Board is authorized to provide compensation to the Bell Telephone Co. for loss in its local exchange business occasioned by giving independent companies long distance connection. *Davies and Idington, J.J., contra.*—The Board has power also to authorize payment of a special rate by companies competing with the Bell Co. who obtain the long distance connection, though non-competing companies are not subjected thereto. *Idington, J., contra. Ingersoll Telephone Co. v. Bell Telephone Co.*, liii., 683.

31. *Appeal from Board of Railway Commissioners—Special leave — Jurisdiction of judge in chambers*, xxxvi., 321.

See APPEAL.

32. *Board of Railway Commissioners — Jurisdiction—Special leave to appeal—Railway Act of 1903*, *Cout. Cas.* 394.

See APPEAL.

33. *Operation of railways — Interchange of traffic—Use of tracks—Interswitching — Conditions imposed—Traffic rates—Jurisdiction of Board of Railway Commissioners — Railway Act, 1903*, ss. 137, 214, 253, 266, 267, 271—6 Edw. VII., c. 42, s. 8—*Occupation of property of other companies—Construction of statute. Grand Trunk Ry. Co. v. Can. Pac. Ry. Co. and City of London*, *Cout. Cas.* 396.

34. *Board of Railway Commissioners for Canada—"Railway Act, 1903," ss. 23, 184—Construction, etc., of street railways and tramways—Removal of tracks—Jurisdiction of Board—Condition precedent — Use of highways in cities and towns—Consent by*

*municipal authority—Approval of by-law — Quebec Municipal Code, arts. 464, 481, xxxvi., 369.*

See RAILWAYS.

35. *Protection of crossings—Party interested—"Railway Act, 1888," ss. 187, 188 — "Railway Act, 1903," ss. 186, 187—Legislative powers*, xxxvii., 232.

See CONSTITUTIONAL LAW.

36. *Board of Railway Commissioners — Consideration of complaints—Evidence — Rejection—Agreement as to special rates—Unjust discrimination. Montreal Park & Island Ry. Co. v. Montreal*, xliiii., 256.

See BOARD OF RAILWAY COMMISSIONERS.

37. *Appeal—Leave by judge—Jurisdiction of Railway Board—Doubt as to decision of Board*, xliiv., 298.

See APPEAL.

38. *Appeal—Setting down for hearing — Form of submission—Defining questions of law*, xliiv., 298.

See APPEAL.

## 2. CARRYING GOODS AND PASSENGERS.

39. *Negligence—Assault on passenger — Duty of conductor.*—If a passenger on a railway train is in danger of injury from a fellow passenger, and the conductor knows, or has an opportunity of knowing of such danger, it is the duty of the latter to take precautions to prevent it, and if he fails or neglects to do so the company is liable in case the threatened injury is inflicted. *Pounder v. North Eastern Railway Co.* ([1892] 1 Q. B. 385), *dissented from*. Judgment of the Court of Appeal (5 Ont. L. R. 334), *affirmed*. (Leave to appeal refused by Privy Council, [1904] A. C. 453). *Canadian Pacific Ry. Co. v. Blain*, xxxiv., 74.

40. *New trial—Decree of appellate court —Reasons for judgment.*—B., a passenger on a railway train, was thrice assaulted by a fellow passenger during the passage. The conductor was informed of the first assault immediately after it occurred and also of the second, but took no steps to protect B. In an action against the railway company B. recovered damages assessed generally for the injuries complained of. The verdict was maintained by the Court of Appeal, but the Supreme Court of Canada ordered a new trial unless B. would consent to his damages being reduced (34 Can. S. C. R. 74). In the reasons given for the last-mentioned judgment written by Mr. Justice Sedgewick for the court, it was held that damages could be recovered for the third assault only, but the judgment, as entered by the registrar, stated that the court ordered the reversal of the judgment appealed from and a new trial unless the plaintiff accepted the reduced amount of damages. Such amount having been refused, a new trial was had on which B. again obtained a verdict, the damages being apportioned between the second

and third assaults. On appeal to the Supreme Court of Canada from the judgment of the Court of Appeal maintaining this verdict.—*Held*, Taschereau, C.J. and Davies, J., dissenting, that as the decree was in accordance with the judgment pronounced by the court when its decision was given, and as it left the whole case open on the second trial, the jury were free to give damages for the second assault, and their verdict should not be disturbed.—*Held*, *per* Taschereau, C.J., that the decree of the court should have been framed with reference to the opinion giving the reasons for the judgment, and, if necessary, could be amended so as to be read as the court intended. *Canadian Pacific Railway Co. v. Blain*, xxxvi., 159.

41. *Negligence—Condition limiting liability—Contract to carry passenger.*—The plaintiff purchased from an agent of the defendant company at Ottawa what was called a land-seeker's ticket, the only kind of return ticket issued on the route, for a passage to Winnipeg and return, paying some thirty dollars less than the single fare each way. The ticket was not transferable and had printed on it a number of conditions, one of which limited the liability of the company for baggage; to wearing apparel, not exceeding \$100 in value, and another required the signature of the passenger for the purpose of identification and to prevent a transfer. The agent obtained the plaintiff's signature to the ticket, explaining that it was for the purpose of identification, but did not read nor explain to her any of the conditions; the plaintiff having sore eyes at the time was unable to read the conditions herself. On the trip to Winnipeg an accident happened to the train, and plaintiff's baggage, valued at over \$1,000, caught fire and was destroyed. In an action for damages for such loss the jury found for the plaintiff for the amount of the alleged value of the baggage.—*Held*, reversing the judgments of the Court of Appeal (15 Ont. App. R. 388), and of the Divisional Court (14 O. R. 625), (Gwynne, J., dissenting), and affirming the judgment at the trial, that the plaintiff was entitled to recover damages for loss of baggage caused by the defendants' negligence notwithstanding the condition limiting the defendants' liability printed upon the ticket sold to the plaintiff.—*Held*, *per* Strong and Taschereau, J.J., that the plaintiff was misled as to the effect of the conditions indorsed on the ticket, and by the answers she received from the defendants' ticket agent, and should not be bound by the condition limiting the company's liability.—*Held*, *per* Fournier, J., adopting the reasons of Mr. Justice Rose in the court below, that there was evidence on which the jury could reasonably find negligence; that the condition limiting the company's liability could not avail, and that the decision in *Grand Trunk Ry. Co. v. Vogel* (11 Can. S. C. R. 612) applied.—*Held*, *per* Gwynne, J., that it was competent for the railway company to enter into a contract with a passenger of the nature pleaded by the defendants in this case, and that the decision in the *Grand Trunk Ry. Co. v. Vogel* (11 Can. S. C. R. 612), had no bearing upon

this case.—*Per* Gwynne, J.; that improper construction of the road-bed did not under the circumstances of the case constitute "any negligence or omission of the defendants or their servants," within the meaning of the statute.—*Per* Gwynne, J., concurring with Patterson, J., in the court below; that the accident having occurred upon a portion of the railway which had been constructed by the Dominion Government the defendants could not be charged with negligence in the construction. *Bate v. Can. Pac. Ry. Co.* (xviii., 697); *Cam. Cas.* 10.

42. *Carriage of passenger—Special contract—Notice to passenger of conditions—Negligence—Exemption from liability.*—P., at Milverton, Ont., purchased a horse for a man in another town, who sent R. to take charge of it. P. signed the way-bill in the form approved by the Board of Railway Commissioners, which contained a clause providing that if the consignee or his nominee should be allowed to travel at less than the regular fare to take care of the property the company should not be liable for any injury to him whether caused by negligence or otherwise. R. was not asked to sign the way-bill though a form indorsed provided for his signature and required the agent to obtain it. The way-bill was given to R., who placed it in his pocket without examining it. On the passage he was injured by negligence of the company's servants.—*Held*, that R. was not aware that the way-bill contained conditions.—*Held*, also, Fitzpatrick, C.J., dissenting, that the company had not done all that was incumbent on them to bring notice of the special condition to his attention.—Judgment of the Court of Appeal (27 Ont. L. R. 290), reversed and that of the trial judge (26 Ont. L. R. 437), restored. *Robinson v. Grand Trunk Railway Co.*, xlviii., 622.

43. *Freight rates—Discrimination—Rebate—Construction of statute—Quebec Railway Act, R. S. Q., 1888, art. 5172—Company—Contract by directors—Powers—Approval of tariffs.*—An agreement by which a railway company undertakes to grant a rebate upon shipments of car lots of goods made by a manufacturer who engages to bear the cost of loading and unloading his freight, unless shewn to be an artifice to secure unjust discrimination, is not in contravention of the provisions of article 5172 of the Quebec Railway Act, R. S. Q., 1888, prohibiting undue advantage, privilege or monopoly being afforded to any person or class of persons in relation to tolls. Judgment appealed from (Q. R. 21 K. B. 85) affirmed, Idington and Anglin, J.J., dissenting.—*Per* Brodeur, J. (approving the judgment appealed from).—The directors of a railway company may bind the company by such an agreement in relation to the business of the railway without having special sanction therefor by the shareholders. *Quebec & Lake St. John Railway Co. v. Kennedy*, xlvi., 520.

44. *Construction of contract—Free passes on railway. Grand Trunk Ry. Co. v. Niagara Falls International Bridge Co.*, *Cout. Cas.* 263.

45. *Negligence — Free-pass — Consideration for transportation — Misdirection — Findings of jury — New trial — Excessive damages—Art. 503 C. P. Q., xxxv., 68.*

See DAMAGES.

### 3. CONSTRUCTION.

46. *Negligence—Defective construction of road-bed—Dangerous way—Vis major—Evidence — Onus of proof — Latent defect.]—*The road-bed of appellants' railway was constructed, in 1893, at a place where it followed a curve round the side of a hill, a cutting being made into the slope and an embankment formed to carry the rails, the grade being one and one-half per cent. or 78.2 feet to the mile. The whole of the embankment was built on the natural surface, which consisted, as afterwards discovered, of a layer of sandy loam of three or four feet in depth resting upon clay subsoil. No borings or other examinations were made in order to ascertain the nature of the subsoil and the road-bed remained for a number of years without shewing any subsidence except such as was considered to be due to natural causes, and required only occasional repairs; the necessity for such repairs had become more frequent, however, for a couple of months immediately prior to the accident which occasioned the injury complained of. Water, coming either from the berm-ditch, or from a natural spring formed beneath the sandy loam, had gradually run down the slope, lubricated the surface of the clay and, finally, caused the entire embankment and sandy layer to slide away about the time a train was approaching, on the evening of 20th September, 1904. The train was derailed and wrecked and the engine-driver was killed.—In an action by his widow for the recovery of damages: — *Held*, that in constructing the road-bed, without sufficient examination upon treacherous soil and failing to maintain it in a safe and proper condition, the railway company was. *primâ facie*, guilty of negligence, which cast upon them the onus of shewing that the accident was due to some undiscoverable cause; that this onus was not discharged by the evidence adduced from which inferences merely could be drawn and which failed to negative the possibility of the accident having been occasioned by other causes which might have been foreseen and guarded against, and that, consequently, the company was liable in damages. Judgment appealed from affirmed, following *The Great Western Railway Co. of Canada v. Braid* (1 Moo. P. C. (N. S.) 101), *Quebec and Lake St. John Ry. Co. v. Julien*, xxxvii., 632.

47. *Navigation—Trent canal crossing — Swing bridge—Cost of construction—Maintenance—Order in council.]—*The C. P. Ry. Co. applied for liberty to build a bridge over the Otonabee, a navigable river, undertaking to construct a draw in it should the Government deem it necessary. An order in council was passed providing that "the company . . . shall construct either a swing in the bridge now in question . . . the cost to be borne by themselves or else a new swing bridge over the contemplated

canal (Trent Valley Canal), in which case the expense incurred over and above the cost of the swing itself and the necessary pivot pier therefor shall be borne by the Government."—A new swing bridge was constructed over the canal by agreement with the company.—*Held*, that the words "the cost of the swing itself and the necessary pier" included, under the circumstances and in the connection in which they were used, the operation and maintenance also of the swing by the company. *Canadian Pacific Ry. Co. v. The King*, xxxviii., 211.

48. *Statutory contract—Construction — Bonds of railway company — Government guarantee.]—*The Government of Canada, in a contract with the Grand Trunk Pacific Railway Co., published as a schedule to and confirmed by 3 Edw. VII., c. 71, agreed to guarantee the bonds of the company to be issued for a sum equal to 75 per cent. of the cost of construction of the western division of its railway. By a later contract (sch. to 4 Edw. VII., c. 24), the Government agreed to implement its guarantee, in such a manner as might be agreed upon, so as to make the proceeds of said bonds a sum equal to 75 per cent. of such cost of construction.—*Held*, that this second contract only imposed upon the Government the liability of guaranteeing bonds, the proceeds of which would produce a defined amount and not that of supplying, in cash or its equivalent, any deficiency there might be between the proceeds of the bonds and the said 75 per cent. *Grand Trunk Pacific Railway Co., xlii., 505.*

49. *Construction and operation—Location plans—Delaying notice to treat—Action to compel expropriation—Compensation in respect of lands not acquired—Mandamus — Use of highway — Crossing public lane — Nuisance.]—*The approval and registration of plans, etc., of the located area of the right-of-way, under the provisions of the "Railway Act," and the subsequent construction and operation of a railway along such area, do not render the railway company liable to mandamus ordering the expropriation of a portion of the lands shewn upon the plans which has not been physically occupied by the permanent way so constructed and operated.—Judgment appealed from reversed, the Chief Justice and Davies, J., dissenting. *Vancouver, Victoria & Eastern Ry. & Navigation Co. v. McDonald*, xlii., 65.

50. *Crossing lines — Overhead bridges — Contract for maintenance—Future traffic.]—*A railway company wishing to cross the line of another contracted with the latter for four crossings, three by an overhead bridge and one by a subway under a bridge of the other company. The contract contained this provision: "The said several crossings . . . shall be maintained at the cost of the Ontario Company (junior road), and shall each always be maintained in a good and safe state, and so as in no way to endanger the property, fixed or movable, of the Midland Company (senior road)." The bridges were to be constructed according to plans and specifications settled and approved by the chief engineer of the senior road, and if the junior failed to main-



tain them to the satisfaction of the chief engineer the senior road could cause the necessary work to be done at the cost of the other company.—*Held*, that the obligation of the junior road was not merely to keep the crossings in good and sufficient repair in the condition they were in when the contract was made, but they could, at any time, be ordered by the Railway Board to make them fit for the heavier traffic caused by the increased business of the senior road. *Canadian Pacific Ry. Co. v. Grand Trunk Ry. Co.*, xlix., 525.

51. *Construction of statute—Spur line to industry—Rebate from tolls* — *R. S. C.*, [1906] c. 37, s. 226.]—By s. 226 of the "Railway Act" the Railway Board may, on application by the owner of an industry within six miles of a railway order the company to construct and operate a spur line from its railway to such industry, the applicant to provide for the cost of construction and be repaid by a rebate to be fixed by the Board "out of or in proportion to the tolls charged by the company in respect of the carriage of traffic for the applicant over the said spur or branch line."—*Held*, Anglin, J., dissenting, that such rebate was not restricted to the tolls for carriage of goods over the said spur, but was applicable to the tolls for carriage of traffic over the company's main line to and from the said industry. *Grand Trunk Railway Co. v. Hepworth Silica Pressed Brick Co.*, li., 81.

52. *Subsidies—Aid to construction—Purchase of constructed line—Construction of statute—Supplementary agreement—Rights of transferee—Obligation binding on the Crown.*—The suppliant company was incorporated by Dominion statute, 6 Edw. VII., c. 150, with power to hold, maintain and operate the railway of the S.S. Ry. Co., and became vested with the franchises and property of that railway company which had been sold in virtue of the statute, 4 & 5 Edw. VII., c. 158. The S.S. Ry. Co. had constructed 6½ miles of its railway, between Yamaska and St. Francis River, for which it had not received subsidy aid as authorized by 62 & 63 Vict., c. 7, and, by 7 & 8 Edw. VII., c. 63, in lieu of the aid provided by the former statutes, subsidy was authorized to be paid to any company completing the construction of 70 miles of the railway from Yamaska on a location which included the 6½ miles of railway so constructed. Under the authority of this legislation the Crown and the appellant company entered into a supplementary agreement fixing the subsidy for the construction of this 70 miles of railway. The company completed the unconstructed portion of the railway, and claimed subsidy for the whole length of the line, including the 6½ miles acquired in virtue of the sale authorized by 4 & 5 Edw. VII., c. 158.—*Held*, reversing the judgment of the Exchequer Court of Canada (15 Ex. C. R. 237), Idington, J., dissenting, that the undertaking of the company to construct the railway was satisfied whether it actually constructed the whole line itself or purchased a constructed portion thereof to form part of the subsidized line; that the statute 7 & 8 Edw. VII., authorizing the subsidy together with the supple-

mentary contract with the Crown constituted an obligation binding on the Crown and the company was, consequently, entitled to the amount of the subsidy applicable to the 6½ miles of the railway in question. *Quebec, Montreal & Southern Railway Co. v. The King*, liiii., 275.

53. *Location—Registration of plans—Construction of line—Plan of subdivision subsequently filed—Dedication of highways—Rights of municipality—Priority—"Railway Act," R. S. C., 1906, c. 87—Dominion "Railway Act," 1903.*—The filing of location plans by a railway company in the proper registry office, after such plans have been approved by the Board of Railway Commissioners under the provisions of the Dominion "Railway Act," is sufficient and effective, after the railway company has constructed its line upon the location indicated, to establish the seniority of the right of the railway company over that of the municipality at points where highways were not dedicated, by the filing of plans of subdivision by the owner or otherwise, or actually used, constructed or accepted by the municipal corporation at the time of the registration of the location plans by the railway company. *Edmonton v. Calgary & Edmonton Railway Co.*, liiii., 406.

54. *Branch lines—Canadian Pacific Railway Company's charter—4 Vict., c. 1 (D.) and schedules—Construction of contract—Limitation of time—Interpretation of terms—"Lay out," "Construct," "Acquire"—"Territory of Dominion"—Hansard debates—Construction of statute—"The Railway Act, 1903," xxxvi., 42.*

See RAILWAYS.

55. *Board of Railway Commissioners—Jurisdiction—Appeal to Supreme Court*, xxxvii., 372.

See RAILWAYS.

56. *Trespass—Railway company—Occupation of lands—Side tracks—Continuous trespass—Damages. Canadian Pacific Railway Co. v. Carr*, xlviii., 514.

57. *Right of action—Protection of railway crossings—Construction of subway—Order-in-council—Apportionment of cost—Land damages—Injurious affection—"Nova Scotia Railway Act," R. S. N. S. (1900), ss. 178 and 179, l., 6.*

See DAMAGES.

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#### 4. CONTRACTS.

58. *Statutory contract—Construction—Bonds of railway company—Government guarantee. Re G. T. P. Ry.*, xlii., 505.

See CONTRACT.

59. *Lessor and lessee—Covenant to renew—Severance of term—Consent of lessor—Enforcement of covenant—Expropriation—Persons interested. Alca. Brown Milling Co. v. C. P. R.*, xlii., 600.

See LEASE.



60. *Local agent of railway company — Collection of freight charges—Receipt delivered before payment. Continental Oil v. C. P. R.*, lii., 605.

See ESTOPPEL.

## 5. EXPROPRIATION.

61. *Government railway — Expropriation — Injuries to property — Crossing at embankment and cutting—Riparian rights — Access to shore — Assessment of damages once for all.*—K. was the owner of certain lands bounded on one side by Halifax harbour, and the Government of Canada constructed its railway through the land cutting off her access to the shore and gave her no crossing. Proceedings having been taken in the Exchequer Court to fix the compensation to which K. was entitled, she was awarded (2 Ex. C. R. 21), for damages occasioned by reason of the absence of the railway crossing, the sum of \$500. On appeal by K. to the Supreme Court of Canada: — *Held*, Gwynne, J., dissenting, that the judge of the Exchequer Court erred, on a question of fact, in not taking into consideration that the character of the embankment and cutting made and the nature of the ground on each side would forbid the making of a reasonably practicable crossing, and that the consequence of the severance would remain notwithstanding; all that under the circumstances could be done towards making a crossing, and also had erred, in law, in not giving compensation for the severance once for all, and that instead of allowing K. \$125 a year for four years' severance, he should have awarded her a sum which would produce \$125 a year for all time.—*Held*, that there is no obligation in law to construct a crossing over a government railway apart from contract.—*Held*, per Gwynne, J., when a railway is constructed across property and severs it into parts in such manner as to make a crossing necessary to the full enjoyment of the several parts, the owner cannot against his will be deprived of a suitable crossing and compelled to accept compensation in lieu thereof. *Kearney v. The Queen* (Cout. Dig. 601), Cam. Cas. 344.

62. *Arbitration and award — Expropriation—Form of award—Evidence—View of property—Proceedings on wrong principle—Disregarding evidence.*—In expropriation proceedings, under the "Railway Act," the arbitrators in making their award stated that they had not found the expert evidence a valuable factor in assisting them in their conclusions and that, after viewing the property in question, they had reached their conclusions by "reasoning from their own judgment and a few actual facts submitted in evidence." On appeal from the judgment of the Supreme Court of Alberta setting aside the award and increasing the damages.—*Held*, that it did not appear from the language used that the arbitrators had proceeded without proper consideration of the evidence adduced or upon what was not properly evidence and, therefore, the award should not have been interfered with. *Calgary and Edmonton Railway Co. v. MacKinnon*, xliiii., 379.

63. *Expropriation of land—Compensation — Transcontinental Railway Commission — Jurisdiction—"Railway Act"—"Exchequer Court Act," s. 2 (d)—3 Edw. VII., c. 71.]—"The Transcontinental Railway Act," 3 Edw. VII., c. 71, does not expressly empower the commissioners to deal with compensation for land taken for the railway, and s. 15 giving them "the rights, powers, remedies and immunities conferred upon a company under the 'Railway Act'" does not confer such power.—The Transcontinental Railway is a public work within the meaning of s. 20, s.-s. (d) of "The Exchequer Court Act," and proceedings respecting compensation for land taken for the railway may be taken by or against the Crown in the Exchequer Court.—Judgment of the Exchequer Court (13 Ex. C. R. 171), reversed. *The King v. Jones*, xliv., 495.*

64. *Expropriation — Municipal plan — Severance of lots—Injurious affection—Reference back to arbitrators—R. S. C., 1906, c. 37.]—For the purposes of expropriation under the Dominion "Railway Act," unless lots laid out on the owner's registered plan are so united as to form one complete whole, each lot taken by the railway company is an independent, separate and complete property in itself and the owner is not entitled to compensation for injurious affection to any such lot, of which no part is taken, and which is severed from the land expropriated by a railway or by land sold to another person. *Cooper-Essex v. Local Board for Acton* (14 App. Cas. 153), distinguished. Duff and Anglin, JJ., *contra*.—The owner of land adjacent to or abutting upon the street over which a railway passes is entitled, by 1 & 2 Geo. V., c. 22, s. 6, to compensation for injury to such land, but the compensation can only be awarded by the Board of Railway Commissioners, and is not a matter for arbitration under the "Railway Act."—*Held*, per Duff and Anglin, JJ. — The arbitrators appointed to value land so expropriated are *functi officio* when their award is delivered, and an appellate court has no power to remit the matter to them for further consideration. *Cedars Rapids Manufacturing Co. v. Lacoste* (1914) A. C. 569, referred to. *Canadian Northern Ontario Railway Co. v. Hoiditch*, l., 265.*

65. *Expropriation—Material for construction—Notice to treat — Statute—"Railway Act," R. S. C., 1906, c. 37, ss. 180, 191, 192, 193, 194, 196—Compensation—Date for ascertainment of value—Order for possession — Deposit of plans—Approval of Board of Railway Commissioners.]—With regard to obtaining materials for the construction of railways, the effect of s.-s. 2 of s. 180 of the "Railway Act," R. S. C., 1906, c. 37, merely requires the general provisions of the Act relating to the using and taking of lands to be observed in so far as they are appropriate to the expropriation of the lands and settling the compensation to be paid therefor; s. 192 of the Act has no application to such a case.—Notices were given, in compliance with ss. 180, 193 and 194 of the "Railway Act," and, before any change had taken place in respect to the*

value of the lands to be taken, the railway company obtained an order of a judge permitting it to do so, and took possession of the lands in question.—*Held*, that the title of the company to the lands, when consummated, must be considered as relating back to the date when possession was taken and that the compensation payable therefor should be ascertained with reference to that time.—Judgment appealed from (6 Alta. L. R. 471), affirmed, *Saskatchewan Land Co. v. Calgary & Edmonton Railway Co.*, li., 1.

66. *Expropriation of lands—Arbitration—Appeal—Jurisdiction of court on appeal—Reference back to arbitrators—Proceedings by arbitrators—Receiving opinion testimony—Number of witnesses examined—“Alberta Evidence Act,” 1910—Alberta “Arbitration Act,” 1909—Alberta “Railway Act,” 1907—Setting aside award—Evidence—Admission in prior affidavit—Ascertaining value of lands.*—The provisions of the Alberta “Arbitration Act” of 1909, in relation to references to arbitration, apply to proceedings on arbitrations under the Alberta “Railway Act” of 1907, and give power to the court or a judge, on an appeal from the award made, to remit the matters referred to the arbitrators for reconsideration. Anglin, J., inclined to the contrary opinion.—*Per* Davies, Idington and Anglin, JJ. (Fitzpatrick, C.J., *contra*).—When arbitrators have violated the provisions of s. 10 of the “Alberta Evidence Act” of 1910, by receiving the testimony of a greater number of expert witnesses than three, as thereby limited, upon either side of the controversy, their award should be set aside by the court upon an appeal.—*Per* Fitzpatrick, C.J., and Idington, J. (Davies, J., *contra*).—An affidavit of the party whose property has been expropriated, made for different purposes several years prior to the expropriation proceedings, cannot properly be taken into consideration by arbitrators as evidence establishing the value of the property at the time of its expropriation.—*Per* Idington and Brodeur, JJ.—In the circumstances of the case the arbitrators were not *functi officii*, as their award had been invalidly made.—The appeal from the judgment of the Appellate Division of the Supreme Court of Alberta (8 Alta. L. R. 379) and the cross-appeal therefrom were dismissed with costs. *Canadian Northern Western Railway Co. v. Moore*, liii., 519.

67. *Expropriation—Date for valuation of lands—Deposit of plan—Notice—Benefit to lands not taken—Set-off—Excessive compensation—Appeal—6 Edw. VII. c. 30 (Ont.)—3 & 4 Geo. V. c. 36 (Ont.)*—Where the expropriation of land is governed by the provisions of the Ontario “Railway Act” of 1906 the date for valuation is that of the notice required by s. 68(1). The effect is the same under the Act of 1913 if the land has not been acquired by the railway company within one year from the date of filing the plan, etc.—The compensation for the land expropriated should not be diminished by an allowance for benefit by reason of the railway to the lands not taken, the Ontario “Railway Acts” making no provision therefor.—On appeal in a matter of expropriation

the award should be treated as the judgment of a subordinate court subject to re-hearing. The amount awarded should not be interfered with unless the appeal court is satisfied that it is clearly wrong, that it does not represent the honest opinion of the arbitrators, or that their basis of valuation was erroneous.—Where the land expropriated is an important and useful part of one holding and is so connected with the remainder that the owner is hampered in the use or disposal thereof by the severance he is entitled to compensation for the consequential injury to the part not taken: *Holditch v. Canadian Northern Railway Co.* (50 Can. S.C.R. 265; [1916] 1 A. C. 536), distinguished.—To estimate the compensation for lands expropriated the arbitrators are justified in basing it on a subdivision of the property if its situation and the evidence respecting it shew that the same is probable.—*Held*, *per* Fitzpatrick, C.J., and Anglin, J., that to prove the value of the lands expropriated evidence of sales between the date of filing the plans and that of the notice to the owner is admissible and also of sales subsequent to the latter date if it is proved that no material change has taken place in the interval.—Brodeur, J., dissenting, held that the damages should be reduced; that the arbitrators should have considered only the market value of the lands established by evidence of recent sales in the vicinity. *Toronto Suburban Railway Co. v. Everson*, liv., 395.

68. *Expropriation of land—Arbitration—Authority for submission—Trespass—2 Edw. VII. c. 104 (N.S.), xxxvii., 134.*

See EXPROPRIATION.

69. *Appeal—Order extending time—Jurisdiction—R. S. C. (1886) c. 135, s. 42—Practice—Trespass—Possession—Evidence—Expropriation—Railways, xxxviii., 230.*

See APPEAL; TRESPASS.

70. *Appeal—Railway Act—Expropriation—Appeal from award—Jurisdiction—Choice of forum—Curia designata, xxxviii., 511.*

See APPEAL.

71. *Arbitration and award—Expropriation—Form of award—View of property—Proceeding on wrong principle—Disregarding evidence. Calgary & Edmonton Ry. Co. v. MacKinnon, xliiii., 379.*

See ARBITRATION AND AWARD.

72. *Arbitration and award—Procedure—Prolonging date for award—Special circumstances—R. S. C. 1906, c. 37, s. 204, xlvi., 242.*

See CROWN.

73. *Appeal—Application to appoint arbitrator—Persona designata—Amount in controversy—“Railway Act,” R. S. C. 1906, c. 37, s. 196—Jurisdiction of court—Practice—Expropriation, l., 476.*

See APPEAL.

74. *Expropriation—Agreement to fix compensation—Arbitration or valuation—Powers of referees—Majority decision, l. 409.*

See ARBITRATION.

75. *Expropriation—Agreement to fix compensation.* *Campbellford, Lake Ontario & West. R. R. Co. v. Massie*, 1, 409.

See ARBITRATION.

76. *Expropriation—Eminent domain—Public work—Abandonment—Revesting of land taken—Compensation—Estimating damages—Construction of statute—Jurisdiction of Exchequer Court—“National Transcontinental Railway Act”—“Railway Act,” R. S. C., 1906, c. 37—“Exchequer Court Act”—“Expropriation Act”—“Railways and Canals Act.”* *Gibb v. The King*, lii., 402.

77. *Expropriation—Business premises—Special value—Mode of estimating compensation*, liii., 416.

See EXPROPRIATION.

## 6. GOVERNMENT RAILWAYS.

78. *Negligence of fellow-servant—Operation of railway—Defective switch—Public work—Tort—Liability of Crown—Right of action—Exchequer Court Act, s. 16 (c)—Lord Campbell’s Act—Art. 1056 C. C.*—In consequence of a broken switch, at a siding on the Intercolonial Railway (a public work of Canada), failing to work properly, although the moving of the crank by the pointsman had the effect of changing the signal so as to indicate that the line was properly set for an approaching train, an accident occurred by which the locomotive engine was wrecked and the engine-driver killed. In an action to recover damages from the Crown, under article 1056 of the Civil Code of Lower Canada:—*Held*, affirming the judgment appealed from (11 Ex. C. R. 119), that there was such negligence on the part of the officers and servants of the Crown as rendered it liable in an action in tort; that the “Exchequer Court Act,” 50 & 51 V. c. 16, s. 16 (c), imposed liability upon the Crown, in such a case, and gave jurisdiction to the Exchequer Court of Canada to entertain the claim for damages; and that the defence that deceased, having obtained satisfaction or indemnity within the meaning of article 1056 of the Civil Code, by reason of the annual contribution made by the Railway Department towards The Intercolonial Railway Employees’ Relief and Insurance Association, of which deceased was a member, was not an answer to the action. *Milner v. The Grand Trunk Railway Co.* ([1896] A. C. 187), followed. (Leave to appeal to Privy Council was refused; 18th July, 1908). *The King v. Armstrong*, xl, 229.

79. *Government railway—Operation over other lines—Agreement for running rights—Extensions and branches—“Public work”—Construction of statute—“Government Railways Act”—R. S. C., 1906, c. 36, s. 80—Exchequer Court Act—R. S. C., 1906, c. 140, s. 20 (c).*—The agreement between the Government of Canada and the Grand Trunk Railway Company, made under the provisions of the Dominion statute, 43 V. c. 8, giving the Government running rights

and powers over a portion of the Grand Trunk Railway, from Levis to Chaudière, between two sections of the Intercolonial Railway, constitutes that portion of the Grand Trunk Railway a part of the Intercolonial Railway, under the provisions of “The Government Railways Act,” as amended by 54 & 55 V. c. 50 (D.), and, consequently, a public work within the meaning of the “Exchequer Court Act,” 50 & 51 V. c. 16, s. 16 (c), (D.); [R. S. C. 1906, c. 140, s. 20 (c).] (11 Ex. C. R. 252, affid.) (Leave to appeal was refused by the Privy Council, 18th July, 1908). *The King v. Lefrançois*, xl, 431.

80. *Petition of right—Contract—Powers of Commissioners of the Transcontinental Railway—Liability of Crown—Construction of statute—3 Edw. VII. c. 71.*—“The National Transcontinental Railway Act,” 3 Edw. VII. c. 71 (D.), does not confer powers upon the Commissioners of the Transcontinental Railway in respect to the inspection and valuation of lands required for the purposes of the “Eastern Division” of the railway; consequently, a petition of right will not lie for the recovery of remuneration for services of that nature.—Judgment appealed from (13 Ex. C. R. 155) affirmed, *Idington, J.*, dissenting. *Johnston v. The King*, xlv., 448.

81. *Negligence—Prescription—Damage or injury—“by reason of construction”—Contractor—Transcontinental Railway Commissioners—“Railway Act,” s. 306.*—Section 15 of the “National Transcontinental Railway Act” provides that “The Commissioners shall have, in respect to the Eastern Division . . . all the rights, powers, remedies and immunities conferred upon a railway company under the ‘Railway Act.’”—*Held*, *Fitzpatrick, C.J.*, and *Idington, J.*, dissenting, that the provision in s. 306 of the “Railway Act” that “all actions or suits for indemnity for any damage or injury sustained by reason of the construction or operation of the railway shall be commenced within one year, etc.” applies to such an action against the Transcontinental Railway Commissioners, and also against a contractor for construction of any portion of the Eastern division.—*Held*, per *Anglin, J.*, that it applies also to an action against a contractor for constructing a railway for a private railway company incorporated by Act of Parliament. *West v. Corbett*, xlviii., 596.

82. *Government railway regulations—Operation of trains—Negligent signaling—Fault of fellow-servant—Common fault—Boarding moving train—Disobedience of employee—Voluntary exposure to danger—Cause of injury—R. S. C., 1906, c. 36, ss. 49, 54—Negligence—Master and servant.*—By a regulation of the Intercolonial Railway, no person is allowed to get aboard cars while trains are in motion. Without ascertaining that all his train-crew were aboard, the conductor signalled the engineman to start his train from a station where it had stopped to discharge freight. One of the crew, who had been assisting in unloading, then attempted to board the moving train

and, in doing so, he was injured.—*Held*, that the injury sustained by the employee was the direct and immediate consequence of his infraction of the regulation which he was, by law, obliged to obey and not the result of the fault of the conductor; that by disobedience to the regulation, the employee had voluntarily exposed himself to danger from the moving train; that the negligence of the conductor in giving the signal to start the train was not an act for which the Government of Canada could be held responsible and that its relation to the accident was too remote to be regarded as the cause of the injury.—Judgment appealed from (15 Ex. C. R.), affirmed. *Turgeon v. The King*, li, 588.

83. *Expropriation of lands—Injuries to property—Crossing at embankment or cutting—Riparian rights—Access to shore—Assessment of damages*, Cam. Cas. 344.

See RAILWAYS.

#### 7. LEGISLATIVE JURISDICTION.

84. *Powers of construction and operation—Conflict of laws—Provincial legislation—Interference with Dominion railways—Constitutional law—Jurisdiction of legislature—Construction of statute—7 Edw. VII. c. 8, s. 82 (Alta.)—2 Geo. V. c. 15, s. 7 (Alta.)—“B. N. A. Act,” 1867, ss. 91 and 92.*—It is not competent to the legislature of the province of Alberta to enact legislation authorizing the construction and operation of railways in such a manner as to interfere with the physical structure or with the operation of railways subject to the jurisdiction of the Parliament of Canada.—*Brodeur, J., contra*, was of the opinion that such legislation would be within the jurisdiction of the provincial legislature provided that in its effect there should be no unreasonable interference with federal railways. *Re Alberta Railway Act*, xlviii., 9.

85. *Board of Railway Commissioners—Jurisdiction—Lands of provincial railway company—Undertaking for general advantage of Canada—Transfer to provincial railway—Construction of statute—“Railway Act,” R. S. C., 1906, c. 37, s. 176.*—The Board of Railway Commissioners for Canada has no jurisdiction, under s. 176 of the “Railway Act,” R. S. C., 1906, c. 37, to order that a Dominion railway company should be authorized to use or occupy lands which, at the time of the application for the approval and of the approval of the location of the Dominion railway, had become the property of a provincial railway company. *City of Montreal v. The Montreal Street Railway Co.* ((1912), A. C. 333), referred to. *Idington, J., dissenting.*—*Per Idington, J.*—The Board of Railway Commissioners for Canada has the same power to make orders respecting the use and occupation of the lands of a provincial railway company as it has in regard to the lands of any other corporate body created by a provincial legislature. *Montreal Tramways Co. v. Lachine, Jacques-Cartier and Maisonneuve Co.*, l. 84.

#### 8. MUNICIPAL AID, BY-LAWS, HIGHWAYS, BRIDGES, ETC.

86. *Construction of railway—Injunction—Interested party—Public corporations—Franchises in public interest—Lapse of chartered powers—“Railway” or “tramway”—Agreement as to local territory—Invalid contract—Public policy—Dominion Railway Act—Work for general advantage of Canada—Quebec Railway Act—Quebec Municipal Code—Limitation of powers.*—An agreement by a corporation to abstain from exercising franchises granted for the promotion of the convenience of the public is invalid as being contrary to public policy and cannot be enforced by the courts.—*Per Sedgewick and Killam, JJ.* A company having power to construct a railway within the limits of the municipality has not such an interest in the municipal highways as would entitle it to an injunction prohibiting another railway company from constructing a tramway upon such highways with the permission of the municipality under the provisions of article 479 of the Quebec Municipal Code. The municipality has power, under the provisions of the Municipal Code, to authorize the construction of a tramway by an existing corporation notwithstanding that such corporation has allowed its powers as to the construction of new lines to lapse by non-user within the time limited in its charter.—*Per Girouard and Davies, JJ.* A railway company which has allowed its powers as to construction to lapse by non-user within the time limited in its charter and which does not own a railway line within the limits of a municipality where such powers were granted has no interest sufficient to maintain an injunction prohibiting the construction therein of another railway or tramway. Where a company, subject to the Dominion Railway Act, with powers to construct railways and tramways, has allowed its powers as to the construction of new lines to lapse by non-user within the time limited, it is not competent for it to enter into an agreement with a municipality for the construction of a tramway within the municipal limits under the provisions of article 479 of the Quebec Municipal Code. *Montreal Park and Island Ry. Co. v. Chateaugay and Northern Ry. Co.*, xxxv., 48.

87. *Use of highways in cities and towns—Consent by municipal authority—Approval of by-law—Quebec Municipal Code, arts. 464, 481, xxxvi., 369.*

See RAILWAYS.

88. *Railway aid—Municipal by-law—Condition precedent—Part performance—Annulment of by-law—Right of action—Assignment of obligation—Notice—Signification upon debtor—Art. 1571 C. C., xxxvi., 686.*

See ACTION.

89. *Municipal corporation—Railway aid—Construction of agreement—Expropriation—Description of lands—Reference to plans—R. S. N. S. 1900, c. 99—3 Edw. VII., c. 97 (N.S.), xxxvii., 75.*

See CONTRACT.

90. *Highway — Dedication—Acceptance by public—User*, xxxvii., 210.

See HIGHWAYS.

91. *Municipal corporation — Agreement with electric street railway company—Use of streets—Payment for privilege—Percentage of receipts—Traffic beyond city—Validity of agreement*, xxxviii., 106.

See TRAMWAYS.

92. *Appeal — Jurisdiction — Provincial tribunal—Consent of parties — Estoppel — Assessment—Railway bridge over navigable river. Township of Cornwall v. Ottawa & N. Y. R. R.*, liii., 466.

See ASSESSMENT AND TAXES.

### 9. NEGLIGENCE OPERATION, ETC.

93. *Negligence — Braking apparatus — Railway Act (1888), s. 243—Sand valves—Notice of defects in machinery—Liability of company—Provident society — Contract indemnifying employer—Indemnity and satisfaction—Lord Campbell's Act—Art. 1056 C. C.—Right of action*—The "sander" and sand-valves of a railway locomotive, which may be used in connection with the brakes in stopping a train, do not constitute part of the "apparatus and arrangements" for applying the brakes to the wheels required by s. 243 of the Railway Act of 1888.—Failure to remedy defects in the sand-valves, upon notice thereof given at the repair shops in conformity with the company's rules, is merely the negligence of an employee and not negligence attributable to the company itself; therefore, the company may validly contract with its employees so as to exonerate itself from liability for such negligence and such a contract is a good answer to an action under article 1056 of the Civil Code of Lower Canada. *The Queen v. Grenier* (30 Can. S. C. R. 42), followed.—Girouard, J., dissented, on the ground that the negligence found by the jury was negligence of both the company and its employees. (Reversed by Privy Council, [1906] A. C. 187). *Grand Trunk Railway Co. v. Miller*, xxxiv., 45.

94. *Highway crossing—Negligence—Rate of speed—Crowded districts—Fencing—51 Vict., c. 29, ss. 197, 259 (D.)—55 & 56 Vict., c. 27, ss. 6 and 8 (D.)*—In passing through a thickly peopled portion of a city, town or village a railway train is not limited to the maximum speed of six miles an hour prescribed by 55 & 56 Vict., c. 27, s. 8, so long as the railway fences on both sides of the track are maintained and turned into the cattle guards at highway crossings as provided by s. 6 of said Act. Judgment of the Court of Appeal (5 Ont. L. R. 313), reversed, Girouard, J., dissenting. *Grand Trunk Ry. Co. v. McKay*, xxxiv., 81.

95. *Negligence—Dangerous way — Operation of railway—Defective bridge—Gratuitous passengers—Liability of carrier for damages*.—In the absence of evidence of gross negligence, a carrier is not liable for injuries sustained by a gratuitous passenger. [*Moffat v. Bateman* (L. R. 3 P. C. 115),

followed. *Harris v. Perry & Co.* ([1903] 2 K. B. 219), distinguished.]—Although a railway company may have failed to properly maintain a bridge under their control so as to ensure the safety of persons travelling upon their trains, the mere fact of such omission of duty does not constitute evidence of the gross negligence necessary to maintain an action in damages for the death of a gratuitous passenger. Judgment appealed from (9 B. C. Rep. 453), affirmed. *Nightingale v. Union Colliery Co.*, xxxv., 65.

96. *Negligence — Railway company — Proximate cause—Imprudence of person injured*.—A railway train was approaching a station in London and the conductor jumped off before it reached it, intending to cross a track between his train and the station, contrary to the rule prohibiting employees to get off a train in motion. A light engine was at the time coming towards him on the track he wished to cross, which struck and killed him. The light engine was moving slowly and showed a red light at the end nearest the conductor, which would indicate that it was either stationary or going away from him. In an action by the conductor's widow she was non-suited at the trial, and a new trial was granted by the Court of Appeal.—*Held*, reversing the judgment of the Court of Appeal, Davies and Killam, JJ., dissenting, that as the light engine had been allowed to pass a semaphore beyond the station on the assumption, which was justified, that it would pass before the train came to a stop at the station, and as, if the deceased had not, contrary to rule, left the train while in motion, he could not have come into contact with said engine, the plaintiff was not entitled to recover.—*Held per Davies and Killam, JJ.*, dissenting, that the act of the deceased in getting off the train when he did was not the proximate cause of the accident, and plaintiff was entitled to have the opinion of the jury as to whether or not deceased was misled by the red light. *Grand Trunk Ry. Co. v. Birkett*, xxxv., 296.

97. *Negligence—Employer's Liability Act—Defect in ways, works, etc.—Care in moving cars—Contributory negligence*.—O., a workman in the employ of defendant company, was directed by a superior to cut sheet iron and to use the rails of the company's railway track for the purpose. The superior offered to assist and the two sat on the track facing each other. O. had his back to two cars standing on the track to which, after they had been working for a time, an engine was attached which backed the cars towards them, and O. not hearing or seeing them in time was run over and had his leg cut off.—*Held*, that O. did not use reasonable precautions for his own safety in what he knew to be a dangerous situation and could not recover damages for such injury.—*Held*, also, that the employees engaged in moving the cars were under no obligation to see that there was no person on the track before doing so.—*Held per Sedgewick, Nesbitt and Killam, JJ.*, that the want of a place specially provided for cutting the sheet iron was not a defect in the ways, works, etc., of the company within the meaning of s. 3 (a) of The Employers' Liability Act.—*Held per*

Girouard and Davies, JJ., that if it was such defect was not the cause of the injury to O. *Dominion Iron and Steel Co. v. Oliver*, xxxv., 517.

98. *Negligence—Railway company—Excessive speed—Fencing—Railway Act, 1888, ss. 194, 197—55 & 56 Vict., c. 27, s. 6 (D.)—Evidence—Reasonable inferences.*—The provisions of 55 & 56 Vict., c. 27, s. 6 amending s. 197 of The Railway Act, 1888, and requiring, at every public road crossing at road level of the railway, the fences on both sides of the crossing and of the track to be turned in to the cattle guards, applies to all public road crossings and not to those in townships only as is the case of the fencing prescribed by s. 194 of The Railway Act, 1888. *Grand Trunk Railway Co. v. McKay* (34 Can. S. C. R. 81), followed.—Three persons were near a public road crossing when a freight train passed after which they attempted to pass over the track and were struck by a passenger train coming from the direction opposite to that of the freight train and killed. The passenger train was running at the rate of forty-five miles an hour, and it was snowing slightly at the time. On the trial of actions under "Lord Campbell's Act" against the railway company, the jury found that the death of the parties was due to negligence "in violating the statute by running at an excessive rate of speed" and that deceased were not guilty of contributory negligence. A verdict for the plaintiff in each case was maintained by the Court of Appeal.—*Held*, that the railway company was liable; that the deceased had a right to cross the track and there was no evidence of want of care on their part, and the same could not be presumed; and, though there may not have been precise proof that the negligence of the company was the direct cause of the accident, the jury could reasonably infer it from the facts proved and their finding was justified. *McArthur v. Dominion Cart-ridge Co.* ([1905] A. C. 72), followed; *Wakelin v. London & South Western Railway Co.* (12 App. Cas. 41), distinguished.—*Held*, also, that the fact of deceased starting to cross the track two seconds before being struck by the engine was not proof of want of care; that owing to the snow storm and the escaping steam and noise of the freight train they might well have failed to see the headlight or hear the approach of the passenger train if they had looked and listened. *Grand Trunk Railway Co. v. Hainer*; *Grand Trunk Railway Co. v. Hughes*; *Grand Trunk Railway Co. v. Brady*, xxxvi., 180.

99. *Operation of railway—Straying animals—Negligence—Duty as regards trespassers—Herding stock—Evidence—Inferences as to facts.*—A railway company is not charged with any duty in respect of avoiding injury to animals wrongfully upon its line of railway until such time as their presence is discovered. Idington, J., dissented, though concurring in the judgment on other grounds. *Canadian Pacific Railway Co. v. Eggleston*, xxxvi., 641.

100. *Joint operation of railway—Master and servant—Negligence—Responsibility for act of joint employee—Traffic agreement—*

*62 & 63 Vict., c. 5 (D.)*—Where by the negligence of the train despatcher engaged by the Grand Trunk Ry. Co. and under its control and directions, injuries were caused by a collision of two Intercolonial Railway trains on the single track of a portion of the Grand Trunk Railway operated under the joint traffic agreement, ratified by the Act, 62 & 63 Vict., c. 5 (D.), the company is liable, notwithstanding that the train despatcher was declared by the agreement to be in the joint employ of the Crown and the railway company, and the Crown was thereby obliged to pay a portion of his salary. Judgment appealed from affirmed, Taschereau, C.J., *dubitante*. *Grand Trunk Railway Co. v. Huard et al.*, xxxvi., 655.

101. *Negligence—Finding of jury—Evidence.*—A. brought an action, as administratrix of the estate of her husband, against the C. P. R. Co., claiming compensation for his death by negligence and alleging in her declaration that the negligence consisted in running a train at a greater speed than six miles an hour through a thickly populated district, and in failing to give the statutory warning on approaching the crossing where the accident happened. At the trial questions were submitted to the jury, who found that the train was running at a speed of 25 miles an hour, that such speed was dangerous for the locality, and that the death of the deceased was caused by neglect or omission of the company in failing to reduce speed as provided by "The Railway Act." The verdict was entered for the plaintiff, and on motion to the court, *en banc*, to have it set aside and judgment entered for defendants a new trial was ordered on the ground that questions as to the bell having been rung and the whistle sounded should have been submitted to the jury. The plaintiff appealed to the Supreme Court of Canada to have the verdict at the trial restored and the defendants, by cross-appeal, asked for judgment.—*Held*, Idington, J., dissenting, that by the above findings the jury must be held to have considered the other grounds of negligence charged, as to which they were properly directed by the judge, and to have exonerated the defendants from liability thereon, and the new trial was improperly granted on the ground mentioned.—*Held*, also, that though there was no express finding that the place at which the accident happened was a thickly peopled portion of the district it was necessarily imported in the findings given above; that this fact had to be proved by the plaintiff, and there was no evidence to support it; and that, as the evidence shewed it was not a thickly peopled portion, the plaintiff could not recover, and the defendants should have judgment on their cross-appeal. *Andreas v. Canadian Pacific Ry. Co.*, xxxvii., 1.

102. *Negligence—Railway crossing—Findings of jury—"Look and listen."*—M. attempted to drive over a railway track which crossed the highway at an acute angle where his back was almost turned to a train coming from one direction. On approaching the track he looked both ways, but did not look again just before crossing when he could have seen an engine approaching which struck his team and he was killed. In

an action by his widow and children the jury found that the statutory warnings had not been given, and a verdict was given for the plaintiffs and affirmed by the Court of Appeal.—*Held*, affirming the judgment of the Court of Appeal (12 Ont. L. R. 71), Fitzpatrick, C.J., *hesitante*, that the findings of the jury were not such as could not have been reached by reasonable men, and the verdict was justified. *Wabash Railroad Co. v. Misener*, xxxviii., 94.

103. *Negligence—Railway Act, 1903 — 3 Edw. VII., c. 58, s. 237—Animals at large—Construction of statute—Words and terms—“At large upon the highway or otherwise”—Fencing of railway—Trespass from lands not belonging to owner.*—C.'s horses strayed from his enclosed pasture situated beside a highway which ran parallel to the company's railway, entered a neighbour's field adjacent thereto, passed thence upon the track through an opening in the fence, which had not been provided with a gate by the company, and were killed by a train. There was no person in charge of the animals, nor was there evidence that they got at large through any negligence or wilful act attributable to C.—*Held*, affirming the judgment appealed from (16 Man. R. 323), that, under the provisions of the fourth subsection of a. 237 of “The Railway Act, 1903,” the company was liable in damages for the loss sustained notwithstanding that the animals had got upon the track while at large in a place other than a highway intersected by the railway. *Canadian Pacific Ry. Co. v. Carruthers*, xxxix., 251.

104. *Operation of railway—Unnecessary combustibles left on right of way—“Railway Act, 1903” ss. 118 (j) and 239—R. S. C. (1906) c. 37, ss. 151 (j) and 297—Damages by fire—Point of origin—Charge by judge—Finding by jury—New trial—Practice—New evidence on appeal — Supreme Court Act, ss. 51 and 78.*—The question for the jury was, whether or not the place of the origin of the fire which caused the damages was within the limits of the “right of way” which the defendants were, by the “Railway Act, 1903,” obliged to keep free from unnecessary combustible matter, and their finding was that it did, but the charge of the judge was calculated to leave the impression that any space where trees had been cut, under the powers conferred by s. 118 (j) of that Act, might be treated as included within the “right of way,” and, in effect, made a direction, on issues not raised by the pleadings or at the trial, as to negligent exercise of the privilege conferred by that section.—*Held*, that, in consequence of the want of more explicit directions to the jury on the question of law and the misdirection as to the issues, the defendants were entitled to a new trial.—The court refused an application by the respondents, on the hearing of the appeal, for leave to supplement the appeal case by the production of plans of the right of way which had not been produced at the trial, as being contrary to the established course of the court. (Leave to appeal to Privy Council granted, 24th February, 1908; 50 Can. Gaz. 544.) *Red Mountain Ry. Co. v. Blue*, xxxix., 390.

105. *Negligence — Breach of statutory duty—Common employment — Nova Scotia Ry. Act, R. S. N. S. (1900) c. 99, s. 251—Employers' Liability Act — Fatal Injuries Act.*—Section 251 of the Railway Act of Nova Scotia provides that when a train is moving reversely in a city, town or village, the company shall station a person on the last car to warn persons standing on or crossing the track, of its approach, and provides a penalty for violation of such provision.—*Held*, that this enactment is for the protection of servants of the company standing on or crossing the track as well as of other persons.—M. was killed by a train, consisting of an engine and coal car, which was moving reversely in North Sydney. No person was stationed on the last car to give warning of its approach, and as the bell was encrusted with snow and ice it could not be heard. Evidence was given that on a train of the kind the conductor was supposed to act as brakeman and would have to be on the rear of the coal-car to work the brakes, but when the car struck M., who was engaged at the time in keeping the track clear of snow, the conductor was in the cab of the engine.—*Held*, Idington, J., dissenting, that an absolute duty was cast on the company by the statute to station a person on the last car to warn workmen, as well as other persons, on the track which, under the facts proved, they had neglected to discharge. The defence under the doctrine of common employment, was, therefore, not open to them. *Groves v. Wimborne*, ([1898] 2 Q. B. 402), followed.—*Held*, per Idington, J., that the evidence shewed the only failure of the company to comply with the statutory provision to have been through the acts and omissions of the fellow-servants of deceased; that the company, therefore, could not be held liable for the consequence under the “Fatal Injuries Act;” that it is, therefore, unnecessary to determine the applicability of the said section of the “Railway Act,” as the fellow-servants were guilty of common law negligence which rendered the company liable, but only by virtue of and within the limits of the “Employers' Liability Act.” (Leave to appeal to Privy Council, refused, 12th May, 1908.) *McMullen v. Nova Scotia Steel and Coal Co.*, xxxix., 593.

106. *Collision—Stop at crossing—Statutory rule—Company's rule — Contributory negligence—R. S. [1906] c. 37, s. 278.*—A train of the Wabash Railroad Co. and one of the Canadian Pacific Railway Co. approached a highway crossing at obtuse angles. The former did not, as required by s. 278 of the Railway Act, come to a full stop; the latter did so at a semaphore nearly 900 feet from the crossing and receiving the proper signal proceeded without stopping again at a “stop post” some 400 feet nearer where a rule of the company required trains to stop. The trains collided and the engineer of the Canadian Pacific Railway Co. was killed. In an action by his widow:—*Held*, that the failure of the engineer to stop the second time was not contributory negligence which prevented the recovery of damages for the loss of plaintiff's husband caused by the admitted negligence of defendants. *Wabash Rd. Co. v. McKay*, xl., 251.



107. *Operation of railway—Negligence—Non-suit.*—The action was by a brakeman for damages in respect of injuries incurred by him while in discharge of his duty through the negligence of servants of the company in checking the speed of the train, on which he was working, too suddenly, so that a part of the train became detached. The jury found for plaintiff, and the trial judge granted a non-suit, although he was inclined to the view that the plaintiff had made out a case. The non-suit was set aside by the Divisional Court.—The Supreme Court of Canada dismissed the appeal with costs for the reasons given in the Divisional Court, Gwynne, J., dissenting. *Lake Erie and Detroit River Ry. Co. v. Scott*, Cout. Cas. 211.

108. *Negligence—Operation of railway—Dangerous way—Passenger jumping off train.*—Plaintiff jumped off a car when the train had become derailed. Other passengers who remained on the train were not injured. The charge of negligence was that the company had allowed the ties to become rotten, thus causing the rails to spread and resulting in the derailment. The defence was that if the plaintiff had not unnecessarily jumped off the car he would have escaped injury. The appeal was dismissed with costs. *Halifax and Southwestern Ry. Co. v. Shea*, Cout. Cas. 418.

109. *Operation of railway—Level crossing Negligence—Statutory signals—Findings against weight of evidence—New trial—Practice.*—S. sustained injuries through running into the engine of a railway train while he was riding a bicycle over a level highway-crossing. On the trial of his action to recover damages, his witnesses stated that they had not heard the whistle sounded nor the bell of the engine rung, and he admitted that he had not taken any precautions to ascertain whether he could cross the track in safety. The evidence for the defence was positive as to the statutory signals being properly given, as well as other warnings of danger:—*Held, per Fitzpatrick, C.J. and Duff, J.*, that the question was not as to the credibility of the witnesses on either side, but whether the character of the evidence for the plaintiffs could, in a reasonable view of the whole evidence adduced, be held to countervail the direct and positive testimony on behalf of the defendants, and, as it could not, the findings by the jury that the company had been guilty of negligence in failing to give the statutory signals were against the weight of evidence and unreasonable.—*Per Girouard, J.*, that S. was guilty of contributory negligence in failing to take proper precautions to avoid the accident and the action should be dismissed. *Railroad Company v. Houston* (95 U. S. R. 697), referred to.—The judgment appealed from was reversed and a new trial ordered, Idington and Maclean, JJ., dissenting. *Grand Trunk Ry. Co. v. Sims*, 8 Can. Ry. Cas. 61.

110. *British Columbia Railway Act—Fire on right-of-way—Combustible matter on berm—Origin of fire—Damage to adjoining property—Negligence—Evidence—Practice—New points raised on appeal.*—In an ac-

tion against a railway company subject to the British Columbia Railway Act, if there is no evidence that the company had knowledge or notice of the existence of a fire on their right-of-way, not caused by the operation of the railway, the fact that the condition of the right-of-way facilitated the spread of the fire to adjoining property which was destroyed by it does not amount to actionable negligence. — Where a matter relied upon to support the action was not urged at the trial nor asserted on an appeal to the provincial court it is too late to put it forward for the first time on an appeal to the Supreme Court of Canada.—Judgment appealed from (14 B. C. Rep. 169), affirmed, Idington, J., dissenting. *Laidlaw v. Crownsnest Southern Ry. Co.*, xlii., 355.

111. *Construction of statute—7 & 8 Edw. IV., c. 31, s. 2—Government railway—Fire from engine—Negligence—Damages.*—By 7 & 8 Edw. IV., c. 31, s. 2, the Government of Canada is liable for damage to property caused by a fire started by a locomotive working on a government railway, whether its officers or servants are or are not negligent, and by a proviso the amount of damages is limited if modern and efficient appliances have been used and the officers or servants "have not otherwise been guilty of any negligence."—*Held, Davies, J.*, dissenting, that the expression "have not otherwise been guilty of any negligence" means negligence in any respect and not merely in the use of a locomotive equipped with modern and efficient appliances.—Sparks from a locomotive set fire to the roof of a government building near the railway track, and the fire was carried to and destroyed private property. The roof of this building had on several previous occasions caught fire in a similar way and the government officials, though notified on many of such occasions, had only patched it up without repairing it properly.—*Held, reversing the judgment of the Exchequer Court* (12 Ex. C. R. 389), that the government officials were guilty of negligence in having a building with a roof in such condition so near to the track, and the owner of the property destroyed was entitled to recover the total amount of his loss. *Leger v. The King*, xliii., 164.

112. *Action—Damages—Denial of traffic facilities—Injury by reason of operation of railway—Limitation of actions—"Railway Act," 3 Edw. VII., c. 58, s. 242—Construction of statute.*—Injuries suffered through the refusal by a railway company to furnish reasonable and proper facilities for receiving, forwarding and delivering freight, as required by the "Railway Act," to and from a shipper's warehouse, by means of a private spur-track connecting with the railway, do not fall within the classes of injuries described as resulting from the construction or operation of the railway, in s. 242 of the "Railway Act," 3 Edw. VII., c. 58, and, consequently, an action to recover damages therefor is not barred by the limitation prescribed by that section for the commencement of actions and suits for indemnity. — Judgment appealed from (19 Man. R. 300), affirmed, Girouard and Davies, JJ., dissenting. *Canadian Northern Railway Co. v. Robinson*, xliiii., 387.



113. *Accident — Negligence — Railway rules—Special instructions—Defective system—Common law negligence—Workmen's Compensation Act.*—The "Railway Act" prescribes that rules and regulations for travelling upon and the use or working of a railway must be approved by the Governor-General in Council and that, until so approved, such rules and regulations shall have no force or effect; when approved they are binding on all persons. Rule 2 of the rules of the Grand Trunk Railway Co. provides that "In addition to these rules, the time-tables will contain special instructions, as the same may be found necessary. Special instructions, not in conflict with these rules, which may be given by proper authority, whether upon the time-tables or otherwise, shall be fully observed while in force." Trains running out of Brantford, Ont., are under control of the train despatcher at London. The railway time-table has for many years contained the following footnote:—"Tilsonburg Branch.—Yard engines at Brantford are allowed to push freight trains up the Mount Vernon grade and return to Brantford B. & T. station without special orders from the train despatcher. Yard foreman in charge of yard engine will be held responsible for protecting the return of the yard engine, and for knowing such engine has returned before allowing a train or engine to follow.—A. J. Nixon, Assistant Superintendent."—This regulation or instruction had not then been submitted for the approval of the Governor-General in Council. — By rule 224 "all messages or orders respecting the movement of trains . . . must be in writing."—*Held*, Davies and Duff, JJ., dissenting, that assuming the foot-note on the time table to be a "special instruction" under Rule 2, it is inconsistent with the train-despatching system in force at Brantford and if, as the evidence indicates, it purports to authorize the sending out of engines under verbal orders to push freight trains up the grade, it is also inconsistent with rule 224. Such instruction has, therefore, no legal operation.—*Held*, per Girouard and Anglin, JJ., that it was not a "special instruction," but a regulation, and not having been sanctioned by order-in-council operation under it was illegal.—By "The Railway Act" a "train" includes any engine or locomotive. Rule 198 provides that it "includes an engine in service with or without cars equipped with signals."—*Held*, per Girouard, Idington and Anglin, JJ., Duff, J., *contra*, that an engine returning to the yard after pushing a train up the grade, is a "train" subject to the provisions of Rule 224, and to the rules of the train-despatching system.—The accident in this case occurred through the yard foreman failing to protect the engine on its return to the yard.—*Held*, Davies and Duff, JJ., dissenting, that the company operated the yard engines under an illegal system, and were liable to common law damages and that s. 2 of s. 427 of the "Railway Act" applied.—*Held*, per Duff, J., that since, as regards the danger of collision with trains stopping at Brantford for orders, the system of operating the yard engines through the telegraphic dispatchers would clearly have afforded greater protection than that in use, and

since there was admittedly no impediment in the way of adopting the former system, there was evidence for the jury of want of care in not adopting the safer system; and the fact that the existing system had been in operation for twenty-five years was evidence from which the jury might infer that the general governing body of the company was aware of it. And further, following *Smith v. Baker* ((1891) A. C. 325), and *Ainslie Mining and Railway Co. v. McDougall* (42 Can. S. C. R. 420), that, in these circumstances, the company was responsible for the defects in the system. *Fraticke v. Grand Trunk Railway Co.*, xliiii., 494.

114. *Negligence—Carriers—Operation of railway—Defective system—Gratuitous passenger—Free pass—Limitation of liability—Employer and employee—Fellow-servant—Evidence—Onus of proof.*—The plaintiff's husband was an employee engaged as a mechanic in the company's workshops and was travelling thither to his work on one of the company's passenger cars, as a passenger, without payment of fare. A freight car became detached from a train, some distance ahead of the passenger car and proceeding in the same direction; it ran backwards down a grade, collided with the passenger car and the plaintiff's husband was killed. The manner in which the freight car became detached was not shewn. On the body of deceased there was found a permit or "pass," which was not produced, and there was no evidence to shew any conditions in it, nor over what portion of the company's lines nor for what purposes it was to be honoured. On the close of the plaintiff's case the defendants adduced no evidence whatever, and the jury found that the company was at fault, owing to a defective system of operation of their trains, and assessed damages, at common law, for which judgment was entered for the plaintiff.—*Held*, that there was a presumption that deceased was lawfully on the passenger car and, in the exercise of their business as common carriers of passengers, the company were, therefore, obliged to use a high degree of care in order to avoid injury being caused to him through negligence; that there was nothing in the evidence to shew that deceased occupied the position of a fellow-servant with the employees engaged in the operation of the trains which were in collision; and that, in the absence of evidence shewing any agreement, express or implied, or some relationship between the company and deceased which would exclude or limit liability, the plaintiff was entitled to recover damages at common law.—Judgment appealed from (16 B. C. Rep. 113), affirmed. *Nightingale v. Union Colliery Co.* (35 Can. S. C. R. 65), distinguished. *British Columbia Electric Ry. Co. v. Wilkinson*, xlv., 263.

115. *Negligence—Risk of employment—Dangerous works and materials—Warnings and instructions—Employers' liability—Damages—Personal injury—Limitation of action—"Railway Act," R. S. C., 1906, c. 37, s. 306—"Construction and operation of railway."*—The limitation of one year, in respect of actions to recover compensation

for injuries sustained "by reason of the construction or operation" of railways, provided by s. 306 of the "Railway Act" (R. S. C., 1906, c. 37), relates only to injuries sustained in the actual construction or operation of a railway; it does not apply to cases where injuries have been sustained by employees engaged in works undertaken by a railway company for procuring or preparing materials which may be necessary for the construction of their railway. *Canadian Northern Ry. Co. v. Robinson* (1911) A. C. 739, applied. Judgment appealed from (21 Man. R. 121), affirmed. (Leave to appeal to Privy Council refused, 20th March, 1912.) *Canadian Northern Ry. Co. v. Anderson*, xlv., 355.

AND see NEGLIGENCE.

116. *Negligence—Operation of railway—Death from contact with train—Absence of eye witness—No warning at crossing—Findings of jury—Reasonable inferences—Balance of probabilities.*]—About 5.30 on a December afternoon, G. left his place of employment to go home. An hour later his body was found some 350 yards east of a crossing of the Grand Trunk Railway, nearly opposite his house. There was no witness of the accident, but it was shewn on the trial of an action by his widow and children, that shortly after he was last seen an express train and a passenger train had passed each other a little east of the crossing, and there was evidence shewing that the latter train had not given the statutory signals when approaching the crossing. The jury found that G. was killed by the passenger train, and that his death was due to the negligence of the latter in failing to give such warnings. This finding was upheld by the Court of Appeal.—*Held*, that the jury were justified in considering the balance of probabilities and drawing the inference from the circumstances proved, that the death of G. was caused by such negligence. *Grand Trunk Ry. Co. v. Griffith*, xlv., 380.

117. *Operation of railway—Condition of yard—"Lay-out" of concourse—Switching—"Workmen's Compensation for Injuries Act," R. S. M. 1902, c. 178—Contributory negligence—Evidence—Volenti non fit injuria—Non-suit—New trial.*]—At the trial, an order of non-suit was refused by the plaintiff and, thereupon, the jury were directed to find a verdict for the defendants, which was done and judgment entered accordingly. On an appeal by the plaintiff this judgment was set aside, 20 Man. R. 92, on the ground that there was some evidence which should have been left to the jury, and a new trial was ordered.—The Supreme Court of Canada allowed the appeal with costs, Idington and Duff, J.J., dissenting, and the judgment entered at the trial was restored. [NOTE.—The Judicial Committee of the Privy Council refused leave for an appeal in *formâ pauperis*, 20th March, 1912; 45 Can. S. C. R. vii.] *Canadian Pacific Railway Co. v. Wood*, xlvii., 403.

118. *Statute—Construction—Operation of railway—Right-of-way—Combustible materials—R. S. N. S. [1900] c. 91, s. 9.*]—Chapter 91, s. 9, of the Revised Statutes of Nova Scotia, 1900, provides that "when railways

pass through woods the railway company shall clean from off the sides of the roadway the combustible material by careful burning at a safe time or otherwise."—*Held*, that this provision is imperative and obliges the company at all times to keep its right-of-way so clear of combustible material that it will not be a source of danger from fire. Clearing it at certain periods only is not a compliance with such provision.—Duff, J., dissented on the ground that it was not proved that the fire in this case originated on the right-of-way.—Judgment appealed from (46 N. S. Rep. 20), affirmed. *Halifax and South Western Railway v. Schwartz*, xlvii., 590.

119. *Negligence—Contravention of statute—Protection of employees—Foreign car—Defective equipment—R. S. C. [1906] c. 37, s. 264, ss. 1(c).*]—The provisions of s. 264, s.s. 1(c) of The Railway Act, which require every railway company "to provide and cause to be used on all trains modern and efficient apparatus" for coupling and uncoupling cars without the necessity of going between them is contravened by the use of a foreign car not provided with such "modern and efficient apparatus" in a train operated by a Canadian company, and the company using such car is responsible for any injury caused by the want of such equipment. A lever for opening and closing the knuckle of the coupler which is too short to be operated from the side ladder with safety is not "modern and efficient apparatus" under the above provision.—Where a brakeman on a car approaching another with which it was to be coupled saw that the knuckle of the coupler of the car he was on had to be opened and had only fifteen seconds in which to do it, being unable to signal the engineer to stop, took the only course open to him, which was a common one, and was injured, he was not guilty of contributory negligence.—Fitzpatrick, C.J., dissented, on the ground that the plaintiff's negligence was the sole cause of the accident.—Judgment of the Court of Appeal (26 Ont. L. R. 121), reversed, Fitzpatrick, C.J., dissenting, xlvii., 634.

120. *Operation—Negligence—Excessive speed—Trespasser—"Railway Act," R. S. C., 1906, c. 37, ss. 275, 408—Cause of accident.*]—While a train was running at the speed of about thirty miles an hour, on the company's line along the harbour front in the City of Vancouver, B.C., H., who had unlawfully entered upon the right-of-way through a break in the company's fences, at tempted to cross the tracks in front of the train. The engine driver saw H., at a distance of about 500 feet, and whistled several times. H. paid no attention to the danger signals and continued walking in an oblique direction towards the track, and, observing his apparent intention to cross the track and his disregard of the signals, the engine driver then applied the emergency brakes which failed to stop the train in time to avoid the accident by which H. was killed. In an action for damages by his widow and child.—*Held*, that, notwithstanding the fact that deceased was a trespasser and committing a breach of s. 408 of the "Railway Act," R. S. C., 1906, c. 37, the company was liable because their engine driver neg-

lected to apply the emergency brakes at the time he became aware of the danger of accident when he first noticed deceased attempting to cross the tracks. *Canadian Pacific Railway Co. v. Hinrich*, xlviii., 557.

121. *Evidence—Onus—Negligence—Excessive speed—“Railway Act,” s. 275—8 & 9 Edw. VII., c. 32, s. 13.*—By 8 & 9 Edw. VII., c. 32, s. 13, amending s. 275 of the “Railway Act” no railway train “shall pass over a highway crossing at rail level in any thickly peopled portion of any city, town or village at a greater speed than ten miles an hour” unless such crossing is constructed and protected according to special orders and regulations of the Railway Committee or Board of Railway Commissioners or permission is given by the Board. In an action against a railway company for damages on account of injuries received through a train passing over such a crossing at a greater speed than ten miles an hour.—*Held*, reversing the judgment of the Appellate Division (29 Ont. L. R. 247), that the onus was on the company of proving that the conditions existed which, under the provisions of said section, exempted them from the necessity of limiting the speed of their train to ten miles an hour or that they had the permission of the Board to exceed that limit, and as they had not satisfied that onus the plaintiff’s verdict should stand.—Sub-section 4, of s. 13, prohibits trains running “over any highway crossing” at more than 10 miles an hour, if at such crossing an accident has happened subsequent to 1st January, 1900, “by a moving train causing bodily injury,” etc., “unless and until” it is protected to the satisfaction of the Board.—*Per Duff and Brodeur, J.J.*—The appellant’s action could also be maintained on the ground that the prohibition of s.-s. 4 applies to the crossing in question. *The Grand Trunk Railway Co. v. McKay* (34 Can. S. C. R. 81), distinguished. *Bell v. Grand Trunk Railway Co.*, xlviii., 561.

122. *Operation—Transfer of cars—Inter-switching—Negligent coupling—Duty of train crew—Scope of employment—Employer’s liability—Master and servant—Jury—Findings of fact—Evidence.*—A train crew of the defendants while performing their duty in the transfer yard of another railway company were directed by the yardmaster to remove a special car of freight which was to be transferred to the defendants’ railway from amongst a number of other cars in the yard. In order to do so it was necessary to shunt several cars placed in front of the car to be transferred, and the train crew switched these cars to certain tracks on which there was then standing a train of the other railway company, headed by an engine under which the fireman, plaintiff, was then working. They undertook to couple the cars which they were switching to the standing train, as a matter of convenience, and, in doing so, struck the rear of the train with such force as to move the engine and cause injuries to the fireman who was working under it. Specific questions were not submitted to the jury, notwithstanding suggestions made by defendants’ counsel after the judge had charged them, and they returned a general verdict in favour of the plaintiff.—*Held*, affirming

the judgment appealed from (24 Man. R. 544), that in so proceeding to couple the cars they had switched or to the standing train the defendants’ train crew were still acting within the scope of their employment in the defendants’ business and, as they performed the work in a negligent manner, the defendants were liable in damages for the injuries caused to the plaintiff.—*Per Duff, J.*—The question, whether the acts of negligence of the company’s servants were done in course of their employment was a question of fact for the jury in respect of which there was evidence to support their finding in favour of the plaintiff. *Grand Trunk Pacific Railway Co. v. Pickering*, 1, 393.

123. *Shipping contract—Carrying person in charge of live stock—Free pass—Release from liability—Approved form—Negligence—Action by dependents—Conflict of laws—“Railway Act,” R. S. C., 1906, c. 37, s. 340.*—The shipping bill for live stock, to be carried from Manitoba to its destination in the province of Quebec, was in a form approved by the Board of Railway Commissioners and provided that, if the person in charge of the stock should be carried at a rate less than full passenger fare on the train by which the stock was transported, the company should be free from liability for death or injury whether caused by the negligence of the company or of its servants. C. travelled by the train in charge of the stock upon a “Live-Stock Transportation Pass” and signed conditions indorsed in English thereon by which he assumed all risks of injury and released the company from liability for damages, to person or property while travelling on the pass, whether caused by negligence or otherwise. While the train was passing through the province of Ontario, an accident happened through the negligence of the company’s employees and C. was killed. In an action by his dependents, instituted in the province of Quebec, it was shewn that C. could neither read nor write, except to sign his name, and that he only understood enough English to comprehend orders in respect of his occupation as a stook-man: there was no evidence that the nature of the conditions was explained to him:—*Held* (Fitzpatrick, C.J., dissenting), that the railway company was liable for damages in the action by the dependents.—*Per Davies, Il-lington, Duff and Brodeur, J.J.* (Fitzpatrick, C.J., and Anglin, J., *contra*), that, as C. could not have known the nature of the conditions or that they released the company from liability, and the company had not done what was reasonably sufficient to give him notice of the conditions on which he was being carried, the company was liable in damages either under the law of Ontario or that of Quebec.—*Per Anglin, J.*—Although no action would lie in Ontario unless the deceased would have had a right of action, had he survived, and such an action would have been barred there by the contract signed by him, nevertheless, in Quebec, where there is no such rule of law, the action would lie, though the wrongful act had been committed in Ontario, as it was of a class actionable in Ontario. *Machado v. Fontes* (1897), 2 Q. B. 231, applied.—Section 340 of the “Railway Act,”

R. S. C., 1906, ch. 37, provides that "no contract, condition, . . . or notice made or given by the company impairing, restricting or limiting its liability in respect of the carriage of any traffic shall . . . relieve the company from such liability unless such class of contract . . . shall have been first authorized or approved by order or regulation of the Board. (2) The Board may in any case or by regulation, determine the extent to which the liability of the company may be so impaired, restricted or limited." The Board of Railway Commissioners made an interim order permitting the use by the company, until otherwise determined, of the shipping form used, but did not expressly authorize the form containing the conditions signed by deceased.—*Held, per Fitzpatrick, C.J., and Davies and Anglin, J.J.* (Idington, Duff and Brodeur, J.J., *contra*), that the contract signed by deceased was one of a class of contracts authorized by the Board.—*Per Duff, J.*—The contract signed by deceased could not have the effect of limiting the liability of the company in respect of death because it was not in a form authorized or approved by the Board of Railway Commissioners and there had been no order or regulation made by the Board expressly determining the extent to which the company's liability should be impaired, restricted or limited as provided by s.-s. 2 of s. 340 of the "Railway Act."—Judgment appealed from, affirming the judgment of the Superior Court (Q. R. 46 S. C. 319) affirmed. *Canadian Pacific Railway Co. v. Parent*, li., 234.

124. *Right-of-way—Clearance of combustible matter—Burning worn-out ties—Injury from spread of fire—Limitation of action—“Operation of the railway”*—“*Railway Act*” (R. S. C. [1906] c. 37, ss 297, 306).]—*Held, per Fitzpatrick, C.J., and Duff, Anglin and Brodeur, J.J.*, that when worn-out ties are burned by a railway company on its right-of-way in performance of the duty imposed by s. 297 of the "Railway Act" to keep the right-of-way free from unnecessary combustible matter any damage or injury resulting therefrom is caused by reason of the "operation of the railway" within the meaning of that phrase in s. 306, and the right of action for such damage or injury is prescribed by one year.—*Per Duff, J.*—The injury in such case may be caused by reason of the "operation of the railway" though the company, in burning the ties, was not performing the duty imposed by s. 297.—*Per Davies and Idington, J.J.*, dissenting.—By s.-s. 2 of s. 306 the application of the section is limited to cases in which the injury was caused "in pursuance of and by the authority of this Act or of the special Act" and as the burning of the ties was not so authorized the prescription could not be relied on.—*Held, also, Idington, J.*, dissenting, that s.-s. 4 of s. 306 did not prevent the application of the provision in s.-s. 1 for limiting the time in which action could be brought.—The decision of the Appellate Division (32 Ont. L. R. 104) maintaining the judgment at the trial (31 Ont. L. R. 419) was affirmed. *Greer v. Canadian Pacific Railway Co.*, li., 338.

125. *Negligence—Ejecting trespasser from moving train—Imprudence—Liability for act of servant—Master and servant.*]—As a train was moving away from a station, where it had stopped, the conductor ordered a brakeman to eject two trespassers from it. On proceeding to do so the brakeman found a man stealing a ride upon the narrow ledge of the engine-tender and, in a scuffle which ensued, the plaintiff, who was on the edge of the ledge but was not seen by the brakeman owing to the darkness, was pushed off the train and injured. In an action for damages, the jury found that the brakeman had been at fault in attempting to eject the man whom he saw while the train was in motion and that it was "dubious" whether he was aware of the presence of the plaintiff in the dangerous position.—*Held, per Fitzpatrick, C.J., and Idington and Anglin, J.J.*, affirming judgment appealed from (9 West. W. R. 1052), that the reckless indifference of the brakeman, in circumstances in which he ought to have been aware of the presence of the plaintiff, was a negligent act for which the railway company was liable.—*Per Davies and Brodeur, J.J.*, dissenting.—As it was not shewn by the evidence nor found by the jury that the brakeman was aware of the presence of the plaintiff in a dangerous position the plaintiff, being a trespasser, could not recover damages against the company for the injuries he sustained. *Canadian Northern Railway Co. v. Diplock*, liii., 376.

126. *Negligence—Construction of statute*—“*Railway Act*” R. S. C. 1906, c. 37, s. 306—*Constitutional law—“Civil rights”*—*Jurisdiction of Dominion Parliament—Provincial legislation*—“*Employers’ Liability Act*” R. S. M., 1913, c. 61—*Paramount authority—“Operation of railway”*—*Limitation of actions—Conflict of laws.*]—An employee of a Dominion railway company sustained injuries while engaged in unloading rails from a car alleged to have been unsuitably equipped for such purposes. The unloading of the rails was for the convenience of the company in using them to replace other rails already in use on the constructed tracks. An action was brought to recover damages, under the Manitoba "Employers' Liability Act" R. S. M., 1913, c. 61, within two years from the time of the accident, the limitation provided by s. 12 of that Act, but after the expiration of the limitation of one year provided, in respect of actions against Dominion railway companies, by the first sub-section of s. 306 of the "Railway Act," R. S. C., 1906, c. 37. The fourth sub-section of s. 306 provides that such railway companies shall not be relieved from liability under laws in force in the province where responsibility arises.—*Held*, affirming the judgment appealed from (25 Man. R. 655), that, in the exercise of authority in respect of railways subject to its jurisdiction, the Parliament of Canada had power to enact the first sub-section of s. 306 of the "Railway Act," R. S. C., 1906, c. 37, providing a limitation of one year for the commencement of actions against Dominion railway companies for the recovery of damages for injury sustained by reason of the

construction or operation of the railway. *Grand Trunk Rwy. Co. v. Attorney-General for Canada* (1907) A. C. 65, applied.—*Per Fitzpatrick, C.J., and Davies, Anglin and Brodeur, JJ.* (Idington, J., *contra*).—The fourth sub-section of s. 306 of the "Railway Act," R. S. C., 1906, c. 37, does not so qualify the limitation provided by the first sub-section thereof as to admit the application, in such cases, of a different limitation provided under provincial legislation. *Greer v. Canadian Pacific Rwy. Co.* (51 Can. S. C. R. 338), followed.—The unloading of rails for the convenience of a railway company to be used in replacing those already in use on the constructed permanent way is included in "operation of the railway" under the first sub-section of s. 306 of the "Railway Act," R. S. C., 1906, c. 37. Idington, J., *contra*.—The judgment appealed from (25 Man. R. 655), was reversed, Idington, J., dissenting. *Canadian Northern Railway Co. v. Pzeniczuy*, liv., 36.

127. *Protection of crossings—Party interested—Powers of Parliament, xxxvii., 232.*  
See RAILWAYS.

128. *Defects in road-bed—Dangerous way—Vis major—Onus of proof—Latent defects, xxxvii., 632.*  
See RAILWAYS.

129. *Operation of railway—Yard siding—Stopping platform—Private passage—Dangerous way—Negligence—Procedure at trial—Objections to charge to jury—Practice, xl., 194.*  
See PRACTICE.

130. *Negligence—Contributory negligence—Accident at crossing—Life insurance—Deduction from damages—Practice—Appeal—Equal division of opinion—Costs, Cam. Cas., 228.*  
See NEGLIGENCE.

131. *Station buildings—Dangerous way—Invitation or license—Breach of duty—Negligence—Questions for jury, Cam. Cas., 262.*  
See NEGLIGENCE.

132. *Operation of railway—Negligence—Moving train—Regulations—Personal liability of employee—Estoppel, Cam. Cas. 589.*  
See NEGLIGENCE.

133. *Negligence—Tort—Liability of the Crown—Demise of the Crown—Personal action—Release—Operation of railway—Common employment—Exchequer Court Act, 50 & 51 V. c. 16, s. 16 (c)—Appeals to Privy Council, xli., 71.*  
See NEGLIGENCE.

134. *Negligence—Operation of railway—Damages—Solutum doloris—Verdict—New trial. C. P. R. v. Lachance, xliii., 205.*  
See DAMAGES.

135. *Negligence—Electric railway—Breach of company's rules. Winnipeg Electric Railway Co. v. Hill, xlvi., 654.*

136. *Negligence—Findings of jury—Volens—Pleading. Grand Trunk Ry. Co. v. Brulot, xlvii., 629.*

137. *Fire insurance—Insurance on lumber—Conditions—Warranty—Railway on lot—Security to bank—Chattel mortgage, xlvii., 216.*  
See INSURANCE, FIRE.

138. *Negligence—Operation of tramway—Passenger riding on platform—Dangerous arrangement of car—Evidence, xlvii., 395.*  
See NEGLIGENCE.

139. *Negligence—Operation of railway—Protection of passenger—Evidence—Mere conjecture, xlvii., 397.*  
See NEGLIGENCE.

140. *Negligence—Tramway—Explosion—Defective controller—Inspection, xlvii., 612.*  
See TRAMWAYS.

141. *Negligence—Operation of tramway—Carelessness of person injured—Reckless conduct of motorman. City of Calgary v. Harnovis, xlvi., 494.*  
See NEGLIGENCE.

142. *Action—Damages—Timber on pre-empted lands—Rights of pre-emptor—B. C. "Land Act," R. S. B. C., 1911, c. 129, ss. 77 et seq. and 132—Negligence—Fire set by railway locomotive, xlix., 33.*  
See DAMAGES.

143. *Practice—Action by dependents—B. C. "Families Compensation Act"—Release by deceased—Defence to action—Repudiation—Fraud—Setting aside release—Personal representative—Right of action—Return of money paid—Limitation of actions—General statutory provision—Carriers—Private Act—B. C. "Consolidated Railway Company's Act"—Statute—R.S.B. C., 1911, c. 82,—"Lord Campbell's Act"—(B.C.) 59 V. c. 55, s. 60, xlix., 470.*  
See PRACTICE AND PROCEDURE.

144. *Negligence—Operation of tramway—Employers' liability—Accident in course of employment—"Workmen's Compensation Act"—Right of action—Dependent relations—Construction of statute—(Que.), 9 Edw. VII., c. 66, ss. 3, 15—R. S. Q. 1909, arts. 7321, 7323, 7335—Incompatible enactment—Repeal—Art. 1056 C. C.—Practice—Charge to jury—Misdirection—Excessive damages—Modification of verdict—New trial—Art. 508 C. P. Q. Lamontagne v. Quebec R. R., Light, Heat and Power Co., l., 423.*  
See NEGLIGENCE.

145. *Operation—Equipment—Coupling apparatus—Duty to provide and maintain—Protection of employees—Inspection—"Inevitable accident"—Findings of jury—Evidence—Common employment—Conflict of laws—"Railway Act," R. S. C., 1906, c. 37, s. 264—Construction of statute—Vis major, li., 113.*  
See NEGLIGENCE.

146. *Negligence—Operation of railway—Unsafe roadbed—Speed of trains—Disobedience of orders—Answers by jury—“Lord Campbell’s Act”—Injury sustained outside province—Right of action in Manitoba*, lii., 227.

See NEGLIGENCE.

147. *Damages—Verdict—Excessive award—Personal injuries—Complete reparation—Loss of prospective earnings—Pain and suffering—Evidence—Mortuary tables—Practice—New trial. C. P. R. v. Jackson*, lii., 281.

See DAMAGES.

148. *System of construction—Exposed switch-roads—Negligence—Dangerous contrivance—Verdict—Findings against evidence*, liii., 323.

See NEGLIGENCE.

## 10. SUBSIDIES.

149. *Appeal—Jurisdiction—Discretion of Governor in Council—Stated case—Railway subsidies—Construction of statute—3 Edw. VII., c. 57—Conditions of contract—Estimating cost of constructing line of railway—Rolling stock and equipment.*] — Where the jurisdiction of the Supreme Court of Canada to entertain an appeal was in doubt, but it was considered that the appeal should be dismissed on the merits, the court heard and decided the appeal accordingly. (Cf. *Bain v. Anderson & Co.* (28 Can. S. C. R. 481).—The provisions of the Act, 3 Edw. VII. c. 57, authorizing the granting of subsidies in aid of the construction of railways are not mandatory, but discretionary in so far as the grant of the subsidies by the Government in Council is concerned.—On a proper construction of the said Act it does not appear to have been the intention of Parliament that the cost of rolling stock and equipment should be included in the cost of construction in estimating the amount of subsidy payable to the company in aid of the “Pheasant Hills Branch” of their railway under the provisions of that Act, notwithstanding that the said Act did not especially exclude the consideration of the cost of equipment in the making of such estimate as had been done in former subsidy Acts with similar objects, and that the Governor in Council imposed the duty of efficient maintenance and equipment of the branch as a condition of the grant of the subsidy. *Canadian Pacific Ry. Co. v. The King (Re Pheasant Hills Branch)*, xxxviii., 137.

150. *Railway aid—Provincial subsidy—Construction of statute—60 Vict. c. 4, s. 12 (Que.)—54 Vict. c. 88, s. 1 j. (Que.)—Breach of conditions—Compromise by Crown officers—Obligation binding on the Crown—Right of action—Extension of railway—Application of subsidy.*]—The suppliants claimed that by the Quebec statutes, 54 Vict. c. 88 and 60 Vict. c. 4, a balance was due them on subsidy in aid of the Baie des Chaleurs Railway; that the subsidy was attributable to the first 60 miles from Metapedia towards Gaspé Basin, that such sub-

sidy was subject only to the conditions in the second part of s.-s. 1j of the Act, 54 Vict. and that the Provincial Government was bound by the terms of a transaction with the Lieutenant-Governor in Council compromising for the land subsidy at a rate per acre in cash. The Supreme Court affirmed the judgment appealed from (Q. R. 15 K. B. 120), dismissing the petition of right and holding that the subsidy applied to the 80 miles terminating at or near Gaspé Basin, and that the construction placed on the statutes by officers of the Crown in effecting the compromise and part payment in money gave the suppliants no right of action against the Crown for the balance claimed by them. *DeGalindez et al. v. The King*, xxxix., 682.

151. *Constitutional law—Railway aid—Land subsidy—Crown lands—Interests of private owner—“Free grant”—“Owner”—“Real property.”*] — The Dominion statute, 53 Vict. c. 4, authorized the granting of aid for the construction of a railway by a subsidy in Crown lands, and, by s. 2, it was declared that such grants should be “free grants” subject only to the payment, on the issue of patents thereof, of the costs of survey and incidental expenses, at the rate of ten cents per acre. The lands in question formed part of the land subsidy, earned by the railway company and reserved and set apart for that purpose by order-in-council, which had been conveyed by deed poll to the appellants by the railway company prior to the issue of a Crown grant. While still unpatented, these lands had been rated for taxes and condemned for arrears of taxes under the statute of Alberta, 7 Edw. VII. c. 11.—*Held*, that the interest of the appellants in the said lands was subject to taxation and liable to be dealt with under the provincial statute, although letters patent of grant thereof by the Crown had not issued.—*Held*, also, that allotment of these lands as “free grants,” under the subsidy Act, related only to exemption from the usual charges made in respect of public lands by or on behalf of the Crown, except the cost of survey, etc., and did not exempt the appellants’ interest therein from taxation under the provisions of the provincial statute, although neither the legal estate nor any interest therein remaining in the Crown could be liable to taxation.—Judgment appealed from (2 Alta. L. R. 446), affirmed. *Rural Municipality of North Cypress v. Canadian Pacific Railway Co.* (35 Can. S. C. R. 550), distinguished. *Calgary & Edmonton Land Co. v. Attorney-General of Alberta*, xlv., 170.

AND see STATUTE.

152. *Title to land—Railway aid—Land grant—Crown patents—Dominion Lands Regulations—Reservation of minerals—Construction of statute—53 Vict. c. 4—R. S. C. (1886) c. 54—Free grants—Parliamentary contract*, Cout. Cas. 271.

See TITLE TO LAND.

153. *Construction of statute—Assessment and taxes—Imposition of taxes—R. S. N. S. [1900] cc. 70, 73, xxxv., 98.*

See ASSESSMENT AND TAXES.

154. *Statute — Construction — Application — Taxation — Exemption — Frontage lots—Local improvements, 63 & 64 V. c. 57, s. 13; c. 58, s. 22 (Man.)—R. S. M., 1902, c. 166; 10 Edw. VII., c. 74 (Man.), liv., 589.*

See ASSESSMENT AND TAXES.

## 12. OTHER MATTERS.

155. *Constitutional law — Railway company—Negligence — Agreements for exemption from liability—Power of Parliament to prohibit.* — An act of the Parliament of Canada providing that no railway company within its jurisdiction shall be relieved from liability for damages for personal injury to any employee by reason of any notice, condition or declaration issued by the company, or by any insurance or provident association of railway employees; or of rules or by-laws of the company or association; or of privity of interest or relation between the company and association or contribution by the company to funds of the association; or of any benefit, compensation or indemnity to which the employee or his personal representatives may become entitled to or obtain from such association; or of any express or implied acknowledgment, acquittance or release obtained from the association prior to such injury purporting to relieve the company from liability, is *intra vires* of said Parliament. Nesbitt, J., dissenting. (Appeal to Privy Council dismissed, [1907] A. C. 65). *In re Railway Act, 1904*, xxxvi., 136.

156. *Judicial sale of railways—Interested bidder — Disqualification as purchaser — Counsel and solicitors—Art. 1484 C. C.—Construction of statute—Discretionary order—Review by appellate court—4 & 5 Edw. VII. c. 158 (D.)—Public policy.*—Solicitors and counsel retained in proceedings for the sale of property are not within the classes of persons disqualified as purchasers by article 1484 of the Civil Code of Lower Canada.—The Act, 4 & 5 Edw. VII. c. 158, directed the sale of certain railways separately or together as in the opinion of the Exchequer Court might be for the best interests of creditors, in such mode as that court might provide, and that such sale should have the same effect as a sheriff's sale of immovables under the laws of the Province of Quebec. The judge of the Exchequer Court directed the sale to be by tender for the railways *en bloc* or for the purchase of each or any two of the lines of which they were constituted.—*Held*, that the judge had properly exercised the discretion vested in him by the statute in accepting a tender for the whole system, in preference to two separate tenders for the several lines of railway at a slightly increased amount, and that his decision should not be disturbed on appeal. Judgment appealed from (10 Ex. C. R. 139), affirmed. *Rutland Railroad Co. v. Béique*; *White v. Béique*; *Morgan v. Béique*, xxxvii., 303.

157. *Constitutional law — Legislative jurisdiction — Application of statute — “The Prairie Fires Ordinance”—Con. Ord. N. W.*

*T. (1898) c. 87, s. 2—N. W. T. Ord. 1903, c. 25 (1st sess.) and c. 30 (2nd sess.)—Works controlled by parliament—Operation of Dominion Railway.*—The provisions of s. 2, s.-s. (2), of c. 87, Con. Ord. N. W. T. (1898), as amended by the N. W. T. Ordinances, c. 25 (1st sess.) and c. 30 (2nd sess.) of 1903, in so far as they relate to fires caused by the escape of sparks, etc., from railway locomotives, constitute “railway legislation,” strictly so-called, and, as such, are beyond the competence of the Legislature of the North-West Territories. *The Canadian Pacific Railway Co. v. The Parish of Notre Dame de Bonsecours* ((1899) A. C. 367), and *Madden v. The Nelson and Fort Sheppard Railway Co.* ((1899) A. C. 626), referred to.—The judgments appealed from were reversed, Idington, J., dissenting. *Canadian Pacific Ry. Co. v. The King*, xxxix., 476.

158. *Grand Trunk Railway of Canada—Passenger tolls — Third-class fares — Construction of statutes — Repeal—16 Vict. c. 37, s. 3 (Can.)—Amendment by subsequent railway legislation.* — The legislation by the late province of Canada and the Parliament of Canada since the enactment of s. 3 of the statute of Canada, 16 Vict. c. 37, in 1852, has not expressly or by implication repealed the provisions of that section requiring third-class passenger carriages to be run every day upon the line of the Grand Trunk Railway of Canada, between Toronto and Montreal, on which the fare or charge for each third-class passenger shall not exceed one penny currency for each mile travelled. (Appeal to Privy Council; 50 Can. Gaz. 591; dismissed with costs; 17th Feb., 1909). *Grand Trunk Ry. Co. v. Robertson*, xxxix., 506.

159. *Operation of railways—Interchange of traffic—Use of tracks—Interswitching—Conditions imposed—Traffic rates—Jurisdiction of Board of Railway Commissioners—Railway Act, 1903, ss. 137, 214, 253, 266, 276, 277—4 Edw. VII. c. 42, s. 8—Occupation of property of other companies—Construction of statute. Grand Trunk Ry. Co. v. Can. Pac. Ry. Co. and City of London, Cout. Cas. 396.*

160. *Vendor and vendee—Sale of securities—Interpretation of contract—Arts. 1018, 1019 C. C.—Debtor and creditor—Right of way claims—Legal expenses incurred in settlement, xxxviii., 422.*

See CONTRACT.

## RATEPAYER.

1. *Municipal council—Illegal expenditure—Action by ratepayer—Intervention of Attorney-General—Validating Act—Right of action, xxxix., 657.*

See MUNICIPAL CORPORATION.

2. *Constitutional law — Taxation on income—Dominion officials and employees, x 597.*

See MUNICIPAL CORPORATION.



**RATIFICATION.**

1. *Municipal corporation—Sale of corporate property—Committee of council—Authority to sell*, xxxix., 586.

See MUNICIPAL CORPORATION.

2. *Trust company law—Extra remuneration—Ultra vires act of directors—Ratification—Recovery of moneys illegally paid—Mistake of law*, xxxix., 614.

See COMPANY.

3. *Bills and notes—Material alteration—Forgery—Partnership mandate—Assent of parties—Liability of indorser—Construction of statute—"Bills of Exchange Act," xl., 458.*

See FORGERY.

4. *Bill of exchange—Forgery—Estoppel*. Cam. Cas. 275.

See BILLS AND NOTES.

**"REAL PROPERTY ACT."**

1. *Married woman—Separate property—Liability for debts of husband—Execution of judgment—Registry law—"Real Property Act"—"Married Women's Act," R. S. M. (1891) c. 95 — Conveyance during coverture.*]—Where land was transferred, as a gift, to a married woman by her husband, during the time that the "Married Women's Act," R. S. M. (1891) c. 95, was in force, the husband being then solvent, and a certificate of title therefor issued in her name under the provisions of the Manitoba "Real Property Act," the beneficial as well as the legal interest in the land vested in her for her separate use, and neither the land nor its proceeds can be taken in execution for debts of the husband subsequently incurred, notwithstanding the provisions of the second section of the "Married Women's Act" respecting property received by a married woman from her husband during coverture. *Fraser v. Douglas*, xl., 384.

2. *Municipal corporation—Powers—Lana tax sales—Purchase by corporation—Vesting of title—Manitoba Real Property Act—Agreement to re-convey—Necessity of by-law*, xli., 18.

See MUNICIPAL CORPORATION.

3. *Registry laws—Manitoba, ss. 100, 130—Agreement for mortgage—Caveat—"Interest in land"—Registration subject to incumbrance—Indorsement on instrument registered*, l., 1.

See REGISTRY LAWS.

**RECEIVER.**

*Appointment of court official—Management of business—Supervision and control—Laches.*]—The receiver of a partnership who is directed by the court to manage the business until it can be sold should exercise the same reasonable care, oversight and

control over it as an ordinary man would give to his own business, and if he fails to do so he must make good any loss resulting from his negligence.—The fact that the receiver is the sheriff of the district does not absolve him from this obligation though the partners consented to his appointment knowing that he would not be able to manage the business in person.—The Chief Justice and MacLennan, J., dissented, taking a different view of the evidence. *Plisson v. Duncan*, xxxvi., 647.

**RECORDER'S COURT.**

1. *Operation of tramway—Powers of municipal corporation—Legislative authority—Use of streets—By-law—Conditions imposed—Penalty for breach of conditions—Repeal of by-law—Contractual obligation—Offence against by-law—Jurisdiction of Recorder's Court—Prohibition.*]—The city enacted a by-law granting the company permission to use its streets for the construction and operation of a tramway and, in conformity with the provisions and conditions of the by-law, the city and the company executed a deed of agreement respecting the same. A provision of the by-law was that "the cars shall follow each other at intervals of not more than five minutes, except from eight o'clock at night to midnight, during which space of time they shall follow each other at intervals of not more than ten minutes. The council may, by resolution, alter the time fixed for the circulation of the cars in the different sections." For neglect or contravention of any condition or obligation imposed by the by-law, a penalty of \$40 was imposed to be paid by the company for each day on which such default occurred, recoverable before the Recorder's Court, "like other fines and penalties." An amendment to the by-law, by a subsequent by-law, provided that "the present disposition shall be applicable only in such portion of the city where such increased circulation is required by the demands of the public."—*Held*, that default to conform to the conditions and obligations so imposed on the company was an offence against the provisions of the by-law, and that, under the statute, 29 & 30 Vict. c. 57, s. 50 (Can.), the exclusive jurisdiction to hear and decide in the matter of such offence was in the Recorder's Court of the city of Quebec.—*Judgment* appealed from (Q. R. 17 K. B. 256), affirmed. *Quebec Rwy., Light & Power Co. v. Recorder's Court and City of Quebec*, xli., 145.

2. *Collection of municipal taxes—Action in Recorder's Court—Montreal city charter, 62 V. c. 58 (Que.)—Appeal—Jurisdiction—Judgment by Court of Review—Special tribunal—Court of last resort—Supreme Court Act, R. S. [1906] c. 139, s. 41.*]—Under the provisions of the Montreal City Charter, 62 V. c. 58, s. 484 (Que.), an action was brought by the city, in the Recorder's Court, to recover taxes on an assessment of the company's property in the city. Judgment was recovered for \$39,691.80, and an appeal to the Superior Court, sitting in review, under the provisions of the Quebec statute, 57 V. c. 49, as amended by 2 Edw. VII. c. 42,



was dismissed. On an application by the company to affirm the jurisdiction of the Supreme Court of Canada to hear an appeal from the judgment of the Court of Review.—*Held*, that the Superior Court, when exercising its special appellate jurisdiction in reviewing this case, was not a court of last resort created under provincial legislation to adjudicate concerning the assessment of property for provincial or municipal purposes within the meaning of s. 41 of "The Supreme Court Act," R. S. [1906] c. 139, and, consequently, there could be no jurisdiction to entertain the appeal. *Montreal St. R'way Co. v. City of Montreal*, xli., 427.

### REDEMPTION.

1. *Construction of deed—Mortgage or sale—Equity of redemption.* *McLean v. McKay*, Cout. Cas. 334.

2. *Assignment by mortgagor for benefit of creditors—Priorities—Assignment of claims of execution creditors—Redemption—Assignments and Preferences Act, s. 11 (Ont.)*, xxxix., 229.

See MORTGAGE.

3. *Chattel mortgage—Fraudulent conveyance—Pleading—Practice—Approbating and reprobating transaction—Right to redeem—Oral evidence to vary deed—Sheriff's sale—Equity of redemption—Execution.* Cam. Cas. 251.

See PLEADING.

### REFEREE.

1. *Assessment of damages—Wilful trespass—Contradictory evidence*, xxxvi., 152.

See PRACTICE.

2. *Appeal—Jurisdiction—Final judgment—Time for appealing—Exchequer Court Act R. S. C., 1906, c. 140, s. 82—Exchequer Court Rules*, xli., 1.

See APPEAL.

### REFERENCES TO SUPREME COURT OF CANADA.

1. *Constitutional law—Sunday observance—Reference to Supreme Court—R. S. C. c. 135, s. 37—54 & 55 Vict. c. 25, s. 4—Legislative jurisdiction.*—The statute 54 & 55 Vict. c. 25, s. 4, does not empower the Governor-General in Council to refer to the Supreme Court for hearing and consideration supposed or hypothetical legislation which the legislature of a province might enact in the future. Sedgewick, J., dissenting.—The said section provides that the Governor-in-Council may refer important questions of law or fact touching any other matter with reference to which he sees fit to exercise this power.—*Held*, Sedgewick, J., *contra*, that such "other matter" must be *ejusdem generis* with the subjects specified. (Leave to appeal to Privy Council refused, 26th July, 1905.)

*In re Legislation respecting Abstention from Labour on Sunday*, xxxv., 581.

AND SEE CONSTITUTIONAL LAW.

2. *Constitutional law—Interprovincial and international ferries—License—Franchise—Exclusive right—Powers of Parliament—R. S. C. 1886, c. 97—51 Vict. c. 23 (D.)*—Chapter 97 R. S. C. 1886, "An Act respecting Ferries," as amended by 51 Vict. c. 23, is *intra vires* of the Parliament of Canada. The Parliament of Canada has authority to, or to authorize the Governor-General in Council to, establish or create ferries between a province and any British or foreign country, or between two provinces. The Governor-General in Council, if authorized by Parliament, may confer, by license or otherwise, an exclusive right to any such ferry. *Re International and Interprovincial Ferries*, xxxvi., 206.

3. *Constitutional law—Penitentiaries—Imprisonment of criminals—Expense of maintenance—B. N. A. Act, 1867—Legislative jurisdiction of Parliament—Provincial legislation—Practice on references by Governor-General in Council.*—*Seem*, that, in references by the Governor-General in Council, it is improper for the Supreme Court of Canada to express opinions upon cognate subjects not falling within the terms of the question as submitted for consideration. *Re New Brunswick Penitentiary*, Cout. Cas. 24.

AND see CONSTITUTIONAL LAW.

4. *Constitutional law—Legislative jurisdiction—Incorporation of trading companies—Foreign corporations—Judicial opinions on references—Private rights—45 Vict. c. 119 (D.)*—It is expedient that opinions should be given upon matters referred for examination and report under the provisions of the Supreme and Exchequer Courts Act, where the questions may affect private rights that may come before the court judicially, and which ought not to be passed upon without a trial. *Re Quebec Timber Co.*, Cout. Cas. 43.

AND see CONSTITUTIONAL LAW.

5. *Amendment to "Canada Temperance Act." Re "Canada Temperance Act,"* Cout. Cas., 204.

6. *Construction of statute—Appeal per saltum—Winding-up Act—Application under s. 76—Defective proceedings*, xxxvi., 494.

See STATUTE.

7. *Appeal—Jurisdiction—Time for appealing—Exchequer Court Act, R. S. C. (1906) c. 140, s. 82—Exchequer Court rules*, xli., 1.

See APPEAL.

8. *Legislative jurisdiction—Constitutional law—Education—Company—Private bills—Questions referred for opinions—Construction of statutes*, Cout. Cas. 1.

See LEGISLATION.

9. *Legislative jurisdiction—Constitutional law—Incorporation of companies—Private*

bill—Property and civil rights — Construction of statutes, *Cout. Cas.* 48.

See LEGISLATION.

10. *Constitutional law—Construction of statute*—"B. N. A. Act, 1867," ss. 91, 92, 101—"Supreme Court Act," R. S. C. 1906, c. 139, ss. 3, 60—References by Governor-General in Council—Opinions and advice—Jurisdiction of Parliament—Independence of judges—Judicial functions—Constitution of courts—Administration of the laws of Canada—Provincial legislative jurisdiction. In *Re Reference by the Gov.-Gen. in Council*, xliii., 536.

See APPEAL; CONSTITUTIONAL LAW.

## REGISTRY LAWS.

1. *Constitutional law—Imperial Act in force in Yukon Territory*—2 & 3 *Vict.* c. 11 (*Imp.*)—R. S. C. c. 50—Title to land—"Torrens System"—Transfer by registered owner—Fraud—Litigious rights—Notice of *lis pendens*—Irregular registration—Indorsements upon certificate of title—Construction of statute—"Land Titles Act, 1894"—*Caveat*—57 & 58 *Vict.* c. 28, s. 126 (D.)—61 *Vict.* c. 32, s. 14 (D.)—Pleading—Objections taken on appeal—Yukon Territorial Court Rules—Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117—Waiver—*Estoppel.*—The provisions of the Imperial Act, 2 & 3 *Vict.* c. 11, in respect to the registration of notices of *lis pendens* and for the protection of *bonâ fide* purchasers *pendente lite* are of a purely local character and do not extend their application to the Yukon Territory by the introduction of the English law generally as it existed on the fifteenth of July, 1870, under the eleventh section of "North-West Territories Act," R. S. C. c. 50.—Under the provisions of "The Land Titles Act, 1894," s. 126, a *bonâ fide* purchaser from the registered owner of land subject to the operation of that statute is not bound or affected by notice of *lis pendens* which has been improperly filed and noted upon the folio of the register containing the certificate of title as an incumbrance or charge upon the land. The exception as to fraud referred to in the 126th section of the Act means actual fraudulent transactions in which the purchaser has participated and does not include constructive or equitable frauds. *The Assets Company v. Mere Roihi* (21 *Times L. R.* 311), referred to and approved. *Syndicat Lyonnais du Klondyke v. McGrade*, xxxvi., 251.

2. *Chattel mortgage—Registration—Subsequent purchaser—Removal of goods.*—For purposes of registration of deeds the North-West Territories is divided into districts, and it is provided by ordinance that registration of a chattel mortgage, not followed by transfer of possession, shall only have effect in the district in which it is made. It is also provided that if the mortgaged goods are removed into another district a certified copy of the mortgage shall be filed in the registry office thereof within three weeks from the time of removal, otherwise the mortgage shall be null and void as against subsequent purchasers, etc.—*Held*, reversing the

judgment in appeal, that the "subsequent purchaser" in such case must be one who purchased after the expiration of the three weeks from time of removal, and that though no copy of the mortgage is filed as provided it is valid as against a purchase made within such period. *Hulbert v. Peterson*, xxxvi., 324.

3. *Equitable mortgage—Mines and minerals—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgagee—Priority—Actual notice—Lien for Crown dues paid as rent*—C. S. N. B. c. 30, s. 139.1—The courts below (37 *N. B. Rep.* 140; 3 *N. B. Eq.* 28), held that mining leases of lands in the province of New Brunswick and of the minerals therein, issued by the Crown to the appellant subsequent to a mortgage executed by it in the State of New York in favour of the respondent, a company incorporated under the laws of that State, which do not reserve the minerals to the State, were subject to the mortgage; that a judgment creditor of the mortgagor (who purchased the leases at a sheriff's sale in execution of his own judgment and afterwards obtained new leases in his own name from the Crown), took the new lease subject to the mortgage; that the mortgage, though not registered under the "General Mining Act," C. S. N. B. (1903), c. 30, s. 139, was not void as against a judgment creditor who had actual notice of the mortgage and whose judgment was not registered under that section at the time of the commencement of the suit, and that the judgment creditor was not entitled to a prior lien for rent paid to the Crown on the license declared to be held in trust for the mortgagee. An appeal to the Supreme Court of Canada was dismissed, *MacLennan, J.*, dissenting. *Mineral Products Co. v. Continental Trust Co.*, xxxvii., 517.

4. *Sale of standing timber—Registration of real rights—Ownership—Distinction of things—Movable and immovable—Priority of title.*—A deed of sale of the right, during twenty years, to cut and remove standing timber, with permission to make and construct such roads and buildings as might be necessary for that purpose, does not affect the title to the lands on which the trees are growing but merely conveys the personal right to the timber as and when cut under the license. The registration of such a deed, in conformity with the provisions of the Civil Code of Lower Canada respecting the registration of real rights, is unnecessary and, if effected, cannot operate to secure to the vendee any right, privilege or priority of title in or to the timber as against a subsequent purchaser of the lands. *Watson v. Perkins* (18 *L. C. Jur.* 261), distinguished. The judgment appealed from (*Q. R.* 16 *K. B.* 471), was affirmed. *Laurentide Paper Co. v. Baptist*, xli., 105.

5. *Homestead lands—"Land Titles Act," 6 Edw. VII. c. 24; 8 Edw. VII. c. 29 (Sask.)—Exemption from seizure—Registered incumbrance—"Exemptions Ordinance," N. W. T., Con. Ord., 1898, c. 27.*—Homestead lands, exempt from seizure under execution by the North-West Territories

"Exemptions Ordinance," are not affected by any charge or incumbrance in consequence of the registration of writs of execution against the homesteader under the provisions of the "Land Titles Act" of the province of Saskatchewan, 6 Edw. VII. c. 24, s. 129, as amended by 8 Edw. VII. c. 29, s. 10; consequently, the transferee of such lands under conveyance from such homesteader acquires them free and clear of any incumbrance resulting from the registration of such execution. Judgment appealed from (3 Sask. L. R. 280), affirmed. *North-West Thresher Co. v. Fredericks*, xlv., 318.

6. *Bill of sale—Mortgage—Registration—Affidavit—Verification—B. C. "Bills of Sale Act," 5 Edw. VII., c. 8, s. 7.*—The defendants rendered financial aid to F. & N. enabling them to purchase the stock-in-trade in the possession of a dealer in Vancouver, including also a quantity of goods ordered by him, but not then delivered, a payment on account being made in cash advanced by the defendants and the balance by four promissory notes, in deferred payments, which the defendants indorsed. At the same time new stock to the amount of \$2,700 was purchased by F. & N. from the defendants which was afterwards delivered to them. A bill of sale by way of chattel mortgage was then given by F. & N. to the defendants for the advances so made and to secure them against liability on the indorsements, the proviso for redemption being on payment of the amounts mentioned and also for all goods thereafter supplied by the defendants to F. & N. during the continuance of the security. The bill of sale was registered with an affidavit by the acting-manager of the defendants, at Vancouver, who therein described himself as "secretary" of the company, which office was also held by him. The affidavit stated that the bill of sale was made *bonâ fide* for valuable consideration, namely, the amounts therein mentioned, and other considerations therein set forth, but it did not state that the grantors were justly and truly indebted to the grantees in such sums. About two years later, F. & N. made an assignment for the benefit of creditors to the plaintiff and, on the same day, after the execution of the assignment, but before the assignee had taken possession, the appellants entered into possession of F. & N.'s stock-in-trade by virtue of the bill of sale and refused delivery to the assignee. In an action by the assignee for a declaration that the bill of sale was void as against him and the creditors and to recover possession of the stock-in-trade:—*Held*, that the registration of the bill of sale was not effective against the assignee or the creditors as it had not been verified in conformity with the provisions of the British Columbia "Bills of Sale Act," 5 Edw. VII., c. 8, s. 7. In regard to the goods supplied after the execution of the bill of sale, the onus was upon the defendants to shew that there were such goods in the possession of the mortgagors at the time of the assignment for the benefit of creditors.—Judgment appealed from (18 B. C. Rep. 487), affirmed.—*Per* Duff, J. (Idington, J., *dubitanie*).—The affidavit of *bona fides* required by s. 7 of the British Columbia "Bills of Sale Act," 5 Edw. VII.,

c. 8, may be made by the secretary of a company who, at the time he makes such affidavit, is also *de facto* manager of the company's business. *Gault Bros. v. Winter*, xlix., 541.

7. *Manitoba "Real Property Act," ss. 100, 130—Agreement for mortgage—Caveat—"Interest in land"—Registration subject to incumbrance—Indorsement on instrument registered—Title to land.*—A mortgagee or incumbrance of lands in Manitoba, subject to the "new system" of registration of titles, has such an interest in the lands as entitles him to file a caveat under s. 130 of the "Real Property Act," R. S. M. c. 148; consequently, where the owner of such lands, for valuable consideration, agrees to execute a mortgage thereon in favour of another person, the right thus obtained constitutes an interest in the lands, within the meaning of s. 130, which may be protected by caveat in the manner therein provided; this right is not affected by the terms of s. 100 of the "Real Property Act" limiting the effect of mortgages and incumbrances. The judgment appealed from (25 West. L. R. 602, 14 D. L. R. 332), was affirmed.—*Per* Fitzpatrick, C.J., and Idington and Anglin, JJ.—Where a mortgage has been registered, under the "new system," indorsed by the registrar as being subject to the caveat of a person claiming the right to have a mortgage in his favour executed affecting the same lands, the mortgagee who has been so registered cannot afterwards claim priority over the right of the caveator. *Yockney v. Thompson*, l., 1.

8. *Highway—Old trails of Rupert's Land—Survey—Width of highway—Construction of statute—60 & 61 V. c. 28, s. 19—"North-West Territories Act," s. 108—Transfer of highway—Plans—Dedication—Estoppel—Expenditure of public funds.*—The plaintiff's lands, held under Crown grant of 1887, were bounded on the south by the middle line of Rat Creek (now in the City of Edmonton) and were traversed by one of the "old trails" of Rupert's Land, known as the "Edmonton and Fort Saskatchewan Trail." Upon instructions, under s. 108 of the "North-West Territories Act," as enacted by 60 & 61 Vict. c. 28, s. 19, that portion of the trail was surveyed and laid out on the ground by a Dominion land surveyor shewing its southern boundary approximately as Rat Creek and thus giving it a width upon the plaintiff's lands in excess of the sixty-six feet limited by this section. The plan of this survey was not shewn to have been approved by the Surveyor-General nor was it filed in the land titles office as required by the statutes in force at the time.—*Held*, reversing the judgment appealed from (28 West L. R. 920), that the statute gave the surveyor no power to increase the width of the highway authorized to be laid out by him; that the approval of the Surveyor-General and the filing of the plan in the land titles office were necessary conditions to the transfer of the trail as a public highway and, consequently, the land comprised in the augmentation of the highway remained vested in the plaintiff—Plaintiff sold part of his lands, described as bounded by the northerly

limit of the surveyed trail, and, subsequently, the purchasers, and persons holding lands south of Rat Creek, filed plans of subdivision shewing the surveyed trail as of the full width given by the surveyor. The city also claimed to have expended moneys in improving the roadway at the locality in question.—*Held*, that the registration of the plans of subdivision, made without privity on the part of the plaintiff, was not binding upon him, and that there was not such evidence of expenditure of public moneys or of conduct by the plaintiff — by recognizing the plans as filed—as could preclude him from claiming the lands encroached upon or compensation therefor. *Rowland v. City of Edmonton*, 1, 520.

9. *Construction of statute—Appeal—Jurisdiction — “Torrens system” — Land Titles Act—Registry laws—Confirmation of tax sale—Persona designata—Court of original jurisdiction — Interlocutory proceeding—Constitutional law—Conflict of laws—Legislative jurisdiction—Retroactive effect of statute—Redemption of land sold for taxes—Vesting of title—Interest in lands—Equitable estate*, xxxv., 461.

See CONSTITUTIONAL LAW.

10. *Limitation of actions — Unregistered deed—Subsequent registered mortgage—Possession—Right of entry*, xxxvi., 455.

See LIMITATIONS OF ACTIONS.

11. *Married woman—Separate property—Liability for debts of husband—Registry law — “Real Property Act”—Married Women’s Act—Conveyance during coverture*, xl., 384.

See MARRIED WOMAN.

12. *Mines and mining—Mining agreement—Interest in order to be mined—After-acquired chattels—Transfer and delivery — Registration—B. C. Bills of Sale Act, 1905—Construction of statute. *Traves v. Forest**, xlii., 514.

See MINES.

13. *Title to land—Mortgage—Foreclosure—Equitable jurisdiction of court—Opening up foreclosure proceedings—Construction of statute—“Real Property Act,” R. S. M., 1902, c. 148—5 & 6 Edw. VII., c. 75, s. 3 (Man.)—Equity of redemption—Certificate of title*, xlii., 1.

See TITLE TO LAND.

14. *Title to land—“Torrens System” — Priority of right—Registration—Caveat — Notice—Construction of statute—Saskatchewan “Land Titles Act,” 6 Edw. VII., c. 24—Equities between purchasers—Assignment of contract—Conditions — Right enforceable against registered owner*, xlv., 551.

See TITLE TO LAND.

15. *Mortgage—“Manitoba Real Property Act”—Power of sale—Special covenant — Notice—Statutory supervision — Registered title—Equitable rights—Possession by mortgagee—Limitation of action — Construction of statute—R. S. M., 1902, c. 148, s. 75—“Real Property Limitation Act,” R. S. M., 1902, c. 100, s. 20, xlv, 618.*

See MORTGAGE.

16. *Colonization—Location ticket—Transfer by locatee—Sale—Issue of letters patent—Title to land—Notice—Arts. 1487, 1488, 2082, 2084, 2085, 2098 C. C., 1, 311.*

See CROWN LANDS.

17. *Construction of statute — Sales of subdivided lands — Prohibitive sanction — “Land Titles Act,” 6 Edw. VII., c. 24, s.-s. 7 (Alta.)—4 Geo. V., c. 2, s. 9; 5 Geo. V., c. 2, s. 25 (Alta.)—Retrospective legislation—Illegality of contract—Rescission—Recovery of money paid—Right of action—Practice—Pleading—Appeal*, lii., 185.

See STATUTE.

18. *Banking—Purchase of assets — Bill of sale—Description of chattels — B. C. “Bills of Sale Act,” R. S. B. C., 1911, c. 20—Registration—Recital in bill of sale — Consideration—Defeasance — Reference to unregistered note—Collateral security—Loan by bank—“Bank Act,” (D.) 3 & 4 Geo. V., c. 9, s. 76. *Ball v. Royal Bank**, lii., 254.

See BILL OF SALE.

19. *Railways—Location—Registration of plans—Construction of line—Plan of subdivision subsequently filed — Dedication of highway—Rights of municipality—Priority — “Railway Act,” R. S. C., 1906, c. 37 — Dominion “Railway Act,” 1903. *Edmonton v. Calgary & Edmonton R. R.**, liii., 406.

See RAILWAYS.

20. *Sale for delinquent taxes—Tax sale deed—Premature delivery—Statutory authority—Condition precedent—Evidence—Presumption—Curative enactment — Certificate of title (B.C.). *Heron v. Lalonde**, liii., 503.

See ASSESSMENT AND TAXATION.

21. *Assessment and taxation—Sale for delinquent taxes—Tax sale deed—Premature delivery—Statutory authority — Condition precedent — Evidence — Presumption — Curative enactment — “Assessment Act,” B. C. Con. Acts, 1888, c. 111, s. 92—B. C. “Assessment Act,” 1903, 3 & 4 Edw. VII., c. 53, ss. 125, 153, 156—Certificate of title (B.C.)*, liiii., 503.

See ASSESSMENT AND TAXATION.

## RELEASE.

1. *Practice—Action by dependents—B. C. “Families Compensation Act”—Release by deceased—Defence to action—Reputation — Fraud—Setting aside release — Personal representative—Right of action—Return of money paid—Limitation of action—General statutory provision—Carriers—Private Act — B. C. “Consolidated Railway Co.’s Act”—Statute—R. S. B. C., 1911, c. 82—“Lord Campbell’s Act”—(B.C.) 59 Vict., c. 55, s. 60.]—Where a release by the deceased is relied upon by the defendants in an action for damages by his dependents, under the provisions of the “Families Compensation Act,” R. S. B. C., 1911, c. 82, the plaintiffs may take exception to the release on the ground that it was fraudulently procured, although the personal representative*

of the deceased has not been made a party to the action. The judgment appealed from (13 B. C. Rep. 132), was affirmed.—Such an exception may be entertained by a court of equity notwithstanding that the money paid as consideration for the release is neither tendered back to the defendants nor brought into court to abide the issue of the action. *Lee v. Lancashire and Yorkshire Ry. Co.* (6 Ch. App. 527); *Read v. Great Eastern Ry. Co.* (L. R. 3 Q. B. 555); *Robinson v. Canadian Pacific Ry. Co.* ((1892) A. C. 481); *Rideal v. Great Western Ry. Co.* (1 F. & F. 706); *Clough v. London and North Western Ry. Co.* (L. R. 7 Ex. 26); *Seward v. The "Vera Cruz"* (10 App. Cas. 59); *Pym v. Great Northern Ry. Co.* (2 B. & S. 759; 4 B. & S. 396); *Williams v. Mersey Docks and Harbour Board* ((1905), 1 K. B. 804); *Erdman v. Walkerton* (20 Ont. App. R. 444), and *Johanson v. Grand Trunk Ry. Co.* (21 Ont. App. R. 408), referred to. *British Columbia Electric Ry. Co. v. Turner*, xlix., 470.

See LIMITATION OF ACTION.

2. *Right of action*—*Lord Campbell's Act*—*Death by accident*—*Action by widow*—*Accord and satisfaction.*—Where the death of a person is caused by the wrongful act, neglect or default of another an action for damages does not lie under Lord Campbell's Act unless the deceased could have maintained an action if death had not ensued.—C. was a temporary employee on the Intercolonial Railway and, as such, a member of the "Employees Relief and Insurance Association." By the rules of the Association the object of the Temporary Employees Accident Fund was to provide for members suffering from bodily injury and for the family or relatives of deceased members. Each member had to contribute to the fund, and the Railway Department gave the annual sum of \$8,000 in consideration of which it was to be "relieved of all claims for compensation for injury or death of any member." C. was killed by a railway train and his widow was paid \$250 out of this fund. She then brought an action under "Lord Campbell's Act."—*Held*, affirming the judgment of the Exchequer Court (14 Ex. C. R. 472), that as by his contract with the Association C. could not have maintained an action had he lived, the widow's right of action was barred. *Conrod v. The King*, xlix., 577.

3. *Suretyship*—*Collateral deposit*—*Earmarked fund*—*Appropriation of proceeds*—*Set-off*—*Release of principal debtor*—*Constructive fraud*—*Discharge of surety*—*Right of action*—*Common counts*—*Equitable recourse*, xxxvii., 331.

See PRINCIPAL AND SURETY.

## RENT CHARGE.

*Appeal*—*Jurisdiction*—*Matter in controversy*—*Warranty of title*—*Future rights*—*Hypothec for rent charges*—*R. S. C. c. 135, s. 29.*—In an action for the price of real estate sold with warranty, a plea alleging troubles and fear of eviction under a prior hypothec to secure rent charges

on the land, does not raise questions affecting the title nor involving future rights so far as to give the Supreme Court of Canada jurisdiction to entertain an appeal. *The Bank of Toronto v. Le Curé et les Marguilliers de la Nativité* (12 Can. S. C. R. 25); *Wineberg v. Hampson* (19 Can. S. C. R. 369); *Jermyn v. Tew* (28 Can. S. C. R. 497); *Waters v. Manigault* (30 Can. S. C. R. 304); *Fréchette v. Simoneau* (31 Can. S. C. R. 13); *Toussignant v. The County of Nicolet* (32 Can. S. C. R. 353), and *The Canadian Mutual Loan and Investment Co. v. Lee* (34 Can. S. C. R. 224), followed. *L'Association Pharmaceutique de Québec v. Livernois* (30 Can. S. C. R. 406), distinguished. *Carrier v. Sirois*, xxxvi., 221.

## REPLEVIN.

See REVENDICATION.

## REQUETE CIVILE.

*Action for account*—*Partition of estate*—*Requête civile*—*Amendment of pleadings*—*Supreme Court Act, s. 63*—*Order nunc pro tunc*—*Final or interlocutory judgment*—*Form of petition in revocation*—*Res judicata.*—On a reference to amend certain accounts a judgment rendered on 30th September, 1901, adjudicated on matters in issue between the parties and, on the accountant's report, homologated 26th October, 1901, judgment was ordered to be entered against the appellant for \$26,316, on 30th January, 1902. The appellant filed a *requête civile* to revoke the latter judgment within six months after it had been rendered, but without referring to the first judgment in the conclusions of the petition. It was objected that the first judgment had the effect of *res judicata* as to the matters in dispute and was a final judgment *inter partes*.—*Held*, that whether the first judgment was final or merely interlocutory, the petition in revocation must be taken as impeaching both former judgments relating to the accounts upon which it was based; that it came in time as it had been filed within six months of the rendering of the said last judgment; and that it virtually raised anew all the issues relating to the taking of the accounts affected by the two former judgments.—A motion to amend the petition so as to include specifically any necessary conclusions against the judgment of 30th September, 1901, had been refused in the court below and was renewed on the appeal to the Supreme Court of Canada.—*Held*, that, as the facts set forth in the petition necessarily involved a contestation of the accountant's report dealt with in the first judgment, the case was a proper one for the exercise of the discretion allowed by section 63 of the Supreme Court Act and that the amendment to the conclusions of the petition should be permitted *nunc pro tunc*. *Hill v. Hill*, xxxiv., 13.

## RESERVED CASE.

See CRIMINAL LAW.

**RES GESTAE.**

*Criminal law—Practice—Crown case reserved—Reserved questions—Dissent from affirmation of conviction—Appeal—Jurisdiction—Criminal Code, 1892, ss. 742, 743, 744, 750—R. S. C. (1906) c. 146, ss. 1013, 1015, 1016, 1024—Admission of evidence, xxxviii., 284.*

See CRIMINAL LAW.

**RES JUDICATA.**

1. *Commissioner of Mines—Appeal from decision—Quashing appeal—Final judgment—Estoppel—Mandamus.*]—Where an appeal from a decision of the Commissioner of Mines for Nova Scotia on an application for a lease of mining land is quashed by the Supreme Court of the province on the ground that it was not a decision from which an appeal could be asserted, the judgment of the Supreme Court is final and binding on the applicant, and also on the Commissioner, even if he is not a party to it.—The quashing of the appeal would not necessarily be a determination that the decision was not appealable if the grounds stated had not shewn it to be so.—In the present case the quashing of the appeal precluded the commissioner or his successors in office from afterwards claiming that the decision was appealable.—If the commissioner after such appeal is quashed, refuses to decide upon the application for a lease the applicant may compel him to do so by writ of mandamus.—Judgment appealed from (36 N. S. Rep. 282) affirmed. *Drysdale v. Dominion Coal Co.*, xxxiv., 328.

2. *Sheriff's sale of lands—Opposition *afin de charge*—Discretionary order—Default in furnishing security—Res judicata—Estoppel by record.*]—In proceedings for the sale of lands under execution, the appellants filed an opposition to secure a charge thereon and, under the provisions of article 726 of the Code of Civil Procedure, a judge of the Superior Court ordered that the opposants should, within a time limited, furnish security that the lands, if sold subject to the charge, should realize sufficient to satisfy the claim of the execution creditor. On failure to give security as required the opposition was dismissed, and, on appeal to the Supreme Court of Canada, the judgment dismissing the opposition was affirmed (35 Can. S. C. R. 1). Subsequently the proceedings in execution were continued and, on the eve of the date advertised for the sale by the sheriff, the opposants filed another opposition to secure the same charge, offered to furnish the necessary security, and obtained an order staying the sale. The judgment appealed from maintained a subsequent order made under art. 651 C. P. Q., which revoked the order staying the sale and dismissing the opposition.—*Held*, that the judgment dismissing the opposition on default to furnish the required security was *chose jugée* against the appellants and deprived them of any right to give such security or take further proceedings to secure their alleged charge upon the lands under seizure. *Fontaine v. Payette*, xxxvi., 613.

AND *see* OPPOSITION.

3. *Action for account—Partition of estate—Requête civile—Amendment of pleadings—Discretion—Supreme Court Act, s. 63—Order nunc pro tunc—Final or interlocutory judgment—Form of petition in revocation—Decision of issues, xxxiv., 13.*

See REQUÊTE CIVILE.

4. *Opposition *afin de charge*—Order for security—Interlocutory judgment—Res judicata—Subsequent final order—Revision of merits on appeal—Practice, xxxv., 1.*

See APPEAL; COSTS.

5. *Right of appeal—Interest of appellant—Parties to action—Art. 77 C. P. Q.—Arts. 252, 953a, 968 et seq. C. C.—Will—Sales of substituted lands—Prohibition against alienation, xxxv., 193.*

See APPEAL.

6. *Construction of will—Usufruct—Substitution—Partition between institutes—Validating legislation—60 Vict., c. 95 (Q.)—Construction of statute—Restraint of alienation—Interest of substitutes—Devise of property held by substitute under partition—Devolution of corpus of estate *es nature*—Accretion—Arts. 868, 948 C. C., xxxviii., 1.*

See WILL.

7. *Mandamus—Order to fix tools—Use of river improvements—Driving timber, xl., 523.*

See MANDAMUS.

8. *Sale of goods—Insolvency—Bonâ fides—Fraudulent preference—Interpleader—Estoppel—Pleading—Bar to action, Cam. Cas. 306.*

See SALE.

9. *Arbitration and award—Statutory arbitrators—Jurisdiction—Awards “from time to time.” Quebec v. Ontario, xlii., 161.*

See ARBITRATION AND AWARD.

**RESPONSIBILITY.**

See CONTRACT; EMPLOYERS' LIABILITY; NEGLIGENCE.

**RETAINER.**

*Solicitor and client—Subsequent proceedings—Habeas corpus—Evidence. Duff v. Lane, xlvi., 508.*

See SOLICITOR.

**RETRAIT DE DROITS LITIGIEUX.**

See LITIGIOUS RIGHTS.

**RETRAIT SUCCESSORAL.**

See SUCCESSION.

**RETRAXIT.**

1. *Appeal—Jurisdiction—Amount in controversy an appeal—Retraxit.*—The judgment appealed from condemned the defendant to pay \$775.40, balance of the amount demanded less \$1,524.60 which had been realized on a conservatory sale of a cargo of lumber made by consent of the parties pending suit and for which credit was given to the defendants.—*Held*, that as the amount recovered was different from that demanded, and the amount of the original demand exceeded \$2,000, there was jurisdiction in the Supreme Court of Canada to entertain an appeal: *Jayce v. Hart* (1 Can. S. C. R. 321); *Levi v. Reed* (6 Can. S. C. R. 482); *Laberge v. The Equitable Life Assurance Society* (24 Can. S. C. R. 59), and *Kunkel v. Brown* (99 Fed. Rep. 593) referred to. *Cowen v. Evans* (22 Can. S. C. R. 328); *Cawen v. Evans*; *Mitchell v. Trenhalme*; *Mills v. Limoges*; *Montreal Street Railway Co. v. Carrière* (22 Can. S. C. R. 331, 333, 334 and 335, *note*); *Lachance v. Société de Prêt et des Placements* (26 Can. S. C. R. 200), and *Beauchemin v. Armstrong* (34 Can. S. C. R. 285), distinguished. *Dufresne v. Fee*, xxxv., 8.

2. *Appeal—Jurisdiction—Amount in controversy—Retraxit—R. S. C. (1906) c. 139, s. 46 (c).*—In an action for \$10,000 damages, a few days before trial and after issues were joined and the case set down for hearing, the plaintiff filed a retraxit reducing her claim to \$1,999, and gave notice that, at the trial, her claim would be limited to that amount. By the judgment appealed from, the damages awarded to the plaintiff were reduced to \$1,333, on account of contributory negligence found by the jury. A motion to quash on the grounds that the retraxit reduced the amount in controversy to less than the appealable limit and that the case actually tried was for \$1,999 only, and, consequently, that there could be no appeal under R. S. C. (1906), c. 139, s. 46 (c), was allowed and the appeal was quashed with costs. *Montreal Park & Island Ry. Co. v. Labrosse*, xl., 96.

**REVENDEICATION.**

1. *Pleadings—Procedure—Evidence—Ultra Petita—Surprise—Arts. 110, 339 C. C. Q.*, xxxvi., 7.

See PLEADING.

2. *Sale of goods—Suspensive condition—Term of credit—Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Banking—Bailee receipt—Brokers and factors—Principal and agent—Resiliation of contract—Damages—Practice—Pleading*, xxxvi., 406.

See SALE.

**REVENUE.**

*Assessment and taxes—Lease of Crown lands—Interest of occupier—Constitutional*

*law—Exemption from taxation—Construction of statute—“B. N. A. Act, 1867,” s. 125—(Sask.) 6 Edw. VII., c. 36, “Local Improvements Act”—(Sask.) 7 Edw. VII., c. 3, “Supplementary Revenue Act”—Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts*, xlix., 563.

See ASSESSMENT AND TAXES.

**REVERSION.**

*Title to land—Conveyance in fee—Reservation of life estate—Possession—Ejectment*, xxxvi., 231.

See TITLE TO LAND.

**REVOCAION OF JUDGMENT.**

See REQUÊTE CIVILE.

**RIGHT OF ACTION.**

*Public work—Incorporation of company—Construction of canal—Governor-in-Council—Approval of plans—Discretion—Refusal to approve*, liv., 461.

See PUBLIC WORK.

**RIOT.**

1. *“Militia Act”—R. S. C., 1906, c. 41—Senior officer present at any locality—Military district—Right of action—4 Edw. VII., c. 23, s. 86—Statute—Retrospective effect.*—By s. 34, s.-s. 6, of the “Militia Act” the officer commanding the troops so called out may, in his own name, take action against the municipality in which the riot occurred to recover the amount of the expenses thereby incurred which are to be paid to His Majesty when recovered. By 4 Edw. VII., c. 23, s. 86, this right of action was vested in His Majesty.—*Held*, that the latter being a procedure Act is retrospective, and an action was properly brought in the name of the Attorney-General of Canada to recover the expenses of calling out the troops on the occasion of an industrial strike in the City of Sydney, part of which expenses were incurred before, and part after, the last mentioned Act came into force.—Judgment appealed from (46 N. S. Rep. 27), reversed, Brodeur, J., dissenting. *Attorney-General of Canada v. City of Sydney*, xlix., 148.

AND see MILITIA.

2. *Municipal corporation—Aid to civil power—Pay of militia—Legislative jurisdiction—Civil rights and obligations—Constitutional law*, Cout. Cas. 343.

See MILITIA.

**RIPARIAN RIGHTS.**

1. *Rivers and streams—Floating sawlogs—Use of baoms—Vis major—Action—Sal-*

vage—*Quantum meruit*.]—P. placed booms across a floatable river to hold logs at a place where he had erected a sawmill on land owned by him on the banks of the river. T. had a boom further upstream for storing pulpwood. An unusual freshet broke T.'s boom and brought a quantity of his wood down with the current into P.'s boom, where it was caught and held for some time, until removed by T., without causing any damage or expense to P. In an action by P. to recover salvage or the value of the use of his boom for the time during which T.'s wood had remained therein:—*Held*, reversing the judgment appealed from (Q. R. 14 K. B. 513), that as P. had no right of property in the waters of the river where he had placed his boom those waters were *publici juris*, notwithstanding the construction of the boom; that T.'s wood came there lawfully; and, that, as the service rendered in stopping the wood was involuntary and accidental, P. could recover nothing therefor.—*Per* Fitzpatrick, C.J.—There is no difference between the laws of the Province of Quebec and those of England in respect to the rights of riparian owners to the waters of floatable streams flowing past their lands. *Miner v. Gilmour* (12 Moo. P. C. 131), referred to. *Tanguay v. Price*, xxxvii., 657.

2. *Floatable stream — Driving logs — Ownership — Servitude*.]—The owners of lands in Quebec, through which are flowing streams *flottables à bûches perdues* are proprietors of the banks and beds thereof and have the right of action *au possessoire* in respect of them. Such streams are, however, subject to servitude in respect to all advantages which the streams and their banks, in their natural condition, can afford to the public. *Tanguay v. Canadian Electric Light Co.*, xl., 1.

AND SEE RIVERS AND STREAMS.

3. *Rivers and streams—Obstructions in channel—Water-power—Mill-dam — Diversion of water—Land covered by water*.]—Judgment of the Court of Appeal for Ontario, reversing the judgment of Proudfoot, J., which in effect confirmed the judgment of the Chancellor of Ontario (26 Gr. 549), affirmed. *Baird v. Elliott*, Cout. Cas. 84.

4. *Title to land—Injunction — Boundary — Prescription*. *City of Hull v. Scott*, Cout. Cas. 264.

5. *Interference—Evidence — Water and watercourses*.]—M., claiming to be a riparian owner on the shore of Ashbridge Bay (part of Toronto harbour), claimed damages from, and an injunction against, the city for interfering with his access to the water when digging a channel along the north side of the bay.—*Held*, affirming the judgment of the Court of Appeal (27 Ont. L. R. 1), by which an appeal from a Divisional Court (23 Ont. L. R. 365), was dismissed, that the evidence established that between M.'s land and the bay was marsh land and not land covered with water as contended and, therefore, M. was not a riparian owner. *Merritt v. City of Toronto*, xlvi., 1.

6. *Watercourses—Driving timber—"Damages resulting" — Reparation—Construction of statute—Arts. 7298, 7340 R. S. Q. (1909) —Servitude—Injury caused by independent contractor—Liability of owner of timber*.]—The privilege of transmitting timber down watercourses in the Province of Quebec given by article 7298 of the Revised Statutes of Quebec, 1909, is not granted in derogation of the obligation imposed upon those making use of watercourses for such purposes to make reparation for damages resulting therefrom by article 7349 (2) of the Revised Statutes of Quebec. The effect of the articles is that persons who avail themselves of the privilege thereby conferred are obliged to compensate riparian owners for all damages which result from the exercise of that right except in regard to such as cannot be avoided by the exercise of reasonable care and skill, and those in respect of which the riparian proprietor himself may have contributed, or which have been occasioned by his own fault. *Tourville v. Ritchie* (21 R. L. 110), referred to.—The judgment appealed from was reversed, Davies and Anglin, JJ., dissenting.—*Per* Davies and Anglin, JJ., dissenting.—The evidence shewed that the damages complained of were caused by the fault of a *bonâ fide* independent contractor and, consequently, the owner of the timber which was being driven down the watercourse in question was not responsible for them. (NOTE.—Leave to appeal to the Privy Council was granted on 15th July, 1913.) *Dumont v. Fraser*, cxlviii., 137.

7. *Watercourses — Trespass — Torts — Diversion of natural flow—Injurious affection — Damages — Execution of statutory powers — Arbitration — Injunction—Mandamus—Construction of statute—59 Vict., c. 44 (N.S.)*, xxxvii., 464.

SEE RIVERS AND STREAMS.

8. *Rivers and streams — Navigable and floatable waters — Obstruction to navigation—Crown lands—Letters patent of grant—Evidence—Collateral circumstances leading to grant—Limitation of terms of grant—Title to land—Fisheries — Arts. 400, 414, 503 C. C.*, xxxvii., 577.

SEE RIVERS AND STREAMS.

9. *Title to land — Ownership—Artificial watercourse — Canal banks — Trespass — Possessory action — Borneage — Practice*, xxxvii., 668.

SEE TITLE TO LAND.

10. *Dominion mining regulations — Hydraulic mining—Placer mining — Lease — Water-grant—Conditions of grant—User of flowing waters—Diversion of watercourse—Dams and flumes—Construction of deed — Priority of right—Injunction*, xxxviii., 79.

SEE MINES AND MINING.

11. *Government railway—Expropriation—Injury to property—Crossing at embankment and cutting—Access to shore—Assessment of damages*, Cam. Cas. 344.

SEE RAILWAYS.

AND SEE RIVERS AND STREAMS; TITLE TO LANDS.



## RIVERS AND STREAMS.

1. *Floating logs—Damage*—*R. S. N. S. (1900), c. 95, s. 17.*—Persons engaged in the floating or transmission of logs down rivers and streams, under the authority of *R. S. N. S. (1900), c. 95, s. 17*, are liable for all damage caused thereby whether by negligence or otherwise, and the owner of the logs is not relieved from liability because the damage was done while the logs were being transmitted by another person under contract with him. Judgment appealed from (*36 N. S. Rep. 40*), affirmed. *Dickie v. Campbell*, xxxiv., 265.

2. *River improvements—Continuing damages—Contract—Protective works—Discretion of court below.*—Owing to the condition of the locality and the character of certain improvements made for the purpose of increasing the water power at Chambly Rapids, in the Richelieu River, the parties entered into an agreement respecting the construction of dams and other works at the *locus in quo*, and it was provided that the company should assume the responsibility and pay for all damages caused by "flooding of land, bridges or roads, if any, as well as all other damages caused" to the plaintiff "during or by reason of" the construction.—*Held*, reversing the judgment appealed from that, under the agreement, the plaintiff could recover only such damages as he might suffer from time to time in consequence of the floods at certain seasons being aggravated by the constructions in the stream and that, in the special circumstances of the case, the courts below erred in decreeing the construction of protective works, inasmuch as the company was entitled to take the risks on payment of indemnity as provided by the contract. *Chambly Mfg. Co. v. Willett*, xxxiv., 502.

AND see PRACTICE.

3. *Title to lands—Grant from Crown—Inlet of navigable river—Implied reservations—Crown domain—Public law—Construction of deed—Evidence—Estoppel—Water.*—By the law of the Province of Quebec, as well as by the law of England, no waters can be deemed navigable unless they are actually capable of being navigated.—An arm or inlet of a navigable river cannot be assumed to be either navigable or floatable, in consequence of its connection with the navigable stream, unless it be itself navigable or floatable as a matter of fact.—The land in dispute forms part of the bed of a stream, called the Brewery Creek, which was originally a narrow inlet from the Ottawa River (dry during the summer time in certain parts), the waters of which passed over certain lots shown on the survey of the Township of Hull and granted by description according to that survey to the defendants' *auteur*, in 1806, without any reservation by the Crown of the portions over which the waters of the creek flowed. Under that grant the grantee and his representatives have, ever since, without interference on the part of the Crown, had possession of the lands on both sides to the creek and of the creek itself.

The erection, during recent years, of public works in the Ottawa River has caused its waters to overflow into the creek to a considerable extent at all seasons of the year. In 1902 the City of Hull obtained a grant by letters patent from the Province of Quebec of a portion of the bed of the creek, as constituting part of the Crown domain, and brought the present action, *au pétitoire*, for a declaration of title, the Attorney-General intervening for the province as warrantor.—*Held*, affirming the judgment appealed from (*Q. R. 13 K. B. 164; 24 S. C. 59*):—1. That, as the Brewery Creek was neither navigable nor floatable in its natural state, the subsequent overflow of the waters of the Ottawa River into it could not have the effect of altering the natural character of the creek.—2. That, as there was no reservation of the lands covered with water in the original grant by the Crown, in 1806, the bed of the creek passed to the grantee as part of the property therein described, whether the waters of the creek were floatable or not.—3. That the uninterrupted possession of the bed of the creek by the grantee and his representatives from the time of the grant with the assent of the Crown was evidence of the intention of the Crown to make an unqualified conveyance of all the lands and lands covered with water situated within the limits designated in the grant of 1806. *Atty.-Gen. for Quebec and City of Hull v. Scott*, xxxiv., 603.

4. *Rivers and streams—Watercourses—Riparian rights—Expropriation—Trespass—Torts—Diversion of natural flow—Injurious affection—Damages—Execution of statutory powers—Arbitration—Injunction—Mandamus—Construction of statute—59 Vict., c. 44 (N.S.).*—A riparian proprietor whose property has been injuriously affected by the unlawful diversion of the natural flow of a watercourse may recover damages therefor, and may also obtain relief by injunction restraining the continuation of the tortious acts so committed.—The powers conferred upon the town council of the Town of North Sydney, N.S., by the Nova Scotia statute, 59 Vict., c. 44, for the purpose of obtaining a water supply give them no rights in respect to the diversion of watercourses except subject to the provisions of the fourth section of the Act, and after arbitration proceedings taken to settle compensation for injurious affection to property resulting from the construction or operation of the waterworks. *Saunby v. The Water Commissioners of London* ([1906] A. C. 110), followed. (Leave to appeal to Privy Council was refused, 17th July, 1906.) *Leahy v. Town of North Sydney*, xxxvii., 464.

5. *Navigable and floatable waters—Obstructions to navigation—Crown lands—Letters patent of grant—Evidence—Collateral circumstances leading to grant—Limitation of terms of grant—Title to land—Riparian rights—Fisheries—Arts. 400, 414, 503 C. C.*—A river is navigable when, with the assistance of the tide, it can be navigated in a practicable and profitable manner, notwithstanding that, at low tides, it may be

impossible for vessels to enter the river on account of the shallowness of the water at its mouth. *Bell v. The Corporation of Quebec* (5 App. Cas. 84), followed. Evidence of the circumstances and correspondence leading to grants by the Crown of lands on the banks of a navigable river cannot be admitted for the purpose of shewing an intention to enlarge the terms of letters patent of grant of the lands, subsequently issued, so as to include the bed of the river and the right of fishing therein. The judgment appealed from (Q. R. 14 K. B. 115), was reversed and the judgment of the Superior Court (Q. R. 25 S. C. 104), was restored. *Steadman v. Robertson* (18 N. B. Rep. 580) and *The Queen v. Robertson* (6 Can. S. C. R. 52), referred to; *In re Provincial Fisheries* (26 Can. S. C. R. 444; (1898) A. C. 700), discussed. (Proceedings for an appeal to the Privy Council were abandoned upon a settlement between the parties, 5th June, 1907). *Atty.-Gen. of Quebec v. Fraser*; *Atty.-Gen. of Quebec v. Adams*, xxxvii., 577.

6. *Floating sawlogs — Use of booms—Vis major — Action — Salvage — Quantum meruit—Riparian rights.*]—P. placed booms across a floatable river to hold logs at a place where he had erected a sawmill on land owned by him on the bank of the river. T. had a boom further upstream for storing pulpwood. An unusual freshet broke T.'s boom and brought a quantity of his wood down with the current into P.'s boom, where it was caught and held for some time until removed by T., without causing any damage or expense to P. In an action by P. to recover salvage or the value of the use of his boom for the time during which T.'s wood had remained therein:—*Held*, reversing the judgment appealed from (Q. R. 14 K. B. 513), that as P. had no right of property in the waters of the river where he had placed his boom those waters were *publici juris*, notwithstanding the construction of the boom; that T.'s wood came there lawfully; and that, as the service rendered in stopping the wood was involuntary and accidental, P. could recover nothing therefor.—*Per Fitzpatrick, C.J.*—There is no difference between the laws of the Province of Quebec and those of England in respect to the rights of riparian owners to the waters of floatable streams flowing past their lands. *Miner v. Gilmour* (12 Moo. P. C. 131), referred to. *Tanguay v. Price*, xxxvii., 657.

7. *Dominion mining regulations—Hydraulic mining — Placer mining — Lease — Water-grant—Conditions of grant—User of flowing waters — Diversion of watercourse —Dams and flumes—Construction of deed—Riparian rights — Priority of right — Injunction.*]—An hydraulic mining lease, granted in 1900, under the Dominion Mining Regulations, for a location extending along both banks of Hunker Creek, in the Yukon Territory, included a point at which, in 1904, the plaintiff acquired the right to divert a portion of the waters of the creek, subject to then existing rights for working his placer mining claims adjacent thereto.—*Held*, that, under a proper construction of the tenth clause of the hydraulic mining

regulations, waters flowing through or past the location were subject to be dealt with under the regulations of August, 1898; that the hydraulic grant conferred no prior privileges or paramount riparian rights upon the lessee, and that the grant to the plaintiff was of a substantial user of the waters which was not subject to the common law rights of riparian owners and entitled him, by all reasonable means necessary for the purpose of working his placer claims, to divert the portion of the flowing waters so acquired by him without interference on the part of the lessee of the hydraulic privileges. *Klondyke Government Concession v. McDonald*, xxxviii., 79.

8. *Crown domain—Title to land — “Flottage”—Driving loose logs—Public servitude —Riparian ownership — Action possessoire —Arts. 400, 503, 507, 2192 C. C.—Art. 1064 C. P. Q.*]—In the Province of Quebec, watercourses which are capable merely of floating loose logs (*flottables à bûches perdues*), are not dependencies of the Crown domain within the meaning of article 400 of the Civil Code. The owners of the adjoining riparian lands are, consequently, the proprietors of the banks and beds of such streams and have the right of action *au possessoire* in respect thereof. — There is, however, a right of servitude over such watercourses in respect to all advantages which the streams and their banks, in their natural condition, can afford to the public, there being no distinction, in this regard, between navigable or floatable streams and those which are neither navigable nor floatable. *McBean v. Carlisle* (19 L. C. Jur. 276) and *Tanguay v. Price* (37 Can. S. C. R. 657), followed.—Judgment appealed from (Q. R. 16 K. B. 48), affirmed, *Girouard and Idington, J.J.*, dissenting. *Tanguay v. Canadian Electric Light Co.*, xl., 1.

9. *Mandamus — Driving timber—Order to fix tolls—Past user of stream—River improvements — Appeal—R. S. O. [1897] c. 142, s. 13—Res judicata.*]—By R. S. O. [1897] c. 142, s. 13, the owner of improvements in a river or stream used for floating down logs may obtain from a district judge an order fixing the tolls to be paid by other parties using such improvements. On application for a writ of mandamus to compel the judge to make such an order:—*Held*, affirming the judgment of the Court of Appeal (16 Ont. L. R. 21), *Davies, J.*, *dubitante*, and *Idington, J.*, expressing no opinion, that such an order had effect only in case of logs floated down the river or stream after it was made. — *Held*, *per Idington, J.*—As s. 15 gives the applicant for the order an appeal from the judge's refusal to make it, mandamus will not lie.—*Held*, *per Duff, J.*—The mandamus could issue if the judge had jurisdiction to make the order though he refused to do so in the belief that a prior decision of a Divisional Court was *res judicata* as to his power. *The C. Berk Mfg. Co. v. Valin*, xl., 523.

10. *Obstructions in channel—Water-power —Mill-dam—Diversion of water—Riparian rights—Land covered by water.*]—Judgment of the Court of Appeal for Ontario, reversing the judgment of *Proudfoot, J.*, which

in effect confirmed the judgment of the Chancery of Ontario (26 Gr. 549), affirmed. *Baird v. Elliott*, Cout. Cas. 84.

11. *Title to land — Injunction — Boundary—Riparian rights — Prescription. City of Hull v. Scott*, Cout. Dig. 264.

12. *River improvements — Precaution against danger to existing constructions — Alteration of natural conditions—Responsibility for damages — Vis major.*—Where works constructed in a river so altered its natural conditions as to create a reservoir in which ice formed in larger quantities than it did prior to such works, and which, during the spring freshets after a severe winter, was driven with such force against the superstructure of a bridge as to partially demolish it, those who constructed the works are responsible for the damages so caused, notwithstanding that they had taken precautions for the protection of the bridge against like troubles, foreseen at the time of the construction of the works, and that the formation of ice in increased weight and thickness in the reservoir had resulted from natural climatic conditions during an unusually rigorous winter.—Judgment appealed from (Q. R. 16 K. B. 410), affirmed. *Montreal Light, Heat and Power Co. v. Attorney-General of Quebec*, xli., 116.

13. *Irrigation—B. C. "Land Act, 1884" and amendments—Pre-emption of agricultural lands—Water records—Appurtenances—Abandonment of pre-emption — Lapse of water record.*—Where holders of separate pre-emptions of agricultural lands, under the provisions of the "Land Act, 1884," 47 Vict., c. 16 (B.C.), and the amendment thereof, 49 Vict., c. 10 (B.C.), with the object of vesting their respective pre-emptions in themselves as partners, surrendered the separate pre-emptions to the Crown, and, on the same day, re-located the same areas as partners, obtaining a pre-emption record thereof in their joint names, the joint water record previously granted to them, as partners, in connection with their separate pre-emptions, cannot be considered to have been abandoned. The effect of the transaction caused the areas to become unoccupied lands of the Crown, within the meaning of the statute, and, upon their re-location, the water record in connection therewith continued to subsist as a right appurtenant to the joint pre-emption.—Judgment appealed from (13 B. C. Rep. 77), reversed, the Chief Justice and Duff, J., dissenting. *Vaughan v. Eastern Townships Bank*, xli., 286.

14. *Industrial improvements — Raising height of dam — Nuisance—Damages—Expertise and arbitration—Right of action — Measure of damages—Practice—Future damages—Pleading—New objection raised on appeal—Prescription — R. S. O., 1888, arts. 5535, 5536—Arts. 2242, 2261 C. C.*—The provisions of the statutes respecting the improvement of watercourses in the Province of Quebec, permit the raising of the height of dams erected by proprietors of lands adjoining streams; this right is subject to the liability to make compensation for all damages resulting to other persons from such works.—The mode of ascertainment of such damages by the arbitration of experts pro-

vided by article 5536 of the Revised Statutes of Quebec, 1888, does not exclude the right of action to recover compensation in the courts.—In such cases the measure of damages is the amount of compensation for injuries sustained up to the time of the action; they ought not to be assessed once for all, *en bloc*, but recourse may be reserved in regard to future damages arising from the same cause.—*Per* Idington and Anglin, JJ.—Objections based upon provisions of enabling statutes which have not been set up in the pleadings nor relied upon in the courts below cannot be entertained upon an appeal to the Supreme Court of Canada. *Hamelin v. Bannerman* (31 Can. S. C. R. 534), followed.—*Per* Anglin, J.—An action, brought in 1908, for recovery of damages in respect of injuries occasioned by improvements executed in 1904, upon works constructed many years before that time, is not subject to the prescription of thirty years; nor can the prescription provided by article 2261 of the Civil Code be applied where the action has been commenced within two years from the time the injuries complained of were sustained. *Gale v. Bureau*, xliv., 305.

15. *Lease—Water lots—Status of lessee—Riparian owner — Access to lot—Injunction.*—S. is a lessee under lease from the City of St. John, of a water lot in the harbour, the F. K. Co. are lessees of the next lot to the south, and there are other lots to the south between that of S. and the fore-shore of the harbour. By his lease S. has a right of access to and from his lot on the east and west sides.—*Held*, that S. was not a riparian owner and had no rights in respect of the water lot other than those given him by his lease. Hence, he could not restrain the F. K. Co. from erecting a wharf on the adjoining lot which would prevent access to his from the south, a right of access not provided for in his lease.—Judgment appealed from (40 N. B. Rep. 8), reversed. Idington, J., dissenting. *Francis Kerr Co. v. Seely*, xliv., 629.

16. *Construction of statute—Fishery and game leases—Personal servitude—Possession—Use and occupation—Right of action—Action en complainte—Renewed leases—Priority—Watercourses — Works to facilitate lumbering operations — Driving logs—Storage dams—Penning back waters out of track of transmission—Damages—Rights of lessees—Injury to preserves—Injunction — Demolition of works.*—The lumber company are holders of timber limits in the Townships of Ixworth, Chapais and Lafontaine, in the counties of L'Islet and Kamouraska, and, assuming to act under the authority of certain statutes of the Province of Quebec (now consolidated in articles 7295 to 7300, R. S. Q. (1909)), erected dams at the outlet of the Lakes Ste. Anne into the River Ouelle to form a reservoir, by penning back the waters of these lakes, for the purpose of augmenting the natural flow of the River Ouelle during seasons when its waters had abated to facilitate the transmission of timber cut on their limits below that point and delivering it at their saw-mill further down stream. They were owners of the lands on both sides of the stream at the place where the dams were

erected. The fish and game club were lessees of fishery and hunting privileges under a lease issued in virtue of the "Quebec Fisheries Act," and the "Quebec Game Laws," which had been in force for a number of years prior to the erection of the dams, but which was surrendered subsequent to their construction and a new lease granted to the club in its stead by the Crown. The leases cover the territory included in the above mentioned townships and the timber limits therein held by the lumber company. The action was brought by the club to recover damages for injuries occasioned to their rights as lessees of the fishery and hunting rights in consequence of the manner in which the dams were used and lumbering operations carried on in the river by the lumber company. — *Held* (Fitzpatrick, C.J., dissenting).—That the plaintiffs have a status to maintain an action for injuries to their rights as fishing and hunting licensees and that the judgment at the trial (Q. R. 36 S. C. 486), for such damages should be restored.—*Per* Fitzpatrick, C.J. and Girouard and Anglin, JJ.—The respondents had the right to construct and maintain the dam in question and to use it to facilitate the flotation of logs, etc., in the lower reaches of the River Ouelle.—*Per* Idington, J. (Davies, J., *adibitante*).—This right exists only in respect of the streams or portions of them down which logs, etc., are actually driven by the timber licensees and does not extend to storage dams upon upper reaches and tributary waters not themselves used for the flotation of timber.—*Per* Duff, J.—The powers conferred by the statute must be exercised reasonably. In this case, the impounding of the stream's sources, miles beyond any part of it on which any timber could be expected to pass, is not within the contemplation of the statute, and would not be a reasonable exercise of the powers intended to be conferred. — *Per* Fitzpatrick, C.J. and Girouard and Duff, JJ. (agreeing with the court below (Q. R. 19 K. B. 178)).—The right to aid the user of floatable streams by artificial means authorized by article 7299 of the Revised Statutes of Quebec (1909), may be exercised at all seasons of the year.—*Per* Davies, Idington and Anglin, JJ.—Articles 7298 and 7299 of the Revised Statutes of Quebec (1909), must be read together and, while the right to use floatable streams in their natural state for the flotation of timber exists at all times and in all seasons, the right to aid such user by the artificial means authorized by article 7299 may be exercised only during the periods mentioned in article 7298, viz., during the spring, summer and autumn freshets.—*Per Curiam*, Fitzpatrick, C.J., *contra*.—This right, whatever its extent or duration, is exercisable only subject to the condition that the person enjoying it shall make compensation to others holding rights such as the appellants enjoy; and, having regard to the circumstances of this case and the legislation governing it, the question of priority in the acquisition of the respective rights of the parties is of no consequence.—Leave to appeal to the Privy Council was refused, 15th May, 1911. *Le Club de Chasse et de Peche Ste. Anne v. Riviere-Ouelle Pulp and Lumber Co.*, xlv., 1.

17. *Appeal—Jurisdiction—Matter in controversy—Damming watercourse—Flooding of lands—Servitude—Damages—Objection to jurisdiction—Practice—Costs.*—The plaintiff claimed \$300 (the amount awarded by arbitrators, for damages in consequence of the defendants' dam penning back the water of a stream in such a manner as to flood his lands; he also asked for the demolition of the dam and an order restraining the defendants from thereby causing further injury to his lands. By the judgment appealed from the award was declared irregular, but damages, once for all, were assessed in favour of the plaintiff for \$225, recourses being reserved to him in respect of any further right of action he might have for the demolition of the dam, etc. On an appeal being taken by the defendants the plaintiff did not move to quash, as provided by Supreme Court Rule No. 4, but took objection, in his factum, to the jurisdiction of the Supreme Court of Canada to entertain the appeal.—*Held*, that the only issue on the appeal was in respect of damages assessed at an amount below that limited for appeals from the Province of Quebec. The appeal was, consequently, quashed, but without costs, as objection to the jurisdiction of the court had not been taken by motion as provided by the Rules of Practice. *Price Brothers & Co. v. Tangway* (42 Can. S. C. R. 133), followed. *Brompton Pulp and Paper Co. v. Bureau*, xlv., 292.

18. *Industrial improvements—Penning back waters—Permanent works—Damages—Measure of damages—Expertise—Arbitration—Reparation—Loss of water-power—Future damages—Compensation once for all—Right of action—Practice—Statute—R. S. Q., 1909, arts. 7295, 7296.*—*Per* Davies, Duff and Brodeur, JJ., Idington and Anglin, JJ., *contra*.—In an action for damages occasioned by constructions in a stream for industrial purposes the plaintiff is entitled, under the provisions of article 7295 of the Revised Statutes of Quebec, 1909, to recover the full extent of damages which experts acting under article 7296, R. S. Q., 1909, would have authority to award as compensation, once for all, for the injuries sustained. *Breakay v. Carter* (Cass. Dig. (2nd ed.) 463), and *Gale v. Bureau* (44 Can. S. C. R. 312), referred to.—By the judgment appealed from it was held that the plaintiff was entitled to reparation for loss incurred in respect of the diminution in value of his water-power and the adjoining property on account of the construction of the works in question.—*Held*, affirming the judgment appealed from (Q. R. 22 K. B. 265), Idington and Anglin, JJ., dissenting, that the plaintiff was entitled to reparation for such injuries.—*Per* Idington and Anglin, JJ.—As it was apparent that the defendants could operate their works in such a manner as to avoid, or diminish, the inconveniences occasioned thereby, it would not be proper, in such an action, to include possible future losses in assessing the damages to be given as compensation for the injuries complained of. *Montreal Street Railway Co. v. Boudreau* (36 Can. S. C. R. 329); *Chambly Manufacturing Co. v. Willett* (34 Can. S. C. R. 502); and *Backhouse*

v. *Bonomi* (9 H. L. Cas. 503), referred to. *Per Davies, Anglin and Brodeur, J.J.* — Where no effective steps have been taken by the party from whom damages are claimed to have the damages resulting from improvements constructed in a stream ascertained by an expertise, in the manner provided by article 7296, R. S. Q., 1909, he cannot set up a mere proposal of such an arbitration as an exception to an action against him to recover compensation.—*Per Duff, J.*—The defendants not having taken steps under the statute for several months, and not having shewn that they were in fact ready and willing to proceed under the statute, the action lies. *Compagnie Electrique Dorchester v. Roy*, xlix, 344.

19. *Navigable waters—Floatability—Ownership of beds—Grant of Crown lands—Conveyance of bed of navigable waters—Title to land—Art. 400 C. C.*—In the Province of Quebec, a river which, owing to natural obstructions, is capable only of floating loose timber (*flotables abûches perdues*), in portions of its course may, at least from its mouth upwards until some such obstruction is reached be navigable and subject to the rule of law applicable to navigable waters. As the river in question for several miles from its mouth upwards to a point where its course is obstructed by rapids is in fact capable of being utilized for the purposes of navigation the bed of the stream for that distance forms part of the Crown domain. (Art. 400 C. C.)—Without express terms to that effect a Crown grant, made in 1806, of township lands in the territory now comprised in the Province of Quebec did not pass title to the grantee in the bed of navigable waters within the area described in the letters patent of grant. *Idington, J.*, dissented, on the ground that the language of the letters patent in question was intended and was sufficiently explicit and comprehensive to convey to the grantee the bed of the navigable waters included within the limits of the description of the lands granted.—The judgment appealed from (15 Ex. C. R. 189), was affirmed, *Idington, J.*, dissenting. *Leamy v. The King*, liv., 143.

20. *Water commission—Construction of statute—Damages to existing works—Appropriation of water*, xxxiv., 650.

See WATERWORKS.

21. *Title to land—Accession—Sea beaches—Servitude—Access to navigable waters—Possession annale—Possessory action*, xxxiv., 716.

See TITLE TO LAND.

22. *Waterworks—Trespass—Damages—Waiver—Injunction—59 Vict., c. 68, ss. 9, 25 (B.C.)*, xxxv., 309.

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23. *Rivers and streams—Construction of statute—Toll-bridge—Franchise—Exclusive limits—Measurement of distance—Encroachment—57 Geo. III., c. 20 (L.C.)*, xxxvi., 224.

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24. *Title to land—Ownership—Artificial watercourse—Canal banks—Trespass—Possessory action—Bornage—Practice*, xxxvii., 668.

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26. *Admiralty law—Foreign bottoms—Collision in foreign waters—Jurisdiction of Canadian courts*, xxxviii., 303.

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27. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with watercourse—Agreement as to user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages*, xxxix., 81.

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28. *Municipal corporation—Boundary roads—Natural divisions—Bridges—Deviation of highway—Liability of adjoining counties for repairs*, Cam. Cas. 608.

See MUNICIPAL CORPORATION.

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29. *Title to land—Possession—Prescription—Interruptive acknowledgment—Evidence*, xlv., 130.

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30. *Title to land—Navigable or floatable waters—Crown grant—Riparian rights—Title to bed of river—Erection of townships—Description of area included—Costs—MacLaren v. Attorney-General for Quebec*, xlv., 656.

31. *Sea-coast and inland fisheries—Canadian waters—Tidal waters—Navigable waters—Open sea—B. C. "Railway Belt"—Foreshores—Fera natura—Legislative jurisdiction—Construction of statute*, xlvii., 493.

See FISHERIES.

32. *Appeal—Jurisdiction of provincial tribunal—Consent of parties—Estoppel—Assessment—Railway bridge over navigable river—Township of Cornwall v. Ottawa & N. Y. R. R. Co.*, lii., 466.

See ASSESSMENT AND TAXES.

33. *Driving lumber—Rights in navigable waters—River improvements—Rivers and Streams Act (Ont.)—"B. N. A. Act, 1867," ss. 91(10), 92(10). Booth v. Lowery*, liv., 421.

See NEGLIGENCE.

34. *Negligence—Driving lumber—Rights in navigable waters—River improvements—Contract with Crown—Rights of contractor—Reckless driving—"B. N. A. Act, 1867," ss. 91(10), 92(10), liv., 421.*

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**ROADSTEAD.**

*Canadian waters* — See *coasts*—*Property in foreshores*—*Harbours*—*Havens*—*Ownership in beds*—*Construction of statute*—"B. N. A. Act, 1867," ss. 108, 109. *Attorney-General v. Ritchie*, lii., 78.

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**ROMAN CATHOLIC BISHOP.**

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5. SALE OF TIMBER, 118-122.

## 1. SALE OF BONDS, STOCKS, SECURITIES, ETC.

1. *Sale of stock*—*Evidence of title*—*Duty of vendor*—*Defective certificate*.]—When shares in the stock of a company are sold for cash and a certificate delivered with a form of transfer indorsed purporting to be signed by the holder named therein who is not the seller, the latter must be taken to affirm that a title which will enable the purchaser to become the legal holder is vested in him by virtue of such certificate and transfer.—A transfer was signed by the wife of the holder at his direction, but not acted upon until after his death.—*Held*, that the authority of the wife to deal with the certificate was revoked by the holder's death and on a cash sale of the shares the purchaser, who received the certificate and transfer so signed being unable, under the company's rules, to be registered as holder, had a right of action to recover back the purchase money from the seller.—The fact that the purchaser endeavoured to have himself registered as holder of the shares was not an acceptance by him of the contract of sale which deprived him of his right of action to have it rescinded. Nor was his action barred by loss of the defective certificate by no fault of his nor of the seller.—Judgment appealed from (13 B. C. Rep. 351), reversed. *Castleman v. Waghorn, Gwyn & Co.*, xli., 88.

2. *Powers of company*—*Sale of shares*—*Security by mortgage*—*Subsequent creditor*—*Status*—*Foreclosure*. *Hughes v. No. Electric & Mfg. Co.*, i., 626.

See COMPANY.

## 2. SALE OF GOODS.

(a) *Breach of Contract*.

3. *Sale of goods*—*Contract by correspondence*—*Statute of Frauds*—*Delivery*—*Principal and agent*—*Statutory prohibition*—*Illicit sale of intoxicating liquors*—*Knowledge of seller*—*Validity of contract*.]—B., a trader, in Truro, N.S., ordered goods from a company in Glasgow, Scotland, through its agents, in Halifax, N.S., whose authority was limited to receiving and transmitting such orders to Glasgow for acceptance. B.'s order was sent to and accepted by the company and the goods delivered to a carrier in Glasgow to be forwarded to B. in Nova Scotia.—*Held*, affirming the judgment appealed from (37 N. S. Rep. 482), Idington, J., dissenting, that the contract was made and completed in Glasgow.—Where a contract was made and completed in Glasgow, Scotland, for the sale of liquor by parties

there to a trader in a county in Nova Scotia where liquor was forbidden by law to be sold on pain of fine or imprisonment, and the vendors had no actual knowledge that the purchaser intended to re-sell the liquors illegally, the contract was not void, and the vendors could recover the price of the goods. *Bigelow v. Craiggellachie Glenlivet Distillery Co.*, xxxvii., 55.

4. *Contract for sale of goods — Lowest wholesale price — Special discount*, xxxvi., 130.

See CONTRACT.

5. *Contract—Literary work — Publisher and author—Obligation to publish*, xlv., 95.

See CONTRACT.

6. *Insolvent company—Sale of assets by liquidator—Sale “free from incumbrances”—Conversion—Breach of contract. Dominion Linen Co. v. Langley*, xli., 633.

7. *Control—Payment in common stock—Unorganized company—Time for delivery—Company law*, liii., 18.

See COMPANY LAW.

(b) *Conditions.*

8. *Conditional sale—Price payable before delivery—Title to goods—Rescission of sale —Action—Legal maxims — Attachment — Execution—Possession by judgment debtor —Ownership—Procedure by bailiff—Guardian to second seizure — Sale super non domino et non possedente — Adjudication upon invalid seizure.*] — The hull of a steamer sunk in a canal had been attached under judicial process and, while standing on the bank at a distance from which he could not see or touch the materials, a bailiff assumed to make a second seizure, gave no notice of his proceedings to those on board the hull, and appointed a guardian other than the one placed in charge of the hull at the time of the first seizure. The execution debtor, named in the second writ, had made a bargain for the purchase of the hull subject to the price being paid before delivery, but had not paid the price nor had the property been delivered into his possession. Subsequently, the bailiff adjudicated the hull to the appellant by judicial sale at auction.—*Held*, that there had been no valid seizure under the second writ; that the purchaser acquired no title to the property, by the adjudication, and the sale to him should be rescinded; that, under the circumstances, there could be no application of the maxim “*en fait de meubles possession vaut titre*” and that the maxim “*main de justice ne dessaisit pas*” must be taken subject to the qualification that a seizure under judicial process places the goods seized beyond the control of an execution debtor. *The Connecticut and Passumpsic Rivers Railroad Co. v. Morris* (14 Can. S. C. R. 319), distinguished, and the judgment appealed from (*Q. R. 17 K. B. 193*), affirmed. *Brook v. Booker*, xli., 331.

9. *Sale of goods by sample—Delivery — Condition f.o.b. — “Sale of Goods Act,”*

*R. S. M. (1902) c. 152—Notice of rejection—Reasonable time—Breach of warranty — Damages.*]—By contract made at Winnipeg, Man., plaintiffs sold to the defendants, by sample, a carload of cured fish to be shipped during the winter from their warehouse at Canso, N.S., “f.o.b. Winnipeg.” The sample was sound and satisfactory. The fish arrived in Winnipeg in a frozen state and were received by the defendants and kept by them in an outhouse for several weeks before being placed in the freezer, the atmospheric conditions being such that the fish could not, in the meantime, have deteriorated by thawing. Some of the fish when sold proved unsound, were returned by customers, and the whole shipment was found not up to sample and unfit for food. On inspection the health inspector condemned the whole carload, and it was destroyed. About six weeks after the fish had been received by them, the defendants notified the plaintiffs of the rejection of the carload so delivered. In an action for the price at which the fish had been sold, the defendants counterclaimed for damages for breach of warranty and consequent loss in their business.—*Held*, reversing the judgment appealed from (17 Man. R. 620), that the sale had been made subject to delivery at Winnipeg, that any loss occasioned by deterioration in transit not necessarily incident to the course of transit should be borne by the sellers, that the loss in this case was not so incident, and that, under the circumstances, the purchasers had notified the sellers of the rejection within a reasonable time, as contemplated by the “Sale of Goods Act.” *R. S. M. (1902), c. 152*; that the plaintiffs could not recover and that the defendants were entitled to have damages on their counterclaim. *Winnipeg Fish Co. v. Whitman Fish Co.*, xli., 453.

10. *Construction of contract — Sale of machinery—Agreement for lien — Delivery*, xxxix., 274.

See CONTRACT.

(c) *Delivery and Possession.*

11. *Sale of goods—Delivery—Lien of unpaid vendor—Stoppage in transitu—Goods not separated from larger bulk—Estoppel.*] —H. had a large quantity of lumber in the yards of E. & Co., and sold a portion thereof to L. through an agent on six months' credit. L. gave his promissory note for the purchase money. Defendants' agent gave L. a delivery order on E. & Co., which the latter accepted. L. then pledged the lumber to R. as security for a large advance, and gave the latter a delivery order on E. & Co., which the latter accepted. Before all the lumber had been delivered, L. made default in paying his note to H., and the latter at once forbade E. & Co. making further delivery to L. or R. E. & Co. then brought an action against R. and H. in which they prayed that the latter be required to interplead regarding their respective claims to the lumber and be restrained from bringing any action against E. & Co. respecting the same. An order was made in chambers directing that an issue be tried

to determine whether R. or H. was entitled to the lumber in the yards of E. & Co. At the trial the issue was found in favour of H., the court holding that until delivery was made there was no completed sale to L. sufficient to pass the title as against the vendor's lien. This judgment was affirmed by the Court of Appeal. On appeal to the Supreme Court of Canada:—*Held*, Strong and Gwynne, J.J., dissenting, that the judgment below should be affirmed and the appeal dismissed with costs.—*Held*, per Patterson, J., that the acceptance of E. & Co. had not the effect of making them bailees for L. or R. by attornment in respect of the property in question, and that the rights of H. were the same as those on an unpaid vendor to stop goods *in transitu*.—*Held*, per Gwynne, J., that H. was estopped by his conduct in the transaction from asserting title to the lumber which E. & Co. had, on the faith of the authority derived from H., undertaken to hold for R. *Ross v. Hurteau* (xviii., 713); Cam. Cas. 511.

12. *Title to goods—Sale or transfer—Retention of ownership—R. S. O. [1897] c. 148, s. 41.*—K., a manufacturing furrier, by agreement with a retail trading company, placed a quantity of his goods with the latter which could sell them as they pleased, paying on each sale, within 24 hours thereafter, the price mentioned in a list supplied by K. K. had the right to withdraw from the company any or all such goods at any time and all remaining unsold at the end of the season were to be returned. While still in possession of a quantity of K.'s goods, the company made an assignment for the benefit of creditors, and they were claimed by the assignee.—*Held*, affirming the judgment of the Court of Appeal (9 Ont. L. R. 164), which maintained the verdict for defendant at the trial (7 Ont. L. R. 356), that the property in and ownership of the goods never passed out of K. and the transaction was not one within the terms of R. S. O. [1897] c. 148, s. 41. *Longley v. Kahnert*, xxxvi., 397.

13. *Sale of goods—Suspensive condition—Terms of credit—Delivery—Pledge—Shipping bills—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Banking—Bailee receipt—Brokers and factors—Principal and agent—Resiliation of contract—Revendication—Damages—Practice—Pleading—52 Vct., c. 30, ss. 64, 73.*—The absence of the indorsement on bills of lading by the consignee therein named is notice of an outstanding interest in the goods represented by the bills and places persons proposing to make advances upon the security of those bills upon inquiry in respect to the circumstances affecting them.—On failure to take proper measures in order to ascertain these facts and obtain a clear title to the bills and goods, any pledge thereof must be assumed to have been made subject to all rights of such consignee. The Chief Justice dissented. — *Held*, per Taschereau, C.J., dissenting, that where a sale of goods has been completed by actual tradition and delivery, the mere absence of the consignee's indorsement upon shipping bills representing the goods made in the name of the

vendor cannot have the effect of reserving any right of property in the vendor. If the goods have been sold upon terms of credit, the unpaid vendor has no right to revendicate such goods after they have passed into the possession of a third person in the ordinary course of business, and, in the present case, on failure of the conservatory seizure and in the absence of any right of the plaintiff to revendicate the goods, the alternative relief prayed for by his action should not be granted. *Gosselin v. Ontario Bank*, xxxvi., 406.

14. *Sale of railway ties—Delivery—Bank Act lien—Trade marks—Timber marks*, Cout. Cas. 266.

See LIEN.

15. *Contract—Delivery of goods—Conditions as to quality, weight, etc.—Inspection—Rejection—Conversion—Sale by Crown officials—Liability of Crown—Deductions for short weight—Costs. Boulay v. The King*, xliiii., 61.

See CONTRACT.

16. *Contract—Delivery of goods—Conditions as to quality, weight, etc.—Inspection—Rejection—Conversion—Sale by Crown officials—Liability of Crown—Deduction for short weight—Costs, xliiii., 61.*

See CONTRACT.

17. *Delay in delivery—Damages—Construction of agreement—Deficiencies in machinery—Exemption clause—"Unable to deliver"—"On or about" stated date. Leonard & Sons v. Kremer*, xlviii., 518.

18. *Guarantee—Payment of draft—Guarantee by bank—Bill of lading—Goods at disposal of consignor*, liii., 570.

See GUARANTEE.

19. *Guarantee by bank—Sale of goods—Payment of draft—Bill of lading—Goods at disposal of consignor. Pioneer Bank v. Bank of Commerce*, liii., 570.

See GUARANTEE.

(d) Evidence.

20. *Chattel mortgage—Sale under powers—Notice—Offer to redeem—Tender—Equitable relief—Evidence—Proceedings taken in good faith.*—To impeach a sale under powers in a chattel mortgage on the ground that an offer to redeem was made prior to the time fixed by the notice of sale, the person entitled to redeem is obliged to show that the amount due under the mortgage was actually tendered or that the mortgagee was distinctly informed that the mortgagor was then and there ready and willing to pay what was so due and, being thus informed of the intention to redeem, refused to accept payment.—In the exercise of his power of sale, a mortgagee of chattels is bound merely to act in good faith and avoid conducting the sale proceedings in a recklessly improvident manner calculated to result in sacrifice of the goods.—And per Duff, J., he is not obliged (regardless of his own interests as



mortgagee), to take all the measures a prudent man might be expected to take in selling his own property.—Judgment appealed from reversed, the Chief Justice and Idington, J., dissenting. *British Columbia Land and Investment Agency v. Ishitaka*, xlv., 302.

21. *Sale of goods—Set-off—Debtor and creditor—Partnership—Evidence—Books of account—Practice—New trial—Reducing verdict on appeal*, Cam. Cas. 282.

See NEW TRIAL.

22. *Evidence—Burden of proof—Shifting of onus—Sale of bank stock—Allotment to shareholders—Shares refused or relinquished—Sale to public—Authority—R. S. C. (1906) c. 29, s. 34*, xlv., 157.

See SHAREHOLDER.

23. *Sale of goods—Express or implied warranty. Canadian Gas Power and Launches v. Orr Brothers*, xlv., 636.

24. *Contract—Sale of hay—Rejection—Conversion—Damages—Counterclaim. Poirier v. The King*, xlv., 638.

(c) *Fraud.*

25. *Sale of goods by insolvent—Bonâ fides—Fraudulent preference—Interpleader order—Res judicata—Estoppel—Pleading—Bar to action.*—K., a trader in insolvent circumstances, sold the whole of his stock-in-trade to D., who immediately took possession on the 2nd January, 1888. A few days afterwards the sheriff seized the goods under executions issued upon judgments obtained, subsequent to the sale by T. B. & Co. and the Bank of B. C. On the 14th January an order was made for the trial of an interpleader issue between D. and T. B. & Co., and the order provided that no action should be brought against the sheriff for the seizure of the goods. Upon the trial of the interpleader issue in the County Court an order was made barring the claimant D. and declaring the bill of sale to him by K. invalid against creditors, and this judgment was affirmed upon appeal to the Supreme Court of British Columbia *in banco*, on the 21st March, 1888. On the 11th January, 1888, D. instituted an action against the sheriff claiming damages for wrongfully seizing, converting and selling the plaintiff's goods. An interpleader order was also made in which D. was the claimant and the Bank of B. C. was defendant, but upon the delivery of the judgment in the other issue between D., claimant, and T. B. & Co., defendants, the court rescinded the second interpleader order, and further ordered that D. be forever barred from prosecuting his claim against the sheriff. D. thereupon abandoned his first action against the sheriff, but instituted a new action against him on the 22nd November, 1888, claiming larger damages for the same wrongs complained of in his first action. On the trial of this cause, the jury found that K. had sold the goods with intent to prefer some of his creditors, but that D. had purchased in good

faith and without knowledge of such intention on the part of the vendor and, thereupon, judgment was ordered to be entered for the plaintiff for the sum of \$9,161 and costs. On appeal, the full court of British Columbia reversed this judgment (McCraith, J., dissenting), on the ground that the bill of sale from K. to D. was void under c. 51 R. S. B. C., being an Act respecting the fraudulent preference of creditors by parties in insolvent circumstances; and secondly, that the judgment in the interpleader issue was *res judicata*. On appeal to the Supreme Court of Canada:—*Held*, reversing the judgment of the Supreme Court of British Columbia, that as the evidence shewed the goods had been purchased by D. in good faith for his own benefit, the sale was not void under the statute respecting fraudulent preferences. — *Held*, also, that the judgment on the interpleader issue could not operate as a bar to the present action.—*Held*, further, that, even if such judgment could be set up as a bar, it ought to have been specially pleaded by way of estoppel by a plea setting up in detail all the facts necessary to constitute the estoppel, and that, from the evidence in the case, it appeared that no such estoppel could have been established. (Leave to appeal to Privy Council granted, 29th January 1894, but not prosecuted). *Davies v. McMillan* (Cout. Dig. 662), Cam. Cas. 306.

26. *Company—Paid-up shares—Sale by broker—Prospectus—Misrepresentations—Rescission—Delay—Liability of directors*, xl., 437.

See COMPANY.

27. *Company—Sale of shares—Misrepresentation—Fraud—Action for deceit—Accord and satisfaction*, xl., 437.

See FRAUD.

28. *Designated quality—Fraud on purchaser—Damages—Loss of market. Bigelow v. Graham*, xlviii., 512.

(f) *Remedy of Unpaid Vendor.*

29. *Sale by sheriff—Book debts—Assignment of debt—Statute of Limitations—Payment—Ratification—Principal and agent*, xxxv., 533.

See SHERIFF.

(g) *Other Cases.*

30. *Mining lease—Prospector's license—Testing machinery—Annexation to the freehold—Trade fixtures—Fi. fa. de bonis—Sale under execution*, xxxv., 539.

See EXECUTION.

31. *Banks and banking—Security for advances—Assignment of goods—Claim on proceeds of sale—53 Vict. c. 31, s. 74 (D.)*, xxxviii., 187.

See BANKS AND BANKING.

32. *Vendor and vendee—Sale of securities—Interpretation of contract—Arts. 1018, 1019 R. C. C.—Railways—Debtor and creditor—Right-of-way claims—Legal expenses incurred in settlement, xxxviii., 422.*

See CONTRACT.

33. *Patent law—Canadian Patent Act—R. S. C. (1906) c. 69, s. 38—Manufacture—Sale—Lease or license, xxxix., 499.*

See PATENT OF INVENTION.

34. *Appeal—Actio Pauliana—Controversy involved—Title to land—Supreme Court Act, s. 40, xli., 80.*

See APPEAL.

35. *Construction of statute—N. W. T. Con. Ord., 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—“Bank Act,” R. S. C., 1906, c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages, xlii., 473.*

See CHATTEL MORTGAGE.

36. *Sale of chattels—Public auction—Disclosure of principal—Liability of auctioneer—Giving credit—Post-dated cheque. Prescott v. Trapp & Co., 1. 263.*

See AUCTION.

### 3. SALE OF LANDS.

#### (a) Contracts Generally.

37. *Contract—Guarantee—Conditional sale—Rescission—Mortgagor and mortgagee—Power of sale—Creditor retaining possession—Continuing liability—Appropriation of money realized by creditor—Release of debtor—Discharge of surety.]—S. leased a hotel for three years and agreed to purchase the furniture therein from plaintiffs (respondents) at \$11,000, payable by instalments, \$3,000 during the first year, \$3,000 during the second year, and \$5,000 during the third year of the term, power to retake and sell the goods, on default, being reserved. The whole debt was secured by chattel mortgage upon the furniture, and, as further security, by an agreement entered into with several other persons, the defendant (appellant), guaranteed the payment of one-sixth of the instalment payable during the second year of the term. It was a condition of the guarantee that it should remain in force notwithstanding that S. might forfeit her right to the furniture under the conditions of any agreement or mortgage. The chattel mortgage, on breach of covenants, provided for forfeiture of all claim of S. to the furniture, and all claim of S. to the furniture, and that the plaintiffs might, thereupon, retake possession thereof, and, also, that all payments she should have made would then be forfeited. During the second year of the term, on default by S. to pay part of the first year's instal-*

*ment, the plaintiffs resumed possession of the hotel and furniture, leased the hotel to another person and sold the furniture for \$6,500; they also notified the guarantors of the default of S. to perform “the conditions of the purchase,” that they had, in consequence, repossessed themselves of the furniture, and that they intended holding the guarantors liable for the payment guaranteed. The money received on the resale was appropriated by the plaintiffs first, in payment of a balance of the first year's instalment; 2dly, in payment of the third instalment; and lastly, towards part payment of the second instalment, thus reducing this last amount by \$105.14. After the expiration of the three years' term of the lease to S., the plaintiffs sued upon the guarantee, and recovered judgment against the defendant.—Held, per Taschereau, Girouard and Davies, J.J. (Sedgewick and Mills, J.J., contra), that the contract represented by the agreement, guarantee and chattel mortgage constituted a relationship of mortgagor and mortgagee between S. and the plaintiffs, and, consequently, that the guarantors continued to be liable under the guarantee, notwithstanding the forfeiture of the rights of S., and the exercise of the powers of resuming possession and resale of the furniture.—Held, per Sedgewick and Mills, J.J., dissenting, that the transaction amounted to a conditional sale of the furniture, that the liability of S. upon her personal covenant ceased upon the exercise of the powers by the plaintiffs, and, consequently, that the sureties were discharged, notwithstanding the special provision that the guarantee should remain in force.—Held, also, per Sedgewick and Mills, J.J. (Davies, J., contra), that in either view of the nature of the contract, the receipt of the money on resale of the furniture cancelled the debt pro tanto, and, upon the second instalment falling due, the plaintiffs were bound forthwith to appropriate the amount of that instalment out of the \$6,500 then in their hands, in satisfaction and discharge of the guaranteed payment, thereby releasing both S. and her sureties from further liability. Stephen v. Black, Cont. Cas. 217.*

38. *Municipal corporation—Sale of corporate property—Committee of council—Authority to sell—Ratification.]—A committee of a municipal council cannot, unless authorized by the council, sell corporate property, and if they do an action lies against them by the corporation for any loss incurred thereby. Such illegal sale cannot be ratified by resolution of the council carried by the votes of the members of the committee. Town of New Glasgow v. Brown, xxxix., 586.*

39. *Agreement for sale of lands—Construction of contract—Right of action—Partition—Administration by co-owners—Trust—Interim account—Partial discharge of trustees.]—A. and S., being holders of the entire capital stock of the C. and W. Rway. Co., agreed that they would cause a moiety of the company's lands to be vested in H. by a valid instrument to be executed by the company at the request of H. and in such form as he might require. During some years the lands were administered by*

A. and S., but H. never requested nor received any conveyance of his moiety, and the title to the lands, in so far as they had not been disposed of, remained in the company. In an action by the plaintiffs against H. for partition of the lands and to have an order for an interim account by and partial discharge of A. and S. as trustees:—*Held*, that as, at the time of action, the title to the lands was still vested in the railway company which was not a party to the agreement, the order for partition could not be granted, and that, independently of partition or other final determination of their trust, the plaintiffs were not entitled to the relief of an interim accounting and partial discharge as trustees.—*Judgment* appealed from (14 B. C. Rep. 517), affirmed. *Angus v. Heinze*, xlii., 416.

40. *Vendor and purchaser — Agreement to convey lands — Consideration—Price in money—Breach of contract—Recovery for "money had and received"—Sale or exchange—Damages.*—S. sold his interest in certain lands to W. for a consideration, fixed at \$19,000, of which \$16,000 was to be satisfied by the conveyance of other lands, alleged to be owned by W. W. then executed a written agreement purporting to sell these others to S., for the sum of sixteen thousand dollars, acknowledged then and there to have been received by the vendor; bound himself to convey them to the purchaser, with a clear title, within one year from the date of the agreement, and time was stated to be of the essence of the contract. Upon default by the vendor to convey the lands, according to the agreement, the plaintiff sued to recover the \$16,000, as money had and received for which no consideration had been given. In his defence, W. contended that the consideration mentioned in the agreement was not actually in cash but consisted merely of lands to be conveyed in exchange at a valuation fixed at that amount, and, consequently, that the plaintiff could recover only damages to be assessed according to the value of the lands which he had failed to convey.—*Held*, that, in the absence of evidence of any special purpose as the basis of the agreement, the terms of the contract in writing governed the rights of the parties, that the consideration mentioned in the agreement should be regarded as a price paid in money and, consequently, the plaintiff was entitled to the relief sought. *Judgment* appealed from (20 Man. R. 562), affirmed. *Webster v. Snider*, xlv., 296.

41. *Stipulation as to user—Deed—Covenant or condition—Detached dwelling house—Apartment house.*—In a deed of sale of land it was stipulated that it was "to be used only as a site for a detached brick or stone dwelling house, to cost at least two thousand dollars, etc."—*Held*, that this stipulation constituted a covenant.—*Held*, also, reversing the judgment of the Appellate Division (28 Ont. L. R. 154), and restoring that of the Divisional Court (27 Ont. L. R. 87), Fitzpatrick, C.J., and Duff, J., dissenting, that an apartment house intended for occupation by several families was not a "detached dwelling house" within its meaning. *Pearson v. Adams*, l., 204.

42. *Contract—Sale of mining land—Substituted purchaser — Reservation of claim against original purchaser — Forfeiture of second contract to other parties—Effect on reserved claim—Judgment.*—In June, 1903, V. & Co., by agreement in writing, contracted to sell, and C. to buy, mining property for \$125,000, to be paid \$5,000 down and the balance in annual instalments of \$24,000. The \$5,000 was paid and in March, 1905, when an instalment was overdue and the second accruing a new agreement was executed, to which C. was a party, for sale of the property to a mining company for the same price and on the same terms. This agreement provided that nothing in it should affect the right of the vendor to claim from C. the amount payable under the original contract up to March, 1905, otherwise the latter was to be merged in the new contract. The mining company made default in their payments and, as provided in their contract, the vendors gave notice that the contract was at an end and, later, sold the property for \$75,000. They then took action against C. for the amount unpaid on the original agreement and recovered judgment. After the final sale of the mine C. applied for and obtained from a judge an order declaring that V. & Co. were not entitled to enforce their judgment against him except for the costs. On appeal from the affirmation of this order by the Appellate Division:—*Held*, affirming the decision of the Appellate Division (32 Ont. L. R. 200), that by extinguishing the interest of the mining company in the land and then selling it V. & Co. had put it out of their power to place C. in the position he was entitled to occupy on making payment and had thus disabled themselves from enforcing their judgment. *Vivian v. Clergue*, li., 527.

43. *Deferred payment—Omission of date—Completion of contract—Acceptance by purchaser—New term—Instruments of title—Delivery — Arts. 1025, 1235, 1472, 1491-1494, 1533, 1534 C. C.*—A contract for the sale of land, in the Province of Quebec, by which the date of the deferred payment of an instalment of the price is not fixed is, nevertheless, according to the law of that province, a completed contract of which specific performance may be enforced. (Duff and Brodeur, J.J., *contra*).—In his letter accepting the offer of sale, the purchaser requested the vendor to send to his notary the documents of title and the registrar's certified abstract of the deeds affecting the property. — *Held*, per Fitzpatrick, C.J., and Anglin, J., that this request did not intend the stipulation of a new term to the contract.—*Per* Brodeur, J.—Although the vendor is obliged to furnish the documents of title, including the registrar's certified abstract, yet, in the present case, as it appeared that the vendor made it a condition that the titles and certificate were not to be delivered into the possession of the purchaser the request in the letter of acceptance was a stipulation of a new term which left the contract incomplete. *La Banque Ville Marie v. Kent* (Q. R. 22 S. C. 162), and *Sauvé v. Picard* (20 Rev. de Jur. 142), referred to.—*Judgment* appealed from (Q.R.

23 K. B. 495), affirmed. *Lareau v. Poirier*, li., 637.

44. Construction of deed — Mortgage or sale — Equity of redemption. *McLean v. McKay*, Cout. Cas. 334.

45. Contract — Resolution by municipal corporation — Acceptance of offer to purchase — Evidence — Written instructions — Statute of Frauds — Estoppel, xxxiv., 132.

See CONTRACT.

46. Contract — Deceit and fraud — Rescission — Evidence — Concurrent findings of lower courts — Duty of second appellate court, xxxiv., 145.

See CONTRACT.

47. Construction of contract — Custom of trade — Arts. 8 and 1016 C. C. — Sale of goods — Delivery, xxxv., 274.

See CONTRACT.

48. Construction of agreement — Sale of goods — Breach of contract — Specific performance — Damages, xxxv., 482.

See CONTRACT.

49. Sale of land — Vendor and purchaser — Formation of contract — Conditions — Acceptance of title — New term — Statute of Frauds — Principal and agent — Secret commission — Avoidance of contract — Fraud — Specific performance, xxxviii., 588.

See CONTRACT.

50. Agreement for sale of land — Principal and agent — Estoppel — "Land Commissioner" — Specific performance, xxxix., 169.

See SPECIFIC PERFORMANCE.

51. Contract for sale — Time of essence — Delay of vendor — Description — Statute of Frauds — Specific performance — Vendor and purchaser. *Anderson v. Foster*, xlii., 251.

52. Agreement for sale of lands — Construction of contract — Right of action — Partition — Administration by co-owners — Trust — Interim account — Partial discharge of trustees. *Angus v. Heinze*, xlii., 416.

See TRUSTS.

53. Contract — Supplying electrical energy — Delivery — Condition — Payment at flat rate — Obligation to pay for pressure not utilized — Sale of commodity — Agreement for service. *Montreal v. Montreal Light, Heat, etc.*, xliii., 431.

See CONTRACT.

54. Vendor and purchaser — Sale of land — Condition — Approval of assignments — Equitable estate or interest — Priority between transferees — Principal and agent — Fraudulent and criminal practices — Notice of previous transfer — Implied knowledge. *MacLeod v. Sawyer-Massey Co.*, xlvi., 622.

55. Vendor and purchaser — Sale of land — Condition dependent — Deferred payment — Disclosure of title — Abstract — Refusal to complete — Lapse of time — Defeasance — Specific performance, xlvi., 114.

See VENDOR AND PURCHASER.

56. Vendor and purchaser — Agreement — Bond to secure payment of price — Conditions as to title. *Colwell et al. v. Neufeld*, xviii., 506.

57. Sale of land — Contract — Defeasance — "Time to be of the essence of the contract" — Deferred payments — Notice after default — Laches — Abandonment — Specific performance, xlix., 14.

See SPECIFIC PERFORMANCE.

58. Vendor and purchaser — Agreement for sale of land — Option — Acceptance — Uncertainty as to terms — Condition precedent — Specific performance, xlix., 211.

See VENDOR AND PURCHASER.

59. Vendor and purchaser — Sale of land — Payment by instalments — Specified dates — Time of essence — Forfeiture — Penalty — Payment declared to be deposit, xlix., 360.

See VENDOR AND PURCHASER.

60. Illicit contract — Lottery — Sale of land — Subsequent purchaser — Action pétitoire — Right of recovery — Ultra vires — Legal maxim — "Extra turpi causâ non oritur actio" — Notary — Official of purchasing company — Validity of deed. *Prevost v. Bedard*, li., 149.

See CONTRACT.

61. Constitutional law — Provincial legislation — Succession duties — Taxation — Property within province — Bona notabilia — Sale of lands — Covenant — Simple contract — Speciality — Construction of statute — Severable provisions — R. S. M., 1902, c. 161, s. 5 — 4 & 5 Edw. VII. c. 45, s. 4 (Man.) — Appeal — Jurisdiction. *Re Muir*, li., 428.

See CONSTITUTIONAL LAW.

62. Contract — Sale of coal areas — Payment in company stock — Unorganized company — Time for delivery. *Roche v. Johnson*, liii., 18.

See CONTRACT.

63. Contract — Foreign lands — Exchange — Specific performance — Jurisdiction of courts of equity — Mutuality of remedy — Relief in personam — Discretionary order — Appeal — Jurisdiction — "Final judgment" — "Supreme Court Act," R. S. C. 1906, c. 139, s. 38c, liii., 431.

See SPECIFIC PERFORMANCE.

64. Mechanic's lien — Loan company — Agreement for sale — Advances for building — "Owner" — Request — Privity and consent — Mortgagee — R. S. O., [1914] c. 140, ss. 2 (1), 8 (3) and 14 (2) — "Mechanics' Lien Act," liv., 569.

See LIEN.

3 (b) Contract by Broker or Agent.

65. Principal and agent — Broker — Sale of land — Commission for procuring purchaser — Company law — Commercial corporation — Contract — Powers of general manager.] — A land broker volunteered to make a sale of

real estate owned by a trading corporation and obtained, from the general manager, a statement of the price, and other particulars with that object in view. He brought a person to the manager who was able and willing to purchase at the price mentioned and who, after some discussion, made a deposit on account of the price and proposed a slight variation as to the terms. They failed to close and the manager sold to another person on the following day. The broker claimed his commission as agent for the sale of the property, having found a qualified purchaser at the price quoted.—*Held*, affirming the judgment appealed from (14 Man. Rep. 650), Taschereau, C.J., and Girouard, J., *dubitante*, that the broker could not recover a commission as he had failed to secure a purchaser on the terms specified. Under the circumstances, as the owner did not accept the purchaser produced and close the deal with him, there could be no inference of the request necessary in law as the basis of an obligation to pay the plaintiff a commission. *Calloway v. Stobart Sons and Co.*, xxxv., 301.

66. *Principal and agent—Sale of land—Authority to make contract—Specific performance.*—The defendant gave a real estate agent the exclusive right, within a stipulated time, to sell, on commission, a lot of land for \$4,270 (the price being calculated at the rate of \$40 per acre on its supposed area), an instalment of \$1,000 to be paid in cash and the balance, secured by mortgage, payable in four annual instalments. The agent entered into a contract for sale of the lot to the plaintiff at \$40 per acre, \$50 being deposited on account of the price, the balance of the cash to be paid "on acceptance of title," the remainder of the purchase money payable in four consecutive yearly instalments and with the privilege of "paying off the mortgage at any time." This contract was in the form of a receipt for the deposit and signed by the broker as agent for the defendant.—*Held*, affirming the judgment appealed from (15 Man. Rep. 205); that the agent had not the clear and express authority necessary to confer the power of entering into a contract for sale binding upon his principal.—*Held*, further, that the term allowing the privilege of paying off the mortgage at any time was not authorized and could not be enforced against the defendant. *Gilmour v. Simon*, xxxvii., 422.

67. *Principal and agent—Sale of mining land—Commission—Change of purchaser—Continued transaction.*—M., owner of mining lands, agreed to give G. a commission for effecting a sale thereof. G. introduced a purchaser to M. and a contract for sale of the lands to said purchaser was executed. This was replaced by a later contract by which the sale price was reduced in consideration of an incumbrance on the property being paid off by the purchaser who borrowed the money for the purpose and assigned his interest in the contract to the lender, also signing a release in favour of M. of any claim against him on the contracts. M. afterwards sold the mining lands to a person buying for the lenders of the

money to pay off the incumbrance. In an action by G. for his commission.—*Held*, that he was entitled to the commission on the full amount received for the land as finally sold.—*Held*, also, that the sale of the land was not a transaction independent of the contract with the purchaser introduced by G., but was a continuance thereof. Judgment appealed from affirmed, Davies, J., dissenting. *Glendinning v. Cavanagh*, xl., 414.

68. *Broker—Purchase on margin—Non-payment—Sale without notice—Liability of customer—Damages.* *Sutherland v. Securities Holding Co.*, xxxvii., 694.

69. *Sale of lands—Conditions—Deposit of price—Compliance with instructions—Vendor refusing to complete—Broker's commission—Remuneration for procuring purchaser.*—A broker instructed to sell lands for a price to be deposited in a bank pending arrival of clear title, procured a purchaser who made the deposit to his own credit without appropriating it to any special purpose. On refusal by the vendor to complete the bargain, the broker sued him for a commission of remuneration for the services rendered.—*Held*, reversing the judgment appealed from (1 Sask. L. R. 247), Idington, J., dissenting, that there had not been such compliance with the terms of the instructions as would entitle the broker to recover commission or remuneration for his services in procuring a purchaser. *Reser v. Yates*, xli., 577.

70. *Principal and agent—Broker selling on grain exchange—Contract in broker's name—Liability of principal—"Futures"—"Margins"—"Options"—Board rules—Indemnity*, xli., 61.

See BROKER.

71. *Broker—Principal and agent—Commission on sale of land—Introduction of purchaser—Efficient cause of sale—Completion of contract on altered terms*, xli., 395.

See BROKER.

72. *Sale of land—Principal and agent—Secret profit by broker—Participation in breach of trust—Implied partnership—Liability to account—Purchaser in good faith—Disclosure of suspicious circumstances—Cross-appeal—Parties—Practice*, xli., 543.

See BROKER.

73. *Principal and agent—Sale of land—Commission.* *Langley v. Rowlands*, xli., 626.

74. *Broker—Sale of land—Principal and agent—Disclosing material information—Secret profit—Vendor and purchaser—Agent's right to sell or purchase—Specific performance*, xli., 477.

See BROKER.

75. *Crown lands—Location—Public policy—Evasion of statute—B. C. "Land Act," 8 Edw. VII. c. 30, ss. 54, 36—Sale of Crown lands—Principal and agent—Commission on sales—Quantum meruit—Tainted contract.* *Brownlee v. McIntosh*, xlviii., 588.

See CROWN LANDS.

76. *Broker—Sale of land—Commission—General employment—Principal and agent—Introduction of purchaser—Interference by principal—Quantum meruit—Variation of written contract—Evidence—(Alta.), 6 Edw. VII. c. 27, xlix., 1.*

See BROKER.

77. *Sale of lands—Agreement to pay commission—Named price—Introduction by agent—General retainer—Sale at lower price—Right of action—Alberta statute, 6 Edw. VII., c. 27, s. 1, xlix., 75.*

See BROKER.

78. *Vendor and purchaser—Agreement for sale—Agent to procure purchaser—Agent joining in purchase—Non-disclosure to co-purchaser—Payment of commission—Rescission of contract, xlix., 403.*

See VENDOR AND PURCHASER.

79. *Broker—Transactions on charge—Principal and agent—Action—Evidence—Parol testimony—Arts. 1206, 1233, 1235 C. C., liv., 131.*

See BROKER.

### 3 (c) Evidence and Executions.

80. *Sale of goods—Condition as to prices—Lost invoices—Secondary evidence—Waiver—Breach of contract—Damages.]—The defendants agreed to purchase the plaintiff's stock-in-trade at a valuation to be based upon an advance of 13 per cent. on the invoice prices of the goods when taken into stock. On stock being taken by the parties the plaintiff was unable to produce invoices for a large portion of the goods, but insisted that their prices could be ascertained from private markings on the packages which, she alleged, represented the prices taken from the missing invoices. Differences arose between the parties respecting the prices of these goods, but the inventory was closed with the prices, as they had been marked on the packages, carried into the valuation columns. The defendants refused to complete the purchase on account of failure to produce the invoices in question and the action was brought to recover damages for breach of the contract.—Held, reversing the judgment appealed from (2 D. L. R. 293; 1 West. W. R. 1103), Duff, J., dissenting, that the consent of the defendants to the closing of the inventory with the prices in question stated according to the information obtained from the private markings constituted satisfactory proof of the fulfilment of the original agreement, and, consequently, damages could be recovered for breach of the contract to purchase.—Per Duff, J., dissenting.—There could be no contract capable of enforcement until the prices of the whole of the stock had been ascertained in the manner contemplated by the agreement, and the closing of the inventory with prices supplied from the unverified statements of the plaintiff did not constitute a new contract varying the condition in the agreement as to the fixing of the prices to be paid. Therefore, no action*

could lie to recover damages for breach of the contract to purchase. *Periard v. Bergeron*, xlvii., 289.

81. *Title to land—Lease for years—Possession by sub-tenant—Purchase at sheriff's sale—Adverse occupation—Evidence—Conveyance of rights acquired—Compromise—Waiver—Estoppel, Cout Cas. 158.*

See TITLE TO LAND.

82. *Consideration—Exchange of properties—Mortgage—Indemnity to vendor—Evidence, liv., 28.*

See MORTGAGE.

83. *Sale of goods—Owner not in possession—Authority to sell—Secret agreement—Estoppel.]—The owner of logs, by contract in writing, agreed to sell and deliver them to McK., the title not to pass until they were paid for. The logs being in custody of a boom company an order was given to deliver them as agreed. E., a dealer in lumber, telephoned the owner asking if he had them for sale and was answered "No, I have sold them to McK." E. then purchased a portion of them from McK., who did not pay the owner therefor and he brought an action to recover the price from E.—Held, affirming the judgment appealed from (36 N. B. Rep. 169), Nesbitt and Killam, JJ., dissenting, that the owner having induced E. to believe that he could safely purchase them from McK. could not afterwards deny the authority of the latter to sell.—Held, per Nesbitt and Killam, JJ., that as there was no evidence that the owner knew the identity of the person making the inquiry by telephone, and nothing was said by the latter to indicate that he would not make further inquiry as to McK's authority to sell, there was no estoppel.—Held, per Taschereau, C.J., that as the owner had given McK. an apparent authority to sell, and knew that he had agreed to buy for that purpose, a sale by him to a *bonâ fide* purchaser was valid. *Peoples Bank of Halifax v. Estey*, xxxiv., 429.*

84. *Servitude—Construction of deed—Purchase of dominant and servient tenements—Unity of ownership—Extinction of servitude—Revival by sale of dominant tenement—Effect of sheriff's sale—Purgation of apparent servitude—Reference to former deed creating charge—Lost deed—Evidence, xli., 217.*

See SERVITUDE.

### 3(d) Fraud, Deceit and Misrepresentation.

85. *Sale of lands—Warranty—Latent defects—Sale or exchange—Dation en paiement—Misrepresentation—Fraud—Errors—Rescission of contract—Damages.]—Where the vendor has sold, with warranty, a building constructed by himself, he must be presumed to have been aware of latent defects and, in that respect, to have acted in bad faith and fraudulently in making the sale.—The vendor, defendant, in the agreement for sale, represented that a block of buildings which he was selling to the plain-*

tiff had been constructed by him of solid stone and brick and so described them in formal deeds subsequently executed relating to the sale. The walls subsequently began to crack, and it was discovered that a portion of the buildings had been built of framed lumber filled in and encased with stone and brick in a manner to deceive the purchaser. — *Held*, that the contract was vitiated on account of error and fraud and should be set aside, and that, as the vendor knew of the faulty construction, he was liable, not only for return of the price, but also for damages. — *Held*, also, that the nature of the contract depended upon the intentions of the parties as disclosed by the last instrument signed by them, in relation thereto.—In the present case the sale was made in part in consideration of vacant city lots given in payment *pro tanto*, and during the time the defendant was in possession of the lots he erected buildings upon them with his own materials.—*Held*, that, even if the contract amounted to a contract of exchange, it was subject to be rescinded in the same manner and for reasons similar to those which would avoid a sale, and, if the contract be set aside for bad faith on the part of the defendant, the plaintiff has options similar to those mentioned in articles 417, 418, 1526 and 1527, of the Civil Code, that is to say, he may either retain the property built upon, on payment of the value of the improvements, or cause the defendant to remove them without injuring the property, or compel the defendant to retain the property built upon and to pay its value, besides having the right to recover damages according to the circumstances.—The judgment appealed from was reversed. *Pagnuello v. Choquette*, xxxiv., 102.

86. *Executor and trustee—Sale of trust property to wife—Inadequate consideration—Account—Jurisdiction of Probate Court.* —An executor sold property of the estate for \$800, his wife being the purchaser. On passing of the accounts the judge of probate found as a fact that the property was worth \$1,800 and ordered that the executor account for the difference.—*Held*, that the executor having really sold the property to himself secretly for an inadequate price he was properly held liable to account for its true value.—*Held*, also, that though the Probate Court could not set aside the sale it had jurisdiction to make such order. *Re Day; Day v. Brown*, xxxix., 122.

87. *Action for deceit—Agreement for sale—False representations—Compromise—Notice.* — P., living in Montreal, owned stock in a Cobalt mining company, and D., of Ottawa, looked after his interests therein. Being informed by D. that the mine was badly managed and the property of little value, and that other holders were selling their stock, P. signed an agreement to sell his at par. D. assigned this agreement to a third party. Later P., learning that the stock was selling at a premium and believing that he had made an improvident bargain, entered into negotiations with the holder of his agreement, and a compromise was effected by a portion of P.'s holdings being sold to the assignee at par and the

remainder returned to him. It transpired afterwards that D. and the assignor were in collusion to get possession of the stock, and P. brought action against D. for damages.—*Held*, that the compromise having been effected when P. was in ignorance of the real state of affairs, it did not bind him as against D., from whom he could recover as damages, the difference between the par value of his remaining shares and their market value at the date of such compromise.—Judgment of the Court of Appeal (12 Ont. W. R. 824), reversed and that of the trial judge (9 Ont. W. R. 380), affirmed by a Divisional Court (11 Ont. W. R. 127), restored. *Pitt v. Dickson*, xlii., 478.

88. *Misrepresentation—Deceit—Contract—Warranty.* *Mey v. Simpson*, xlii., 230.

89. *Contract—Rescission—Sale of land—Misrepresentations—Affirmance.* — B. advertised for sale his farm in Ontario, stating the contents and describing it as in first-class condition. He also stated the number of trees, old and new, in the orchard then on it. S., then in British Columbia, was shewn the advertisement and, after some correspondence in which B. reiterated the statements therein, came to Ontario and spent some time in inspecting the farm, which he finally purchased on B.'s terms and entered into possession. Shortly after he leased the orchard for ten years, and within a day or two discovered that the farm contained over forty acres less than, and the contents of the orchard were only half of, what had been represented; also that the farm was not in the condition stated, but badly overrun with noxious weeds.—He, therefore, procured the cancellation of the lease of the orchard and brought action to have the sale rescinded.—*Held*, that the lease of the orchard was not, under the circumstances, an affirmation of the contract for sale which would disentitle S. to rescission; that if it were an affirmation as to the orchard the subsequent discovery of the other misrepresentations would entitle him to a decree. *Campbell v. Fleming* (1 A. & E. 40), distinguished. *Boulter v. Stocks*, xlvii., 440.

90. *Sale of land—Deceit—Misrepresentation—Honest belief—Pleading—Amendment—Adding new cause of action.* — On the appeal of Macfarlane, one of the defendants, to the Supreme Court of Canada, from the judgment of the (Supreme Court of Saskatchewan (3 Sask. L. R. 446), after hearing counsel on behalf of both parties, the court reserved judgment, and, on a subsequent day, the appeal was allowed with costs, Idington, J., dissenting. *Macfarlane v. Davis*, xlvii., 399.

91. *Mines and mining—Vendor and purchaser—Sale of mining locations—Consideration in lump sum—Separate valuations—Misrepresentation—Deceit and fraud—Measures of damages*, xxxvi., 279.

See VENDOR AND PURCHASER.

92. *Mortgage—Sale under power—False bidding—Withdrawal of bid.* *Kaiserhoff Hotel Co. v. Zuber*, xlvi., 657.

## 3(e) Redemption.

93. *Vente à réméré*.—*Redemption—Term—Judicial proceedings—Art. 1550 C. O.]—Article 1550 of the Civil Code does not oblige the vendor, in a vente à réméré, to take judicial proceedings for redemption within the time stipulated in the deed. It is sufficient that, within such time, he signifies to the vendee his intention to redeem. Duff and Anglin, J.J., dissented.—Judgment appealed from (Q. R. 25 K. B. 464), affirmed. Johnson v. Laflamme, liv., 495.*

94. *Privileges and hypothecs—Tramway—Operation on highway—Title to land—Immobilization by destination—Sale of tramway by sheriff as a "going concern"—Unpaid vendor—Lien on price of cars—Pledge—Construction of statute, 3 Edu. VII., c. 91 (Que.)—Priority of claim—Collocation and distribution—Arts. 379, 2000 C. C.—Art. 752 Mun. Code. Ahearn & Soper v. N. Y. Trust, xlii., 267.*

See PRIVILEGES AND HYPOTHECS.

## 3(f) Rescission.

95. *Vendor and purchaser—Condition of agreement—Sale of land—Payment on account of price—Cancellation—Notice—Return of money paid—Rescission—Form of action—Practice.]—An agreement for the sale of lands acknowledged receipt of \$600 on account of the price and provided, in the event of default in the payment of deferred instalments, that the vendor might, on giving a certain notice, declare the agreement null and void and retain the moneys paid by the purchaser. On default by the purchaser to make payments according to the terms of the agreement the vendor served him with a notice for cancellation which incorrectly recited that the contract contained a stipulation for its cancellation, in case of default, "without notice," and concluded by declaring the contract null and void "in accordance with the terms thereof as above recited." The vendor, subsequently, refused a tender of the unpaid balance of the price and re-entered into possession of the lands. In an action by the purchaser for specific performance or the return of the amount paid, rescission was not asked for.—Held, that, as the vendor had not given the notice required by the conditions of the agreement he could not retain the money as forfeited on account of the purchaser's default; that, as the payment had not been made as earnest, but on account of the price, the purchaser was entitled to recover it back on the cancellation of the contract, and that, as the relief sought by the action could not be granted while the contract subsisted, a demand for rescission must necessarily be implied from the plaintiff's claim for the return of the money so paid. March Bros. & Wells v. Banton, xlv., 338.*

## 3 (g) Specific Performance.

96. *Agreement for the sale of land—Falsa demonstratio—Position of vendor's signature—Specific performance.]—On the conclusion of negotiations between C. and B. as to the sale of two city lots on the cor-*

ner of Hastings Street and Westminster Avenue, in Vancouver, B.C., C. signed a document as follows:—"Vancouver, June 28th, 1902.—Received from James Borland the sum of ten dollars, being a deposit on the purchase of Lots No. 9 and 10, Block No. 10, District Lot 196, purchase price twenty thousand dollars (\$20,000.00), balance to be paid within (10 July) days, when I agree to give the said James Borland a deed in fee simple free from all incumbrances.—(Sgd.) Jos. Coote, N. W. Cor. Hastings & Westr. Ave."—The lots on the corner of the streets mentioned were, in fact, lots 9 and 10 in block 9, and were the only lots defendant owned. In an action for specific performance of the agreement for sale of the lands the trial judge found that these were the lots intended to be sold, and also that the words below the signature formed part of the receipt.—Held, affirming the judgment appealed from (10 B. C. Rep. 493), Killam, J., dissenting, that the inaccuracy of the description in the receipt was a mere discrepancy which should be disregarded and the decree made for specific performance in respect of the lots actually bargained for between the parties. (Leave to appeal to Privy Council refused, 5th July, 1905.) Coote v. Borland, xxxv., 282.

97. *Specific performance—Agreement for—Inability to perform—Liability to damages—Diminution in price.]—A lease of land for ten years provided that on its termination the lessee could by giving notice, purchase the fee for \$22,000. In a suit for specific performance of this agreement.—Held, applying the rule in Bain v. Fothergill (L. R. 7 H. L. 158), Fitzpatrick, C.J. and Davies, J., dissenting, that if the lessor, without fault, was unable to give title in fee to the land the lessee was not entitled to damages for loss of his bargain.—Per Fitzpatrick, C.J. and Davies, J.—The above rule should not be applied in a case like this, where the lease contained onerous conditions binding the lessee to expend large sums in improving the property, and it must have been contemplated by the parties that such expenditure would have caused him special damage if he could not purchase the fee.—Judgment appealed against (32 Ont. L. R. 243), affirmed. Ontario Asphalt Block Co. v. Montreuil, lii., 541.*

98. *Agreement for sale of lands—Transactions with co-trustees—Necessity of joint action—Delegation of trust—Specific performance of contract, xxxvii., 362.*

See TRUSTS.

99. *Vendor and purchaser—Mortgaged lands—Agreement—Condition precedent—Cash payment—Default—Objection to title—Repudiation—Specific performance, xlvi., 555.*

See VENDOR AND PURCHASER.

100. *Sale of lands—Agreement for re-sale—Novation—Rescission—Specific performance—Defence to action—Practice—Evidence—Statute of Frauds—Principal and agent—Agent purchasing—Disclosure—Findings of fact, xlix., 384.*

See SPECIFIC PERFORMANCE.



101. *Specific performance—Lease of land—Option for purchase—Acceptance of new lease—Waiver of option. Mathewson v. Burns, l., 115.*

See LEASE.

102. *Landlord and tenant—Lease of land—Special condition—Promise of sale—Option—Pacte de préférence—Unilateral contract—Real rights—Registry laws—Arts. 2032, 2035 C. C.—Specific performance—Damages—Right of action, li., 603.*

See LANDLORD AND TENANT.

103. *Municipal corporation—Assessment and taxes—Meetings of council—Court of Revision—Transaction of business outside limits of municipality—Place of voting—Revision of assessment rolls—By-laws—Sale for arrears of taxes—Construction of statute—Statutory relief—Estoppel—Acquiescence—Laches—Limitation of action, xlv, 425.*

See MUNICIPAL CORPORATION.

### 3(h) Tax Sales.

104. *Taxes—Sale of land for arrears—Purchase by municipality—Failure to give notice—Curative Act—Evidence—Discovery—Death of deponent—Use of deposition at trial. Cartwright v. City of Toronto, l., 215.*

See ASSESSMENT AND TAXES.

105. *Assessment and taxes—Purchase by municipality—Failure to give notice—Curative Act—Evidence—Discovery—Death of deponent—Use of deposition at trial, l., 215.*

See ASSESSMENT AND TAXES.

106. *Sale for delinquent taxes—Tax sale deed—Premature delivery—Statutory authority—Condition precedent—Evidence—Presumption—Curative enactment—Certificate of title (B.C.). Heran v. Lalonde, liii., 503.*

See ASSESSMENT AND TAXATION.

### 3(i) Other Cases.

107. *Judicial sale of railways—Interested bidder—Disqualification as purchaser—Counsel and solicitors—Art. 1484 C. C.—Construction of statute—Discretionary order—Review by appellate court—4 & 5 Edw. VII., c. 158 (D.)—Public policy.]—Solicitors and counsel retained in proceedings for the sale of property are not within the classes of persons disqualified as purchasers by article 1484 of the Civil Code of Lower Canada.—The Act, 4 & 5 Edw. VII., c. 158, directed the sale of certain railways separately or together as in the opinion of the Exchequer Court might be for the best interests of creditors, in such mode as that court might provide, and that such sale should have the same effect as a sheriff's sale of immovables under the laws of the Province of Quebec. The judge of the Ex-*

chequer Court directed the sale to be by tender for the railways *en bloc* or for the purchase of each or any two of the lines of which they were constituted.—*Held*, that the judge had properly exercised the discretion vested in him by the statute in accepting a tender for the whole system, in preference to two separate tenders for the several lines of railway at a slightly increased amount, and that his decision should not be disturbed on appeal. Judgment appealed from (10 Ex. C. R. 139) affirmed. *Rutland Railway Co. v. Béique; White v. Béique; Morgan v. Béique*, xxxvii., 303.

108. *Contract—Agreement for sale of land—Deferred conveyance—Default in payment—Remedy of vendor—Reading "or" as "and."—Where, in accepting an offer by V. for sale of land, C. undertook to pay certain instalments of the purchase money before receiving the deed V. could sue for recovery of unpaid instalments, his remedy not being confined to an action in damages for breach of contract. *Laird v. Pim* (7 M. & W. 474), distinguished.—The offer having been accepted by C. for "myself or assigns," to avoid holding the contract void for uncertainty as to the purchaser's identity, the word "or" was read as "and." *Idington, J.*, dissenting, on this point.—Judgment of the Court of Appeal (16 Ont. L. R. 372), maintaining that of a Divisional Court (15 Ont. L. R. 280), affirmed. *Clergue v. Vivian & Co.*, xli., 607.*

109. *Sale of land—Constitutional law—Imperial Acts in force in Yukon Territory—Title to land—Torrens System—Transfer by registered owner—Fraud—Litigious rights—Notice of lis pendens—Irregular registration—Indorsements upon certificate of title—Construction of statute—Pleading—Objections taken on appeal—Yukon Territorial Court Rules—Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117—Waiver—Estoppel, xxxvi., 251.*

See TITLE TO LAND.

110. *Equitable mortgage—Mines and minerals—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgagee—Registry laws—Priority—Actual notice—Lien for Crown dues paid as rent—C. S. N. B. (1903), c. 30, s. 139, xxxvii., 517.*

See MINES AND MINING.

111. *Tenant by sufferance—Use and occupation of lands—Art. 1608 C. C.—Promise of sale—Vendor and purchaser—Reddition de compte—Actio ex vendito—Practice, xxxvii., 627.*

See ACTION.

112. *Title to land—Promise of sale—Entry in land register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Possessory action—Compensation for improvements—Rents, issues and profits—Set-off—Tender of deed—Restrictive conditions—Evidence—Arts. 411, 412, 417, 419, 1204, 1233, 1476, 1478 C. C., xxxix., 47.*

See ACTION; TITLE TO LAND.

113. *Damages—Trespass—Cutting timber—Sale to bonâ fide purchaser—Action by owner of land, xl., 399.*

See DAMAGES.

114. *Negligence—Sale of ruined building—Personal responsibility of vendor, xli., 259.*

See NEGLIGENCE.

115. *Crown lands—Colonization—Location ticket—Transfer by locatee—Issue of letters patent—Title to land—Registry laws—Notice—Arts. 1487, 1488, 2082, 2085, 2098 C. C. Howard v. Stewart, l., 311.*

See CROWN LANDS.

116. *Substitution—Registration—Sheriff's sale—Right of institute—Effect of sale under execution. Leroux v. McIntosh, lii., 1.*

See SUBSTITUTION.

#### 4. SHIPS.

117. *Ships and shipping—Material used in construction—Sale of goods—Contract—Principal and agent—Misrepresentations—Mistake—Conversion—Trover—Evidence—Misdirection—New trial—Ship's husband—Pledging credit of owners—Necessary outfitting at home port.]—While a three-masted schooner was in course of construction, E. obtained goods on credit from the plaintiffs (appellants) falsely representing that his co-defendants were interested in the ship. The materials were built into the ship and used in rigging and equipping her, she was launched and registered in the name of E. as sole owner, and, subsequently, these co-defendants became bonâ fide purchasers of certain shares in the ship. E. was registered as her managing owner, and she was sent to sea.—Held, that sending the ship to sea was not such a conversion of the materials worked into the ship as could support an action in trover against the subsequent purchasers of shares in her.—After the purchasers of the above mentioned shares were registered as co-owners, E. obtained, on a further credit, metal sheathing and other goods from the plaintiffs which were used in sheathing and further outfitting the vessel, at the port where she had been built, and where the owners resided, before sending her out to sea.—Held, that the managing owner had power to pledge the credit of the owners for such necessary purposes. The "Huntsman" (1894) P. D. 218, followed. The judgment appealed from (32 N. B. Rep. 147), which ordered a new trial on the ground of misdirection, was affirmed. Troop v. Everett, Cout. Cas. 131.*

AND see VENDOR AND PURCHASER.

#### 5. TIMBER.

118. *Sale of timber on Crown lands—Contract—Agreement in writing—Construction of terms—Terms of payment.]—The appellant held rights in unpatented lands and, agreed to sell the timber thereon to respondent, one of the conditions as to payment therefor being that, as soon as the*

Crown grant issued, the respondent should settle a judgment against the appellant which they both understood could, at that time, be purchased for \$500. On the issue of the grant, about six months afterwards, the judgment creditor refused to accept \$500 as full settlement at the later date and he took proceedings to enforce execution for the full amount. The execution was opposed on behalf of the appellant, the respondent becoming surety for the costs and being also made a party to the proceedings.—Held, affirming the judgment appealed from (10 B. C. Rep. 84) that the agreement to settle the outstanding judgment was not made unconditionally by the respondent, but was limited to settling it for \$500, after the issue of the Crown grant for the land.—Held, also, Davies, J., dissenting, that the costs incurred in unsuccessfully opposing the execution of the judgment, upon being paid by the respondent, were properly chargeable against the appellant. O'Brien v. Mackintosh, xxiv., 169.

119. *Title to land—Construction of deed—Reservation of growing timber—Rights of vendor and purchaser—Resolutive condition.]—A deed of sale of wild lands to be used for agricultural purposes clearly expressed certain specific reservations and contained, in addition, a clause as follows: "Et de plus la présente vente est faite à la condition expresse que le dit acquéreur n'aura pas le droit de couper, enlever ou charroyer aucun bois sur le terrain ci-dessus vendu autrement que pour son propre usage pour faire des bâtisses sur le terrain, des clôtures, et du bois de chauffage; il est, en conséquence, convenu que si l'acquéreur coupait du bois en violation de la présente clause, les vendeurs auront droit de demander la résiliation des présentes et de reprendre possession des immeubles ci-dessus vendus sans rein payer à l'acquéreur pour les améliorations qu'il pourra avoir faites. Et tout bois coupé en violation des présentes deviendra, aussitôt coupé, la propriété des vendeurs, car tel est la convention expresse des parties et sans laquelle les présentes n'auraient pas eu lieu."—Held, that, in the absence of any contrary intention expressed in the deed, the title to the lot of land sold passed absolutely to the purchaser with the exception of the special reservations.—Held, also, that the clause in question had not the effect of reserving to the vendors all the timber standing upon the land sold, nor can it be construed as giving them the right (without rescission upon breach of the resolutive condition) to re-enter on said land for the purpose of removing stumps or second growth timber. Rioux v. St. Lawrence Terminal Co., xl., 98.*

120. *Contract—Construction—Sale of timber—Fee simple—Right of removal—Reasonable time.]—In 1872 M., owner of timber land, sold to B. the pine timber thereon with the right to remove it within ten years. In 1881 another agreement replaced this and conveyed all the timber standing, growing or being on the land to have and to hold the same unto the said party of the second part, his heirs and assigns "forever" with a right at all reasonable times during years to enter and cut and remove the same. B. exercised his rights*

over the timber at times up to his death in 1893, and his executors did so after his death, M. not objecting. In 1903 persons authorized by said executors entered and cut timber and continued until 1905. The following year B. brought an action for an injunction against further cutting, a declaration that the right to take the timber had lapsed and for damages.—*Held*, affirming the judgment of the Court of Appeal (15 Ont. L. R. 557), Davies and Duff, JJ., dissenting, that the instrument executed in 1881 did not convey to B. the fee simple in the standing timber, but only gave him the right to cut and remove it within a reasonable time, and that such time had elapsed before the entry to cut in 1903, and M. was entitled to damages. *Beatty v. Mathewson*, xl., 557.

121. *Sale of standing timber—Registration of real rights—Ownership—Distinction of things—Movables and immovables—Priority of title.*—A deed of sale of the right, during twenty years, to cut and remove standing timber, with permission to make and construct such roads and buildings as might be necessary for that purpose, does not affect the title to the lands on which the trees are growing, but merely conveys the personal right to the timber as and when cut under the license. The registration of such a deed, in conformity with the provisions of the Civil Code of Lower Canada respecting the registration of real rights, is unnecessary and, if effected, cannot operate to secure to the vendee any right, privilege or priority of title in or to the timber as against a subsequent purchaser of the lands. *Watson v. Perkins* (18 L. C. Jur. 261), distinguished. — The judgment appealed from (Q. R. 16 K. B. 471), was affirmed. *Laurantide Paper Co. v. Baptist*, xli., 103.

122. *Timber license—Crown lands in British Columbia—Real estate—Personality—Contract—Exchange—Consideration—Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof—Pleading and practice*, xliiv., 458.

#### SEE LIEN.

### SALVAGE.

1. *Breach of contract—Breach of trust—Assessment of damages—Sale of mining rights—Promotion of company—Failure to deliver securities—Principal and agent—Account—Evidence—Salvage—Indemnity for necessary expenses—Laches—Estoppel*, xxxviii., 198.

#### SEE TRUSTS.

2. *Admiralty law—Injury to salvaging ship—Necessities of service—Seamanship—Appeal on nautical question*, xli., 1.

#### SEE ADMIRALTY LAW.

### SAW-LOGS.

1. *Floating saw-logs in rivers and streams—Damages—R. S. N. S. (1900)*, c. 95, s. 17, xxxiv., 265.

#### SEE RIVERS AND STREAMS.

2. *Rivers and streams—Floating saw-logs—Use of booms—Vis major—Action—Quantum meruit—Salvage—Riparian rights*, xxxvii., 657.

#### SEE RIVERS AND STREAMS.

3. *Mandamus—Driving timber—Order to fix tolls—Past user of stream—Appeal—River improvements—R. S. O. (1897)*, c. 142, s. 13, xl., 523.

#### SEE MANDAMUS.

### SCHOOLS.

1. *Assessment and taxes—County School Fund—Contributions by incorporated towns—Construction of statute—3 Edw. VII., c. 6, s. 7.*—The Supreme Court of Nova Scotia held (38 N. S. R. Rep. 1) that the Town of Dartmouth was liable to contribute proportionately towards the School Fund of the County of Halifax for the year 1904. Without calling upon counsel for the respondent, the Supreme Court of Canada dismissed the appeal with costs. *The Town of Dartmouth v. The County of Halifax*, xxxvii., 514.

2. *Legislative jurisdiction—Constitutional law—Companies—Private bills—Questions referred for opinions—Construction of statute—B. N. A. Act, 1867*, ss. 92, 93—33 Vict., c. 11, s. 53 (D.), Cout. Cas. 1.

#### SEE LEGISLATION.

AND see UPPER CANADA GRAMMAR SCHOOL FUND.

3. *Appeal—Special leave—Public interest—Important questions of law—Exemption from taxation—School rates. Whyte Packing Co. v. Pringle*, xlii., 691.

#### SEE APPEAL.

4. *Leave to appeal—Municipal by-law—High School District—Public importance. In re Henderson and Township of West Nisouri*, xlvi., 627.

5. *Municipal by-law—Exemption from taxation—Validating legislation—School rates—“Public School Act,” 55 Vict., c. 60, s. 4 (Ont.)—Special by-law. Can. Niagara Power Co. v. Stamford*, l., 168.

See also Regina Public School Board v. Gratton, l. 589.

#### SEE ASSESSMENT AND TAXES.

#### AND see EDUCATION.

### SCRUTINY.

*Election law—Voting—Municipal by-law—Powers of judge—Inquiry into qualification of voter—Disposition of rejected ballots—“Ontario Municipal Act,” 1903*, ss. 369 et seq.—“Voters’ Lists Act,” 1907, s. 24, xlvii., 451.

#### SEE ELECTION LAW.

### SEA BEACHES.

1. *Title to land—Servitude—Possession—Action.*—The possession necessary to entitle a plaintiff to maintain a possessory action must be continuous and uninterrupted,

peaceable, public and as proprietor for the whole period of a year and a day immediately preceding the disturbance complained of. *Couture v. Couture*, xxxiv., 716.

2. *Title to land—Accession—Servitude—Access to navigable waters—Possession anale—Possessory action*, xxxiv., 716.

See TITLE TO LAND.

### SEA-COASTS.

*Sea-coast and inland fisheries—Canadian waters—Tidal waters—Navigable waters—Open sea—B. C. "Railway Belt"—Fore-shores—Terra natura—Legislative jurisdiction—Construction of statute*, xvii., 493.

See FISHERIES.

### SEA-COAST FISHERIES.

*Canadian waters—Three-mile-zone—Fishing by foreign vessels—Legislative jurisdiction—Seizure on high seas—Pursuit beyond territorial limit—International law—Constitutional law—Construction of statute—B. N. A. Act, 1867, s. 91, s-s. 12—R. S. C. c. 94, ss. 2, 3, 4, xxxvii, 385.*

See CONSTITUTIONAL LAW.

### SECURITY.

*Banks and banking—Security for advances—Assignment of goods—Claim on proceeds of sale—53 Vict., c. 31, s. 74 (D.), xxxviii., 187.*

See BANKS AND BANKING.

### SEIZURE.

1. *Sheriff—Cause of action—Execution of writ of attachment—Abandonment of seizure—Estoppel*, Cam. Cas. 78; xli., 331.

See ATTACHMENT; EXECUTION.

2. *Construction of statute—"Quebec Public Health Act," R. S. Q., 1909, art. 3913—Inspection of food—Duty of health officers—Quality of food—Condemnation—Seizure—Notice—Effect of action by health officers—Controlling power of courts—Evidence—Injunction—Appeal—Jurisdiction—Question in controversy*, xlvii., 514.

See STATUTE.

### SERVITUDE.

1. *Title to land—Construction of deed—Reservations—"Representatives"—Owners par indivis—Common lanes—Right of passage—Private wall—Windows and openings on line of lane—Arts. 533-538 C. C.]—A conveyance of lands fronting on public highways with the right of passage merely over a private lane does not create a servitude that can entitle the grantee to make*

windows and openings in walls which are built upon the line of the lane.—A reservation in a deed of partition to the effect that lanes through subdivided lands should be held in common by the proprietors *par indivis* or their representatives must be construed as reserving the rights in common only to the co-proprietors, their heirs or the persons to whom such rights in the lanes might be conveyed. *Lespérance v. Goné*, xxxvi., 618.

2. *Rights appartenant to dominant tenement—Construction of ice-house—Change in natural conditions—Flooding of servient tenement—Aggravation of servitude—Injunction—Damages—Abatement of nuisance—Arts. 406, 501, 549 C. C.]—The construction upon a dominant tenement of an ice-house in a manner to cause the water from melting ice stored therein to flow down upon adjoining lands of lower level and injuriously affect the same is an aggravation of the natural servitude in respect of which the owner of the servient tenement may recover damages for the injury sustained and have a decree for the abatement of the nuisance.—Judgment appealed from affirmed, Girouard, J., dissenting. *Audette v. O'Caïn*, xxxix., 103.*

3. *Construction of deed—Title to land—Acquiescence—Bstoppe] by conduct—Actio negatoria servitutis—Operation of waterworks.]—By a deed executed in 1879, C. granted to R. the right of building a reservoir in connection with a system of waterworks, laying pipes and taking water from a stream on his land, and in 1897, executed a deed of lease of the same land to him with the right, for the purposes of the waterworks established thereon, "de vaquer sur tout le terrain . . . et le droit d'y conduire des tuyaux, y faire des citernes et autres travaux et rapport au dit aqueduc et aux réparations d'icelui."—Held, that the deed executed in 1897 gave R. the right of bringing water from adjoining lands through pipes laid on the lands so leased. *Cliche v. Roy*, xxxix., 244.*

4. *Rivers and streams—Crown domain—Title to land—"Flottage"—Driving loose logs—Public servitude—Riparian ownership—Action possessoire—Arts 400, 503, 507, 2192 C. C.—Art. 1064 C. P. Q.]—There is a right of servitude over water-courses in respect of all advantages which the streams, and their banks, in their natural condition, can afford to the public, there being no distinction, in this regard, between navigable or floatable streams and those which are neither navigable nor floatable. *McBean v. Carlisle* (19 L. C. Jur. 276), and *Tanguay v. Price* (37 Can. S. C. R. 657), followed.—Judgment appealed from (Q. R. 16 K. B. 48) affirmed, Girouard and Idington, JJ., dissenting. *Tanguay v. Canadian Electric Light Co.* xl., 1.*

AND see RIVERS AND STREAMS.

5. *Title to land—Construction of deed—Easement appartenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Trespass—Right of action.]—A grant of the right to use a lane*

in rear of city lots "in common with others," as an easement appurtenant to the lots conveyed, entitles the purchaser to make any reasonable use, consistent with the common user, not only of the surface but also of the space over the lane. The construction of a fire-escape, three feet wide with its lower end 17 feet above the ground (in compliance with municipal regulations), is not an unreasonable use nor inconsistent with the use of the lane in common by others; consequently, its removal should not be decreed at the suit of the owner of the land across which the lane has been opened.—Judgment appealed from affirmed, Maclean, J., dissenting. *Meighen v. Pacaud*, xl, 188.

6. *Construction of deed — Purchase of dominant and servient tenements—Unity of ownership—Extinction of servitude—Revival by sale of dominant tenement—Effect of sheriff's sale—Purgation of apparent servitude—Reference to former deed creating charge—Lost deed — Evidence.*] — By the judgment appealed from (Q. R. 18 K. B. 24), reversing the judgment of the Superior Court (Q. R. 32 S. C. 289), it was held that (1) Where the purchaser of two parcels of land upon one of which there existed a servitude for the benefit of the other, that was extinguished by the unity of ownership thus restored, executes a deed of sale of the former, subject to the servitude as constituted by the original title deed to which it made reference, such deed of sale in turn becomes a title which revives the servitude; (2) The situation of a servitude giving a right of passage, which has not been defined in the title by which it was created, is sufficiently determined by the description given of its position, accompanied by a plan, in a deed of compromise between the owners of the two parcels of land submitting their differences in regard to the servitude to the decision of an arbitrator; (3) Both before and since the promulgation of the Civil Code, apparent servitudes are not purged by adjudication on a sale by the sheriff under a writ of execution.—On appeal to the Supreme Court of Canada the judgment appealed from was affirmed. *Thompson v. Stinard*, xli, 217.

AND see EASEMENT.

7. *Obligation of mitoyenneté—Exercise of Party-rights — Contribution towards party-wall—Arts. 510 et seq. C. C.*]—The defendants erected their building against the plaintiffs' wall so that it served them in the way of exterior protection for the side of the new building; they connected the metal roof-flashing with the wall by nails, etc., but constructed the new works in such a manner as to avoid depending upon the plaintiffs' wall for support and without piercing recesses in it to receive joists, etc.—*Held*, reversing the judgment appealed from (Q. R. 20 K. B. 524), Fitzpatrick, C.J., dissenting, that the defendants had exercised party-rights in the plaintiffs' wall and utilized it as an external wall for their building, and that they were, consequently, obliged to treat it as a common wall and to pay half the value of the portion thereof so utilized by them. *Morgan v. Avenue Realty Co.*, xli, 589.

8. *Actio negatoria servitutis — Boundary ditch — Estoppel—Waiver of objections — Evidence. Breton v. Gonthier dit Bernard*, Cout. Cas. 350.

9. *Title to land—Accession—Sea beaches — Passage of navigable waters—Possession unale—Possessory action, xxxiv, 716.*  
See TITLE TO LAND.

10. *Appeal — Jurisdiction—Annulment of procès-verbal — Injunction—Matter in controversy—Art. 560 C. C.—Highway, xxxvii, 321.*

See APPEAL.

11. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with watercourse—Agreement as to user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages, xxxix., 81.*

See ACTION.

12. *Fishery and game leases—Lumbering operations—Driving logs—Dams—Personal servitude—Use and occupation, xlv., 1.*

See RIVERS AND STREAMS.

13. *Appeal—Jurisdiction—Matter in controversy—Damming watercourse — Flooding of lands—Damages—Objection to jurisdiction—Practice—Costs, xlv., 292.*

See APPEAL.

14. *Watercourses — Driving timber — "Damages resulting" — Reparation—Riparian rights—Construction of statute—Arts. 7298, 7349 R. S. Q., 1909 — Injury caused by independent contractor — Liability of owner of timber. Dumont v. Fraser, xviii, 137.*

See RIVERS AND STREAMS.

AND see EASEMENT.

## SET-OFF.

1. *Application to judgments — Equitable assignment — Practice—Stay of execution.*] — G. and H. brought actions against each other for breaches of the same agreement. H. pleaded a set-off in the suit by G. against him, but he offered no evidence in support of such plea at the trial, and proceeded with an independent action against G. G. obtained judgment in his action against H. and assigned it to L. while H. obtained judgment against G. in his action. Upon L. proceeding to enforce the assignment of the judgment in his favour, H. sought to stay the issue of execution and to set-off in the action of G. against H. the judgment in his favour, in the action of H. against G.—*Held* (Strong, J., dissenting), reversing the judgment of the court below (25 N. B. Rep. 451), that H. had not any equity against the *bonâ fide* assignee of G. to have his judgment set-off against the judgment obtained by G. which had passed to L. *bonâ fide* and for valuable consideration. *Greene v. Harris* (xvi, 714), Cam. Cas. 99.

2. *Company law—Payment for shares—Transfer of business—Debt due partnership—Counterclaim—Accord and satisfaction—Liability on subscription for shares—R. S. B. C. c. 44, ss. 50, 51, xxxiv., 160.*

See COMPANY.

3. *Pleading—Cross-demand—Compensation—Arts. 3, 203, 205, 207, C. P. Q.—Practice—Damages—Construction of contract—Liquidated damages—Penal clause—Arts. 1076, 1187, 1188 C. C.—Estoppel—Waiver, xxxvi., 347.*

See PLEADING.

4. *Title to land—Promise of sale—Entry in land register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Possessory action—Compensation for improvements—Rents, issues and profits, xxxix., 47.*

See TITLE TO LAND.

5. *Sale of goods—Debtor and creditor—Partnership—Evidence—Books of account—Practice—New trial—Reducing verdict on appeal, Cam. Cas. 282.*

See NEW TRIAL.

## SHAREHOLDER.

1. *Evidence—Burden of proof—Sale of bank stock—Allotment to shareholders—Shares refused or relinquished—Sale to public—Authority—R. S. C. [1906] c. 29, s. 34.*—M. was sued by a bank on a promissory note alleged to have been given in payment for a portion of an issue of increased stock. He pleaded want of consideration and non-receipt of the stock. On the trial evidence was given of a resolution by the bank directors authorizing the allotment of the new issue to the then shareholders of whom M. was not one, and counsel for the bank admitted that there was no resolution allotting it an anybody else. A verdict in favour of the bank was set aside by the Court of Appeal:—*Held*, Idington and Duff, JJ., dissenting, that the onus was on M. to prove that the stock was issued to the public without authority and such onus was not satisfied.—*Held*, per Idington and Duff, JJ., that such onus was originally on M. but the evidence produced, and the said admission of counsel had shifted it to the bank, which did not furnish the requisite proof. *Sovereign Bank of Canada v. McIntyre*, xlv., 157.

2. *Joint stock company—Allotment of shares—Surrender by allottee—Unpaid calls—Transfer—Waiver.*—S. subscribed for shares in a mining company, was notified of allotment of the same and paid the amount due on a first call as agreed. Later he notified the company that he withdrew his subscription and refusing to pay further calls was sued therefor. It turned out that when S. subscribed for the stock all the shares had been allotted by the company and those given to him had been obtained by surrender from one of the original allottees:—*Held*, that under the Ontario Companies Act, when

stock had been allotted by a company, the only case in which the directors can regain control of it, is that of forfeiture for non-payment of calls. As in this case there was no forfeiture, the company did not legally own the stock allotted to S. and could not compel him to pay for it.—*Held*, also, that the provision in said Act that stock on which calls are unpaid cannot be transferred, is imperative and cannot be waived by the company. *Smith v. Gowganda Mines*, xlv., 621.

3. *Joint stock company—Subscription for shares—Principal and agent—Authority of agent—Conditional agreement, xxxiv., 508.*

See COMPANY.

4. *Company—Paid-up shares—Sale by broker—Prospectus—Misrepresentations—Rescission—Delay—Liability of directors, xl., 339.*

See COMPANY.

5. *Sale of shares—Misrepresentation—Fraud—Action for deceit—Accord and satisfaction, xl., 437.*

See COMPANY.

AND see BROKER; COMPANY LAW.

6. *Action for deceit—Agreement for sale—False representations—Compromise—Notice. Pitt v. Dickson, xlii., 478.*

See DECEIT.

7. *Company law—Issue of shares—Authority to sign certificate—Estoppel—Evidence, xlv., 232.*

See COMPANY.

8. *Company—Purchase of director's property—Secret profit. Bennett v. Havelock Electric Light Co., xlv., 640.*

9. *Company—Subscription for shares—Misrepresentation—Action for calls—Charge to jury—Misdirection—Objection—Pleading. Boeckh v. Gowganda Mines, xlv., 645.*

10. *Company—Subscription for treasury stock—Contract—Principal and agent—Misrepresentation—Fraud—Transfer of shares—Rescission—Return of payments—Want of consideration. International Casualty Co. v. Thompson, xlviii., 167.*

See COMPANY LAW.

11. *Company law—Agreement by directors—Onerous contract—Non-disclosure to shareholders—Breach of contract—Damages—Settlement of accounts—Appeal—Jurisdiction—Reference to master—Final judgment. Denman v. Clover Bar Coal Co., xlviii., 318.*

See COMPANY LAW.

12. *Company—Disqualification of directors—Taking personal profit—Fraud—Illegal contract—Ratification—Right of action—Recourse by minority—Alberta "Companies Ordinance," N.-W. Ter. Ord., No. 20 of 1901—Construction of statute. Theatre Amusement Co. v. Stone, l., 32.*

See COMPANY.

13. *Municipal corporation — Powers of council—Validity of contract—Right of action—Status of plaintiff — Special injury. Robertson v. Montreal*, lii., 30.

See MUNICIPAL CORPORATION.

14. *Contract—Sale—Payment in company stock—Unorganized company—Time for delivery. Roche v. Johnson*, liii., 18.

See CONTRACT.

## SHERIFF.

1. *Debtor and creditor — Assignment of debt—Sheriff's sale—Equitable assignment—Statute of Limitations—Payment—Ratification—Principal and agent.*—In Nova Scotia book debts cannot be sold under execution and the act of the judgment debtor in allowing such sale does not constitute an equitable assignment of such debts to the purchaser.—The purchaser received payment on account of a debt so sold which, in a subsequent action by the creditor and others, was relied on to prevent the operation of the Statute of Limitations. — *Held*, that though the creditor might be unable to deny the validity of the payment he could not adopt it so as to obtain a right of action thereon and the payment having been made to a third party who was not his agent did not interrupt the prescription. *Keighley, Maatead & Co. v. Durant* ([1901] A. C. 240), followed. *Moore v. Roper*, xxxv., 533.

2. *Equitable mortgage—Mines and minerals—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgage—Registry laws—Priority—Actual notice—Lien for Crown dues paid as rent.*—*C. S. N. B. c. 30, s. 139.*—The courts below (37 N. B. Rep. 140; 3 N. B. Eq. 28), held that mining leases of lands in the province of New Brunswick and of the minerals therein, issued by the Crown to the appellant subsequent to a mortgage executed by it in the State of New York in favour of the respondent, a company incorporated under the laws of that State, which do not reserve the minerals to the State, were subject to the mortgage; that a judgment creditor of the mortgagor (who purchased the leases at a sheriff's sale in execution of his own judgment and afterwards obtained new leases in his own name from the Crown), took the new leases subject to the mortgage; that the mortgage, though not registered under the "General Mining Act," *C. S. N. B. (1903), c. 30, s. 139*, was not void as against a judgment creditor who had actual notice of the mortgage and whose judgment was not registered under that section at the time of the commencement of the suit, and that the judgment creditor was not entitled to a prior lien for rent paid to the Crown on the licenses declared to be held in trust for the mortgagee. An appeal to the Supreme Court of Canada was dismissed, *Macleanan, J.*, dissenting. *Mineral Products Co. v. Continental Trust Co.*, xxxvii., 517.

3. *Substitution — Registration — Sale—Right of institute—Effect of sale under exe-*

*cutio*—*Arts. 938-941, 950, 953, 2000, 2091 C. C.—Art. 781, C. P. Q.*—The judgment appealed from (19 R. L. N. S. 444), affirming the judgment of the Superior Court, which maintained the plaintiff's action to recover certain substituted lands on the ground that the rights of the substitute had not been purged by a sheriff's sale thereof, was affirmed with a variation in regard to the *expertise* ordered respecting the amounts to be allowed to the purchaser at the sheriff's sale for improvements made thereon and as to accounts for rents, issues and profits. *Brodeur, J.*, dissented.—*Per Duff and Anglin, JJ.*—The provisions of the Civil Code in regard to the registration of unopened substitutions do not contemplate registration affecting immovables, as such, but refer merely to registration necessary to the operation of the instrument creating the substitution; consequently articles 2090 and 2091 of the Civil Code have no application.—*Per Duff, J., Brodeur, J., contra.*—Article 781 of the Code of Civil Procedure deals primarily with procedure and should be construed in connection with article 953 of the Civil Code so as to effectuate rights resting upon the provisions of the Civil Code relating to substantive law. *Vadebonceur v. City of Montreal* (29 Can. S. C. R. 9), distinguished.—*Per Duff and Anglin, JJ.*—The registration of an instrument creating a substitution is effective from the date upon which it is registered and protects the rights of the substitute against the right acquired by a purchaser under a subsequent sale in execution made by the sheriff. *Trudel v. Parent* (Q. R. 2 Q. B. 578), referred to.—*Per Anglin, J.*—In the case of a sale under execution against an institute, subsequent to the registration of the substitution, the purchaser at sheriff's sale acquires merely the personal interest of the institute subject to the substitution; such a title cannot defeat the claim of the substitute.—*Per Brodeur, J.*, dissenting.—Inasmuch as the claim of the execution creditor was for a debt due and exigible prior to the date when the instrument creating the substitution was registered, the effect of the sale by the sheriff was to discharge the immovable sold from the claim of the substitute and to give the purchaser at that sale an absolute title to the land having priority over that of the substitute. *Leroux v. McIntosh*, lii., 1.

4. *Extinction of servitude—Effect of sheriff's sale—Purgation of apparent servitude—Evidence.*—Both before and since the promulgation of the Civil Code, apparent servitudes are not purged by adjudication on a sale by the sheriff under a writ of execution. *Thompson v. Simard*, xli., 217.

AND SEE SERVITUDE.

5. *Sheriff's sale — Ownership — Lease—Title to land—Trust—Beneficiary—Fraudulent contrivances—Estoppel*, xxxiv., 1.

See LEASE.

6. *Sheriff's sale of lands—Opposition *afn de charge*—Discretionary order—Default in furnishing security—Res judicata—Estoppel by record—Fivolous and vexatious proceedings—Quashing appeal—Jurisdiction of*

*Supreme Court of Canada—R. S. C. c. 135, ss. 27, 59—Arts. 651, 726 C. P. Q., xxxvi., 613.*

See OPPOSITION.

7. *Appointment of court official to act as receiver—Management of business—Supervision and control—Laches, xxxvi., 647.*

See RECEIVER.

8. *Execution — Sale of land—Statute of Limitations — Possession of land—Constructive possession—Colourable title—Effect of sheriff's sale, xxxvii., 157.*

See TITLE TO LAND.

9. *Cause of action—Execution of writ of attachment — Abandonment of seizure—Estoppel, Cam. Cas. 78.*

See ATTACHMENT.

10. *Title to land—Lease for years—Possession by sub-tenant—Purchase at sheriff's sale—Adverse occupation — Evidence—Conveyance of rights acquired—Compromise—Waiver—Estoppel, Cout. Cas. 158.*

See TITLE TO LAND.

11. *Substitution—Registration — Sheriff's sale—Right of institute—Effect of sale under execution. Leroux v. McIntosh, lii., 1.*

See SUBSTITUTION.

## SHIPS AND SHIPPING.

1. *Time limit for loading—Loading at port — Custom — Obligation of charterer.] — A ship, by the terms of the charter, was to load grain at Fort William before noon of December 5th.—Held, per Taschereau, C.J., and Davies, J. (Girouard and Nesbitt, J.J.), dissenting), that to load at Fort William meant to load at the elevator there; that the obligation of the ship-owner was to have the vessel placed under the elevator in time to be loaded before the expiration of the time limit; and where, finding several vessels ahead of him, the captain saw that he could not be loaded by the time fixed and left to save insurance, the obligation was not fulfilled and the owner could not recover damages.—Per Killam, J. The contract would have been fulfilled if the vessel had arrived at Fort William in time to load under the conditions which might be supposed to exist on arrival.—Judgment appealed from (6 Ont. L. R. 432), affirmed. (Leave to appeal refused by Privy Council, July, 1904). *Midland Navigation Co. v. Dominion Elevator Co.*, xxxiv., 578.*

2. *Negligence—Careless mooring of vessels —Vis major.]—The plaintiff's tug, "Vigilant," was moored at a wharf in Vancouver Harbour with another tug, the "Lois," belonging to the defendant, lying outside and moored there by a line attached to the "Vigilant." The "Lois" was left in that position all night with no one in charge and no fenders out on the side next the "Vigilant." During the night a heavy gale came up and the "Lois" pounded the "Vigilant" causing her considerable damage.—Held,*

affirming the judgment appealed from, that, as the defendant was not a trespasser, he was not guilty of negligence, under the circumstances, in leaving his tug as he did and that he was not obliged to observe extreme and unusual precautions to avoid injury by a storm of exceptional violence. *Bailey v. Cates*, xxxv., 293.

3. *Pilotage — Port of St. John, N.B.—Ships propelled wholly or in part by steam —Coal barges towed—R. S. C. c. 80, ss. 53, 59.]—Coal barges towed by steamers or tugs between the ports of Parrsboro', N.S. and St. John, N.B., are exempt from compulsory pilotage at the latter port, even though under favourable conditions they could be navigated as sailing ships.—Judgment appealed from (37 N. B. Rep. 406), affirmed. *Saint John Pilot Commissioners v. Cumberland Ry. and Coal Co.*, xxxviii., 169.*

4. *Collision—Violation of rules not affecting accident—Steering wrong course.]—The Supreme Court will not set aside the finding of a nautical assessor on questions of navigation adopted by the local judge unless the appellant can point out his mistake and shew conclusively that the judgment is entirely erroneous. *The Picton* (4 Can. S. C. R. 648), followed.—A steamer coming up Halifax harbour ran into a schooner striking her stern on the port side. No sound signals were given. The green light of the schooner was seen on the steamer's port bow and the latter starboarded her helm to pass astern and then ported. She then was so close that the engines were stopped too late to prevent the collision.—Held, that the steamer alone was to blame for the collision.—Held, also, that though under the rules the schooner should have kept her course and also was to blame for not having a proper lookout, neither fault contributed to the collision. (Appeal to Privy Council stood dismissed, 27th May, 1907, for want of prosecution under Privy Council, Rule V. of 13th June, 1853). *S. S. "Arranmore" v. Rudolph*, xxxviii., 176.*

5. *Admiralty law—Foreign bottoms—Collision in foreign waters — Jurisdiction of Canadian courts.]—A foreign vessel passing through waters dividing Canada from the United States under a treaty allowing free passage to ships of both nations is not, even when on the Canadian side, within Canadian control, so as to be subject to arrest on a warrant from the Admiralty Court.—A warrant to arrest a foreign ship cannot be issued until she is within the jurisdiction of the court.—*Quere*. Have the Canadian Courts of Admiralty the same jurisdiction as those in England to try an action *in rem* by one foreign ship against another for damages caused by a collision in foreign waters?—Judgment of the Exchequer Court, Toronto Admiralty District (10 Ex. C. R. 1), reversed. Idington, J., dissenting. *The Ship "D. C. Whitney" v. St. Clair Navigation Co.*, xxxviii., 303.*

6. *Maritime law — Collision—Negligence —Tug and tow — Negligence of tow.]—A tug with the ship "Wandrian" in tow left a wharf at Parrsboro', N.S., to proceed down*



the river and get to sea. The schooner "Helen M." was at anchor in the channel and the tug directed its course so as to pass her on the port side when another vessel was seen coming out from a slip on that side. The tug then, when near the "Helen M." changed her course, without giving any signal, and tried to cross her bow to pass down on the starboard side and in doing so the "Wandrian" struck her, inflicting serious injury. In an action against the "Wandrian" by the owners of the "Helen M." the captain of the former insisted that the schooner was in the middle of the channel, which was about 400 feet wide, but the local judge found as a fact that she was on the eastern side.—*Held*, affirming the judgment of the local judge (11 Ex. C. R. 1), that the navigation of the tug was faulty and shewed negligence, that if the "Helen M." was on the eastern side of the channel as found by the judge there was plenty of room to pass on her port side, and if, as contended, she was in the middle of the channel she could easily have been passed to starboard; and that in attempting to cross over and pass to starboard when she was so near the "Helen M." as to render a collision almost inevitable was negligence on the tug's part; and that the "Helen M." exercised proper vigilance and was not negligent in failing to slacken her anchor chain as the "Wandrian" was too close and had not signalled.—*Held*, also, that the tow was liable for such negligence in the navigation of the tug. *The "Wandrian" v. Hatfield*, xxxviii., 431.

7. *Shipping—Material men—Supplies furnished for "last voyage"—Privilege of dernier équipour — Round voyage — Charter-party—Personal debts of hirers—Seizure of ship—Arts. 2383, 2391 C. C.—Art. 931 C. P. Q. — Construction of statute — Ordonnances de la Marine, 1681.*—A steamship lying at the port of Liverpool was chartered by the owners to P. for six months, for voyages between certain European ports and Canada, the hirers to bear all expenses of navigation and upkeep until she was returned to the owners. The ship was delivered to the hirers at Rotterdam where she took on cargo and sailed for Montreal. On arriving at Montreal she unloaded and re-loaded for a voyage to Rotterdam, with the intention of returning to Montreal, and obtained a supply of coal from the plaintiffs which was furnished on the order of the hirers' agent at Montreal. The ship sailed to Rotterdam and returned to Montreal in about one month, touching at Havre and Quebec, discharged her cargo and proceeded to re-load, obtaining another supply of coal from the plaintiffs in the same manner as the first supply had been furnished. Within a few days, the price of these supplies of coal being still owing and unpaid, the hirers became insolvent, and the plaintiffs arrested the ship at Montreal, claiming special privilege upon her as *derniers équipours* in furnishing the first supply of coal on her last round voyage, the right of attachment before judgment in respect of both supplies, and seizing her under the provisions of articles 2391 of the Civil Code and 931 of the Code of Civil Procedure.—*Held*, per Fitz-

patrick, C.J., and Davies, MacLennan and Duff, J.J., that voyage from Montreal to Rotterdam and return was not the ship's "last voyage" within the meaning of article 2383 (5) of the Civil Code; that the voyage out from Montreal and that returning from Rotterdam did not constitute one round voyage but were separate and complete voyages, and that, consequently, there was no privilege upon the ship for the supply of coal furnished for her voyage from Montreal to Rotterdam. And also, that the provisions of article 2391 of the Civil Code did not render the ship liable to seizure for personal debts of the hirers, and, consequently, that she could not be attached therefor by *saïsie-arrêt*.—Judgment appealed from (Q. R. 16 K. B. 16), affirmed, Girouard, J., dissenting.—*Per* Davies, J.—The "last voyage" mentioned in art. 2383 C. C. refers only to a voyage ending in the Province of Quebec. — *Per* Idington, J.—As the terms of the charter-party expressly excluded authority in the hirers to bind the ship for any expenses of supply and as nothing arose later that could by any implication of law confer any such authority on anyone, and especially so in a port where the owners had their own agents, any possible rights that might in a proper case arise under article 2383 of the Civil Code did not so arise here; and, therefore, though agreeing in the result he expressed no opinion on the meaning of the term "last voyage" therein. *Lloyd v. Guibert* (L. R. 1 Q. B. 115), should govern this case. *Inverness Ry. and Coal Co. v. Jones et al.*, xl., 45.

8. *Admiralty — Preliminary act—Amendment — Collision — Evidence.*—In an action in admiralty claiming damages for injury to plaintiffs' ship, the "Neepawah," through collision with the "Westmount" belonging to defendants the preliminary act and statement of claim alleged that the port quarter of the latter struck the stern of the "Neepawah." The local judge, in his judgment, held that the evidence shewed a collision between the two ships stern to stern and, against objection by defendants' counsel, of his own motion allowed the statement of claim to be amended to conform to such evidence, stating that its admission had not been objected to and that defendants were not misled.—*Held*, that such amendment should not have been made; that it set up a new case and one entirely different from that presented by the preliminary act and statement of claim and greatly prejudiced the defence; and that the local judge was wrong in stating that the evidence was admitted without objection as it was protested against at the trial.—*Held*, also, that errors in the preliminary act may be corrected by the pleadings but, if not, the parties will be held most strongly to what is contained in their act.—*Held*, per Davies, MacLennan and Duff, J.J., that the plaintiffs had not satisfactorily established that the collision, even that charged under the amendment, had actually occurred.—*Per* Fitzpatrick, C.J., that the evidence proved that no collision between the vessels took place.—Idington, J., concurred in the judgment allowing the appeal. *Montreal Transportation Co. v. New Ontario S. S. Co.*, xl., 160.

9. *Admiralty law — Jurisdiction of the Exchequer Court of Canada—Claim under mortgage on ship—Action in rem—Pleading—Abatement of contract price—Defects in construction—Damages.*—In an action in rem by the builders of a ship to enforce a mortgage thereon, given to them on account of the contract price for its construction, the owners, for whom the ship was built, may plead as a defence *pro tanto* that the ship was not constructed according to specifications and claim an abatement of the price in consequence of such default and that the loss in value of the ship, at the time of delivery, attributable to such default, should be deducted from the claim under the mortgage. (Leave to appeal to Privy Council was granted by the Supreme Court of Can.; see xl, 430.) *Bow McLachlan and Co. v. The "Camosun,"* xl, 418.

10. *Material used in construction—Sale of goods — Contract—Principal and agent—Misrepresentations — Mistake — Conversion — Trover — Evidence — Misdirection—New trial—Ship's husband—Pleading credit of owners—Necessary outfitting at home port.*—While a three-master schooner was in course of construction, E. obtained goods on credit from the plaintiffs (appellants) falsely representing that his co-defendants were interested in the ship. The materials were built into the ship and used in rigging and equipping her, she was launched and registered in the name of E. as sole owner, and, subsequently, these co-defendants became *bonâ fide* purchasers of certain shares in the ship. E. was registered as her managing owner, and she was sent to sea.—*Held*, that sending the ship to sea was not such a conversion of the materials worked into the ship as could support an action in trover against the subsequent purchasers of shares in her.—After the purchasers of the above mentioned shares were registered as co-owners, E. obtained, on a further credit, metal sheathing and other goods from the plaintiffs which were used in sheathing and further outfitting the vessel, at the port where she had been built, and where the owners resided, before sending her out to sea.—*Held*, that the managing owner had power to pledge the credit of the owners for such necessary purposes. *The "Huntsman"* (1894), P. D. 214, followed.—The judgment appealed from (32 N. B. Rep. 147), which ordered a new trial on the ground of misdirection, was affirmed. *Troop v. Everett*, Cout. Cas., 131.

11. *Winding-up proceedings—Company in liquidation—Sale of assets—Consent to sale of mortgaged ship—Sale by order of court—Mariners' liens — Sale free from incumbrances—Special fund—Privileged charge—Priority—Valuation of security—Release of mortgage—Marshalling securities—Subrogation.*—A ship which belonged to a company in liquidation was mortgaged to a bank and was also subject to maritime liens for seamen's wages due at the time of the winding-up order. The bank consented to the sale of the ship, by the liquidator, free from incumbrances, at the same time as he sold the other assets of the company by direction of the court. He sold the ship separately

and free from incumbrances for \$5,000, which was credited, as a special fund, in his accounts. The bank subsequently filed its claim, valuing its security on the ship at \$5,000. The purchasers took the ship to sea and it became a total loss. The bank then made claim to the whole of the fund realized on the sale of the ship and their claim was opposed on behalf of the wage lien-holders claiming the right to be paid by priority out of this fund.—*Held*, affirming the judgment appealed from (4 West. W. R. 1271; 25 West. L. R. 92; 12 D. L. R. 807), that by its consent to the sale of the ship under direction of the court, free from incumbrances, the bank had assented to the conversion thereof released from its mortgage and that the proceeds of the sale of the ship should be apportioned amongst the creditors in the order and according to the priorities provided by law: consequently it was not entitled to any special charge on the fund realized upon its sale.—*Held*, further, that the rights of the wage-earners holding maritime liens were not affected by the loss of the ship after it had been sold by the liquidator under the order of the court and that they were entitled to recover their claims out of the fund realized upon the sale of the ship in priority to the mortgagee. *Traders Bank v. Lockwood*, xlvi, 593.

[Memo.—The court ordered that the rights of the bank, if any, to relief, by way of subrogation or marshalling of securities, should be reserved to be dealt with on further proceedings in the winding-up of the company.]

12. *Chartered ship—Suitability for cargo—Duty of owner—Dead freight—Demurrage.*—L. chartered the ship "Helen" to carry a full and complete cargo of re-sawn yellow pine lumber from a port in Florida to St. John, N.B. At the port of loading the lumber of dimensions customary in the trade at that port, was furnished in quantity sufficient to fill a ship of the "Helen's" tonnage, but it could not all be stowed in that ship, which was built for the fruit trade, and could not take a full cargo of lumber of that size. The quantity loaded was delivered at St. John, and the ship-owner brought action for the freight on the deficiency.—*Held*, reversing the judgment appealed against (44 N. B. Rep. 12), that it was the duty of the owners to provide a ship capable of carrying the cargo called for by the charter party; that the evidence established that the "Helen" was not so capable; that the charterer, having furnished lumber of the dimensions customary at the port for loading ships of the size of the "Helen," had discharged his duty under the contract, and was not liable to the owner for the dead freight.—Under the demurrage clause of the charter party, the owners claimed damages for delay in loading and discharging the cargo.—*Held*, that the manner in which the ship was constructed prevented the work of loading and discharging the lumber from proceeding as fast as it otherwise would have done; the delay was, therefore, imputable to the owners themselves and the charterer was not liable. *Likely v. Duckett*, liii, 471.

13. *Charter party—Conditions to load and proceed with dispatch—Delay—Loss of cargo—Recovery of freight—Action.* *Spindler v. Farquhar*, *Cout. Cas.* 364.

14. *Jury trial—Practice—Findings as to negligence—Questions as to special grounds—Judge's charge—Non-direction—Misdirection—Application of law to facts—New trial*, xxxv., 362.

See NEW TRIAL.

15. *Maritime law—Collision—Inland waters—Rules of navigation—Narrow channel—Boston Harbour*, xxxv., 616.

See ADMIRALTY LAW.

16. *Maritime law—Collision—Crossing ships—Admiralty Rules 1897, rule 19*, xxxvii., 284.

See ADMIRALTY LAW.

17. *Canadian waters—Three-mile zone—Fishing by foreign vessel—Legislative jurisdiction—Seizure on high seas—Pursuit beyond territorial limit—International law—Constitutional law—Sea-coast fisheries—Construction of statute—B. N. A. Act, 1867, c. 91, s. s. 12—R. S. C. c. 94, ss. 2, 3, 4*, xxxvii., 385.

See CONSTITUTIONAL LAW.

18. *Negligence—Navigation of inland waters—Collision—Government ships and vessels—"Public work"—"The Eschequer Court Act," s. 16—Construction of statute—Right of action*, xxxviii., 126.

See NEGLIGENCE; ADMIRALTY LAW;  
INSURANCE; MARINE.

19. *Perils of the sea—Unseaworthy ship—Evidence—Warranty—Inspection of shipping—Certificate of seaworthiness—Construction of statute—R. S. C. 1906, c. 133, s. 342—Drowning of sailors—Negligence of master—Liability of owner.* *Connolly v. Grenier*, xlii., 242.

20. *Winding-up proceedings—Company in liquidation—Sale of assets—Consent to sale of mortgaged ship—Sale by order of court—Mariners' liens—Sale free from incumbrances—Special fund—Privileged charge—Priority—Valuation of security—Release of mortgage—Marshalling securities—Subrogation.* *Traders Bank v. Lockwood*, xlviii., 593.

See LIEN.

21. *Maritime law—Tug and tow—Contract of navigation—Collision of tug—Liability of tow—Foreign ship—Proceedings in foreign court—Jurisdiction in Canada.* *A. L. Smith v. Ontario Gravel*, li., 39.

See ADMIRALTY LAW.

22. *Admiralty law—Navigation of canal—"Narrow channel"—Marine Department Regulations, rule 25—Starboard course—Fairways and mid-channels—"Canada Shipping Act," R. S. C. 1906, c. 113, s. 916—Collision—Liability for damages—Canal Regulations, rule 22—Right-of-way*, liv., 51.

See COLLISION.

## SHIPPING BILLS.

*Sale of goods—Suspensive condition—Term of credit—Delivery—Pledge—Bills of lading—Indorsement of bills—Notice—Fraudulent transfer—Insolvency—Banking—Bailee receipt—Brokers and factors—Principal and agent—Resiliation of contract—Revendication—Damages—Practice—Pleading*, xxxvi., 406.

See SALE.

## SIGNATURE.

*Contract—Fictitious signature—Assumed name*, xxxix., 378.

See CONTRACT; FORGERY.

## SIGNIFICATION.

*Railway aid—Municipal by-law—Condition precedent—Part performance—Annulment of by-law—Right of action—Assignment of obligation—Notice—Art. 1571 C. C.*, xxxvi., 686.

See ACTION.

## SLANDER OF TITLE.

*Defamation—Printing report of ghost haunting premises—Fair comment—Disparaging property—Special damages—Evidence—Presumption of malice—Right of action.*—The reckless publication of a report as to premises being haunted by a ghost raises a presumption of malice sufficient to support an action for damages from depreciation in the value of the property, loss of rent and expenses incurred in consequence of such publication. *Barrett v. The Associated Newspapers* (23 Times L. R. 666), distinguished. The judgment appealed from (16 Man. R. 619), was affirmed, the Chief Justice dissenting. *Manitoba Free Press Co. v. Nagy*, xxxix., 340.

## SMUGGLING.

1. *Customs Act—Importation of cattle—Smuggling—Clandestinely introducing cattle into Canada—Claim for return of deposit made to secure release of cattle seized—Evidence.*—The suppliants claimed the return of money deposited by them to obtain the release of cattle seized for the infraction of the "Customs Act" and held by the Crown as forfeiture. Upon conclusions as to facts drawn from the evidence the petition of right was refused by the Exchequer Court (10 Ex. C. R. 79). On appeal the judgment of the Exchequer Court was affirmed. *Spencer Brothers v. The King*, xxxix., 12.

2. *Promissory note—Illegal consideration—Smuggling transaction—Burden of proof—Findings of trial judge.*—The trial judge dismissed the action on the ground that the original note, of which those sued upon were renewals, was given without consideration

or in connection with smuggling transactions. He considered the evidence unsatisfactory as the plaintiff did not produce the books of account shewing how the consideration was made up and that there was evidence to support the plea of illegality. On an equal division of opinion among the judges, on an appeal (39 N. S. Rep. 65), his judgment stood affirmed, and a further appeal to the Supreme Court of Canada was dismissed. *Ross v. Gannon*, xxxix., 675.

### SOLICITOR.

1. *Solicitor and client — Confession of judgment—Agreement with counsel — Over charge.*—A solicitor may take security from a client for costs incurred though the relationship between them has not been terminated and the costs not taxed, but the amount charged against the client must be made up of nothing but a reasonable remuneration for services and necessary disbursements.—A country solicitor had an agreement with a barrister at Halifax for a division of counsel fees earned by the latter on business given him by the solicitor. The solicitor took a confession of judgment from a client for a sum which included the whole amount charged by the Halifax counsel, only part of which was paid to him.—*Held*, that though the arrangement was improper it did not vitiate the judgment entered on the confession, but the amount not paid to counsel should be deducted therefrom. *Knock v. Owen*, xxxv., 168.

2. *Judicial sales — Interested bidders — Disqualification as purchaser—Art. 1434 C. C.—Public policy.*—Solicitors and counsel retained in proceedings for the sale of property are not within the classes of persons disqualified as purchasers by article 1434 of the Civil Code of Lower Canada. Judgment appealed from (10 Ex. C. R. 139), affirmed. *Rutland Railroad Co. v. Béique*; *White v. Béique*; *Morgan v. Béique*, xxxvii., 303.

AND see RAILWAYS.

3. *Fiduciary relationship — Transfer of lands—Joint negotiations — Agreement to share profits—Intervention of third party —Solicitor's separate advantage — Bonus from third party—Obligation to account to client.*—The Government of British Columbia had unsuccessfully attempted, through the agency of A., to obtain a transfer of the rights of a band of Indians in the Kit-silano Reserve. About a year afterwards C. became interested in the matter and arranged with R., a solicitor, that they should undertake to obtain the required transfer on the understanding that any profits made out of the transaction should be equally divided between them. Long negotiations with the band took place without any definite result, when, without the consent of C., through the intervention of A. at the request of R., the transfer was obtained and R. received a sum of money from A. as a share of the profits realized on carrying the transaction through. In an action by C. to recover one-half of the amount so received by R.—*Held*, affirming the judgment appealed from (20 B. C. Rep. 365), that throughout the

whole transactions the fiduciary relationship of solicitor and client had continued between R. and C. and, consequently, that R. was obliged to account to C. for what he had received from A. as remuneration for services in connection with the business which they had jointly undertaken in order to obtain the transfer of the title from the Indians. *Read v. Cole*, lii., 176.

4. *Taxing costs to Crown—Fees to counsel and solicitor—Salaried officers representing the Crown*, xxxix., 621.

See COSTS.

5. *Lawful costs — Taxation of fees to counsel and solicitor—Construction of statute—1 & 2 Edw. VII., c. 77 (Man.)—Contract with solicitor engaged on salary—Conflict of laws*, xli., 366.

See COSTS.

6. *Retainer — Subsequent proceedings — Habeas corpus—Evidence. Duff v. Lane*, xlviii., 508.

7. *Special statute—Fixed sum for costs—Delivery of bill—"Solicitors' Act," 2 Geo. V., c. 28, s. 34. Gundy v. Johnstone*, xlviii., 516.

### SOUTH SHORE RAILWAY.

See RAILWAYS.

### SPEAKER.

*Constitutional law—Legislative Assembly —Powers of Speaker—Precincts of House of Assembly—Expulsion*, xxxiv., 400.

See CONSTITUTIONAL LAW.

### SPECIFICATIONS.

*Public work—Contract—Change in plans and specifications — Waiver by Order-in-Council—Powers of executive—Construction of statute—Directory and imperative clauses —Words and phrases—"Stipulations"—Exchequer Court Act, s. 33—Extra works—Engineer's certificate—Instructions in writing—Schedule of prices—Compensation at increased rate—Damages—Right of action —Quantum meruit*, xxxviii., 501.

See CONTRACT.

### SPECIFIC PERFORMANCE.

1. *Petitory action — Specific performance of contract—Joinder of cause of action.*—There can be no objection to the *demande au pétitoire* being joined in the action for specific performance. *Meloche v. Deguire*, xxxiv., 24.

AND see TITLE TO LAND.

2. *Agreement for the sale of land—Falsa demonstratio—Position of vendor's signature —Specific performance.*—On the conclusion

of negotiations between C. and B. as to the sale of two city lots on the corner of Hastings Street and Westminster Avenue, in Vancouver, B.C., C. signed a document as follows:—"Vancouver, June 28th, 1902.—Received from James Borland the sum of ten dollars, being a deposit on the purchase of lots No. 9 & 10, Block No. 10, District Lot 196, purchase price twenty thousand dollars (\$20,000.00), the balance to be paid within (10 July) days, when I agree to give the said James Borland a deed in fee simple free from all incumbrances. (Sgd.) Jos. Coote, N.W. Cor. Hastings & Westr. Ave." The lots on the corner of the streets mentioned were, in fact, lots 9 and 10 in block 9, and were the only lots defendant owned. In an action for specific performance of the agreement for sale of the lands the trial judge found that these were the lots intended to be sold, and also that the words below the signature formed part of the receipt.—*Held*, affirming the judgment appealed from (10 B. C. Rep. 493), Killam, J., dissenting, that the inaccuracy of the description in the receipt was a mere discrepancy which should be disregarded and the decree made for specific performance in respect of the lots actually bargained for between the parties. (Leave to appeal to Privy Council refused, 5th July, 1905). *Coote v. Borland*, xxxv., 282.

3. *Contract—Sale of goods—Refusal to perform—Specific performance—Damages.*—By contract in writing M. agreed to sell to P. cedar poles of specified dimensions, the contract containing the following provisions: "All poles as they are landed in Arnprior are to be shipped from time to time as soon as they are in shipping condition. Any poles remaining in Arnprior over one month after they are in shipping condition to be paid for on estimate in thirty days therefrom less 2 per cent. discount. . . . For shipments cash 30 days from dates of invoices less 2 per cent. discount."—*Held*, that for poles not shipped P. was not obliged to pay on the expiration of one month after they were in shipping condition, but only after 30 days from receipt of the estimate of such poles.—M. refused to deliver logs that had been on the ground one month without previous payment and P. brought an action for specific performance and damages claiming that he could not be called upon to pay until the poles were inspected and passed by him, and also that M. should supply the cars. M. counter-claimed for the price of the poles.—*Held*, Sedgewick and Killam, JJ., dissenting, that each party had misconceived his rights under the contract, and no judgment could be rendered for either. *Phelps v. McLachlin*, xxxv., 482.

4. *Partnership—Syndicate for promotion of joint stock company—Trust agreement—Construction of contract—Administration by majority of partners—Lapse of time limit—Specific performance.*—A syndicate consisting of seven members agreed to form a stock company for the development, etc., of properties owned by two of their number, the defendants, under patent rights belonging to two other members; the three remaining members, of whom plaintiff was one, furnishing capital, and all members agreeing to

assist in the promotion of the proposed company. In the meantime the lands were acquired by the defendants and the patent rights were assigned to them, in trust for the syndicate, and the lands and patent rights were to be transferred to the syndicate or to the company without any consideration save the allotment of shares proportionately to the interest of the parties. The stock in the proposed company was to be allotted, having in view the proprietary rights and moneys contributed by the syndicate members, in proportion as follows, 37½ per cent. to the defendants who held the property, 32½ per cent. to the owners of the patent rights, the other three members to receive each 10 per cent. of the total stock. A time limit was fixed within which the company was to be formed, and in default of its incorporation within that time, the lands were to remain the property of the defendants, the transfers of the patent rights were to become void and all parties were to be in the same position as if the agreement had never been made. The tenth clause of the agreement provided that, in case of difference of opinion, three-fourths in value should control. Owing to differences in opinion, the proposed company was not formed but, within the time limited, the plaintiff, and the other two members, holding together 30 per cent. interest in the syndicate, caused a company to be incorporated for the development and exploitation of the enterprise, and demanded that the property and rights should be transferred to it under the agreement. This being refused, the plaintiff brought action against the trustees for specific performance of the agreement to convey the lands and transfer the patent rights to the company, so incorporated or for damages.—*Held*, that the tenth clause of the agreement controlled the administration of the affairs of the syndicate and that, as three-fourths in value of the members had not joined in the formation of a company, as proposed, within the time limited, the lands remained the property of the defendants, the patent rights had reverted to their original owners and the plaintiff could not enforce specific performance. *Hopper v. Hootor*, xxxv., 645.

5. *Principal and agent—Sale of land—Authority to make contract.*—The defendant gave a real estate agent the exclusive right, within a stipulated time, to sell, on commission, a lot of land for \$4,270 (the price being calculated at the rate of \$40 per acre on its supposed area), an instalment of \$1,000 to be paid in cash and the balance, secured by mortgage, payable in four annual instalments. The agent entered into a contract for sale of the lot to the plaintiff at \$40 per acre, \$50 being deposited on account of the price, the balance of the cash to be paid "on acceptance of title," the remainder of the purchase money payable in four consecutive yearly instalments and with the privilege of "paying off the mortgage at any time." This contract was in the form of a receipt for the deposit and signed by the broker as agent for the defendant. — *Held*, affirming the judgment appealed from (15 Man. Rep. 205) that the agent had not the clear and express authority necessary to confer the power of entering into a contract for sale binding upon

his principal.—*Held*, further, that the term allowing the privilege of paying off the mortgage at any time was not authorized and could not be enforced against the defendant. *Gilmour v. Simon*, xxxvii., 422.

6. *Agreement for sale of land—Principal and agent—Estoppel—“Land Commissioner”—Specific performance.*—The plaintiffs, as assignees, claimed specific performance of an alleged agreement for the sale of lands based upon the following letter:—“*Fernie, B.C., June 5th, 1900.—D. V. Mott, Esq., Fernie, B.C.:—Re sale to you of mill site.—Dear Sir:—The Crow’s Nest Pass Coal Company hereby agree to sell to you a piece of land at or near Hosmer Station, on the Crow’s Nest Pass line, to contain at least one hundred acres of land, at the price of \$5.00 per acre; payable as follows:—When title issued to purchaser, title to be given as soon as the company is in a position to do so. Purchaser to have possession at once. The land to be as near as possible as shewn on the annexed sketch plan. Yours truly, W. Fernie, Land Commissioner.*” — The lands claimed were not those shewn on the sketch plan, but other lands alleged to have been substituted therefor by verbal agreement with another employee of the defendant company, at the time of survey.—*Held*, affirming the judgment appealed from (12 B. C. Rep. 433), but on different grounds, that specific performance could not be decreed in the absence of any proof of authority of the agent to sell the lands of the defendant company, and that the mere fact of investing their employee with the title of “Land Commissioner” did not estop the defendants from denying his power to sell lands. *Elk Lumber Co. v. Crow’s Nest Pass Coal Co.*, xxxix., 169.

7. *Tender for land—Agreement for tender—One party to acquire and divide with other—Division by plan—Reservation of portion of land from grant.*—By agreement through correspondence the G. T. R. Co. was to tender for a triangular piece of land offered for sale by the Ontario Government containing 19 acres and convey half to the C. P. R. Co., which would not tender. The division was to be made according to a plan of the block of land with a line drawn through the centre from east to west, the C. P. R. Co. to have the northern half. The G. T. R. Co. acquired the land, but the Government reserved from the grant two acres in the northern half. In an action by the C. P. R. Co. for specific performance of the agreement.—*Held*, affirming the judgment of the Court of Appeal (14 Ont. L. R. 41) MacLennan and Duff, JJ, dissenting, that the C. P. R. Co. was entitled to one-half of the land actually acquired by the G. T. R. Co., and not only to the balance of the northern half as marked on the plan. The Court of Appeal directed a reference to the Master in case the parties could not agree on the mode of division.—*Held*, that such reference was unnecessary and the judgment appealed against should be varied in this respect. *Grand Trunk Ry. Co. v. Canadian Pacific Ry. Co.*, xxxix., 220.

8. *Tramway—Contract with municipality—Limited tickets—Specific performance—Injunction—Right of action—Par-*

*tia.*] — An injunction granted by the judgment of Street, J. (8 Ont. L. R. 642), affirmed by the Court of Appeal for Ontario (10 Ont. L. R. 594), was affirmed by the Supreme Court of Canada for the reasons given in the courts below. The order of Street, J., restrained the company from operating trams in which they did not provide “workmen’s tickets” good for passenger fares during certain fixed hours of each day in virtue of an agreement with the city. The Court of Appeal held that the agreement was *intra vires*, that the company were obliged to provide such tickets, that it was not necessary to make the Attorney-General a party to the action, and that specific performance could be enforced by injunction. *Hamilton Street Ry. Co. v. City of Hamilton*, xxxix., 673.

9. *Vendor and purchaser—Agreement for sale of land—Principal and agent—Fiduciary relationship.*—Where an intending purchaser, by disguising his intentions under the role of a disinterested friend imposed on the confidence thus established, and induced the owner of land to accept an offer for the purchase of it which probably would not otherwise have been accepted without independent investigation, specific performance of an agreement for sale thus procured should not be enforced. *Feloues v. Lord Gwydyr* (1 Sim. 63), discussed and distinguished. *Henderson v. Thompson*, xli., 445.

10. *Vendor and purchaser—Sale of mortgaged lands—Agreement—Condition precedent—Cash payment—Default—Objection to title—Reputation.*—An agreement for the sale of land provided that the purchase-money was to be paid by instalments “\$10,000 cash on the signing of this agreement, the receipt of which is hereby acknowledged,” the remaining instalments to be paid in one, two and four years, with interest from the date of the agreement, and there was a proviso making time of the essence of the contract and, on default in performance of conditions and payment of instalments, for the cancellation of the agreement by the vendors on giving written notice to the purchaser. The land in question formed part of a larger area, and there was an undischarged mortgage upon the whole property of which both parties had knowledge at the time of the agreement. The cash payment was not made, the purchaser refusing to pay this amount until the mortgage was severed and apportioned so that the land mentioned in the agreement should bear only a determinate share thereof, and the agreement amended to this effect. The vendors then withdrew from the agreement by a letter addressed to the purchaser’s solicitor. In an action against the vendors for specific performance.—*Held, per Davies and Anglin, JJ.*—The execution of the agreement constituting the relationship of vendor and purchaser was the consideration for the cash payment then to be made and, in default of such payment, the obligation to sell and convey the lands with a good title did not become binding upon the vendors.—*Per Duff and Brodeur, JJ.*—Payment of the ten thousand dollars in cash was a condition precedent to the constitution of any obligation by the vendors to sell or convey the

lands and, consequently, to shew good title.—*Per* Idington, J.—In the circumstances the purchaser's refusal to make the cash payment was a repudiation of the agreement which deprived him of the right to a decree for specific performance. — Judgment appealed from (1 D. L. R. 331; 1 West. W. R. 563), reversed. (Leave to appeal to Privy Council was refused, 9th December, 1912.) *Cushing v. Knight*, xlvii., 555.

11. *Vendor and purchaser—Sale of land—Condition dependent—Deferred payment—Disclosure of title—Abstract—Refusal to complete—Lapse of time—Defeasance.*—In an agreement for the sale of an interest in land, for a price payable by deferred instalments at specified dates, there was a condition for defeasance, at the option of the vendor, for default in punctual payments, time was of the essence of the contract, and receipt of a deposit on account of the price was acknowledged. Some time before the date fixed for payment of the first deferred instalment the purchasers made requisitions for the production for inspection of the vendor's evidence of title to the interests he was selling and the vendor refused to comply with the requisitions. The payment was not made on the appointed date and the vendor declared the agreement cancelled in consequence of such default. In suit for specific performance, brought by the purchaser. — *Held*, affirming the judgment appealed from (17 B. C. Rep. 88), that the vendor was bound, upon requisition made within a reasonable time by the purchasers, to produce for their inspection the documents under which he claimed the interests he was selling in the lands; until he had complied with such demand the purchasers were not obliged to make payment of deferred instalments of the price and, in the circumstances, their failure to make the payment in question was not an answer to the suit for specific performance. *Cushing v. Knight* (46 Can. S. C. R. 555), distinguished.—*Per* Duff, J.—In the absence of any express or implied stipulation to the contrary in an agreement respecting the sale of land in British Columbia, which is not held under a certificate of indefeasible title, the purchaser is entitled, according to the rule introduced into that province with the general body of the law of England, to the production of a solicitor's abstract of the vendor's title to the interest in the land which he has agreed to sell. *Newberry v. Langan*, xlviii., 114.

12. *Sale of land—Contract—Defeasance—Time to be of the essence of the agreement—Deferred payments—Notice after default—Laches—Abandonment.*—In an agreement for the sale of lands, for a price of which half was paid and the balance to be paid by deferred instalments at specified dates, there was a clause for forfeiture, both of the agreement and the payments made, upon default in punctual payments; time was of the essence of the contract and, on default, the vendor had the right to give the purchasers thirty days' notice in writing demanding payment; in case of continuing default, at the expiration of that time, forfeiture would become effective and the vendor might retake possession and re-sell the lands. On default in payment as provided, a notice was given in the terms men-

tioned, but only to one of the purchasers, an extension of time was applied for and refused and, after thirty days from the time of the notice the vendor re-entered. Five days later the purchasers tendered the balance unpaid, which was refused by the vendor on the grounds that no conveyance was tendered for execution and that the purchasers had abandoned the agreement. Two weeks later the purchasers sued for specific performance. — *Held*, reversing the judgment appealed from (18 B. C. Rep. 271), that the clause making time of the essence of the contract had reference, not to the date dates, but to the time mentioned in the notice; that the notice as given did not comply with the condition of the agreement requiring notice to all of the purchasers, and that, in the circumstances of the case, there were not such laches chargeable against the purchasers as would amount to abandonment of their rights under the agreement or deprive them of their remedy of specific performance. *Bark-Fong v. Cooper*, xlix., 14.

13. *Vendor and purchaser—Agreement for sale of land—Option—Acceptance—Uncertainty as to terms—Condition precedent.*—On 26th November, 1910, R. gave C. a memorandum respecting the sale of his land, as follows: "In consideration of a payment of \$10, I agree to give to Major A. B. Carey, the option of my quarter-section—N.E.  $\frac{1}{4}$  of 20, Tp. 12, Medicine Hat, at the rate of \$25 per acre. Balance to be paid 1-3 on the last day of January of each year till paid." On the 20th of January, 1911, a letter was written, by C.'s solicitor, to R., as follows: "Major Carey is prepared to make payment of one-third of purchase price, and we are anxious to close the matter out at once. We would suggest that, rather than give an agreement for sale, you execute a transfer of the land in favour of our client and take a mortgage back for unpaid balance. We would be obliged if you would let us hear from you at once. We would be pleased to prepare the necessary documents, and you can submit same to your solicitor at Medicine Hat."—*Held*, reversing the judgment appealed from (5 Alta. L. R. 125), *Davies and Anglin, JJ.*, dissenting, that the memorandum constituted an offer requiring acceptance; that the letter of the solicitor was not an unqualified acceptance of the terms of the contract such as was called for in the circumstances, and that C. was, therefore, not entitled to a decree for specific performance. (Leave to appeal to Privy Council refused, 7th May, 1914.) *Roots v. Carey*, xlix., 211.

14. *Sale of lands—Contract—Agreement for re-sale—Novation—Rescission—Defence to action—Practice—Evidence—Statute of Frauds—Principal and agent—Agent purchasing—Disclosure—Findings of fact.*—In a suit for specific performance of a contract for the sale of lands an agreement for the re-sale of the lands may be set up as a defence notwithstanding that such re-sale agreement does not satisfy the requirements of the 4th section of the Statute of Frauds. Judgment appealed from (10 D. L. R. 765), affirmed.—Such an agreement for re-sale affords a sufficient reason for refusing a decree for specific performance of the original



contract for sale.—The Supreme Court of Canada refused to review the finding of the courts below that the defendants, while agents for the sale of the property in question, when purchasing it themselves under the contract for re-sale, had discharged their duty towards the plaintiff in regard to disclosure of material facts relating to the value of the property.—*Per Davies and Idington, J.J.*—Where the parties to a contract come to a fresh agreement of such a kind that the two cannot stand together the effect of the second agreement is to rescind the first. *Frith v. Alliance Investment Co.*, xlix., 384.

15. *Lease of land—Option for purchase—Acceptance of new lease—Waiver of option.*]—Where a lease for a term of years gives the lessee an option to purchase the land the latter's acceptance during the term of a new lease to begin on its expiration is not of itself a waiver or abandonment of the option. Anglin and Brodeur, J.J., dissenting.—Judgment of the Appellate Division (30 Ont. L. R. 186), reversed. *Mathewson v. Burns*, l., 115.

16. *Agreement for sale of land—Inability to perform—Liability to damages—Diminution in price.*]—A lease of land for ten years provided that on its termination the lessee could by giving notice, purchase the fee for \$22,000. In a suit for specific performance of this agreement.—*Held*, applying the rule in *Bain v. Fothergill* (L. R. 7 H. L. 158), Fitzpatrick, C.J. and Davies, J., dissenting, that if the lessor, without fault, was unable to give title in fee to the land the lessee was not entitled to damages for loss of his bargain.—*Per Fitzpatrick, C.J. and Davies, J.*—The above rule should not be applied in a case like this where the lease contained onerous conditions binding the lessee to expend large sums in improving the property, and it must have been contemplated by the parties that such expenditure would have caused him special damage if he could not purchase the fee.—Judgment appealed against (32 Ont. L. R. 243), affirmed. *Ontario Asphalt Block Co. v. Montreuil*, lii., 541.

17. *Contract—Foreign lands—Sale of lands—Exchange—Jurisdiction of courts of equity—Mutuality of remedy—Relief in personam—Discretionary order—Appeal—Jurisdiction—“Final judgment”*—“*Supreme Court Act.*” R. S. C. 1906, c. 139, s. 38 (c).]—T., resident in the State of Iowa, U.S.A., brought suit in Saskatchewan for specific performance of a contract by which J., resident in Saskatchewan, agreed to sell him lands in Saskatchewan, part of the price being the conveyance to J. of lands in Iowa by T. The trial judge decreed specific performance of the contract by J., and, on appeal, the full court varied the judgment by ordering that there should be a reference for inquiry and report upon T.'s title to the lands in Iowa, and that upon the filing of such report, either party should be at liberty to apply for such judgment as he might be entitled to (8 Sask. L. R. 387). On the appeal to the Supreme Court of Canada the material questions were whether or not the fact that the lands to be

exchanged were situated outside the province precluded the courts of Saskatchewan from decreeing specific performance for want of mutuality of relief, and whether or not there was error in making the order of reference, which, in effect, gave the plaintiff a second opportunity of proving his title.—*Held*, Idington, J., dissenting, that the courts of Saskatchewan, as courts of equity acting in personam, have jurisdiction to decree specific performance of contracts for the sale of lands situate within the province where the person against whom relief is sought resides within their jurisdiction; that, in the suit instituted by the foreign plaintiff in Saskatchewan, mutuality of relief existed between the parties, and that the discretion of the court appealed from in ordering the reference before the entry of the formal decree ought not to be interfered with on the appeal.—The jurisdiction of the Supreme Court of Canada to entertain the appeal was questioned by the Chief Justice and Idington, J., on the ground that the judgment appealed from was not a “final judgment.” Davies, J., was of opinion that, as the suit was “in the nature of a suit or proceeding in equity,” an appeal lay to the Supreme Court of Canada in virtue of s.s. (c) of s. 38 of the “Supreme Court Act,” R. S. C., 1906, c. 139. Anglin, J., thought that, as a matter of discretion, the court might decline to hear such an appeal.—Judgment appealed from (8 Sask. L. R. 387), affirmed, Idington, J., dissenting. *Jones v. Tucker*, liii., 431.

18. *Agreement for sale of lands—Transactions with co-trustees—Necessity of joint action—Delegation of trust—Specific performance of contract*, xxxvii., 362.

See TRUSTS.

19. *Vendor and purchaser—Sale of land—Formation of contract—Conditions—Acceptance of title—New term—Statute of Frauds—Principal and agent—Secret commission—Avoidance of contract—Fraud*, xxxviii., 588.

See CONTRACT.

- 20. *Lessor and lessee—Covenant for renewal—Option of lessor—Second term—Possession by lessee after expiration of term—Construction of deed*, Cam. Cas. 486.

See LEASE.

21. *Sale of land—Contract for sale—Time of essence—Delay of vendor—Vendor and purchaser—Description—Statute of Frauds*, xlii., 251.

See SALE OF LANDS.

22. *Vendor and purchaser—Condition of agreement—Sale of land—Payment on account of price—Cancellation—Notice—Return of money paid—Rescission—Form of action—Practice*, xlv., 338.

See ACTION.

23. *Broker—Sale of land—Principal and agent—Disclosing material information—Secret profit—Vendor and purchaser—Agent's right to sell or purchase*, xlvi., 477.

See BROKER.



24. *Vendor and purchaser—Sale of land—Deferred payment—Omission of date—Completion of contract—Acceptance by purchaser—New term—Instruments of title—Delivery—Arts. 1025, 1235, 1472, 1491-1494, 1534 C. C., li., 637.*

See SALE OF LAND.

### SQUATTERS.

*Title to land—Promise of sale—Entry in land-register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Compensation for improvements—Rents, issues and profits—Set-off, xxxix., 47.*

See TITLE TO LAND.

### ST. JOHN, PORT OF.

*Ships propelled wholly or in part by steam—Coal barges towed—R. S. C. (1886), c. 80, ss. 58, 59, xxxviii., 169.*

See SHIPS AND SHIPPING.

### STARE DECISIS.

1. *Husband and wife—Contract—Separate estate—Security for husband's debt—Independent advice.*—The confidential relations between husband and wife are such that where the latter conveys or encumbers her separate property for her husband's benefit she is entitled to the protection of independent advice; without that her action does not bind her. *Cox v. Adams* (35 Can. S. C. R. 393), followed, *Idington, J.*, dissenting.—Only in very exceptional circumstances should the Supreme Court refuse to follow its own decisions.—Judgment of the Court of Appeal (17 Ont. L. R. 436), reversed. *Stuart v. Bank of Montreal*, xli., 516.

2. *Appeal—Jurisdiction—Matter in controversy—Municipal by-law—Injunction—Contract—Collateral effect of judgment—Construction of statute—“Supreme Court Act,” R. S. C. (1906), c. 139, ss. 36, 39(e), 46, xliiii., 650.*

See APPEAL.

### STATUTE.

1. *“Quebec Act, 1774”—Criminal law—Champertry.*—The laws relating to champertry were introduced into Lower Canada by the “Quebec Act, 1774,” as part of the criminal law of England, and as a law of public order, the principles of which and the reasons for which apply as well to the Province of Quebec as to England and the other provinces of the Dominion of Canada. *Price v. Mercier* (18 Can. S. C. R. 303), referred to. (Leave to appeal to Privy Council refused.) *Meloche v. Déguire*, xxxiv., 24.

AND see CHAMPERTY.

2. *Negligence—Railways—Braking apparatus—Railway Act (1888), s. 243—Sand valves—Notice of defects in machinery—Liability of company—Provident society—Contract indemnifying employer—Indemnity and satisfaction—Lord Campbell's Act—Art. 1056 C. C.—Right of action.*—The “sander” and sand-valves of a railway locomotive, which may be used in connection with the brakes in stopping a train, do not constitute part of the “apparatus and arrangements” for applying the brakes to the wheels required by section 243 of the Railway Act of 1888.—Failure to remedy defects in the sand-valves, upon notice thereof given at the repair shops in conformity with the company's rules, is merely the negligence of an employee and not negligence attributable to the company itself; therefore, the company may validly contract with its employees so as to exonerate itself from liability for such negligence and such a contract is a good answer to an action under article 1056 of the Civil Code of Lower Canada. *The Queen v. Grenier* (30 Can. S. C. R. 42), followed.—(Q. R. 12 K. B. 1, reversed.)—*Girouard, J.*, dissented, on the ground that the negligence found by the jury was negligence of both the company and its employees. (Reversed by Privy Council, [1906] A. C. 187). *Grand Trunk Railway Co. v. Miller*, xxxiv., 45.

3. *Railway crossing—Rate of speed—Crowded districts—Fencing—51 Vict., c. 29, ss. 197, 259 (D.)—55 & 56 Vict., c. 27, ss. 6 and 8 (D.).*—In passing through a thickly peopled portion of a city, town or village a railway train is not limited to the maximum speed of six miles an hour prescribed by 55 & 56 Vict., c. 27, s. 8, so long as the railway fences on both sides of the track are maintained and turned into the cattle guards at highway crossings as provided by s. 6 of said Act. Judgment of the Court of Appeal (5 Ont. L. R. 313), reversed, *Girouard, J.*, dissenting. *Gand Trunk Railway Co. v. McKay*, xxxiv., 81.

4. *Arbitration and award—British Columbia Arbitration Act—Setting aside award—Misconduct of arbitrator—Partiality—Evidence—Jurisdiction of majority—Decision in absence of third arbitrator—Judicial discretion.*—A reference under the British Columbia Arbitration Act authorized two out of three arbitrators to make the award. After notice of the final meeting the third arbitrator failed to attend, on account of personal inconvenience and private affairs, but both parties appeared at the time appointed and no objections were raised on account of the absence of the third arbitrator. The award was then made by the other two arbitrators present. — *Held*, reversing the judgment appealed from (10 B. C. Rep. 48), that under the circumstances, there was cast upon the two arbitrators present the jurisdiction to decide whether or not, in the exercise of judicial discretion, the proceedings should be further delayed or the award made by them alone in the absence of the third arbitrator, and it was not inconsistent with natural justice that they should decide upon making the award themselves. — *Held*, further, that although

the third arbitrator had previously suggested some further audit of certain accounts that had already been examined by the arbitrators, there was nothing in this circumstance to impugn the good faith of the other two arbitrators in deciding that further delay was unnecessary.—Where it does not appear that an arbitrator is in a position with regard to the parties or the matter in dispute such as might cast suspicion upon his honour and impartiality, there must be proof of actual partiality or unfairness in order to justify the setting aside of the award. *Doberer v. Megaw*, xxxiv., 125.

5. *Mining plans and surveys—Negligence of higher officials—Duty of absent owners—Operation of metalliferous mines—Common law liability—Employers' Liability Act—R. S. B. C., c. 69, s. 3.*—The provisions of the third section of the "Inspection of Metalliferous Mines Act, 1867," of British Columbia, do not impose upon an absent mine-owner the absolute duty of ascertaining that the plans for the working of the mine are accurate and sufficient and, unless the mine-owner is actually aware of inaccuracy or imperfections in such plans, he cannot be held responsible for the result of an accident occurring in consequence of the neglect of the proper officials to plat the plans up to date according to surveys.—The defendant company acquired a mine which had been previously worked by another company and provided a proper system of surveys and operation and employed competent superintendents and surveyors for the efficient carrying out of their system. An accident occurred in consequence of neglect to plat the working plans according to surveys made up to date, the inaccurate plans misleading the superintendent so that he ordered works to be carried out without sufficient information as to the situation of openings made or taking the necessary precautions to secure the safety of the men in the working places. The engineers who had made the surveys and omitted plating the information on the plans had left the employ of the company prior to the engagement of the deceased, who was killed in the accident.—*Held*, *Taschereau, C.J., contra*, that the employers not being charged with knowledge of the neglect of their officers to carry out the efficient system provided for the operation of their mine, could not be held responsible for the consequences of failure to provide complete and accurate plans of the mine.—The negligence of the superintendent of a mine would be negligence of a co-employee of a miner injured for which the employers would not be liable at common law, although there might be liability under the British Columbia "Employers' Liability Act" (R. S. B. C., c. 69, s. 3), for negligence on the part of the superintendent.—*Per Taschereau, C.J.* An employee who has left the service of the common master cannot be regarded as a fellow workman of servants engaged subsequently.—Judgment appealed from reversed and a new trial ordered; *Taschereau, C.J.*, being of opinion that judgment should be entered in favour of the plaintiff. *Hosking v. Le-Roi No. 2*, xxxiv., 244.

6. *Rivers and streams—Floating logs—Damage—R. S. N. S. (1900), c. 95, s. 17.*—Persons engaged in the floating or trans-

mission of logs down rivers and streams, under the authority of R. S. N. S. (1900), c. 95, s. 17, are liable for damage caused thereby whether by negligence or otherwise, and the owner of the logs is not relieved from liability because the damage was done while the logs were being transmitted by another person under contract with him. Judgment appealed from (36 N. S. Rep. 40), affirmed. *Dickie v. Campbell*, xxxiv., 265.

7. *Manitoba swamp lands—Crown lands—Settlement of Manitoba claims—48 & 49 Vict., c. 50 (D.)—49 Vict., c. 38 (Man.)—Construction of statute—Title to lands—Operation of grant—Transfer in præsentia—Condition precedent—Ascertainment and identification of swamp lands—Revenues and emblements—Constitutional law.*—The first section of the "Act for the Final Settlement of the Claims of the Province of Manitoba on the Dominion" (48 & 49 Vict., c. 50), enacts that "all Crown lands in Manitoba which may be shewn, to the satisfaction of the Dominion Government, to be swamp lands, shall be transferred to the province and enure wholly to its benefit and uses."—*Held*, affirming the judgment appealed from (8 Ex. C. R. 337), *Girouard and Killam, J.J.*, dissenting, that the operation of the statutory conveyance in favour of the Province of Manitoba was suspended until such time or times as the lands in question were ascertained and identified as swamp lands and transferred as such by order of the Governor-General-in-Council, and that, in the meantime, the Government of Canada remained entitled to their administration, and the revenues derived therefrom enured wholly to the benefit and use of the Dominion. (Affirmed on appeal by Privy Council, [1904] A. C. 799.) *Atty-Gen. for Manitoba v. Atty-Gen. for Canada*, xxxiv., 287.

8. *Crown land—Crown out of possession—Adverse possession—Grant during—21 Jac. I., c. 14 (Imp.)—Information for intrusion.*—Though there has been adverse possession of Crown lands for more than twenty years the Act, 21 Jac. I., c. 14, does not prevent the Crown from granting the same without first re-establishing title by information of intrusion. Judgment appealed from (36 N. B. Rep. 260), reversed, *Davies, J.*, dissenting. (Appeal to Privy Council dismissed, 47 Can. Gaz. 424.) *Maddison v. Emmerson*, xxxiv., 533.

9. *Courts—Criminal law—Jurisdiction of magistrate—Criminal Code, s. 785—Constitutional law—Constitution of criminal courts—General Sessions of the Peace.*—By s. 785 of the Criminal Code, any person charged before a police magistrate in Ontario with an offence which might be tried at the General Sessions of the Peace, may, with his own consent, be tried by a magistrate and sentenced, if convicted, to the same punishment as if tried at the General Sessions. By an amendment in 1900 (63 Vict., c. 46), the provisions of said section were extended to police and stipendiary magistrates of cities and towns in other parts of Canada.—*Held*, that though there are no courts of General Sessions except in Ontario, the amending Act is not, therefore, inoperative,

but gives to a magistrate in any other province the jurisdiction created for Ontario by s. 785.—Though the organization of courts of criminal jurisdiction is within the exclusive powers of the provincial legislature, the Parliament of Canada may impose upon existing courts or individuals the duty of administering the criminal law and its action to that end need not be supplemented by provincial legislation. *In re Vancini*, xxxiv., 621.

10. *Water commission—Act of incorporation — Construction — Appropriation of water.*—The Act for the construction of water works in the City of London empowered the commissioners to enter upon any lands in the city or within fifteen miles thereof and set out the portion required for the works, and to divert and appropriate any river, pond, spring or stream therein.—*Held*, Sedgewick and Killam, J.J., dissenting, that the water to be appropriated was not confined to the area of the lands entered upon but the commissioners could appropriate the water of the River Thames by the erection of a dam and setting aside of a reservoir, and that such water could be used to create power for utilization of other waters and was not necessarily to be distributed in the city for drinking and other municipal purposes. (Appeal to Privy Council allowed with costs; judgment of Supreme Court of Canada reversed and that of the Court of Appeal for Ontario restored with the variations that the damages be confined to the period beginning six months prior to the commencement of the action.) *Water Commissioners of London v. Saunby*, xxxiv., 650.

11. *Dangerous way, works, etc.—Master and servant—Workmen's Compensation Act—Evidence.*—M., proprietor of iron works, had built an engine in the course of business, and while it was standing on a railway track in the workshop, a heavy dray standing near, owing to the horses attached being startled, was thrown against it whereby it was overturned and killed a workman at a bench three or four feet away. On the trial of an action by the administratrix of the workman's estate, the jury found that the accident was due to the negligence of M. in not having the engine properly braced.—*Held*, that his finding was justified by the evidence and M. was liable under the Workmen's Compensation for Injuries Act (R. S. O. [1897] c. 160.)—*Held*, also that the accident did not occur through a defect in the condition or arrangement of the ways, works, machinery, plant, building or premises connected with, intended for or used in the business of the employer. *Miller v. King*, xxxiv., 710.

12. *Construction of statute — Mechanic's lien—Machinery furnished — R. S. N. S. (1900), c. 171, ss. 6 & 8—Contract price.*—Under the Mechanics' Lien Act of Nova Scotia, R. S. N. S. (1900), c. 171, a lien for machinery for a mill does not attach until it is delivered, and if the contractor for building the mill has then been fully paid there is nothing upon which the lien can operate, as by s. 6 of the Act the owner cannot be liable for a sum greater than that due to the contractor.—B., holder of

more than half the stock of a pulp company for which he had paid by cheque, and also a director, offered to sell to the company land, build a mill and furnish working capital on receipt of all the bond issue and cash on hand. The offer was accepted, and all the stock, issued as fully paid up, was deposited with a trust company and the cash, his own cheque and the price of five shares, given to B. The stock was sold and, from the proceeds, the land was paid for, the working capital promised given to the company and the balance paid to B. from time to time, as the mill was constructed. The machinery was supplied by an American company, but when it was delivered all the money had been paid out as above.—*Held*, affirming the judgment appealed from (36 N. S. Rep. 358), that as all the money had been paid before delivery the company was not liable under the Mechanics' Lien Act to pay for the machinery.—*Held*, also, that a s. 8 of the Act which requires the owner to retain 15 per cent. of the contract price until the work is completed did not apply as no price for building the mill was specified, but the price was associated with other considerations from which it could not be separated. *S. Morgan Smith Co. v. Sissiboo Pulp and Paper Co.*, xxxv., 93.

13. *Assessment and taxation — Constitutional law—Exemption from taxation—Land subsidies of the Canadian Pacific Railway—Extension of boundaries of Manitoba—Construction of statutes—B. N. A. Act, 1867 and 1871—33 Vict., c. 3 (D.)—43 Vict., c. 25 (D.)—44 Vict., c. 14 (D.)—44 Vict., cc. 1 and 6 (3rd Sess.), (Man.)—Construction of contract—Grant in presentii.*—The land subsidy of the Canadian Pacific Railway Company authorized by the Act, 44 Vict., c. 1 (D.), is not a grant in presentii and, consequently, the period of twenty years of exemption from taxation of such lands provided by the sixteenth section of the contract for the construction of the Canadian Pacific Railway begins from the date of the actual issue of letters patent of grant from the Crown, from time to time, after they had been allotted and accepted by the Canadian Pacific Railway Company.—The exemption was from taxation "by the Dominion, or any province hereafter to be established or any municipal corporation therein"—*Held*, that when, in 1881, a portion of the North-West Territories in which this exemption attached was added to Manitoba the latter was a province "thereafter established" and such added territory continued to be subject to the said exemption from taxation. The limitations in respect of legislation affecting the territory so added to Manitoba, by virtue of the Dominion Act, 44 Vict., c. 14, upon the terms and conditions assented to by the Manitoban Acts, 44 Vict. (3rd Sess.), chs. 1 and 6, are constitutional limitations of the powers of the Legislature of Manitoba in respect of such added territory and embrace the previous legislation of the Parliament of Canada relating to the Canadian Pacific Railway and the land subsidy in aid of its construction. — Taxation of any kind attempted to be laid upon any part of such land subsidy by the North-West Council, the North-West Legislative Assembly or any municipal or school corporation in the

North-West Territories is Dominion taxation within the meaning of the sixteenth clause of the Canadian Pacific Railway contract providing for exemption from taxation. (Leave to appeal to Privy Council refused, 27th February, 1907.) *North Cypress v. Can. Pac. Ry. Co.*; *Argyle v. Can. Pac. Ry. Co.*; *Can. Pac. Ry. Co. v. Springdale*, xxxv., 551.

14. *Constitutional law—Sunday observance—Reference to Supreme Court—R. S. C. c. 135, s. 37—54 & 55 Vict. c. 25, s. 4—Legislative jurisdiction.*—The statute 54 & 55 Vict. c. 25, s. 4, does not empower the Governor-General in Council to refer to the Supreme Court for hearing and consideration supposed or hypothetical legislation which the legislature of a province might enact in the future. Sedgewick, J., dissenting. —The said section provides that the Governor in Council may refer important questions of law or fact touching specified subjects "or touching any other matter with reference to which he sees fit to exercise this power."—*Held*, Sedgewick, J., *contra*, that such "other matter" must be *ejusdem generis* with the subjects specified. (Leave to appeal to Privy Council refused, 26th July, 1905). *In re Legislation respecting Abstinence from Labour on Sunday*, xxxv., 581.

15. *Railway—Branch lines—Canadian Pacific Railway Co.'s charter—44 Vict. c. 1 (D.) and schedules—Construction of contract—Limitation of time—Interpretation of terms—"Lay out," "Construct," "Acquire"—"Territory of Dominion"—Hansard debates—Construction of statute—"The Railway Act, 1903."*—The charter of the Canadian Pacific Railway Company (44 Vict. c. 1 (D.) and schedules thereto appended), imposes limitations neither as to time nor point of departure in respect of the construction of branch lines; they may be constructed from any point of the main line of the Canadian Pacific Railway between Callender Station and the Pacific Seaboard, subject merely to the existing regulation as to approval of location, plans, etc., and without the necessity of any further legislation. On a reference concerning an application to the Board of Railway Commissioners for Canada for the approval of deviations from plans of a proposed branch line, under s. 43 of "The Railway Act, 1903," it is competent for objections as to the expiration of limitation of time to be taken by the said Board, of its own motion, or by any interested party. *In re Branch Lines, Canadian Pacific Railway*, xxxvi., 42.

16. *Construction of statute—Toll-bridge—Franchise—Exclusive limits—Measurement of distance—Encroachment—58 Geo. III. c. 20 (L.C.).*—The Act, 58 Geo. III. c. 20 (L.C.), authorized the erection of a toll-bridge across the River Etchemin, in the Parish of Ste. Claire "opposite the road leading to Ste. Therèse, or as near thereto as may be, in the county of Dorchester," and by s. 6, it was provided that no other bridge should be erected or any ferry used "for hire across the said River Etchemin, within half a league above the said bridge and below the said bridge."—*Held*, Nesbitt and Idington, JJ., dissenting, that the sta-

tute should be construed as intending that the privileged limit defined should be measured up-stream and down-stream from the site of the bridge as constructed. *Per* Nesbitt and Idington, JJ. There was not any expression in the statute shewing a contrary intention, and consequently that the distance should be measured from a straight line on the horizontal plane; but, *per* Idington, J., in this case, as the location of the bridge was to be "opposite the road leading to Ste. Therèse," and there was no proof that the new bridge complained of was within half a league of that road, the plaintiff's action should not be maintained. *Rouleau v. Pouliot*, xxxvi., 224.

17. *Constitutional law—Imperial Acts in force in Yukon Territory—2 & 3 Vict. c. 11 (Imp.)—R. S. C. c. 50—Title to land—"Torrens System"—Transfer by registered owner—Fraud—Litigious rights—Notice of lis pendens—Irregular registration—Indorsement upon certificate of title—Construction of statute—"Land Titles Act, 1894"—Caveat—57 & 58 Vict. c. 28, s. 126 (D.)—61 Vict. c. 32, s. 14 (D.)—Pleading—Objections taken on appeal—Yukon Territorial Court Rules—Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117—Waiver—Estoppel.*—The provisions of the Imperial Act, 2 & 3 Vict. c. 11, in respect to the registration of notices of litespendence and for the protection of *bonâ fide* purchasers *pende lite* are of a purely local character and do not extend their application to the Yukon Territory by the introduction of the English law generally as it existed on the fifteenth of July, 1870, under the eleventh section of "North-West Territories Act," R. S. C. 1886, c. 50.—Under the provisions of "The Land Titles Act, 1894," s. 126, a *bonâ fide* purchaser from the registered owner of land subject to the operation of that statute is not bound or affected by notice of litespendence which had been improperly filed and noted upon the folio of the register containing the certificate of title as an incumbrance or charge upon the land. The exception as to fraud referred to in the 126th section of the Act means actual fraudulent transactions in which the purchaser has participated and does not include constructive or equitable frauds. *The Assets Company v. Mere Roihi* (21 Times L. R. 311), referred to and approved. *Syndicat Lyonnais du Klondyke v. McGrade*, xxxvi., 251.

AND see YUKON TERRITORY.

18. *Construction of statute—Appeal—Special leave—Judge in chambers—Appeal to full court—Jurisdiction.*—No appeal lies to the Supreme Court of Canada from an order of a judge of that court in chambers granting or refusing leave to appeal from a decision of the Board of Railway Commissioners under s. 44 (3) of the Railway Act, 1903. (Leave for an appeal to the Privy Council was refused, 2nd Aug., 1905.) *Williams v. Grand Trunk Railway Co.*, xxxvi., 321.

19. *Construction of statute—Appeal per saltum—Winding-up Act—Application under s. 76—Defective proceedings.*—Leave to appeal *per saltum*, under s. 26 of the Supreme

Court Act, cannot be granted in a case under the Dominion Winding-up Act.—An application under s. 76 of the Winding-up Act, for leave to appeal from a judgment of the Supreme Court of New Brunswick was refused where the judge had made no formal order on the petition for a winding-up order and the proceedings before the full court were in the nature of a reference rather than of an appeal from his decision. *In re Cushing Sulphite Fibre Co.*, xxxvi., 494.

20. *Constitutional law — Construction of statute — B. N. A. Act, 1867, s. 92, s.-s. 10 (c)—Legislative jurisdiction—Parliament of Canada — Local works and undertakings—Recital in preamble—Enacting clause—General advantage of Canada, etc. — Subject matter of legislation — Presumption as to legislation of Parliament being intra vires.*—In construing an Act of the Parliament of Canada, there is a presumption in law that the jurisdiction has not been exceeded.—Where the subject matter of legislation by the Parliament of Canada, although situate wholly within a province, is obviously beyond the powers of the local legislature, there is no necessity for an enacting clause specially declaring the works to be for the general advantage of Canada or for the advantage of two or more of the provinces.—*Semble, per Sedgewick and Davies, J.J.* (Girouard and Idington, J.J., *contra*), a recital in the preamble to a special private Act, enacted by the Parliament of Canada, is not such a declaration as that contemplated by s.-s. 10 (c) of s. 92 of the British North America Act, 1867, in order to bring the subject matter of the legislation within the jurisdiction of Parliament. *Hewson v. Ontario Power Co.*, xxxvi., 596.

AND see PRACTICE.

21. *Construction of statute—Mining law —Staking claim — Initial post — Occupied ground — Curative provision—R. S. B. C. c. 135, s. 16—61 Vict. c. 33, s. 4 (B.C.)*—In staking out a claim under the mineral Acts of British Columbia the fact that initial post No. 1 is placed on ground previously granted by the Crown under said Acts does not necessarily invalidate the claim, and s.-s. (g) of s. 4 of 61 Vict. c. 33 amending the "Mineral Act" (R. S. B. C. c. 135) may be relied on to cure the defect. *Madden v. Connell* (30 Can. S. C. R. 109), distinguished. Judgment appealed from (11 B. C. Rep. 37), affirmed, Idington, J., dissenting. *Clark v. Dockstader*, xxxvi., 622.

22. *Railway — Farm crossings — Jurisdiction of Board of Railway Commissioners for Canada—Statutory contract — Railway Clauses Act of 1851—Grand Trunk Railway Act, 1852—"Railway Act, 1888"—"Railway Act, 1903"—Appeal — Controversy involved — Jurisdiction.*—Orders directing the establishment of farm crossings over railways subject to "The Railway Act, 1903," are exclusively within the jurisdiction of the Board of Railway Commissioners for Canada.—The right claimed by the plaintiff's action, instituted in 1904, to have a farm crossing established and maintained by the railway company, cannot be enforced under the provisions of the Act, 16 Vict. c. 37 (Can.), in-

corporating the Grand Trunk Railway of Canada.—Judgment appealed from reversed, Idington, J., dissenting in regard to damages and costs. *Grand Trunk Railway Co. v. Perrault*, xxxvi., 671.

23. *Construction of statute—"Marsh Act," R. S. N. S. 1900, c. 66, ss. 22, 66—Jurisdiction of marsh commissioners—Assessment of lands — Certiorari—Limitation for granting writ — Practice — Expiration of time—Delays occasioned by judge—Legal maxim —Order nonc pro tunc.*—Where a statute authorizing commissioners to assess lands provided that no writ of certiorari to review the assessment should be granted after the expiration of six months from the initiation of the commissioners' proceedings:—*Held*, Girouard, J., dissenting, that an order for the issue of a writ of certiorari made after the expiration of the prescribed time was void notwithstanding that it was applied for and judgment on the application reversed before the time had expired.—*Held, per Taschereau, C.J.*—That where jurisdiction has been taken away by statute, the maxim *actus curiæ neminem gravabit* cannot be applied, after the expiration of the time prescribed, so as to validate an order either by antedating or entering it *nunc pro tunc*; that, in the present case, the order for certiorari could issue as the impeachment of the proceedings of the inferior tribunal was sought upon the ground of want of jurisdiction in the commissioners, but the appellants were not entitled to it on the merits.—*Per Girouard, J.* (dissenting).—Under the circumstances, the order in this case ought to be treated as having been made upon the date when judgment upon the application was reserved by the judge. Upon the merits, the appeal should be allowed as the commissioners had no jurisdiction in the absence of proper notices as required by the twenty-second section of the "Marsh Act," R. S. N. S. 1900, c. 66.—*Per Davies, J.*—The statute allows any person aggrieved by the proceedings of the commissioners to remove the same into the Supreme Court by certiorari; the claim for the writ on the ground of jurisdiction was either abandoned or unfounded; and the statutory writ could not issue after the six months had expired. *In re Trecothick Marsh*. xxxvii. 70.

24. *Breach of trust—Accounts—Evidence —Nova Scotia "Trustee Act," 2 Edw. VII. c. 13—Liability of trustee — N. S. Order XXXII., r. 3—Judicial discretion—Statute of Limitations.*—By his last will N. bequeathed shares of his estate to his daughters A. and C. and appointed A. executrix and trustee. C. was weak-minded and infirm and her share was directed to be invested for her benefit and the revenue paid to her half yearly. A. proved the will, assumed the management of both shares and also the support and care of C. at their common domicile, and applied their joint incomes to meet the general expenses. No detailed accounts were kept sufficient to comply with the terms of the trust nor to shew the amounts necessarily expended for the support, care and attendance of C., but A. kept books which shewed the general household expenses and consisted, principally, of admissions against her own interests. After

the decease of both A. and C. the plaintiffs obtained a reference to a master to ascertain the amount of the residue of the estate coming to C. (who survived A.) and the receipts and expenditures by A. on account of C. On receiving the report the judge referred it back to be varied, with further instructions and a direction that the books kept by A. should be admitted as *prima facie* evidence of the matters therein contained (see 37 N. S. Rep. pp. 452-464). This order was affirmed by the Supreme Court of Nova Scotia *in banco*.—*Held*, affirming the judgment appealed from (37 N. S. Rep. 451), that the allowances for such expenditure need not be restricted to amounts actually shewn to have been so expended; that, under the Nova Scotia statute, 2 Edw. VII. c. 13, and Order XXXII., rule 3, a judge may exercise judicial discretion towards relieving a trustee from liability for technical breaches of trust and, for that purpose, may direct the admission of any evidence which he may deem proper for the taking of accounts. *Cairns v. Murray*, xxxvii., 163.

25 *Constitutional law — Parliament — Power to legislate — Railways — "Railway Act," 1888, ss. 187, 188—Protection of crossings—Party interested—Railway committee —"Railway Act, 1903"—Board of Railway Commissioners.*—Sections 187 and 188 of "The Railway Act," 1888, empowering the Railway Committee of the Privy Council to order any crossing over a highway of a railway subject to its jurisdiction to be protected by gates or otherwise, are *intra vires* of the Parliament of Canada. *Idington, J.*, dissenting.—(Sections 186 and 187 of "The Railway Act, 1903," confer similar powers on the Board of Railway Commissioners.)—These sections also authorize the committee to apportion the cost of providing and maintaining such protection between the railway company and "any person interested."—*Held*, *Idington, J.*, dissenting, that the municipality in which the highway crossed by the railway is situate is a "person interested" under said sections. *City of Toronto v. Grand Trunk Railway Co.*, xxxvii., 232.

26. *Construction of statute — Canadian waters — Three-mile zone — Fishing by foreign vessels—Legislative jurisdiction — Seizure on high seas—Pursuit beyond territorial limit — International law — Constitutional law—B. N. A. Act, 1867, s. 91, s.-s. 12—Seacoast fisheries—R. S. C. c. 94, ss. 2, 3, 4.*—Under the provisions of the "British North America Act," 1867, s. 91, s.-s. 12, the Parliament of Canada has exclusive jurisdiction to legislate with respect to fisheries within the three-mile zone off the sea-coasts of Canada.—A foreign vessel found violating the fishery laws of Canada within three marine miles off the sea-coasts of the Dominion may be immediately pursued beyond the three-mile zone and lawfully seized on the high seas. *Girouard, J.*, dissenting. The judgment appealed from (11 B. C. Rep. 473), was affirmed. *The Ship "North" v. The King*, xxxvii., 385.

27. *Contract—Breach of conditions—Liquidated damages — Penalty — Cumulative*

*remedy—Operation of tramway—Construction and location of lines—Use of highways —Car service — Time-tables — Municipal control — Territory annexed after contract —Abandonment of monopoly—55 Vict. c. 99 (Ont.).*—Except where otherwise specially provided in the agreement between the Toronto Railway Company and the City of Toronto set forth in the schedules to c. 99 of the statutes of Ontario, 55 Vict., in 1892, the right of the city to determine, decide upon and direct the establishment of new lines of tracks and tramway service, in the manner therein prescribed, applies only within the territorial limits of the city as constituted at the end of the contract. Judgment appealed from (10 Ont. L. R. 657) reversed, *Girouard, J.*, dissenting.—The city, and not the company, is the proper authority to determine, decide upon and direct the establishment of new lines, and the service, time-tables, and routes thereon. Judgment appealed from affirmed, *Sedgewick, J.*, dissenting.—As between the contracting parties, the company, and not the city, is the proper authority to determine, decide upon and direct the time at which the use of open cars shall be discontinued in the autumn and resumed in the spring, and when the cars should be provided with heating apparatus and heated. Judgment appealed from reversed, *Girouard, J.*, dissenting.—Upon the failure of the company to comply with requisitions for extensions as provided in the agreement, it has no right of action against the city for grants of the privilege to others; the right of making such grants accrues, *ipso facto*, to the city, but is not the only remedy which the city is entitled to invoke. Judgment appealed from affirmed, *Sedgewick, J.*, dissenting.—Cars starting out before midnight as day cars may be required by the city to complete their routes, although it may be necessary for them to run after midnight or transfer their passengers to a car which would carry them to their destinations without payment of extra fares, but at midnight their character would be changed to night cars and all passengers entering them after that hour could be obliged to pay night fares. *Sedgewick, J.*, dissenting. (Varied on appeal by Privy Council, 26th April, 1907; 49 Can. Gaz. 102). *Toronto Ry. Co. v. City of Toronto*, xxxvii., 430.

28. *Execution of statutory powers—Arbitration — Injunction — Mandamus — Construction of statute—59 Vict. c. 44 (N.S.).*—The powers conferred upon the town council of the Town of North Sydney, N.S., by the Nova Scotia statute, 59 Vict. c. 44, for the purpose of obtaining a water supply give them no rights in respect to the diversion of watercourses except subject to the provisions of the fourth section of the Act, and after arbitration proceedings taken to settle compensation for injurious affection to property resulting from the construction or operation of the water-works. *Saunby v. The Water Commissioners of London* ([1906] A. C. 110), followed. (Leave to appeal to Privy Council was refused, 17th July, 1906). *Leahy v. Town of North Sydney*, xxxvii., 464.

AND SEE RIVERS AND STREAMS,

29. *Cause of action—Limitation of actions—Contract—Foreign judgment—Yukon Ordinance, c. 31 of 1890—Statute of James—Statute of Anne—Lex fori—Lex loci contractus—Absence of debtor.*—Under the provisions of the Yukon Ordinance, c. 31 of 1890, the right to recover simple contract debts in the Territorial Court of Yukon Territory is absolutely barred after the expiration of six years from the date when the cause of action arose notwithstanding that the debtor has not been for that period resident within the jurisdiction of the court. Judgment appealed from reversed, Girouard and Davies, J.J., dissenting. *Rutledge v. United States Savings and Loan Co.* xxxvii., 546.

30. *Construction of statute—R. S. C. c. 135, s. 27—Appeal—Jurisdiction—New trial—Discretion—Ontario appeals—60 & 61 Vict. c. 34.*—Per Fitzpatrick, C.J., and Duff, J.—Section 27 of R. S. C. (1886), c. 135, prohibits an appeal from a judgment of the Court of Appeal for Ontario granting, in the exercise of judicial discretion, a new trial in the action.—Per Davies, J.—Under the rule in *Town of Aurora v. Village of Markham* (32 Can S. C. R. 457), no appeal lies from a judgment of the Court of Appeal for Ontario on motion for a new trial unless it comes within the cases mentioned in 60 & 61 Vict. c. 34, or special leave to appeal has been obtained. Appeal from judgment of the Court of Appeal (11 Ont. L. R. 171), quashed. *Canada Carriage Co. v. Lea*, xxxvii., 672.

31. *Construction of will—Usufruct—Substitution—Partition between institutes—Validating legislation—60 Vict. c. 95 (Q.)—Construction of statute—Restraint of alienation—Interest of substitutes—Devise of property held by institute under partition—Devolution of corpus of estate en nature—Accretion—Res judicata—Arts. 868, 948 C. C.*—The effect of the statute, 60 Vict. c. 95 (Que.), respecting the will of the late Amable Prévost, read in conjunction with the provisions of the will and codicils therein referred to, is to declare the deed of partition between the beneficiaries thereunder final and definitive and not merely provisional; the judgment of the Court of Queen's Bench, on the appeal side, taken under that statute, has no other effect. Neither the statute nor the judgment referred to sanctions the view that the said will and codicils constitute more than one substitution; there was but one substitution created thereunder in favour of all the joint legatees and consequently accretion takes place among them within the meaning of article 868 of the Civil Code, in the event of any legacy lapsing, under the terms of the will, upon the death of an institute without issue prior to the opening of the substitution. In such case, the share of the institute dying without issue devolves to the other joint legatees, as well in usufruct as in absolute ownership, and, consequently, none of the institutes or substitutes have the right of disposing of any portion of the testator's estate, by will or otherwise, prior to the date of the opening of the substitution.—Judgment appealed from (Q. R. 28 S. C. 257), reversed.

*DeHetel v. Goddard* (66 L. J. P. C. 90), distinguished.—(Reversed by Privy Council [1908] A. C. 341). *Prévost v. Lamarche*, xxxviii., 1.

32. *Construction of 3 Edw. VII. c. 57—Railway subsidies—Conditions—Cost of construction—Method of estimating—Rolling stock and equipment.*—The provisions of the Act, 3 Edw. VII. c. 57, authorizing the granting of subsidies in aid of the construction of railways are not mandatory, but discretionary in so far as the grant of the subsidies by the Governor in Council is concerned.—On a proper construction of the said Act it does not appear to have been the intention of Parliament that the cost of rolling stock and equipment should be included in the cost of construction in estimating the amount of subsidy payable to the company in aid of the "Pheasant Hills Branch" of their railway under the provisions of that Act, notwithstanding that the said Act did not specially exclude the consideration of the cost of equipment in the making of such estimate as had been done in former subsidy Acts with similar objects, and that the Governor in Council imposed the duty of efficient maintenance and equipment of the branch as a condition of the grant of the subsidy. *Canadian Pacific Ry. Co. v. The King; Re Pheasant Hills Branch*, xxxviii., 137.

AND see APPEAL.

33. *Criminal law—Crown case reserved—Appeal—Extension of time for notice of appeal—"Criminal Code," s. 1024—Order after expiration of time for service of notice—Jurisdiction.*—The power given by s. 1024 of the "Criminal Code" (R. S. C. (1906), c. 146), to a judge of the Supreme Court of Canada to extend the time for service on the Attorney-General of notice of an appeal in a reserved Crown case may be exercised after the expiration of the time limited by the code for the service of such notice. *Banner v. Johnston* (L. R. 5 H. L. 157), and *Vaughan v. Richardson* (17 Can. S. C. R. 703), followed. *Gilbert v. The King*, xxxviii., 207.

34. *Appeal—Order extending time—Jurisdiction—R. S. C. c. 135, s. 42—Practice.*—The court refused to entertain a motion to quash the appeal on the ground that it had not been taken within the sixty days limited by the statute and that an order by a judge of the court appealed from after the expiration of that time was *ultra vires* and could not be permitted under s. 42 of the Supreme and Exchequer Courts Act, R. S. C. (1886), c. 135. *Temiscouata Ry. Co. v. Clair*, xxxviii., 230.

AND see TRESPASS.

35. *Appeal—Action for declaration and injunction—60 & 61 Vict. c. 34, s. 1 (d.)—Municipal corporation—Water rates—Discrimination.*—The Act 60 & 61 Vict. 34 (D) relating to appeals from the Court of Appeal for Ontario does not authorize an appeal in an action claiming only a declaration that a municipal by-law is illegal and an injunction to restrain its enforcement. *City of Hamilton v. Hamilton Distillery Co.*;



*City of Hamilton v. Hamilton Brewing Association*, xxxviii., 239.

AND see MUNICIPAL CORPORATION.

36. *Criminal law — Disorderly house — Common betting house—Place for betting—Betting booth—Race-course of incorporated association—Crim. Code, 1892, ss. 197, 204—Crim. Code, 1906, ss. 227, 235.*—A perambulating booth used on the race-course of an incorporated racing association for the purpose of making bets is an "office" or "place" used for betting between persons resorting thereto as defined in s. 197 of the Criminal Code, 1892 (Crim. Code, 1906, s. 227).—Sub-section 2 of s. 204 of the former Code (now s. 235) which exempts from the provisions of the main section (dealing with the recording or registering of hets, etc.), bets made on the race-course of an incorporated association does not apply to the offence of keeping a common betting-house. *Girouard and Davies, J.J.*, dissenting.—Judgment of the Court of Appeal (12 Ont. L. R. 615), affirmed, *Girouard and Davies, J.J.*, dissenting. *Saunders v. The King*, xxxviii., 382.

37. *Construction of statute—4 Edw. VII. c. 41—R. S. C. (1906) c. 152, s. 127—Conviction—Penalty.*—By 4 Edw. VII., c. 41 (R. S. C. 1906, c. 152, s. 127), for a first offence against Part II. of the Canada Temperance Act a fine may be imposed of "not less than \$50" and for a second offence of "not less than \$100."—*Held*, that for a first offence the justice cannot impose a fine of more than \$50. *Maclennan, J.*, dissenting. *In re Richard*, xxxviii., 394.

AND see "CANADA TEMPERANCE ACT."

38. *Municipal corporation — Exemption from taxes—Resolution of council—Discrimination — Establishment of industry—Construction of 36 Vict. c. 81, s. 1 (N.B.).*—By s. 1 of 36 Vict. c. 81, the New Brunswick Legislature authorized the town council of Woodstock from time to time to "give encouragement to manufacturing enterprises within the said town by exempting the property thereof from taxation for a period of not more than ten years by a resolution declaring such exemption." In 1892 the council passed the following resolution: "That any company establishing a woollen mill in the town of Woodstock be exempted from taxation for a period of ten years."—*Held*, per *Davies, Idington and Maclennan, J.J.*, that this resolution provided for discrimination in favour of companies and against individuals who might establish a woollen mill or mills in the town and was therefore void. *City of Hamilton v. Hamilton Distillery Co.* (38 Can. S. C. R. 239), followed.—*Held*, per *Davies, J.*—The resolution exempting any company and not any property of a company was too indefinite and uncertain to be the basis of a claim for exemption.—In 1893 a woollen mill was established in Woodstock by the Woodstock Woollen Mills Co., and operated for some years without taxation. In 1899 the mill was sold under execution and two months later the Carleton Woollen Co. (appellants) were incorporated and acquired the said mill from the purchaser at the sheriff's sale and have

operated it since.—*Held*, that the appellants could not by so acquiring the mill which had been exempted be said to have "established a woollen mill" without shewing that when it was acquired it had ceased to exist as such, which they had not done.—Judgment appealed from, affirming that of *Barker, J.*, at the hearing (3 N. B. Eq. 138) affirmed. *Carleton Woollen Co. v. Town of Woodstock*, xxxviii., 411.

39. *Appeal — Railway Act — Expropriation—Appeal from award—Choice of forum—Curia designata.*—By s. 168 of 3 Edw. VII. c. 58, amending the Railway Act, 1903 (R. S. C. (1906), c. 37, s. 209), if an award by arbitrators on expropriation of land by a railway company exceeds \$600 any dissatisfied party may appeal therefrom to a Superior Court, which in Ontario means the High Court or the Court of Appeal (Interpretation Act R. S. C. [1906] c. 1, s. 34, s.-s. 26).—*Held*, that if an appeal from an award is taken to the High Court there can be no further appeal to the Supreme Court of Canada, which cannot even give special leave. (Leave to appeal to Privy Council granted on terms, 19th July, 1907). *James Bay Ry. Co. v. Armstrong*, xxxviii. 511.

40. *Constitutional law — British North America Act, 1867 — Provincial legislative jurisdiction — "Alberta Act," 4 & 5 Edw. VII. c. 3 (2.) — Con. Ord. N. W. T. (1898), c. 5D.—6 Edw. VII. c. 28 (Alta.)—Medical profession — Practising without license — Criminal law—Practice—Special leave to appeal — R. S. C. (1906), c. 139, s. 37 (c).]*—The "Medical Profession Act" 6 Edw. VII. c. 28 (Alta.), is *intra vires* of the legislative jurisdiction of the Legislature of Alberta and a member of the College of Physicians and Surgeons of the North-West Territories may be validly convicted thereunder for the offence of practising medicine, surgery, etc. for gain and reward, in the Province of Alberta, without complying with its requirements as to registration and license, notwithstanding that the College of Physicians and Surgeons of the North-West Territories had not been previously dissolved and abolished by order of the Governor in Council, in conformity with the provisions of s. 16 (3) of "The Alberta Act." *Dobie v. The Temporalities Board* (7 App. Cas. 136), distinguished. *Lafferty v. Lincoln*, xxxviii., 620.

41. *Constitutional law—Liabilities of province at Confederation—Special funds—Rate of interest—Trust funds or debt—Award of 1870—B. N. A. Act, 1867, ss. 111 and 142.]*—Among the assets of the Province of Canada at Confederation, were certain special funds, namely, U. C. Grammar School Fund, U. C. Building Fund and U. C. Improvement Fund, and the province was a debtor in respect thereto and liable for interest thereon. By s. 111 of the B. N. A. Act, 1867, the Dominion of Canada succeeded to such liability and paid the Province of Ontario interest thereon at five per cent. up to 1904. In the award made in 1870 and finally established in 1878, on the arbitration under s. 142 of the Act, to adjust the debts and assets of Upper and Lower Canada, it was adjudged that these funds were the property



of Ontario. In 1904 the Dominion Government claimed the right to reduce the rate of interest to four per cent., or if that was not acceptable to the province to hand over the principal. On appeal from the judgment of the Exchequer Court in an action asking for a declaration as to the rights of the province in respect of said funds:—*Held*, affirming said judgment (10 Ex. C. R. 292), Idington, J., dissenting, that though before the said award the Dominion was obliged to hold the funds and pay the interest thereon to Ontario, after the award the Dominion had a right to pay over the same with any accrued interest to the province and thereafter be free from liability in respect thereof.—*Held*, also, that until the principal sum was paid over the Dominion was liable for interest thereon at the rate of five per cent. per annum. *Atty.-Gen. of Ontario v. Atty.-Gen. of Canada*, xxxix., 14.

42. *Municipal corporation—Montreal city charter—52 Vict. c. 79, s. 120 (Que.)—Construction of statute—"Current year"—Assessment and taxes—Limitation of action—Local improvements—Special tax.*—By s. 120 of the charter of the City of Montreal, 52 Vict. c. 79 (Que.), the right to recover taxes is prescribed and extinguished by the lapse of "three years, in addition to the current year, to be counted from the time at which such tax, etc., became due." A special assessment for local improvements became due on the 14th of March, 1898, and action was brought to recover the same on the 4th of February, 1902.—*Held*, affirming the judgment appealed from (Q. R. 15 K. B. 479), the Chief Justice and Duff, J., dissenting, that the words "current year" in the section in question, mean the year commencing on the date when the tax became due and that the time limited for prescription had not expired at the time of the institution of the action. *Vanier v. City of Montreal*, xxxix., 151.

43. *Appeal—Stated case—Provincial legislation—Assessment—Municipal tax—Foreign company—"Doing business in Halifax."*—An Ontario company resisted the imposition of a license fee for "doing business in the City of Halifax" and a case was stated and submitted to the Supreme Court of Nova Scotia for an opinion as to such liability. On appeal from the decision of the said court to the Supreme Court of Canada, counsel for the City of Halifax contended that the proceedings were really an appeal against an assessment under the city charter, that no appeal lay therefrom to the Supreme Court of the province, and, therefore, and because the proceedings did not originate in a superior court, the appeal to the Supreme Court of Canada did not lie.—*Held*, per Fitzpatrick, C.J. and Duff, J., that as the appeal was from the final judgment of the court of last resort in the province, this court had jurisdiction under the provisions of the Supreme Court Act and it could not be taken away by provincial legislation. — *Per Davies, J.*—Provincial legislation cannot impair the jurisdiction conferred on this court by the Supreme Court Act. In this case the Supreme Court of Nova Scotia had jurisdiction under Order XXXIII., Rule 1 of the Judicature

Act.—*Per Idington, J.*—If the case was stated under the Judicature Act Rules the appeal would lie, but not if it was a submission under the charter for a reference to a judge at request of a ratepayer.—By s. 313 of the said charter (54 Vict., c. 58), as amended by 60 Vict., c. 44, "Every insurance company or association, accident and guarantee company established in the City of Halifax, or having any branch office, office or agency therein shall . . . pay an annual license fee as hereinafter mentioned . . . Every other company, corporation, association or agency doing business in the City of Halifax (banks, insurance companies or associations, etc., excepted) shall . . . pay an annual license fee of one hundred dollars." — *Held*, that the words "every other company" in the last clause were not subject to the operation of the *ejusdem generis* rule, but applied to any company doing business in the city. Judgment appealed from overruled on this point.—A carriage company agreed with a dealer in Halifax to supply him with goods and give him the sole right to sell the same, in a territory named, on commission, all monies and securities given on any sale to be the property of the company, and goods not sold within a certain time to be returned. The goods were supplied and the dealer assessed for the same as his personal property.—*Held*, Davies and MacLennan, JJ., dissenting, that the company was not "doing business in the City of Halifax" within the meaning of s. 313 of the charter, and not liable for the license fee of one hundred dollars thereunder.—Judgment of the Supreme Court of Nova Scotia (39 N. S. Rep. 403), affirmed, but reasons overruled. *City of Halifax v. McLaughlin Carriage Co.*, xxxix., 174.

44. *Constitutional law—Construction of statute—"Crown Procedure Act" R. S. B. C. c. 57—Duty of responsible ministers of the Crown—Refusal to submit petition of right—Tort—Right of action—Damages.*—Under the provisions of the "Crown Procedure Act," R. S. B. C., c. 57, an imperative duty is imposed upon the Provincial Secretary to submit petitions of right for the consideration of the Lieutenant-Governor within a reasonable time after presentation and failure to do so gives a right of action to recover damages. After a decisive refusal to submit the petition has been made, the right of action vests at once, and the fact that a submission was duly made after the institution of the action is not an answer to the plaintiff's claim. (Appeal to Privy Council dismissed, ([1908] A. C. 451). *Norton v. Fulton*, xxxix., 202.

AND see ACTION.

45. *Assignment by mortgagor for benefit of creditors—Priorities—Assignment of claims of execution creditors—Redemption—Assignments and Preferences Act, 11 (Ont.).*—After judgment for foreclosure of mortgage or redemption judgment creditors of the mortgagor with executions in the sheriff's hands were added as parties in the master's office and proved their claims. The master's report found that they were the only incumbancers, and fixed a date for payment by them of the amount due to the mortgagees. After confirmation of the

report S. obtained assignments of these judgments, and was added as a party. He then paid the amount due the mortgagees, and the master took a new account and appointed a day for payment by the mortgagor of the amount due S. on the judgments as well as the mortgage. This report was confirmed, and the mortgagor having made an assignment for benefit of creditors before the day fixed for redemption an order was made by a judge in chambers adding the assignee as a party, extending the time for redemption and referring the case back to the master to take a new account and appoint a new day.—*Held*, affirming the judgment of the Court of Appeal (13 Ont. L. R. 127), that under the provisions of s. 11 of the Assignments and Preferences Act the assignee of the mortgagor could only redeem on payment of the total sum due to S. under the mortgage and the judgments assigned to him. *Scott v. Swanson*, xxxix., 229.

46. *Municipal Act — Vote on by-law — Local option—Division into wards—Single or multiple voting—3 Edw. VII., c. 19, s. 355—R. S. O. (1897), c. 245, s. 141.*—Section 355 of the Ontario Municipal Act, 3 Edw. VII., c. 19, providing that "when a municipality is divided into wards each ratepayer shall be so entitled to vote in each ward in which he has the qualification necessary to enable him to vote on the by-law" does not apply to the vote on a local option by-law required by s. 141 of the Liquor License Act (R. S. O. [1897] c. 245). Judgment of the Court of Appeal (13 Ont. L. R. 447), affirming that of the Divisional Court (12 Ont. L. R. 488), affirmed. *Sinclair v. Town of Owen Sound*, xxxix., 236.

47. *Negligence — Railway Act 1903 — 3 Edw. VII., c. 58, s. 237—Animals at large—Construction of statute—Words and terms—"At large upon the highway or otherwise"—Fencing of railway—Trespass from lands not belonging to owner.*—C.'s horses strayed from his enclosed pasture situated beside a highway which ran parallel to the company's railway, entered a neighbour's field adjacent thereto, passed thence upon the track through an opening in the fence, which had not been provided with a gate by the company, and were killed by a train. There was no person in charge of the animals, nor was there evidence that they got at large through any negligence or wilful act attributable to C.—*Held*, affirming the judgment appealed from (16 Man. R. 323), that, under the provisions of the fourth sub-section of s. 237 of "The Railway Act, 1903," the company was liable in damages for the loss sustained notwithstanding that the animals had got upon the track while at large in a place other than a highway intersected by the railway. *Canadian Pacific Railway Co. v. Carruthers*, xxxix., 251.

48. *Mechanics' lien—Completion of contract — Time for filing claim—Construction of statute—R. S. M., 1902, c. 110, ss. 20 and 36—Right of appeal.*—The time limited for the registration of claims for liens by s. 20 of "The Mechanics' and Wage Earners' Lien Act," R. S. M., 1902, c. 110, does not commence to run until there has been such performance of the contract as would entitle the contractor to maintain an

action for the whole amount due thereunder. The judgment appealed from (16 Man. R. 366), was reversed. *Davies and MacLennan, JJ.*, dissented, on the ground that the evidence was too unsatisfactory to justify an extension of the time.—The court refused to quash the appeal on the ground that the right of appeal had been taken away by a. 36 of the statute above referred to. (Appeal to Privy Council dismissed, [1908] A. C. 504.) *Day v. Crown Grain Co.*, xxxix., 258.

49. *Negligence — Common employment—Construction of statute—3 Edw. VII. c. 11, s. 2, s.-s. 3 (N.B.) — "Longshoreman"—"Workman."*—The plaintiff, a longshoreman, was engaged by the defendant, in Montreal, to act as foreman on his contracts as a stevedore at the port of St. John, N.B. While in the performance of his work, the plaintiff went into the hold to rearrange a part of the cargo in a vessel, in the port of St. John, and, in assisting the labourers, stood under an open hatchway where he was injured by a heavy weight falling upon him on account of the negligence of the winchman in passing it across the upper deck. The winchman had attempted to remove the article which fell, without any order from his foreman, the plaintiff, and with improperly adjusted tackle. In an action for damages instituted in the Superior Court, at Montreal:—*Held*, that the plaintiff was entitled to recover either under the law of the Province of Quebec or under provisions of the New Brunswick Act, 3 Edw. VII. c. 11, as he came within the class of persons therein mentioned to whom the law of the latter province relating to the doctrine of common employment does not apply. *Logan v. Lee*, xxxix., 311.

AND see NEGLIGENCE.

50. *Railways—Constitutional law—Legislative jurisdiction—Application of statute—"The Prairie Fires Ordinance"—Con. Ord. N. W. T. (1898) c. 87, s. 2—N. W. T. Ord. 1903, c. 25 (1st Sess.) and c. 30 (2nd Sess.)—Works controlled by Parliament—Operation of Dominion railway.*—The provisions of s. 2, s.-s. (2); of c. 87, Con. Ord. N. W. T. (1898), as amended by the N. W. T. Ordinances, c. 25 (1st sess.) and c. 30 (2nd sess.) of 1903, in so far as they relate to fires caused by the escape of sparks, etc., from railway locomotives, constitute "railway legislation," strictly so called, and, as such, are beyond the competence of the Legislature of the North-West Territories. *The Canadian Pacific Railway Co. v. The Parish of Notre Dame de Bonsecours* ((1899) A. C. 367) and *Madden v. The Nelson and Fort Sheppard Railway Co.* ((1899) A. C. 626), referred to. The judgments appealed from were reversed, *Idington, J.*, dissenting; *Canadian Pacific Ry. Co. v. The King*, xxxix., 476.

51. *Patent law—Canadian Patent Act — R. S. C. 1906, c. 69, s. 38—Manufacture — Sale—Lease of license.*—Under the Canadian Patent Act the holder of a patent is obliged after the expiration of two years from its date, or an authorized extension of that period, to sell his invention to any per-

son desiring to obtain it and cannot claim the right merely to lease it or license its use. Judgment of the Exchequer Court (10 Ex. C. R. 378), affirmed. *Hildreth v. McCormick Manufacturing Co.*, xxxix., 499.

52. *Grand Trunk Railway of Canada — Passenger tolls — Third-class fares — Construction of statutes—Repeal—16 Vict. c. 37, s. 3 (Can.) — Amendments by subsequent railway legislation.*—The legislation by the late Province of Canada and the Parliament of Canada since the enactment of s. 3 of the statute of Canada, 16 Vict. c. 37, in 1852, has not expressly or by implication repealed the provisions of that section requiring third-class passenger carriages to be run every day upon the line of the Grand Trunk Railway of Canada, between Toronto and Montreal, on which the fare or charge for each third-class passenger shall not exceed one penny currency for each mile travelled. (Leave to appeal to the Privy Council 50 Can. Gaz. 591; dismissed with costs; 17th February, 1907.) *Grand Trunk Ry. Co. v. Robertson*, xxxix., 506.

53. *Negligence — Railway — Breach of statutory duty — Common employment — Nova Scotia Ry. Act, R. S. N. S. (1900) c. 99, s. 251—Employers' Liability Act—Fatal Injuries Act.*—Section 251 of the Railway Act of Nova Scotia provides that when a train is moving reversely in a city, town or village the company shall station a person on the last car to warn persons standing on or crossing the track, of its approach and provide a penalty for violation of such provision.—*Held*, that this enactment is for the protection of servants of the company standing on or crossing the track as well as of other persons. M. was killed by a train, consisting of an engine and coal car, which was moving reversely in North Sydney. No person was stationed on the last car to give warning of its approach, and as the bell was encrusted with snow and ice it could not be heard. Evidence was given that on a train of the kind the conductor was supposed to act as brakeman and would have to be on the rear of the coal-car to work the brakes, but when the car struck M., who was engaged at the time in keeping the track clear of snow, the conductor was in the cab of the engine.—*Held*, Idington, J., dissenting, that an absolute duty was cast on the company by the statute to station a person on the last car to warn workmen, as well as other persons on the track, which, under the facts proved, they had neglected to discharge. The defence under the doctrine of common employment was, therefore, not open to them. *Groves v. Wimborne* (1898) 2 Q. B. 402), followed.—*Held*, per Idington, J., that the evidence shewed the only failure of the company to comply with the statutory provisions to have been through the acts and omissions of the fellow-servants of deceased; that the company, therefore, could not be held liable for the consequences under the "Fatal Injuries Act"; that it is, therefore, unnecessary to determine the applicability of the said section of the "Railway Act," as the fellow-servants were guilty of common law negligence which rendered the company liable, but only by virtue of and within the limits of the "Employers' Liability Act."

(Leave to appeal to Privy Council refused, 12th May, 1908). *McMullin v. Nova Scotia Steel and Coal Co.*, xxxix., 593.

54. *Powers of municipal council—Illegal expenditure—Action by ratepayer—Intervention of Attorney-General—Right of action—Validating Act.*—Pending the action the legislature of Nova Scotia passed an Act authorizing payment by the council of the City of Halifax of any sums for principal, interest and costs incurred by the defendant "in the event of judgment being finally recovered by the plaintiff."—*Held*, per Fitzpatrick, C.J. and Macleannan, J., that the meaning of the words quoted was that the action might proceed to a finality including any competent appeal and that they did not put an end to the appeal to this court.—*Per* Fitzpatrick, C.J. and Macleannan, J.—*Quære*. Should not the action have been brought on behalf of all the ratepayers and inhabitants of the municipality. Judgment appealed from (41 N. S. Rep. 351), affirmed. *Macleannan v. Hart*, xxxix., 657.

AND see MUNICIPAL CORPORATION.

55. *Married woman—Separate property—Liability for debts of husband—Execution of judgment—Registry law — "Real Property Act"—"Married Woman's Act," R. S. M. (1891) c. 95 — Conveyance during coverture.*—Where land was transferred, as a gift, to a married woman by her husband, during the time that the "Married Woman's Act," R. S. M. (1891), c. 95, was in force, the husband being then solvent, and a certificate of title therefor issued in her name under the provisions of the Manitoba "Real Property Act," the beneficial as well as the legal interest in the land vested in her for her separate use and neither the land nor its proceeds can be taken in execution for debts of the husband subsequently incurred, notwithstanding the provisions of the second section of the "Married Women's Act" respecting property received by a married woman from her husband during coverture. (Appeal from 17 Man. R. 439, dismissed.) *Fraser v. Douglas*, xl., 384.

56. *Government railway—Operation over other lines—Agreement for running rights—Extensions and branches—"Public work"—Construction of statutes—"Government Railways Act"—R. S. C., 1906, c. 36, s. 80—"Exchequer Court Act"—R. S. C., 1906, c. 140, s. 20(c).*—The agreement between the Government of Canada and the Grand Trunk Railway Company, made under the provisions of the Dominion statute, 43 Vict. c. 8, giving the Government running rights and powers over a portion of the Grand Trunk Railway, from Levis to Chaudière, between two sections of the Intercolonial Railway, constitutes that portion of the Grand Trunk Railway a part of the Intercolonial Railway, under the provisions of "The Government Railways Act," as amended by 54 & 55 Vict. c. 50 (D.), and, consequently, a public work within the meaning of the "Exchequer Court Act," 50 & 51 Vict. c. 16, s. 16 (c) (D.), [R. S. C., 1906, c. 140, s. 20 (c)]. (Leave to appeal was refused by the Privy Council, 18th July, 1908). *The King v. Lefrançois*, xl., 431.

57. *Supreme Court Act, ss. 75, 76—Appeal—Delay in approval of security—Jurisdiction—Extension of time—Stay of execution.*]—Application for approval of the security on an appeal to the Supreme Court of Canada was made within the time limited by the statute, but the hearing of the application was not completed until afterwards, and the judge made an order, after the expiration of sixty days from the rendering of the judgment appealed from, approving of the security offered by the appellants.—*Held*, Idington, J., dissenting, that although the record did not shew that the judge had expressly made an order to that effect he impliedly extended the time by accepting the security offered, and that this was a sufficient compliance with the statute. An objection that the security approved was not such as contemplated by the 75th and 76th sections of the "Supreme Court Act" (the amount thereof being insufficient for a stay of execution), was not entertained for the reason that the amount in controversy was sufficient to bring the case within the competence of the court and it was immaterial whether or not execution could be stayed. *The Attorney-General of Quebec v. Scott* (34 Can. S. C. R. 282) and *The Halifax Election Cases* (37 Can. S. C. R. 601), referred to. *Great Northern Railway Co. v. Furness, Withy and Co.*, xl., 455.

58. *Bills and notes—Material alterations—Forgery—Partnership—Mandate—Assent of parties—Liability of indorser—Construction of statute—"Bills of Exchange Act."*—R. induced H. to become a party to and indorser of a demand note for the purpose of raising funds and agreed to give warehouse receipts as security to the bank on discounting the note. It was arranged that the goods covered by the warehouse receipts were to be held and sold on joint account, each sharing equally in the profits and losses on the transaction. Subsequently R. altered the note, without the knowledge or consent of H., by adding thereto the words "*avec intérêt à sept par cent par an.*" and falsely represented to the bank that H. held the warehouse receipts as collateral security for his indorsement. A couple of months later H., for the first time, became aware that the goods had never been purchased or placed in warehouse, that no warehouse receipts had been assigned to the bank, and did not, until some months later, know that the alteration had been made in the note. There was some evidence that H. had asked for time to make a settlement of the amount due to the bank upon the note after he had become aware of the fraud and the alteration so made.—*Held*, by Idington, MacLennan and Duff, JJ., that the instrument was a forgery and could not be ratified by an *ex post facto* assent. *The Merchants Bank v. Lucas* (18 Can. S. C. R. 704; *Cam Cas.* 275), and *Brooke v. Hook* (L. R. 6 Ex. 89), followed.—*Per* Idington, J.—The circumstances of the case did not shew that there had been any assent to the alteration within the meaning of s. 145 of the "Bills of Exchange Act."—*Per* MacLennan, J.—The assent required to bring an altered bill within the exception provided by s. 145 of the "Bills of Exchange Act," R. S. C. (1906), c. 119, must be given by the party sought to be bound at the time of or before the

making of the alteration.—*Held*, also, the Chief Justice and Davies, J., *contra*, that in the special circumstances of the case, there was no partnership relation between the parties to the note for the purposes of the transaction in question, and there could be no implied authorization for the making of the alteration in the note.—*Per* Fitzpatrick, C.J.—The transaction in question was a joint venture or particular partnership for the enterprise in contemplation of the parties, and, consequently, R. had a mandate to make whatever agreement was necessary with the bank to obtain the funds and to provide for the payment of interest on the advances required to carry out the business. Judgment appealed from (Q. R. 16 K. B. 191), reversed, the Chief Justice and Davies, J., dissenting. *Hébert v. La Banque Nationale*, xl., 458.

59. *Will—Powers of executors—Winding-up estate—Time limit—Legacy—Special legislation—Extension of time—3 Edu. VII, c. 136 (Que.)—Construction of statute.*]—The provisions of the Quebec statute, 3 Edu. VII, c. 136, have not the effect of extending indefinitely the time limited by the will of the late Owen McGarvey for the investment of \$50,000 for the appellant's benefit as directed by the will. Judgment appealed from (Q. R. 32 S. C. 364), reversed. *McGarvey v. McNally*, xl., 489.

60. *Driving timber—Order to fix tolls—Past user of stream—Appeal—R. S. O. [1897] c. 142, s. 13.*—By R. S. O. [1897] c. 142, sec. 13, the owner of improvements in a river or stream used for floating down logs may obtain from a district judge an order fixing the tolls to be paid by other parties using such improvements. On application for a writ of mandamus to compel the judge to make such an order:—*Held*, affirming the judgment of the Court of Appeal (16 Ont. L. R. 21) Davies, J., *dubitante* and Idington, J., expressing no opinion, that such an order had effect only in case of logs floated down the river or stream after it was made. *Held*, *per* Idington, J.—As s. 15 gives the applicant for the order an appeal from the judge's refusal to make it mandamus will not lie.—*Held*, *per* Duff, J.—The mandamus could issue if the judge had jurisdiction to make the order though he refused to do so in the belief that a prior decision of a Divisional Court was *res judicata* as to his power. *C. Beck Manufacturing Co. v. Valin*, xl., 523.

61. *Legislative jurisdiction—Constitutional law—Companies—Private bill—Property and civil rights—Construction of statute—B. N. A. Act, 1867, s. 92—45 Vict. c. 107.*]—The objects of the Act to incorporate the "Canada Provident Association" (45 Vict. c. 107 (D.)), for carrying on business as a mutual benefit society throughout the Dominion of Canada do not fall within the class of subjects allotted to the provincial legislatures under s. 92 of the "British North America Act, 1867."—*Per* Ritchie, C.J., and Fournier, J.—There may be doubt as to whether so much of the first section of the Act enables the company to hold and deal in real estate beyond what may be required for their own use and accommoda-

tion, or so much of the second section as enacts that certain funds shall be exempt from execution for the debt of any member of the association, could be *intra vires* of the Parliament of Canada. *In re Canada Provident Association*, Cout. Cas. 48.

62. *Construction of statute — Supreme Court Acts — Validity of patent.*—The power of extending the time for appealing under s. 42 of the Supreme and Exchequer Courts Act is vested solely in the court appealed from or a judge thereof. *Walmsley v. Griffith* (13 Can. S. C. R. 434), referred to. *MacLaughlin v. Lake Erie and Detroit River Ry. Co.*, Cout. Cas. 297.

AND see APPEAL.

63. *Appeal — Jurisdiction — Amount in controversy—Adding interest to judgment — 60 & 61 Vict. c. 34 (D.) — R. S. O. (1897) c. 51, s. 116.*—In an appeal from the Province of Ontario, interest allowed by statute cannot be added to the amount of the judgments recovered in order to make the case appealable *de plano* under the provisions of the Act, 60 & 61 Vict. c. 34 (D.). *Toussignant v. County of Nicolet* (32 Can. S. C. R. 353), followed. *Bresnan v. Bisnaw*, Cout. Cas. 318.

64. *Irrigation—Rivers and streams—B. C. "Land Act, 1884" and amendments—Pre-emption of agricultural lands — Water records—Appurtenances — Abandonment of pre-emption — Lapse of water record.*—Where holders of separate pre-emptions of agricultural lands, under the provisions of the "Land Act, 1884," 47 Vict. c. 16 (B.C.), and the amendment thereof, 49 Vict. c. 10 (B.C.), with the object of vesting their respective pre-emptions in themselves as partners, surrendered the separate pre-emptions to the Crown, and, on the same day, re-located the same areas as partners, obtaining a pre-emption record thereof in their joint names, the joint water record previously granted to them, as partners, in connection with their separate pre-emptions, cannot be considered to have been abandoned. The effect of the transaction caused the areas to become unoccupied lands of the Crown, within the meaning of the statute, and, upon their re-location, the water record in connection therewith continued to subsist as a right appurtenant to the joint pre-emption. — Judgment appealed from (13 B. C. Rep. 77), reversed, the Chief Justice and Duff, J., dissenting. *Vaughan v. Eastern Townships Bank*, xli., 286.

65. *"Lawful costs"—Taxation of fees to counsel and solicitor — Construction of statute, 1 & 2 Edw. VII. c. 77 (Man.)—Contract with solicitor engaged on salary—Conflict of laws.*—Section 468 of the charter of the City of Winnipeg (1 & 2 Edw. VII. c. 77), provides that where the city solicitor is engaged at a stated salary, the city has the right, in law suits and proceedings, to recover and collect "lawful costs," in the same manner as if such solicitor were not receiving such salary. The corporation enacted a by-law appointing its solicitor at an annual salary and, in addition thereto, that he should be entitled, for his own use, to such lawful costs as the corporation

might recover in action and proceedings, except disbursements paid by the city. Upon the taxation of the costs awarded to the respondent on an appeal to the Supreme Court of Canada (41 Can. S. C. R. 18):—*Held*, that the statute and contracts above recited applied to costs awarded on said appeal and that, on the taxation, the usual fees to counsel and solicitor should be allowed. *Hamburg-American Packet Co. v. The King* (39 Can. S. C. R. 621), distinguished. *Ponton v. City of Winnipeg*, xli., 366.

66. *Mines and mining—B. C. "Mineral Act, 1891"—Apex location—Exploitation of vein—Continuity—Extralateral workings — Encroachment—Trespass—Onus of proof.*—To justify an encroachment in the exercise of the right, under the British Columbia "Mineral Act, 1891" (54 Vict. c. 25), of following and exploiting a mineral vein extralaterally beyond the vertical plane of the side-line of the location within which it has its apex, the owner of the apex must prove the identity and continuity of the vein from such apex to his extralateral workings. In the present case, as the appellants failed to discharge the onus thus resting upon them, the judgment appealed from (13 B. C. Rep. 234), was affirmed. *B. N. White Co. v. Star Mining & Milling Co.*, xli., 377.

67. *Controverted election—Service of petition—Extension of time — Substitutional service—R. S. O. [1906] c. 7, ss. 17 and 18.*—The provision in s. 18, s.-s. 2 of the Controverted Elections Act (R. S. O. [1906] c. 7), for substitutional service of an election petition where the respondent cannot be served personally is not exclusive and an order for such service on the ground that prompt personal service could not be effected as in the case of a writ in civil matters may be made under s. 17.—The time for service may be extended, under the provisions of s. 18, after the period limited by that section has expired. *Gilbert v. The King* (38 Can. S. C. R. 207), followed. *Peterborough West Election Case*, xli., 410.

68. *Insurance against fire—Statutory condition—R. S. O. [1897] c. 203, s. 163, s.-s. 10 (f)—Construction of statute — Gasoline "stored or kept."*—One of the conditions of the contract of insurance against fire imposed by the Ontario Insurance Act (R. S. O. [1897] c. 203, s. 163, s.-s. 10 (f)), is that an insurance company is not liable for a loss occurring while gasoline, *inter alia*, is "stored or kept in the building insured . . . unless permission is given in writing by the company."—T. effected insurance on a building used as a drug and furniture shop having in his employ a qualified chemist who occupied rooms in the upper part as tenant. This clerk had a gasoline stove which he used occasionally for domestic purposes and later on he brought it down to the shop and used it in making syrups, and while doing so the building took fire and was totally destroyed. — *Held*, that this was a "keeping" of gasoline on the insured premises within the meaning of the statutory condition, and the insurance company were not liable for the loss. *Mitchell v. City of London Assur. Co.* (15 Ont. App. R. 262), distinguished.—Judgment appealed from (17

Ont. L. R. 214), reversed, Idington and Anglin, J.J., dissenting. *Equity Fire Ins. Co. v. Thompson; Standard Mutual Fire Ins. Co. v. Thompson*, xli., 491.

69. *Construction of statute—General and special Act — Inconsistency—Ontario Railway Act, 6 Edw. VII. c. 30, ss. 5 and 116—Charter of Toronto Railway Co., s. 17.]—The Ontario Railway Act of 1906 (6 Edw. VII. c. 30), is, by s. 5, made applicable to street railway companies incorporated by the legislature, but, by the same section, if provisions of the general and special Acts are inconsistent, those of the latter shall prevail. By s. 116 of the general Act, a passenger on a railway train or car who refuses to pay his fare may be ejected by the conductor; and by s. 17 of the Act incorporating the Toronto Railway Co., a passenger in such case is liable to a fine only.—*Held*, that these two provisions are not inconsistent, and the conductor of a street railway car may lawfully eject therefrom a passenger who refuses to pay his fare.—In this case the company was held liable for damages, the passenger having been ejected from a car with unnecessary violence. *Toronto Railway Co. v. Paget*, xliii., 488.*

70. *Construction of statute—Limitations of actions—Contract for supply of electric light—Negligence — Injury to person not privy to contract — “Consolidated Railway Company’s Act, 1896,” 59 Vict. c. 55 (B.C.), ss. 29, 50, 60.]—The appellant company, having acquired the property, rights, contracts, privileges and franchises of the “Consolidated Railway Company’s Act, 1896” (59 Vict. c. 55 [B.C.]), is entitled to the benefit of the limitation of actions provided by s. 60 of that statute. Idington, J., dissenting.—The limitation so provided applies to the case of a minor injured, while residing in his mother’s house, by contact with an electric wire in use there under a contract between the company and his mother.—Judgment appealed from (14 B. C. Rep. 224), reversed, Davies and Idington, J.J., dissenting. *British Columbia Electric Railway Co. v. Crompton*, xliiii., 1.*

71. *Title to land — Mortgage—Foreclosure—Equitable jurisdiction of court—Opening up foreclosure proceedings — Construction of statute—“Real Property Act,” R. S. M. (1902), c. 148—5 & 6 Edw. VII. c. 75, s. 3 (Man.)—Equity of redemption — Certificate of title.]—Under the provisions of s. 126 of the Manitoba “Real Property Act” R. S. M. (1902), c. 148, as amended by s. 3 of c. 75 of the statute of Manitoba, 5 & 6 Edw. VII., the court has jurisdiction to open up foreclosure proceedings in respect of mortgages foreclosed under ss. 113 and 114 of the Act, notwithstanding the issue of a certificate of title, in the same manner and upon the same grounds as in the case of ordinary mortgages, at all events where rights of a third party holding the status of a *bona fide* purchaser for value have not intervened. — Judgment appealed from (19 Man. R. 560), reversed. (Leave to appeal to Privy Council refused, 11th July, 1911.) *Williams v. Boaz*, xliiv., 1.*

72. *Municipal corporation — Assessment and taxes — Exemption from taxation —*

*Board of Revision—Judicial functions—Administrative powers—Construction of statute—“Vancouver Incorporation Act,” 64 Vict. c. 54, s. 46, s.-s. 3.]—The “Vancouver Incorporation Act,” 64 Vict. c. 54 (B.C.), by s.-s. 3 of s. 46, provides that “the buildings and grounds of and attached to and belonging to . . . any incorporated seminary of learning, public hospital, or any incorporated charitable institution, whether vested in trustees or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise used or occupied; provided, that such grounds shall not exceed in extent the amount actually necessary for the requirements of the institution. The question as to what amount of land is necessary shall be decided by the Court of Revision, whose decision shall be final.”—*Held, per Davies, Duff and Anglin, J.J.*, that the functions in respect of the limitation of exemptions from taxation so vested in the Court of Revision are quasi-judicial and must be exercised in each case with respect to that case alone; it is not vested with power to lay down a general rule based solely upon general considerations.—*Per Idington, J.*—That the provision in question was merely a delegation of a legislative or administrative power, probably carrying with it a duty, but in no manner implying the discharge of a judicial duty subject to review or supervision. *Sisters of Charity of Providence v. City of Vancouver*, xliiv., 29.*

AND see ASSESSMENT AND TAXATION.

73. *Fire insurance — Policy—Statutory conditions—Gasoline on premises—Illuminating oils insured—Notice of loss—Remedial clause in Act—Discretion of court — Construction of statute—R. S. M. (1902) c. 87.]—By the Manitoba “Fire Insurance Policy Act” (R. S. M. (1902), c. 87, sch.), an insurance company insuring against loss by fire is not liable “for loss or damage occurring while . . . gasoline . . . is stored or kept in the building insured or containing the property insured unless permission is given in writing by the company.” Insurance was effected “on stock consisting chiefly of illuminating and lubricating oils, etc., and all other goods kept by them for sale.” A quantity of gasoline was in the building containing the stock when destroyed by fire.—*Held*, that gasoline, being an illuminating oil, was part of the stock insured and the above statutory condition could not be invoked to defeat the policy.—*Held, per Anglin, J.*, that if gasoline was not insured as an illuminating oil it was within the description of “all other goods kept for sale.”—By s. 2 of the Act “where, by reason of necessity, accident or mistake, the conditions of any contract of fire insurance on property in this province as to the proof to be given to the insurance company after the occurrence of a fire have not been strictly complied with . . . or where from any other reason the court or judge before whom a question relating to such insurance is tried or inquired into considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions,” the company shall not be*

discharged from liability. — By statutory condition 13(a) in the schedule to the Act every person entitled to make a claim "is forthwith after loss to give notice in writing to the company."—*Held*, Fitzpatrick, C.J., dissenting, that the above clause applies to said condition and under it, in the circumstances of this case, the insurance should be held not to be forfeited by reason of the failure to give such notice.—Judgment appealed from (19 Man. R. 720), reversed, Fitzpatrick, C.J., dissenting, *Prairie City Oil Co. v. Standard Mutual Fire Insurance Co.*, xlv., 40.

74. *Mechanics' Lien*—*Construction of statute*—*Alberta Mechanics' Lien Act*—6 Edw. VII. c. 21, ss. 4 and 11—*Building erected by lessee*—*Liability of "owner."*—Section 4 of the "Alberta Mechanics' Lien Act" (6 Edw. VII. c. 21), gives to any contractor or materialman furnishing labour or materials for a building at the request of the owner of the land a lien on such land for the value of such labour or material. Sub-section 4 of s. 2 provides that the term "owner" shall extend to and include a person having any estate or interest "in the land upon or in respect of which the work is done or materials are placed or furnished, at whose request and upon whose credit or on whose behalf or with whose privity or consent or for whose direct benefit any such work is done, etc." By s. 11 "every building . . . mentioned in the fourth section of this Act, constructed upon any lands with the knowledge of the owner or of his authorized agent . . . shall be held to have been constructed at the request of such owner," unless the latter gives notice within three days after acquiring such knowledge that he will not be responsible.—The lessee of land, as permitted by his lease, had buildings thereon pulled down and proceeded to erect others in their place, but was obliged to abandon the work before it was finished. The owner of the land was aware of the work being done, but gave no notice disclaiming responsibility therefor. Mechanics' liens having been filed under the Act:—*Held*, that the interest of the owner in the land was subject to such liens.—Judgment appealed from, varying that at the trial (2 Alta. L. R. 109), in favour of the lienholders, affirmed. *Limoges v. Scratch*, xlv., 86.

75. *Employer and employee* — *Compensation for injury*—*Contributory negligence* — *Construction of statute*—"Workmen's Compensation Act," 2 Edw. VII. c. 74, s. 2, s.-s. 2(c) and 4, sch. 2, art. 4—*Remedial legislation*—*Refusal of damages*—*Right of appeal*—*Evidence.*—In an action in the Supreme Court of British Columbia claiming damages under the "Employers' Liability Act," and, alternatively under the "Workmen's Compensation Act," the plaintiff, at the trial, abandoned the claim under the former Act and, thereupon, the judge dealt with the case as a claim under the "Workmen's Compensation Act," found that the plaintiff's deceased husband came to his death solely in consequence of his own "wilful and serious misconduct," and, therefore, under s.-s. 2(c) of s. 2 of the Act, held that she was precluded from obtaining compensation in consequence of his death.—*Per Davies, Duff and Anglin, JJ.*—The right of appeal from a decision in the

course of proceedings to which article 4 of the second schedule of the "Workmen's Compensation Act" applies is available only for questioning the determination of the court or judge upon some question of law. Decisions upon questions of fact in adjudicating upon a claim brought before the Supreme Court under s.-s. 4 of s. 2 of that Act are not subject to appeal. Whether or not there is any reasonable evidence to support a finding of wilful and serious misconduct is an appealable question.—In the circumstances of the case the court held, Davies and Anglin, JJ., dissenting, that there was not reasonable evidence to support the finding of wilful and serious misconduct. — The appeal from the judgment of the Court of Appeal for British Columbia (15 B. C. Rep. 198), was dismissed, Davies and Anglin, JJ., dissenting. *British Columbia Sugar Refining Co. v. Granick*, xlv., 106.

76. *Construction of statute* — *Bridges*—*Crossing by engines*—*Condition precedent*—*R. S. O. (1897) c. 242—3 Edw. VII. c. 7, s. 43—4 Edw. VII. c. 10, s. 60.*—*R. S. O. (1897) c. 242, as amended by 3 Edw. VII. c. 7, s. 43, and 4 Edw. VII. c. 10, s. 60, provides as follows:*—"10. (1) Before it shall be lawful to run such engine over any highway whereon no tolls are levied, it shall be the duty of the person or persons proposing to run the same to strengthen, at his or their own expense, all bridges and culverts to be crossed by such engines, and to keep the same in repair so long as the highway is so used.—(2) The costs of such repairs shall be borne by the owners of different engines in proportion to the number of engines run over such bridges or culverts. *R. S. O. 1887, c. 200, s. 10.*—(3) The two preceding sub-sections shall not apply to engines used for threshing purposes or for machinery in construction of roadways of less than eight tons in weight. Provided, however, that before crossing any such bridge or culvert it shall be the duty of the person or persons proposing to run any engine or machinery mentioned in any of the sub-sections of this section to lay down on such bridge or culvert planks of such sufficient width and thickness as may be necessary to fully protect the flooring or surface of such bridge or culvert from any injury that might otherwise result thereto from the contact of the wheels of such engine or machinery; and in default thereof the person in charge and his employer, if any, shall be liable to the municipality for all damage resulting to the flooring or surface of such bridge or culvert as aforesaid. 3 Edw. VII. c. 7, s. 43; 4 Edw. VII. c. 10, s. 60."—*Held*, affirming the judgment of the Court of Appeal (19 Ont. L. R. 188), Fitzpatrick, C.J. and Girouard, J., dissenting, that the strengthening of a bridge or laying of planks over it is a condition precedent to the right to run an engine over the same, and any engine crossing without observing such condition is unlawfully on the bridge and liable for injury resulting therefrom.—*Held*, also, Fitzpatrick, C.J., and Girouard, J., dissenting, that planks required by s.-s. 3 over a bridge or culvert were not intended merely to protect the surface from injury by contact with the wheels of the engine or machinery passing over it, but was also to guard against the danger



of the flooring giving way. *Goodison Thresher Co. v. Township of McNab*, xlv., 187.

77. *Rivers and streams—Industrial improvements—Raising height of dam—Nuisance—Damages—Expertise and arbitration—Right of action—Measure of damages—R. S. Q., 1888, arts. 5535, 5536.*—The provisions of the statutes respecting the improvement of watercourses in the Province of Quebec, permit the raising of the height of dams erected by proprietors of lands adjoining streams; this right is subject to the liability to make compensation for all damages resulting to other persons from such works.—The mode of ascertainment of such damages by the arbitration of experts provided by article 5536 of the Revised Statutes of Quebec, 1888, does not exclude the right of action to recover compensation in the courts. — In such cases the measure of damages is the amount of compensation for injuries sustained up to the time of the action; they ought not to be assessed once for all, *en bloc*, but recourse may be reserved in regard to future damages arising from the same cause. *Gale v. Bureau*, xlv., 305.

AND see RIVERS AND STREAMS.

78. *Homestead lands—"Land Titles Act," 6 Edw. VII. c. 24; 8 Edw. VII. c. 29 (Sask.)—Exemption from seizure—Registered incumbrance—"Exemptions Ordinance," N. W. T., Con. Ord., 1898, c. 27.*—Homestead lands, exempt from seizure under execution by the North-West Territories "Exemptions Ordinance," are not affected by any charge or incumbrance in consequence of the registration of writs of execution against the homesteader under the provisions of the "Land Titles Act" of the Province of Saskatchewan, 6 Edw. VII. c. 24, s. 129, as amended by 8 Edw. VII. c. 29, s. 10; consequently, the transferee of such lands under conveyance from such homesteader acquires them free and clear of any incumbrance resulting from the registration of such execution. Judgment appealed from (3 Sask. L. R. 280), affirmed. *Northwest Thresher Co. v. Fredericks*, xlv., 318.

79. *Liquor laws—"Liquor License Ordinance," ss. 37 and 57—Cancellation of license—Jurisdiction of judge—7 Edw. VII. c. 9, s. 14 (Alta.)*—The provisions of s. 57 of "The Liquor License Ordinance" (Con. Ord., 1898, c. 89), confer upon a judge of the Supreme Court of Alberta power to direct the cancellation of liquor licenses which have been obtained in violation of s. s. 3, of s. 37, of that ordinance as amended by s. 14 of "the Liquor License Amendment Act, 1907," 7 Edw. VII. c. 9, of the Province of Alberta. *Finseth v. Ryley Hotel Co.*, xlv., 321.

80. *Assessment and taxes—Construction of statute—Words and phrases—"Terrain"—"Lot"—Immovable property—Charter of the Town of Westmount—56 Vict. c. 54, s. 100.*—Section 100 of the statute of the Province of Quebec, 56 Vict. c. 54, referred to as "The Westmount Charter," authorized the town council to levy assessments "on every lot, town lot, or portion of a lot,

whether built upon or not, with all buildings and erections thereon." The words used in the French version of the statute were, "*toute terrain, lot de ville ou portion de lot.*" The by-law enacted in virtue of the statute purported to impose a tax upon "all real estate" within the municipality, and under the by-law the property of the company, respondents, consisting of their equipment for the transmission of gas and electric currents installed upon and under the public streets, squares, etc., of the town, was assessed as subject to taxation and described on the rolls as "gas-mains and equipment, poles, transformers, wires, etc." In an action by the municipal corporation for the recovery of the amount of taxes claimed in virtue of the by-law and assessment.—*Held*, Idington, J., dissenting, that neither poles carrying electric wires nor gas-mains, and their respective equipments, placed on or under the public streets, etc., of the town, can be deemed taxable real estate within the meaning of the word "terrain" used in the French version, nor of the word "lot" used in the English version of the provisions made by s. 100 of the statute, 56 Vict. c. 54 (Que.). Judgment appealed from (Q. R. 20 K. B. 244), affirmed. *The Town of Westmount v. Montreal Light, Heat and Power Co.*, xlv., 364.

81. *Fire insurance—Policy—Conditions—Notice of loss—Imperfect proofs—Non-payment of premium—Waiver—Application of statute—Remedial clause—N. W. Ter. Ord., 1903 (1st sess.), c. 16, s. 2.*—The premium on a policy of fire insurance was not paid at the time the policy was delivered, but on request, credit was given for the amount and a draft for the same by the insurance company, accepted by the insured, remained due and unpaid at the time the property insured was destroyed by fire.—*Held*, that, in an action to recover the amount of the insurance, the non-payment of the premium was not available as a defence.—The policy was subject to the statutory condition requiring prompt notice of loss by the insured to the company; by another condition the insured was required, in making proofs of loss, to declare how the fire originated so far as he knew or believed. Upon the occurrence of the loss, the company's local agent gave notice thereof to the company, and informed the insured that he had done so and that the company had acknowledged receipt of his notice. The insured gave no further notice to the company. Forms were then supplied by the company for making proofs of loss, and they were completed by an agent of the company and signed and sworn to by the insured, the origin of the fire being therein stated to be unknown. On examination for discovery the insured stated that, at the time he signed the declaration, he entertained an opinion as to the origin of the fire, and the company's adjuster reported a similar opinion as to its origin. An adjustment of the amount of the loss was then proceeded with by the several companies carrying insurances on the property in which the defendant company took part, but, after payment by the other companies of their proportionate shares according to the adjustment, the defendants repudiated liability on the grounds of want of notice as required by the statutory con-



dition and non-disclosure of the opinion entertained by the insured as to the origin of the fire.—*Held*, reversing the judgment appealed from (3 Sask. L. R. 219), that, in respect of both conditions, the default was the result of mistake on the part of the insured, and in the circumstances of the case, the provisions of s. 2 of "The Fire Insurance Policy Ordinance," N. W. T. Ord., 1903 (1st sess.), c. 16, should be applied and the insurance held not to be forfeited by reason of default of notice or imperfect compliance with the condition as to proofs of loss. *Prairie City Oil Co. v. Standard Mutual Fire Ins. Co.* (44 Can. S. C. R. 40), followed. *Bell Bros. v. Hudson Bay Ins. Co.*, xlv., 419.

82. *Petition of right—Contract—Powers of Commissioners of the Transcontinental Railway—Liability of Crown—Construction of statute—3 Edw. VII. c. 71.*—"The National Transcontinental Railway Act," 3 Edw. VII. c. 71 (D.), does not confer powers upon the Commissioners of the Transcontinental Railway in respect to the inspection and valuation of lands required for the purposes of the "Eastern Division" of the railway; consequently, a petition of right will not lie for the recovery of remuneration for services of that nature.—Judgment appealed from (13 Ex. C. R. 155), affirmed, Idington, J., dissenting. *Johnston v. The King*, xlv., 448.

83. *Construction of statute—N. W. Ter. Con. Ord., 1898, c. 34—Extra-judicial seizures—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—The "Bank Act." R. S. C., 1906, c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Surcharging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages.*—The parties to a chattel mortgage may waive the provisions of the third section of the North-West Territories Ordinance, 1898, c. 34, in respect to the expenses of the seizure and sale of the mortgaged property. *Robson v. Biggar* (1907) 1 K. B. 690), followed. Judgment appealed from (3 Alta. L. R. 166), reversed.—Where interest in excess of the rate of seven per cent. per annum has been voluntarily paid upon the settlement of accounts stated between a bank and its debtor, the amount so paid cannot be recovered back from the bank by the payer. In respect of unsettled accounts between a bank and its debtor, charges of interest in excess of the rate limited by s. 91 of the "Bank Act," R. S. C., 1906, c. 29, made in virtue of an agreement between the parties, should be reduced to the rate of seven per cent. per annum upon the surcharging and falsifying of such accounts. Judgment appealed from (3 Alta. L. R. 166), affirmed, Idington, J., dissenting.—Where loss occurs to mortgaged property in consequence of want of reasonable care in its removal from the place of seizure to the place at which it is sold under the authority of a chattel mortgage, the proper measure of damages recoverable by the mortgagor is the amount of depreciation in value caused by the negligent manner in which the removal

was effected. In the present case, the evidence being insufficient to justify the assessment made by the trial judge, it was referred back to have the damages properly assessed. Judgment appealed from (3 Alta. L. R. 166), varied, Duff and Anglin, JJ., dissenting. *Union Bank of Canada v. McHugh*, xlv., 473.

84. *Municipal corporation—Water service—Statutory authority—Construction of statute—Water for domestic, fire and other purpose—Motive power—Discretion of council.*—The charter of a town (50 Vict. c. 58, s. 6 [N.B.]), provides that "the town council of the Town of Campbellton are hereby authorized and empowered to provide for the said town a good and sufficient supply of water for domestic, fire and other purposes." — *Held*, per Fitzpatrick, C.J. and Duff, J. (Idington, J., contra, Davies and Anglin, JJ. *dubitante*), that the statute empowers the municipality to furnish water for the use of the customer in working a printing-press.—The town council, by by-law, fixed the rates to be paid for water including "printing presses, one service, 1½ pipe or less, per year, \$30." C., proprietor of a newspaper and printing establishment, connected his premises with the water mains by a two-inch pipe and received water for a year for his motor, paying said rate therefor. He then continued the use of the water for some months when the council passed a resolution that newspaper proprietors should be notified that the supply would be cut off at a certain date, which was done. C. brought an action for damages to his business.—*Held*, per Idington, J.—The council had no authority to make the contract with C.; there was no authority in the absence of a special contract with the town, to place a two-inch service pipe for receipt of water; and if the municipality had power to enter into this agreement it was under no duty to exercise it.—*Per* Fitzpatrick, C.J. and Duff, J., that the municipality having entered upon the service of the appellant's motor was bound to continue it unless and until the council in the *bonâ fide* and reasonable exercise of its discretion thought it desirable to discontinue it in the interest of the inhabitants as a whole.—*Per* Davies and Anglin, JJ.—If any contract existed it was one under which C. was entitled to a supply of water for his motor so long as the town council should, in its discretion, deem it advisable to continue it. There was no evidence to warrant the jury's finding that the council was guilty of negligence and exercised its discretion *malâ fide*. —*Per* Fitzpatrick, C.J. and Duff, J.—The circumstances disclosed were such as to warrant a finding of unfair discrimination against C., but the damages awarded were excessive.—Judgment ordering a new trial (39 N. B. Rep. 573), affirmed. *Crockett v. Town of Campbellton*, xlv., 606.

85. *Appeal—Special leave—"Supreme Court Act," R. S. C. (1906) c. 139, s. 37 (c)—Interests involved—Construction of statute—"Alberta Local Improvement Act," 7 Edw. VII. c. 11, and amendments—"B. N. A. Act, 1867," s. 125—53 Vict. c. 4 (D.)—*

*Assessment and taxation — Constitutional law—Railway aid—Land subsidy—Crown lands—Interests of private owner—“Free grant”—“Owner”—“Real property.”*]—Special leave to appeal from the judgment of the Supreme Court of Alberta (2 Alta. L. R. 446) was granted, under the provisions of s. 37 (c) of the “Supreme Court Act,” R. S. C. 1906, c. 139, because of the magnitude of the interests involved.—Provincial legislatures may authorize the taxation of beneficial or equitable interests acquired in lands wherein the Crown, in the right of the Dominion of Canada, holds some interest and the legal estate. The legislature of a province may provide for the levy and collection of taxes so imposed by the transfer of the interests affected by such taxes.—The Dominion statute, 53 Vict. c. 4, authorized the granting of aid for the construction of a railway by a subsidy in Crown lands, and, by s. 2, it was declared that such grants should be “free grants” subject only to the payment, on the issue of patents therefor, of the costs of survey and incidental expenses, at the rate of ten cents per acre. The lands in question formed part of the land subsidy, earned by the railway company and reserved and set apart for that purpose by order-in-council, which had been conveyed by deed poll to the appellants by the railway company prior to the issue of a Crown grant. While still unpatented, these lands had been rated for taxes and condemned for arrears of taxes under the statute of Alberta, 7 Edw. VII. c. 11.—*Held*, that the interest of the appellants in the said lands was subject to taxation and liable to be dealt with under the provincial statute, although letters patent of grant thereof by the Crown had not issued. — *Held*, also, that allotment of these lands as “free grants,” under the subsidy Act, related only to exemption from the usual charges made in respect of public lands by or on behalf of the Crown, except the cost of survey, etc., and did not exempt the appellants’ interest therein from taxation under the provisions of the provincial statute, although neither the legal estate nor any interest therein remaining in the Crown could be liable to taxation.—Judgment appealed from (2 Alta. L. R. 446), affirmed. *Rural Municipality of North Cypress v. Canadian Pacific Railway Co.* (35 Can. S. C. R. 550), distinguished. *Calgary & Edmonton Land Co. v. Attorney-General of Alberta*, xlv., 170.

86. *Municipal corporation—Closing streets—“Passage of by-law”—Coming into force of by-law—Time for appealing—3 & 4 Edw. VII. c. 64 (Man.)—“Winnipeg City Charter”—Construction of statute.*]—A municipal by-law for the diversion and closing of certain highways and the transfer of the land to a railway company provided that it should “come into force and effect” on the execution of a supplementary agreement between the municipal corporation and a railway company “duly ratified by council;” it also determined the classes of persons and property entitled to compensation in consequence of being injuriously affected by the diversion and closing of the streets. The statute (3 & 4 Edw. VII. c. 64, s. 708, s.-s. c (1)), conferring these powers, gave persons dissatisfied with the determination the

right to appeal to a judge “within ten days after the passage of the by-law.” Another by-law was subsequently enacted by which the first by-law was “ratified and confirmed and declared to be now in force.” The defendants, who had been excluded from the class of persons to receive compensation, appealed to a judge, under the section of the statute above referred to within ten days after the enactment of the second by-law.—*Held*, that the terms “within ten days after the passage of the by-law” in the statute had reference to the date when the by-law affecting the streets and determining the classes entitled to compensation became effective; that the first by-law did not come into force and effect in such a manner as to injuriously affect the defendants until it was ratified and confirmed by the subsequent by-law, and, consequently, the defendants’ appeal came within the time limited by the statute.—Judgment appealed from (20 Man. R. 669), affirmed. *City of Winnipeg v. Brock*, xlv., 271.

87. *Railways—Construction of statute—“The Railway Act,” R. S. C. (1906), c. 37, ss. 77, 315, 318(2), 323—(D. 1 Edw. VII. c. 53)—(Man.) 52 Vict. c. 2; 53 Vict. c. 17; 1 Edw. VII. c. 39—Board of Railway Commissioners—Complaints—Evidence—Agreement for special rates—Unjust discrimination—Practice—Form of order on reference.*]—In virtue of an agreement with the Government of Manitoba, validated by statutes of that province and of the Parliament of Canada, the Canadian Northern Railway Company established special rates for the carriage of freight, etc, to points in Manitoba, and the Canadian Pacific Railway Company reduced its rates, which had been in force prior to the agreement, in order to meet the competition resulting therefrom. The complaint made to the Board of Railway Commissioners for Canada by the respondents was, in effect, that as similar proportionate rates were not provided in respect of freight, etc., to points west of the Province of Manitoba there was unjust discrimination operating to the prejudice of shippers, etc., to and from the western points. On questions submitted for the consideration of the Supreme Court of Canada.—*Held*, that the facts mentioned are circumstances and conditions, within the meaning of the “Railway Act” to be considered by the Board of Railway Commissioners in determining the question of unjust discrimination in regard to both railways; that such facts and circumstances are not, in law, conclusive of the question of unjust discrimination, but the effect, if any, to be given to them is a question of fact to be considered and decided by the Board in its discretion. (*Cf. The Montreal Park and Island Railway Co. v. The City of Montreal* (43 Can. S. C. R. 256).) *Canadian Pacific Ry. Co. v. Board of Trade of Regina*, xlv., 321.

88. *Board of Railway Commissioners—Jurisdiction—Private siding—Construction of statute—“Railway Act,” R. S. C., 1906, c. 37, ss. 26a, 226—(D.) 8 & 9 Edw. VII. c. 32, s. 1.]—Notwithstanding provisions in an agreement under which a private industrial spur or siding has been constructed entitling*

the railway company to make use of it for the purpose of affording shipping facilities for themselves and persons other than the owners of the land upon which it has been built, the Board of Railway Commissioners for Canada, except on expropriation and compensation, has not the power, on an application under s. 226 of the "Railway Act," (R. S. C., 1906, c. 37), to order the construction and operation of an extension of such spur or siding as a branch of the railway with which it is connected. *Blackwoods Limited v. The Canadian Northern Railway Co.* (44 Can. S. C. R. 92), applied, Duff, J., dissenting. *Clover Bar Coal Co. v. Lumberston*, xlv., 346.

89. *Negligence—Risk of employment—Dangerous works and materials—Warnings and instructions—Employers' liability—Damages—Personal injury—Limitation of action—"Railway Act," R. S. C., 1906, c. 37, s. 306—"Construction and operation of railway."*]—The limitation of one year, in respect of actions to recover compensation for injuries sustained "by reason of the construction or operation" of railways, provided by s. 306 of the "Railway Act" (R. S. C., 1906, c. 37), relates only to injuries sustained in the actual construction or operation of a railway; it does not apply to cases where injuries have been sustained by employees engaged in works undertaken by a railway company for procuring or preparing materials which may be necessary for the construction of their railway. *Canadian Northern Ry. Co. v. Robinson* (1911) A. C. 739, applied; judgment appealed from (21 Man. R. 121), affirmed. (Leave to appeal to Privy Council refused, 20th March, 1912.) *Canadian Northern Ry. Co. v. Anderson*, xlv., 355.

AND see NEGLIGENCE.

90. *Municipal corporation—Assessment and taxation—Meetings of council—Court of Revision—Transacting business outside limits of municipality—Place of meeting—Revision of assessment rolls—By-laws—Sale for arrears of taxes—Construction of statute—55 Vict. c. 33, s. 83(a) (B.C.)—R. S. B. C., 1897, c. 144—Statutory relief—Estoppel—Acquiescence—Laches—Limitation of action.*]—Per Fitzpatrick, C.J., and Idington, and Anglin, J.J.—Prior to the amendment of the British Columbia "Municipal Act, 1892," by the "Municipal Amendment Act, 1894," 57 Vict. (B.C.), c. 34, s. 15, municipal councils subject to those statutes had no power to hold meetings for the transaction of any administrative, legislative or judicial business of the municipal corporation at a place outside of the territorial boundaries of the municipality.—Per Fitzpatrick, C.J. and Idington, Duff, and Anglin, J.J.—Courts of revision organized under the British Columbia municipal statutes, have no power to exercise their functions as such, except at meetings held within the territorial limits of the municipality where the property, described in the assessment rolls to be revised by them, is situate. — Section 15 of the "Municipal Amendment Act, 1894," inserted in the "Municipal Act, 1892" (B.C.), a new provision, s. 83(a), as follows: "All meetings of a municipal council shall take place

within the limits of the municipality, except when the council have unanimously resolved that it would be more convenient to hold such meetings, or some of them, outside of the limits of the municipality."—*Held*, Brodeur, J., dissenting, that there was no proof of such a unanimous resolution as the statute requires.—The council of the respondent municipality, without any formal resolution as provided by the amended statute, held its meetings during several years at a place outside the limits of the municipality, and organized courts of revision there. These courts held all their meetings at the same place as the council, and assumed to revise the municipal assessment rolls at those meetings. The council approved the rolls so revised and enacted by-laws, from year to year, levying rates and authorizing the collection of taxes on the lands mentioned in the rolls, and, after notice as provided by the statutes, sold lands so assessed and alleged to be in arrear for the taxes so imposed. — *Held*, Brodeur, J., dissenting, that the assessment rolls were invalid, that the by-laws levying the rates and authorizing the collection of taxes on the lands mentioned therein were null and void, and that the sales of the lands so made for alleged arrears of taxes were illegal and of no effect.—Per Duff and Anglin, J.J., Brodeur, J., *contra*.—The default in payment of taxes, by the appellant, and his subsequent inaction and silence, while aware of the fact that his lands had been sold for alleged arrears of taxes, did not disentitle him from taking advantage of the statutory procedure respecting the contestation of sales for arrears of taxes either by estoppel, acquiescence or laches. The provisions of s. 126(3) of the "Municipal Act, 1892" (now R. S. B. C. 1897, c. 144, s. 86(2)), have no application to invalid by-laws by municipal councils on occasions when they could not perform legislative functions.—The judgment appealed from was reversed, Brodeur, J., dissenting, on the ground that, as the council had held its first meeting in each year within the limits of the municipality and adjourned for the purpose of holding its next meetings at the place outside of the municipality where all other meetings were held, the by-laws approving of the assessment rolls and those levying rates and authorizing the collection of taxes were valid and the sale of the lands in question for arrears of such taxes was legal and effective. *Anderson v. Municipality of South Vancouver*, xlv., 425.

91. *"Torrens System"—Priority of right—Registration—Caveat—Notice—Construction of statute—Saskatchewan "Land Titles Act," 6 Sdov. VII. c. 24—Equities between purchasers—Assignment of contract—Conditions—Right enforceable against registered owner.*]—Under the provisions of the Saskatchewan "Land Titles Act" (6 Edw. VII. c. 24), the lodging of a caveat in the land titles office in which the title to the lands in question is registered, prevents the acquisition of any legal or equitable interest in the lands adverse to or in derogation of the claim of the caveator.—A company, being registered owner of lands under the Act, entered into a written agreement to sell them to P., who assigned his interest in the contract to G., who then agreed

to transfer his equitable interest, thus acquired, to A. Subsequently, without knowledge of A.'s interest, McK. & B. acquired a like interest from G. A caveat claiming interest in the lands was then lodged by A., in the proper land titles office, and, without inquiry or actual notice of the registration of the caveat, McK. & B. afterwards obtained the approval of the company to the assignment which had been made to them. In an action for specific performance.—*Held, per Davies, Idington, Anglin and Brodeur, J.J.*, that as the purchasers from G. were on equal terms as to equities, A. had priority in point of time at the date when his caveat was lodged; that such priority had been preserved by the registration of the caveat, and that the subsequent advantage which would, otherwise, have been secured by the company's approval of the assignment to McK. & B. was postponed to any equitable right which A. might have to a conveyance. And, further, *per Idington, J.*, that, irrespective of the lodging of the caveat, A. had prior equity to the subsequent assignees. — The agreement by the company provided that no assignment of the contract should be valid unless it was for the whole of the purchaser's interest and was approved by the company, and also that the assignee should become bound to discharge all the obligations of the purchaser towards the company. Until the time of the approval of the assignment to McK. & B., none of these conditions had been complied with.—*Held, per Davies, Idington, Anglin and Brodeur, J.J.*, that the conditions in restriction of such assignments of the original contract could be invoked only by the company.—*Held, per Duff, J.*, dissenting, that, as the rights of G. against the company had never become vested in A., according to the provisions of the contract, he had acquired no enforceable right against the company, the registered owner of the land, and, consequently, he had no legal or equitable interest in them which could be protected by caveat.—Judgment appealed from (4 Sask. L. R. 111), affirmed, Duff, J., dissenting. *McKillop and Benjafield v. Alexander*, xlv., 551.

92. *Constitutional law — Construction of statute*—*B. N. A. Act, 1867, s. 92, s.-s. 2—R. S. Q. 1888, s. 1191(b), 1191(c); (Que.) 57 Vict. c. 16, s. 2; 6 Edw. VII. c. 11, s. 1—Legislative jurisdiction — "Direct taxation within the province"—Succession duty — Extra-territorial movables — Decedent domiciled in province.]—The legislative authority of a province in the matter of taxation conferred by s.-s. 2 of s. 92 of the "British North America Act, 1867," which authorizes the levying of "direct taxation within the province," extends to the imposition of duties upon the transmission of movables having a local *situs* outside the provincial boundaries which form part of the succession of a decedent domiciled within the province. *Woodruff v. The Attorney-General for Ontario* (1908), A. C. 508, distinguished. Judgment appealed from (Q. R. 20 K. B. 164), reversed, Davies and Anglin, J.J., dissenting.—At the time of the death of C. L. C., 11th April, 1902, the statutes in force in the Province of Quebec relating to succession duties provided that "all transmissions, owing to death, of the property in.*

usufruct or enjoyment of movable and immovable property in the province shall be liable to the following taxes, calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of the death, etc." Subsequently, by 6 Edw. VII. c. 11, a clause was added (s. 1191(c)), as follows: "The word 'property' within the meaning of this section shall include all property, whether movable or immovable, actually situate or owing within the province, whether the deceased at the time of his death had his domicile within or without the province, or whether the debt is payable within or without the province, or whether the transmission takes place within or without the province, and all movables, wherever situate, of persons having their domicile (or residing), in the Province of Quebec at the time of their death," which was in force at the time of the death of H. H. C., 26th December, 1906. Succession duties were levied, in respect of both estates upon the whole value of the property devolving including, in each case, movable property locally situated in the United States of America. The action was to recover back those portions of the duties paid in respect of the value of the movables situated outside the limits of the Province of Quebec.—*Heid*, reversing the judgment appealed from (Q. R. 20 K. B. 164), Davies and Anglin, J.J., dissenting, that the movable property situated outside the limits of Quebec forming part of the succession of H. H. C. was subject to the duty so imposed.—On an equal division of opinion among the judges of the Supreme Court of Canada the judgment appealed from stood affirmed in so far as it held that the movable property situated outside the limits of Quebec forming part of the estate of C. L. C. was not liable to such taxation. *The King v. Cotton*, xlv., 469.

93. *Municipal corporation — Statutory powers—Electric light and power — Waterworks—Immovable outside boundaries—Purchase on credit — Promissory notes—Hypothec—By-law—Loans—Approval of ratepayers—Special rate—Sinking fund — Construction of statute—(Que.) 8 Edw. VII. c. 95—R. S. Q., 1909, tit. XI.—"Cities and Towns Act."]*—The council of the Town of Shawinigan Falls, acting under a special Act of incorporation, 8 Edw. VII. c. 95, and the "Cities and Towns Act," R. S. Q., 1909, Title XI., enacted a by-law authorizing the purchase by the municipality of the appellants' electric light and power plant, which was situated outside the municipal boundaries, but within twenty miles thereof, for the purpose of establishing a system of electric lighting and waterworks within the municipality. The price of the property was to be paid in part by annual instalments, to be secured by the promissory notes of the municipal corporation, and the balance, being the amount of a subsisting hypothec and interest thereon, was to be satisfied by the corporation assuming the hypothecary obligations. Previous to enactment the by-law had not been approved by a vote of the ratepayers, and it did not impose a special rate to meet interest and establish a sinking fund, as required by article 5668 R. S. Q., 1909.—*Held*, affirming the judgment appealed from (Q. R. 19 K. B.

546), Anglin, J., dissenting, that the by-law was invalid.—*Held, per Davies, Idington and Duff, J.J.*, that the municipal corporation had no power to establish works outside the boundaries of the municipality. *Per Anglin, J.*, dissenting, that in view of the situation of the electric and power plant, the peculiar circumstances of the case, and the special provisions of the Act incorporating the town, it was competent for the municipal corporation to acquire the property and to establish and maintain the works in question.—*Per Davies, J., Anglin, J., contra*, that the by-law was invalid for want of provision, either in itself or in another by-law contemporaneously enacted, fixing the necessary rate for the purpose of meeting interest and establishing a sinking fund, as required by article 5668 R. S. Q. 1909.—*Per Idington, J., Anglin, J., contra*, that the by-law was one which required the approval of the ratepayers of the municipality, as provided by article 5783 R. S. Q. 1909, respecting loans, and, as their assent had not been obtained prior to enactment the by-law was invalid.—*Per Anglin, J.*—The statutory obligation in respect of the imposition of a special rate to meet interest and establish a sinking fund would be discharged by the levy of the necessary rates for those purposes from year to year until the debt to be incurred was extinguished. *Shawinigan Hydro-Electric Company v. Shawinigan Water and Power Company*, xlv., 585.

94. *Mortgage—Manitoba “Real Property Act.”—Power of sale—Special covenant — Notice—Statutory supervision — Registered title—Equitable rights—Possession by mortgage—Limitation of action—Construction of statute—R. S. M., 1902, c. 148, s. 75—“Real Property Limitation Act,” R. S. C., 1902, c. 100, s. 20.]*—In respect of lands subject to the operation of the “Real Property Act,” R. S. M., 1902, c. 148, mortgages have no registered interest, but merely obtain powers of disposing thereof; these powers do not vest as incidental to the estate mortgaged, but are efficacious only by virtue of the statute. Where the mortgage stipulates for a power of sale, on default, without notice, and contains no proviso dispensing with the official supervision required by the statute, a sale by the mortgagee, purporting to be made under that power, without compliance with the requirements of s. 110 of the Act or an order of the court, cannot operate to extinguish the registered title of the mortgagor. Judgment appealed from (20 Man. R. 522), affirmed, *Idington and Anglin, J.J.*, dissenting.—*Per Davies, Duff and Brodeur, J.J.*, affirming the judgment appealed from (20 Man. R. 522).—The registered title of a mortgagor in lands subject to the operation of the “Real Property Act,” R. S. M., 1902, c. 148, and of persons claiming through them, are protected by the provisions of the 75th section of that statute denying the acquisition of title adverse to or in derogation of that of the registered owner of such lands by length of possession only; the limitation provided by s. 20 of the “Real Property Limitation Act,” R. S. M., 1902, c. 100, in favour of mortgagees, has no application to lands after they have been brought under

the “Real Property Act.” *Smith v. National Trust Co.*, xlv., 618.

95. *Construction of statute—“Creditors’ Relief Act”—9 Edw. VII. c. 48, s. 6, ss. 4 (Ont.)—Contesting creditor’s lien—“Assignments and Preferences Act”—10 Edw. VII. c. 64, s. 14 (Ont.)]*—Section 6, s.-s. 4, of the “Creditors’ Relief Act” of Ontario provides that “where proceedings are taken by a sheriff for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute *pro rata* in proportion to the amount of their executions or certificates to the expense of contesting any adverse claim shall be entitled to share in any benefit which may be derived from the contestation of such claim so far as may be necessary to satisfy their executions or certificates.” Section 14 of the “Assignments and Preferences Act” is as follows:—“14. An assignment for the general benefit of creditors under this Act shall take precedence of attachments, garnishee orders, judgments, executions not completely executed by payment and orders appointing receivers by way of equitable execution subject to the lien, if any, of an execution creditor for his costs, where there is but one execution in the sheriff’s hands, or to the lien, if any, for his costs of the creditor who has the first execution in the sheriff’s hands.”—*Held*, affirming the judgment of the Court of Appeal (24 Ont. L. R. 356, *sub nom. Re Henderson Roller Bearings, Ltd.*), which affirmed that of the Divisional Court (22 Ont. L. R. 306), that the preferential lien given by the former Act to the contesting creditor is not taken away by said s. 14 of the “Assignments and Preferences Act.” *Martin v. Fowler*, xlv., 119.

96. *Constitutional law—Construction of statute—Quebec “Sunday Act”—7 Edw. VII. c. 42, amended by 9 Edw. VII. c. 51—Prohibition of theatrical performances — Local, municipal and police regulations — Criminal law — Legislative jurisdiction — Validation by federal legislation — “Lord’s Day Act,” R. S. C., 1906, c. 153.]*—In the “Act respecting the observance of Sunday,” 7 Edw. VII. c. 42 (Que.), as amended by 9 Edw. VII. c. 51 (Que.), the provisions prohibiting theatrical performances on Sunday are not of the character of local, municipal or police regulations. On the proper construction of the legislation, treated as a whole, they purport to create offences against criminal law and, consequently, are not within the legislative competence of a provincial legislature under the “British North America Act, 1867.” *The Attorney-General for Ontario v. The Hamilton Street Railway Co.* ([1903] A. C. 524), followed. The legislation in question derives no validity from the provisions of the “Lord’s Day Act,” R. S. C., 1906, c. 27. Judgment appealed from (Q. R. 20 K. B. 416), reversed, *Idington and Brodeur, J.J.*, dissenting.—*Per Idington, J.*, dissenting.—The provisions of s. 2 of the statute 7 Edw. VII. c. 42 (Que.), are severable from one another as well as from the other provisions of the statute, and, consequently, although other provisions may be *ultra vires*, the prohibition in respect of theatrical performances on Sunday is a

police regulation which is within the competence of the provincial legislature.—*Per Brodeur, J.*, dissenting.—The legislation in question deals merely with local matters affecting police regulations and civil rights within the province and, consequently, is *intra vires* of the Legislature of Quebec. *Quimet v. Bazin*, xlvii., 502.

97. *Election law—Nomination—Irregularities—Omission of additions—Identification of candidate—Technical objections—Receipt for deposit—Validating effect—Evidence—Construction of statute—R. S. C., 1906, c. 6, "Dominion Elections Act"—R. S. C., 1906, c. 7, "Dominion Controverted Elections Act."*—*Per Fitzpatrick, C.J. and Davies, Anglin and Brodeur, J.J.*—Technical objections to the form of nomination papers filed with the returning officer at an election of a member of the House of Commons, under the provisions of the "Dominion Elections Act," R. S. C., 1906, c. 6, should not be permitted to defeat the manifest purpose of the statute. The omission in nomination papers to mention the residence, addition or description of the candidate proposed in such a manner as sufficiently to identify him constitutes a patent and substantial failure to comply with the essential requirements of s. 94 of the Act; on the objection in this respect taken by the only opposing candidate it is the duty of the returning officer to reject a nomination so irregularly made and to declare such opposing candidate elected by acclamation. Such rejection and declaration of election by acclamation may properly be made by the returning officer after the expiration of the time limited for the nomination of candidates by section 100 of the Act.—*Per Fitzpatrick, C.J. and Davies, Anglin and Brodeur, J.J.* (Idington and Duff, J.J., *contra*).—The receipt for the required deposit of \$200, accompanying the nomination papers, given by the returning officer under the provisions of s. 97 of the "Dominion Elections Act," is evidence merely of the production of the papers and payment of the deposit and not of the validity of the nomination.—*Per Idington and Duff, J.J.* (dissenting).—The receipt so given for the required deposit constitutes a legal assurance that the candidate has been duly and properly nominated; it cannot be revoked nor the nomination papers rejected by the returning officer after the expiration of the time limited by s. 100 of the Act for the nomination of candidates; when that time has passed all questions touching the statutory sufficiency of the papers are concluded in so far as it is within the province of the returning officer to deal with such matters.—*Per Duff, J.* (dissenting).—Where the returning officer has received papers professing to nominate a proposed candidate with the consent of the candidate to such nomination and given his receipt for the required deposit pursuant to s. 97 of the Act, and the time limited for the nomination of candidates at the election has expired, the status of such candidate becomes finally determined *quoad* proceedings under the control of the returning officer, and it is then the duty of that official to grant a poll for taking the votes of the electors.—*Per Duff, J.* (dissenting).—In view of the limited jurisdiction conferred

upon judges in respect to election trials under the "Dominion Controverted Elections Act," R. S. C., 1906, c. 7, where the returning officer has exceeded his legal powers by improperly returning a candidate as having been elected by acclamation the judgment should declare that the election was not according to law.—The judgment appealed from (Q. R. 42 S. C. 235), was affirmed, Idington and Duff, J.J., dissenting. *Two Mountains Election*, xlvii., 185.

98. *Election law—Appeal—Preliminary objections—Interlocutory motions—Construction of statute—"Dominion Controverted Elections Act," R. S. C., 1906, c. 7, s. 64.*—Several of the preliminary objections to a petition against the election of a member of the House of Commons of Canada having remained undisposed of, on the day before the expiration of the six months limited for the commencement of the trial by s. 39 of the "Dominion Controverted Elections Act," R. S. C., 1906, c. 7, the petitioner applied to a judge, by motions, (a) to obtain an enlargement of the time for the commencement of the trial, and, (b) to have a day fixed for the hearing on such preliminary objections. On appeal from the judgment dismissing the motions.—*Held*, that the judgment in question was not appealable to the Supreme Court of Canada under the provisions of s. 64 of the "Dominion Controverted Elections Act." *L'Assomption Election Case* (14 Can. S. C. R. 429); *King's County Election Case* (8 Can. S. C. R. 192); *Gloucester Election Case* (8 Can. S. C. R. 204), and *Halifax Election Case* (39 Can. S. C. R. 401), referred to. *Temiscouata Election*, xlviii., 211.

99. *Habeas corpus—"Supreme Court Act," s. 39(c)—Criminal charge—Prosecution under Provincial Act—Application for writ—Judge's order.*—By s. 39(c), of the "Supreme Court Act" an appeal is given from the judgment in any case of proceedings for or upon a writ of *habeas corpus* . . . not arising out of a criminal charge.—*Held*, *per Fitzpatrick, C.J. and Davies and Anglin, J.J.*, that a trial and conviction for keeping liquor for sale contrary to the provisions of the "Nova Scotia Temperance Act" are proceedings on a criminal charge, and no appeal lies to the Supreme Court of Canada from the refusal of a writ of *habeas corpus* to discharge the accused from imprisonment on such conviction. Duff, J., *contra*. Brodeur, J., *hesitante*.—By the "Liberty of the Subject Act" of Nova Scotia on an application to the court or a judge for a writ of *habeas corpus* an order may be made calling on the keeper of the gaol or prison to return to the court or judge whether or not the person named is detained therein, with the day and cause of his detention. On the return of an order so made, an application for the discharge of the prisoner was refused, and an appeal from this refusal was dismissed by the full court.—*Held*, *per Idington and Brodeur, J.J.*, that such order is not a proceeding for or upon a writ of *habeas corpus* from which an appeal lies under said s. 39(c).—*Per Duff, J.*—That the judgment of the full court was given in a case of proceedings for a writ of *habeas corpus* within the meaning of s.

39(c), and that the proceedings did not arise out of a "criminal charge" within the meaning of that provision; but that, on the merits, the appeal ought to be dismissed. *In re McNutt*, xviii., 259.

100. *Construction of statute*—*"Quebec Public Health Act"*—*R. S. Q., 1909, art. 3913—Inspection of food—Duty of health officers—Quality of food—Condemnation—Seizure—Notice—Effect of action by health officers—Controlling power of courts—Evidence—Injunction—Appeal—Jurisdiction—Question in controversy.*]—*Per Fitzpatrick, C.J.*—In the Province of Quebec, in order to constitute a valid seizure of movable property there must be something done by competent authority which has the effect of dispossessing the person proceeded against of the property; notice thereof must be given; an inventory made and a guardian appointed. Where these formalities have not been observed there can be no valid seizure. *Brook v. Booker* (41 Can. S. C. R. 331), referred to.—*Per Fitzpatrick, C.J.*—Extraordinary powers, conferred by statute, authorizing interference with private property must be exercised in such a manner that the rights of the owners may not be disregarded. *Bonanza Creek Hydraulic Concession v. The King* (40 Can. S. C. R. 281), and *Riopelle v. City of Montreal* (44 Can. S. C. R. 579), referred to.—*Per Fitzpatrick, C.J. and Davies and Idington, JJ.*—The authority conferred upon health officers by the "Quebec Public Health Act" respecting the condemnation, seizure and disposal of food, as being deleterious to the public health, is not final and conclusive in its effect, but it is to be exercised subject to the superintending power, orders and control of the Superior Court and the judges thereof.—*Per Anglin and Brodeur, JJ.*—The protection afforded by the Quebec "Public Health Act" to an executive officer of a local board of health cannot be invoked when the officer has apparently not acted under its provisions, but has condemned food, not as the result of his own independent judgment upon its quality, but in carrying out instructions given him by municipal officials purporting to act under other statutory provisions.—In the result the finding of the trial judge that the food in question was fit for human consumption (Q. R. 39 S. C. 520), being supported by evidence, was not disturbed, and the effect of the judgment appealed from (1 D. L. R. 160) was affirmed with a variation of the order making absolute the injunction against the defendant interfering therewith. *City of Montreal v. Layton & Co.*, xviii., 514.

101. *Statute—Construction—Operation of railway—Right-of-way—Combustible materials*—*R. S. N. S. [1900] c. 91, s. 9.*]—Chapter 91, s. 9, of the Revised Statutes of Nova Scotia, 1900, provides that "when railways pass through woods the railway company shall clear from off the sides of the roadway the combustible material by careful burning at a safe time or otherwise."—*Held*, that this provision is imperative and obliges the company at all times to keep its right-of-way so clear of combustible material that it will not be a source of danger from fire. Clearing it at certain periods only is not a compliance with such pro-

vision.—*Duff, J.*, dissented on the ground that it was not proved that the fire in this case originated on the right-of-way.—*Judgment appealed from* (46 N. S. Rep. 20) affirmed. *Halifax and South Western Ry. v. Schwartz*, xviii., 590.

102. *Railway company—Negligence—Contravention of statute—Protection of employees—Foreign car—Defective equipment*—*R. S. C. [1906] c. 37, s. 264, ss. 1(c).*]—The provisions of s. 264, s.s. 1(c) of The Railway Act which require every railway company "to provide and cause to be used on all trains modern and efficient apparatus" for coupling and uncoupling cars without the necessity of going between them is contravened by the use of a foreign car not provided with such "modern and efficient apparatus" in a train operated by a Canadian company, and the company using such car is responsible for any injury caused by the want of such equipment. A lever for opening and closing the knuckle of the coupler which is too short to be operated from the side ladder with safety is not "modern and efficient apparatus" under the above provision.—Where a brakeman on a car approaching another with which it was to be coupled saw that the knuckle of the coupler of the car he was on had to be opened and had only fifteen seconds in which to do it, being unable to signal the engineer to stop, took the only course open to him, which was a common one, and was injured, he was not guilty of contributory negligence.—*Fitzpatrick, C.J.*, dissented, on the ground that the plaintiff's negligence was the sole cause of the accident.—*Judgment of the Court of Appeal* (26 Ont. L. R. 121), reversed. *Fitzpatrick, C.J.*, dissenting. *Stone v. Canadian Pacific Railway Co.*, xviii., 634.

103. *Master and servant—Profit-sharing—Partnership—Evidence*—*R. S. B. C. 1911, c. 153, s. 3; c. 175, s. 4—Words and phrases—"Partnership."*]—The "Master and Servant Act," R. S. B. C. 1911, c. 153, by s. 3, respecting profit-sharing by servants, declares that no agreement of that nature shall create any relationship in the nature of partnership. Section 4 of the "Partnership Act," R. S. B. C. 1911, c. 175, provides rules for determining partnership and, by s.s. 2 and 3, declares that the sharing of gross profits does not, of itself, create a partnership, that the receipt of a share of the profits of a business is *prima facie* evidence of a partnership, that the receipt of such share or of a payment varying with the profits does not, of itself, make the person receiving the same a partner, and that a contract to remunerate a servant by a share of the profits does not, of itself, make him a partner. The plaintiff, an employee of the defendant, by the terms of his engagement was to receive as remuneration for his services a one-half share of the profits of defendant's business and conversations took place regarding an arrangement whereby plaintiff might have a "share in the business," but no definite agreement was made. Plaintiff, claiming to have become a partner, wrote a letter to defendant asserting that he had an undivided interest in the business and asking him to execute articles of partnership. Defendant replied to this letter in



an evasive and temporizing manner and the business continued to be conducted without any change. Later on, the defendant served upon the plaintiff a notice of dissolution of partnership and, in the notice as well as in the correspondence, made use of the word "partnership" in referring to the relations between them.—*Held*, reversing the judgment appealed from (18 B. C. Rep. 230) that, under the statutes referred to, the onus was upon the plaintiff to shew that he had been admitted as a partner in the business in the strict legal sense and that the indefinite use of the term "partnership" in the correspondence and notice did not, in the circumstances, amount to evidence of an agreement that there should be a partnership. *Donkin v. Disher*, xlix., 60.

104. *Appeal—New right of appeal—Application to pending actions.*—An Act of Parliament enlarging the right of appeal to the Supreme Court of Canada does not apply to a case in which the action was instituted before the Act came into force. *Williams v. Irvine* (22 Can. S. C. R. 108); *Hyde v. Lindsay* (29 Can. S. C. R. 99) and *Colonial Sugar Refining Co. v. Irving* ([1905] A. C. 369), followed. *Doran v. Jewell*, xlix., 88.

105. "Militia Act"—R. S. C. [1896] c. 41—*"Senior officer . . . present at any locality"*—*Military district—Right of action*—4 Edw. VII. c. 23, s. 86—*Retrospective effect.*—By s. 16 of the "Militia Act" (R. S. C. [1896] c. 41), Canada is divided into military districts of which the Province of Nova Scotia is one. By s. 34 "the senior officer present at any locality" may, on requisition from three justices of the peace, call out the troops in aid of the civil power wherever a riot or disturbance of the peace has occurred or is anticipated.—*Held*, Brodeur, J., dissenting, that the "senior officer present at any locality" is not necessarily the senior officer of a corps stationed at the place where the riot occurs or is likely to occur. The justices, in their discretion, may requisition the senior officer of any available force.—By s. 34, s.s. 6, of the above Act the officer commanding the troops so called out may, in his own name, take action against the municipality in which the riot occurred to recover the amount of the expenses thereby incurred which are to be paid to His Majesty when recovered. By 4 Edw. VII. c. 23, s. 86, this right of action was vested in His Majesty.—*Held*, that the latter being a procedure Act is retrospective and an action was properly brought in the name of the Attorney-General of Canada to recover the expenses of calling out the troops on the occasion of an industrial strike in the City of Sydney, part of which expenses were incurred before, and part after, the last mentioned Act came into force.—Judgment appealed from (46 N. S. Rep. 527), reversed. Brodeur, J., dissenting. *Attorney-General of Canada v. City of Sydney*, xlix., 148.

106. *Appeal—Jurisdiction—"Matter in controversy"*—*Annuity—Quebec "Workmen's Compensation Act," R. S. Q., 1909, arts. 7321 et seq.—9 Edw. VII. c. 66—"Supreme Court Act," R. S. C., 1906, c. 139, s. 46(c)—Construction of statute.*—Plain-

tiff's action, under the Quebec "Workmen's Compensation Act," claimed \$450 for loss of earnings, for six months, during incapacity occasioned by personal injuries, and also an annuity of \$337 *per annum*. The plaintiff recovered judgment for the specific amount claimed and he was also awarded an annuity of \$247.50, which might be subject to revision, under the statute. The capitalized value of the annuity would, probably, amount to a sum exceeding \$2,000, the appealable limitation fixed by s. 46(c) of the "Supreme Court Act," R. S. C., 1906, c. 139.—*Held*, Davies, J., dissenting, that, in the circumstances of the case, it did not appear that the *demande* amounted to the sum or value of two thousand dollars, within the meaning of s. 46 (c) of the "Supreme Court Act," and, consequently, the court had no jurisdiction to entertain the appeal. *Talbot v. Guilmartin* (30 Can. S. C. R. 482); *La Cie. d'Aqueduc de la Jeune Lorette v. Verrett* (42 Can. S. C. R. 156); *Lapointe v. The Montreal Police Benevolent and Pension Society* (35 Can. S. C. R. 5), and *Macdonald v. Galivan* (28 Can. S. C. R. 258), referred to. (Leave to appeal to Privy Council granted, 15th July, 1914.) *Canadian Pacific Ry. Co. v. McDonald*, xlix., 163.

107. *Sale of lands—Agreement for re-sale—Novation—Rescission—Specific performance—Defence to action—Practice—Evidence—Principal and agent.*—In a suit for specific performance of a contract for the sale of lands an agreement for the re-sale of the lands may be set up as a defence notwithstanding that such re-sale agreement does not satisfy the requirements of the 4th section of the Statute of Frauds. Judgment appealed from (10 D. L. R. 765), affirmed.—Such an agreement for resale affords a sufficient reason for refusing a decree for specific performance of the original contract for sale. *Frith v. Alliance Investment Co.*, xlix., 384.

AND see SPECIFIC PERFORMANCE.

108. *Banks and banking—Loans—Security—Wholesale purchaser—"Products of the forest"*—"Bank Act," s. 88.]—By s. 88(1) of the "Bank Act" a bank "may lend money to any wholesale purchaser . . . or dealer in products of agriculture, the forest, etc.; or to any wholesale purchaser . . . of live stock or dead stock and the products thereof, upon the security of such products or of such live stock or dead stock and the products thereof"—*Held*, affirming the judgment of the Appellate Division (28 Ont. L. R. 521), which affirmed the decision of a Divisional Court (27 Ont. L. R. 479), by which the judgment of the trial judge (26 Ont. L. R. 291), was maintained, that a person who purchases lumber by the carload having on hand at times 200,000 or 300,000 feet and sells it by retail or uses it in his business is a "wholesale purchaser" within the meaning of the above provision.—*Held*, also, that sawn lumber is a "product of the forest" on which money can be lent under said provisions. *Molson's Bank v. Beaudry* (Q. R. 11 K. B. 212), overruled.—*Held*, per Duff and Anglin, JJ. —The words "and the products thereof" at the end of the above sub-section mean the pro-



ducts of live or dead stock and not of the other articles mentioned. *Townsend v. Northern Crown Bank*, xlix., 394.

109. *Constitutional law—Criminal law—Legislation respecting Orientals—Chinese places of business—Employment of white females—2 Geo. V. c. 17 (Sask.)*—"B. N. A. Act, 1867," ss. 91, 92—*Local and private matters—Property and civil rights—Naturalized British subject—Conviction under provincial statute.*—The provisions of the statute of the Province of Saskatchewan, 2 Geo. V. c. 17, containing a prohibition against the employment of white female labour in places of business and amusement kept or managed by Chinamen, sanctioned by fine and imprisonment, is *intra vires* of the Provincial Legislature. *Union Colliery Co. v. Bryden* ([1899] A. C. 580), and *Cunningham v. Pomey Homma* ([1903] A. C. 151), referred to.—*Per Duff, J.*—The imposition of penalties for the purpose of enforcing the provisions of a provincial statute does not, in itself, amount to legislation on the subject-matter of criminal law within the meaning of item 27 of the 91st section of the "British North America Act, 1867." *Hodge v. The Queen* (9 App. Cas. 117), *The Attorney-General of Ontario v. The Attorney-General for the Dominion* ([1896] A. C. 348), and *The Attorney-General of Manitoba v. The Manitoba License Holders' Association* ([1902] A. C. 73), referred to.—The judgment appealed from (4 West. W. R. 1135), was affirmed, Idington, J., dissenting.—(Leave to appeal to the Privy Council refused, 19th May, 1914.) *Quong-Wing v. The King*, xlix., 440.

110. *Limitation of actions—General statutory provisions—Carriers—Private Act—R. C. Consolidated Railway Co.'s Act—R. S. B. C., 1911, c. 82—Lord Campbell's Act—(B. C.) 59 Vict. c. 55, s. 60.*—*Per Duff, J.*—Section 60 of the "Consolidated Railway Company's Act," (B.C.), 59 Vict. c. 55, has no application to an action brought against the company for breach of duty as a carrier. *Sayers v. British Columbia Electric Ry. Co.* (12 B. C. Rep. 102), referred to. *British Columbia Electric Ry. Co. v. Turner*, xlix., 470.

AND see PRACTICE AND PROCEDURE.

111. *Assessment and taxes—Lease of Crown lands—Interest of occupier—Constitutional law—Exemption from taxation—Construction of statute—"B.N.A. Act, 1867," s. 125—(Sask.) 6 Edw. VII. c. 36, "Local Improvement Act"—(Sask.) 7 Edw. VII. c. 3, "Supplementary Revenue Act"—Recovery of taxes—Non-resident—Action for debt—Jurisdiction of provincial courts.*—The Saskatchewan statutes, 6 Edw. VII. c. 36 ("The Local Improvement Act") and 7 Edw. VII. c. 3 ("The Supplementary Revenue Act"), and their amendments, authorizing the taxation of interests in Dominion lands held by persons occupying them under grazing leases, or licenses from the Minister of the Interior, are not in contravention of the provision of s. 125 of the "British North America Act, 1867," exempting from taxation all lands or property belonging to the Dominion of Canada; consequently, these enactments are *intra vires* of the provincial legislature.

*The Calgary and Edmonton Land Co. v. The Attorney-General of Alberta* (45 Can. S. C. R. 170), followed. For the purposes of the collection of taxes so levied the provincial legislature may authorize their recovery by personal action, as for debt, against persons so occupying such lands, in the civil courts of the province, notwithstanding that the residences of such persons may be outside the limits of the province.—The judgment appealed from (24 West. L. R. 903; 4 West. W. R. 1219), was affirmed. *Smith v. Rural Municipality of Vermilion Hills*, xlix., 563.

112. *Dedication of lands for highway—Opening of street—Construction of agreement.*—A land company made a donation of certain lots of land to the municipal corporation for the purpose of a highway and the corporation agreed to open and construct a portion of the street when necessary.—*Held*, that, on the proper construction of the agreement, in view of the powers conferred upon the corporation by s. 85 of its charter (Que.), 56 Vict. c. 54, the word "necessary" in the agreement should be construed as meaning "necessary in the public or general interest" and not merely in the interest of the other party to the agreement. *In re Morton and the City of St. Thomas* (6 Ont. App. R. 323), and *Pells v. Boswell* (8 O. R. 680), referred to. *Hutchison v. City of Westmount*, xlix., 621.

113. "*Colonial Courts of Admiralty Act, 1890,*" (Imp.) 53 & 54 Vict. c. 27—"Public Authorities Protection Act, 1892," (Imp.) 56 & 57 Vict. c. 61—*Limitations of actions—Effect of statutes—Practice and procedure—Jurisdiction.*—The "Public Authorities Protection Act, 1893" (Imp.), 56 & 57 Vict. c. 61, does not apply to suits or actions instituted in the Exchequer Court of Canada in the exercise of its jurisdiction as a Colonial Court of Admiralty. *Harbour Commissioners of Montreal v. Sydney, Cape Breton and Montreal S. S. Co.*, xlix., 627.

114. *Construction of—Sales of subdivided lands—Registration of plans—Prohibitive sanction—"Land Titles Act," 6 Edw. VII. c. 24, s.-s. 7 (Alta.); 4 Geo. V. c. 2, s. 9; 5 Geo. V. c. 2, s. 25 (Alta.)—Retrospective legislation—Illegality of contract—Rescission—Recovery of money paid—Right of action—Practice—Pleading—Appeal.*—The effect of the amendment to the Alberta "Land Titles Act," 6 Edw. VII. c. 24, by 1 Geo. V. c. 4, s. 15(25), adding the seventh sub-section to s. 124 of that Act, is to prohibit sales of lands subdivided into lots according to plans of subdivision until after the registration of the plans in the proper land titles office and also to render any sales made in contravention of the prohibition inoperative.—The vindicatory sanction imposed by the statute is directed against the vendor and where there is no presumption of knowledge of the invalidity on the part of the purchaser he cannot be deemed *in pari delicto* with the vendor and is not deprived of the right of action to set aside the agreement and recover back moneys paid thereunder.—After the judgment appealed from had been rendered the statute was further amended (5 Geo. V. c. 2, s. 25) by the addition of s.-s. 8(a) providing that

the seventh sub-section could not be pleaded or relied upon in any civil action or proceeding by a party to any such agreement when the plan in question had been registered before the action or proceeding was instituted or where it was the duty of the party pleading to make such registration.—*Held*, that, as the last amending Act was not a statute declaratory of the law as it stood at the time when the judgment appealed from was rendered, and as appeals to the Supreme Court of Canada are not of the nature of re-hearings to which the principle of the decision in *Quilter v. Mapleson* (9 Q. B. D. 672), applies, the restricting provisions can have no effect upon the decision of the present appeal.—Judgment appealed from (8 West. W. R. 440), affirmed. *Boulevard Heights, Limited v. Veilleux*, lii., 185.

115. *Collection of municipal taxes—Action in Recorder's Court—Montreal City Charter*, 62 Vict. c. 58 (Que.)—*Appeal—Jurisdiction—Judgment by Court of Review—Special tribunal—Court of last resort—Supreme Court Act, R. S. C., 1906, c. 139, s. 41, xli., 427.*

See APPEAL.

116. *Sale of goods by sample—Delivery—Condition f.o.b.—“Sale of Goods Act,” R. S. M., 1902, s. 152—Notice of rejection—Reasonable time—Breach of warranty, xli., 435.*

See SALE.

117. *Ships and shipping—Perils of the sea—Unseaworthy ship—Evidence—Warranty—Inspection of shipping—Certificate of seaworthiness—Construction of statute—R. S. C., 1906, c. 113, s. 312—Drowning of sailors—Negligence of master—Liability of owner. *Connolly v. Grenier*, xlii., 242.*

See SHIPS AND SHIPPING.

118. *Action—Damages—Denial of traffic facilities—Injury by reason of operation of railway—Limitation of actions—“Railway Act,” 3 Edw. VII. c. 58, s. 242—Construction of statute, xliii., 387.*

See ACTION.

119. *Appeal—Jurisdiction—Prohibition—Quebec appeals—R. S. C., 1906, c. 139, ss. 39, 46—Construction of statute, xliii., 82.*

See APPEAL.

120. *Railways—Construction of statute—R. S. O., 1906, c. 37, ss. 335, 336—Through traffic—Joint international tariffs—Filing by foreign company—Assent of domestic company—Tariffs “duly filed”—Jurisdiction of Board of Railway Commissioners, xliii., 311.*

See RAILWAYS.

121. *Construction of statute—7 & 8 Edw. VII. c. 31, s. 2—Government railway—Fire from engine—Negligence—Damages, xliii., 164.*

See RAILWAYS.

122. *Board of Railway Commissioners—Jurisdiction—Private siding—Construction of statute—“Railway Act,” R. S. C. (1906)*

*c. 37, ss. 222, 226, 317—Branch of railway—Res inter alios—Estoppel, xliiv., 92.*

See RAILWAYS.

123. *Appeal—Nature of action—Equitable relief—“Supreme Court Act,” s. 38c—Appeal from referee—Final judgment—Assessment of damages, xliiv., 284.*

See APPEAL.

124. *Appeal—Setting down for hearing—Form of submission—Defining questions of law, xliiv., 328.*

See APPEAL.

125. *Criminal law—Trial for murder—Improper admission of evidence—Substantial wrong or miscarriage—Criminal Code, s. 1019, xliiv., 331.*

See CRIMINAL LAW.

126. *Irrigation works—Nuisance—Obstruction of highways—Duty to build and maintain bridges—Construction of statute—61 V. c. 35, ss. 11, 16, 37 (D.), xliiv., 505.*

See IRRIGATION WORKS.

127. *Construction of statute—Fishery and game leases—Personal servitude—Possession—Use and occupation—Right of action—Action en complainte—Renewed leases—Priority—Watercourses—Works to facilitate lumbering operations—Driving logs—Storage dams—Penning back waters out of track of transmission—Damages—Rights of lessees—Injury to preserves—Injunction—Demolition of works, xlv., 1.*

See RIVERS AND STREAMS.

128. *Municipal corporation—Highways—Nuisance—Repair of sidewalks—Negligence—Statutory duty—Nonfeasance—Personal injury—Civil liability—Right of action—Construction of statute—“Vancouver City Charter,” xlv., 194.*

See MUNICIPAL CORPORATION.

129. *Contract—Public policy—Restraint of trade—Combination—Conspiracy—Construction of statute—“Criminal Code,” c. 498—Words and phrases, “unduly” preventing competition, etc., xlv., 1.*

See CONTRACT.

130. *Municipal corporation—Repair of highways—Statutory duty—“Unfenced trap” in sidewalk—Misfeasance—Actionable negligence—Notice—Knowledge—Personal injuries—Liability of corporation—Evidence—Findings of jury—“Res ipsa loquitur,” xlv., 457.*

See MUNICIPAL CORPORATION.

131. *Banking—“Bills of Exchange Act”—Promissory note—Special indorsement—Condition—Pledge—Collateral security—Holder in due course—Payment and satisfaction—Liability on current account, xlv., 564.*

See BANKING.

132. *Criminal law—Indictment for murder—Trial—Evidence—Criminal intent—Provocation—“Heat of passion”—Charge*

to jury—Misdirection—Reducing charge to manslaughter — New trial — “Substantial wrong”—Criminal Code, ss. 261, 1019—Appeal—Questions to be reviewed, xlvii., 1.

See CRIMINAL LAW.

133. Construction of statute — “Railway Act,” R. S. C., 1906, c. 37, ss. 20, 318—Joint freight tariff—Power to supersede—Declaratory decree—Jurisdiction of Board of Railway Commissioners, xlvii., 155.

See RAILWAYS.

134. Banking — Security for advances—Assignment — Chase in action—Moneys to arise out of contract — Unearned funds—Equitable assignment to third party—Notice—Evidence — Priority of claim—Estoppel — Construction of statute — Manitoba “King’s Bench Act” — “Bank Act,” xlviii., 313.

See BANKING.

135. Sale of lands—Agreement to pay commission—Named price — Introduction by agent — General retainer—Sale at lower price—Right of action—Alberta statute, 6 Edw. VII., c. 27, s. 1, xlix., 75.

See BROKER.

136. Municipal councillor — Interest in municipal contract—Public policy—Money received under prohibited contract — Recovery of funds—Right of action—Construction of statute—(Que.) 58 V. c. 42, ss. 1, 2, II—Arts. 989, 1047 C. C., xlix., 271.

See MUNICIPAL CORPORATION.

137. Rivers and streams—Industrial improvements — Penning back waters—Permanent works—Damages—Measure of damages—Expertise — Arbitration — Reparation—Loss of water-power—Future damages—Compensation once for all—Right of action—Practice—R. S. Q., 1909, arts. 7295, 7296, xlix., 344.

See RIVERS AND STREAMS.

138. Bill of sale—Mortgage—Registration—Affidavit — Verification—B. C. “Bills of Sale Act,” 5 Edw. VII., c. 8, s. 7, xlix., 541.

See BILLS OF SALE.

139. Manitoba “Real Property Act,” ss. 100, 130—Agreement for mortgage—Caveat — “Interest in land”—Registration subject to incumbrance — Indorsement on instrument registered. Yockney & Thompson, l., 1.

See REGISTRY LAWS.

140. Company—Disqualification of directors—Taking personal profit—Fraud—Illegal contract—Ratification—Right of action—Shareholder—Recourse by minority—Alberta “Companies Ordinance.” N.-W. Ter. Ord., No. 20 of 1901—Construction of statute. Theatre Amusement Co. v. Stone, l., 32.

See COMPANY.

141. Board of Railway Commissioners—Jurisdiction—Lands of provincial railway company—Undertaking for general advantage of Canada—Transfer of provincial rail-

way—Construction of statute — “Railway Act,” R. S. C., 1906, c. 37, s. 176. Mont. Tram. Co. v. Lachine, l., 84.

See RAILWAYS.

142. “Railway Act” — Expropriation—Municipal plan—Severance of lots—Injurious affection—Reference back to arbitrators—R. S. C., 1906, c. 37—(D.) 1 & 2 Geo. V., c. 22, s. 6. C. N. O. R. R. Co. v. Holditch, l., 265.

See ARBITRATION.

143. Assessment and taxation—Interest in land—Recitals in agreement—Validation by statute—Legislative declarations—Construction of statute. Re Heinze, Fleitman, etc., lii., 15.

See ASSESSMENT AND TAXES.

144. Banking — Purchase of company’s assets—Bill of sale—Description of chattels—B. C. “Bills of Sale Act,” R. S. B. C. 1911, c. 20—Registration—Recital in bill of sale—Consideration—Defeasance — Reference to unregistered note—Collateral security—Loan by bank—“Bank Act,” (D.) 3 & 4 Geo. V., c. 9, s. 76. Ball v. Royal Bank, lii., 254.

See BILL OF SALE.

145. Dominion lands — Lease of mining areas—“Dominion Lands Act,” s. 47—Statutory regulations — Conditions of lease—Defeasance — Notice — Cancellation on default—Forfeiture of rights. Paulson v. The King, lii., 317.

See CROWN LANDS.

146. Electric transmission—Statutory authority—Special Act—Negligence — Character of installations—System of operation—Grounding transformers—Defective fittings — Vis major—Responsibility without fault — Art. 1054 C. C.. Vandry v. Quebec R. R. & Light, etc., liii., 72.

See NEGLIGENCE.

147. Construction — Application—Taxation — Exemption — Railway property—Frontage lots—Local improvements, 63 & 64 V. c. 57, s. 18; c. 58, s. 22 (Man.)—R. S. M., 1902, c. 166; 10 Edw. VII., c. 74 (Man.), liv., 589.

See ASSESSMENT AND TAXES.

## STATUTE OF ANNE.

Cause of action—Limitation of actions—Contract—Foreign judgment—Yukon Ordinance, c. 31 of 1890—Statute of James 4 & 5 Anne, c. 16—Lex fori—Lex loci contractus—Absence of debtor, xxxvii., 546.

See LIMITATION OF ACTIONS.

## STATUTE OF ELIZABETH.

Appeal — Jurisdiction — Title to land—Fraudulent conveyance, Bateman v. Scott, liii., 145.

See APPEAL.

## STATUTE OF FRAUDS.

1. *Statute of Frauds—Part performance—Evidence.*]—M. leased land to his two sons, S. and W., of which fifty acres was to be in the sole tenancy of W. In an action by M. against S. for waste by cutting wood on said fifty acres the defence set up was that by parol agreement, in consideration of S. conveying one hundred acres of the land to W. he was to have a deed of the fifty acres, and having so conveyed to W. he had an equitable title to the latter. M. admitted the agreement but denied that the land to be conveyed to S. was the said fifty acres.—*Held*, per Nesbitt and Idington, J.J., that the conveyance to W. was a part performance of the parol agreement and the Statute of Frauds was no answer to this defence.—The majority of the court held that as the possession of the fifty acres was referable to the lease as well as to the parol agreement, part performance was not proved, and affirmed the judgment appealed from, in favour of the plaintiff (37 N. S. Rep. 23) on this and other grounds. *Meisner v. Meisner*, xxxvi., 34.

2. *Vendor and purchaser—Sale of land—Formation of contract—Conditions—Acceptance of title—New term—Statute of Frauds—Principal and agent—Secret commission—Avoidance of contract—Fraud—Specific performance.*]—While A. was absent abroad, B. assumed, without authority, to sell certain of his lands to C., and received, from C., a deposit on account of the price. On receipt of a cablegram from B., notifying him of what had been done, but without disclosing the name of the proposed purchaser, A. replied by letter, stating that he was willing to sell at the price named, that he would not complete the deal until he returned home, that the sale would be subject to an existing lease of the premises and that he would not furnish evidence of title other than the deeds that were in his possession, and requesting B. to communicate these terms to the proposed purchaser. On learning the conditions, C., in a letter by his solicitors, accepted the terms and offered to pay the balance of the price as soon as the title was evidenced to their satisfaction. In a suit for specific performance:—*Held*, that the correspondence which had taken place constituted a contract sufficient to satisfy the requirements of the Statute of Frauds, that the words "so soon as title is evidenced to our satisfaction," in the solicitors' letter accepting the conditions, did not import the proposal of a new term and that A. was bound to specific performance.—*Held*, also, that an arrangement, unknown to A. and made prior to the receipt of his letter, whereby B. was to have a commission on the transaction from C., could not have the effect of avoiding the contract, as B. was not, at that time, the agent of A. for the sale of the property.—Judgment appealed from (12 B. C. Rep. 236), affirmed. *Andrews v. Calori*, xxxviii., 588.

3. *Location of mineral claims—Construction of contract—Fictitious signature—Unauthorized use of a firm name—Transfer by bare trustee—Statute of Frauds—R. S. B.*

*C. (1897), c. 135, ss. 50, 130.*]—Where B., acting as principal and for himself only, signed a document containing the following provision: "We hereby agree to give F. one-half (½) non-assessable interest in the following claims" (describing three located mineral claims), in the name of "J. B. & Sons," without authority from the locatees of two of the claims which had been staked in the names of other persons, without their knowledge or consent:—*Held*, affirming the judgment appealed from (13 B. C. Rep. 20) that, although no such firm existed and notwithstanding that two of the claims had been located in the names of the other persons, who, while disclaiming any interest therein, had afterwards transferred them to B., the latter was personally bound by the agreement in respect to all three claims, and F. was entitled to the half interest therein.—A subsequent agreement for the reduction of the interest of F. from one-half to one-fifth, which had been drawn up in writing, but was not signed by F., was held void under the Statute of Frauds. *McMeekin v. Furry*, xxxix., 378.

4. *Title to land—Trust—Interest in mining areas—Sale by trustee—Recovery of proceeds of sale—Agreement in writing—Statute of Frauds—R. S. N. S. (1900), c. 141, ss. 4 and 7—Part performance—Acts referable to contract—Evidence—Pleading.*]—M. transferred to C. a portion of an interest in mining areas which he claimed was held in trust for him by the defendant. In an action by C. claiming a share in the proceeds of the sale thereof, no deed or note in writing of the assignment was produced as required by the fourth section of the Nova Scotia Statute of Frauds, and there was no evidence that, prior to the assignment, there had been such a conversion of the interest as would take away its character as real estate.—*Held*, that the subject of the alleged assignment was an interest in lands within the meaning of the Statute of Frauds and not merely an interest in the proceeds of the sale as distinguished from an interest in the areas themselves, and, consequently, that the plaintiff could not recover on account of failure to comply with that statute.—It was shewn that, on settling with interested parties, the defendant had given M. a bond for \$500, as his share of what he had received on the sale of the areas.—*Held*, that, as this act was not unequivocally and in its own nature referable to some dealing with the mining areas alleged to have been the subject of the agreement, it could not have the effect of taking the case out of the operation of the Statute of Frauds. *Maddison v. Alderson* (8 App. Cas. 467), referred to.—Judgment appealed from (41 N. S. Rep. 110), reversed. *McNeil v. Corbett*, xxxix., 608.

5. *Debtor and creditor—Surety—Advances to company—Third party's promise to repay.*]—B., a director of a mining company, advanced money for the company's purposes, which G., the president and largest shareholder, orally agreed to repay.—*Held*, affirming the decision of the Appellate Division (35 Ont. L. R. 218), which reversed the judgment for the defendant at the trial (34 Ont. L. R. 210), Fitzpatrick, C.J., and Idington, J., dissenting, that this was

not a promise to pay a debt of the company and void as a contract by virtue of the fourth section of the Statute of Frauds; that G. was a primary debtor for the monies advanced by B. and liable to the latter for their re-payment. *Gillies v. Brown*, liii., 557.

6. *Contract—Purchase of bonds—Memorandum in writing—Correspondence—Relation of documents—Parol evidence.*—In an action against D., claiming damages for breach of a contract to purchase bonds, a telegram from D. to his partner was produced, saying, "I absolutely bought them yesterday after our 'phone conversation, they agreeing to our terms."—*Held*, that parol evidence was properly received to shew that terms had been stated by D., over his signature, that they were the only terms, and were those referred to in the telegram and the two constituted a sufficient memorandum within the Statute of Frauds. *Ridge-way v. Wharton* (6 H. L. Cas. 238) and *Baumann v. James* (3 Ch. App. 508), followed. Duff, J., dissented.—Judgment of the Appellate Division (35 Ont. L. R. 349), affirming that at the trial (34 Ont. L. R. 403), affirmed. *Doran v. McKinnon*, liiii., 609.

7. *Statute of Frauds—Contract—Resolution by municipal corporation—Acceptance of offer to purchase—Evidence—Written instruments—Estoppel*, xxxiv., 132.

See CONTRACT.

8. *Statute of Frauds—Sale of goods—Contract by correspondence—Delivery—Principal and agent—Statutory prohibition—Illicit sale of intoxicating liquors—Knowledge of seller—Validity of contract*, xxxvii., 55.

See CONTRACT.

9. *Assignment—Insolvency—Preference—Trust*, xlvii., 392.

See ASSIGNMENT.

10. *Contract—Settlement of action—Debt of another. MacEwan v. Toronto Gen. Trusts Corp.*, liv., 381.

See CONTRACT.

## STATUTE OF JAMES.

*Cause of action—Limitation of actions—Contract—Foreign judgment—Yukon Ordinance*, c. 31 of 1890—21 Jac. I. c. 16—*Statute of Anne—Lex fori—Lex loci contractus—Absence of debtor*, xxxvii., 546.

See LIMITATIONS OF ACTIONS.

## STATUTE OF LIMITATIONS.

1. *Account—Statute of Limitations—Agents or partners—Reference.*—By agreement between them the Hamilton Brass Mfg. Co. was appointed agent of the Barr Cash Co. for sale and lease of its carriers in Canada at a price named for manufacture; net profits to be equally divided and quar-

terly returns to be furnished, either party having liberty to annul the contract for non-fulfilment of conditions. The agreement was in force for three years when the Barr Co. sued for an account, alleging failure to make proper returns and payments.—*Held*, reversing the judgment of the Court of Appeal, Girouard and Davies, JJ., dissenting, that the accounts should be taken for the six years preceding the action only.—On a reference to the master the taking of the accounts was brought down to a time at which defendants claimed that the contract was terminated by notice. The Court of Appeal ordered that they should be taken down to the date of the master's report.—*Held*, that this was a matter of practice and procedure as to which the Supreme Court would not entertain an appeal. *Hamilton Brass Manufacturing Co. v. Barr Cash and Package Carrier Co.*, xxxviii., 216.

2. *Statute of Limitations—Crown lands—Adverse possession—Grant during—Information for intrusion—21 Jac. I. c. 14 (Imp.)*, xxxiv., 533.

See CROWN LANDS.

3. *Possession of part of lands—Colourable title—Evidence*, xxxiv., 627.

See TITLE TO LAND.

4. *Statute of Limitations—Possession of land—Constructive possession—Colourable title—Effect of sheriff's sale*, xxxvii., 157.

See TITLE TO LAND.

5. *Breach of trust—Accounts—Evidence—Nova Scotia "Trusts Act"—2 Edw. VII. c. 13—Liability of trustee—N. S. Order XXXII., r. 3—Judicial discretion*, xxxvii., 163.

See TRUSTS.

6. *Title to land—Room in building—Adverse possession—Incidental rights—Implied grant—License or easement*, xl., 315.

See TITLE TO LAND.

AND see LIMITATIONS OF ACTIONS.

## STIPENDIARY MAGISTRATE.

*Courts of General Sessions of the Peace—Criminal law—Jurisdiction of magistrate—Criminal Code*, s. 785—*Constitutional law—Constitution of criminal courts*, xxxiv., 621.

See CRIMINAL LAW.

## STOCK.

1. *Broker—Purchase on margin—Pledge of stock by broker—Possession for delivery to purchaser*, xxxviii., 601.

See BROKER.

AND see COMPANY; SHAREHOLDER.

2. *Evidence—Burden of proof—Shifting of onus—Sale of bank stock—Allotment to shareholders—Shares refused or relinquished—Sale to public—Authority—R. S. C. (1906) c. 29, s. 34*, xlv., 157.

See SHAREHOLDER.

**STREAMS.**

See RIVERS AND STREAMS.

**STREET RAILWAY.**

*Franchise—Assumption by municipality—Principle of valuation—Operation in two municipalities—Compulsory taking—R. S. O. [1897] c. 208.*—By s. 41 of the "Ontario Street Railway Act" (R. S. O. [1897] c. 208), no municipal council shall grant to a street railway company any privilege thereunder for a longer period than twenty years, and at the expiration of a franchise so granted, or earlier if so agreed upon, it may, on giving six months' previous notice to the company, assume the ownership of the railway and all real and personal property in connection with the working thereof on payment of the value of the same to be determined by arbitration. — *Held*, reversing the judgment of the Court of Appeal (19 Ont. L. R. 57), that the proper mode of estimating the value of the "railway and all real and personal property in connection with the working thereof," was not by capitalizing its net permanent revenue and taking that as the value, but by estimating what it was worth as a railway in use and capable of being operated excluding compensation for loss of franchise.—*Held*, also, that in view of the provisions in the "Street Railway Act" authorizing the municipality to assume ownership of a street railway operating in two or more municipalities the company in this case whose railway was taken over by the Town of Berlin was not entitled to compensation for loss of its franchise in the municipality of Waterloo.—On the expiration of its franchise the company executed an agreement extending for two months the time for assumption of ownership by the municipality, but did not relinquish possession until six months more had elapsed. During the extended time an Act was passed by the legislature reciting all the circumstances, ratifying and confirming the agreement for extension and authorizing the municipality to take possession on payment of the award subject to any variation in the amount by the court.—*Held*, that though this Act did not expressly provide for taking possession on the same footing as if it had been done immediately on the expiration of the franchise its effect was, not to confer on the municipality a new right of expropriation in respect of an extended franchise, but merely to extend the time for assumption of ownership under the original conditions.—The rights of the company to compensation are defined by statute, and there is no provision for an allowance of ten per cent. over and above the actual value of the property. *Berlin v. Berlin and Waterloo Street Ry. Co.*, xlii., 581.

See RAILWAY.

**SUBROGATION.**

1. *Liquidation of insolvent corporation — Distribution and collocation — Privileged claim—Expenses for preservation of estate*

—*Fire insurance premiums—Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 2009 C. O., xxxix., 318.*

See COMPANY.

2. *Fire insurance—Insurance by mortgage—Interest insured — Payment to mortgagee—Subrogation, Cam. Cas. 1.*

See INSURANCE, FIRE.

3. *Winding-up proceedings—Company in liquidation—Sale of assets—Consent to sale of mortgaged ship—Sale by order of court—Mariners' liens—Sale free from incumbrances—Special fund—Privileged charge—Priority—Valuation of security—Release of mortgage—Marshaling securities. Traders Bank of Can. v. Lockwood, xlvi., 593.*

See LIEN.

**SUBSIDIES.**

1. *Aid to railway—Construction of statute—3 Edu. VII. c. 57—Mode of estimating cost of construction of line—Rolling stock and equipment, xxxviii., 137.*

See RAILWAYS.

2. *Railway aid—Provincial subsidy—Construction of statute—60 Vict. c. 4, s. 12 (Que.)—54 Vict. c. 88, s. 1(j), (Que.)—Breach of condition—Compromise by Crown officers—Obligation binding on the Crown—Right of action—Application of subsidy to extension of line of railway, xxxix., 682.*

See RAILWAYS.

**SUBSTITUTION.**

1. *Right of appeal — Interest of appellant — Parties to action—Art. 77 C. P. Q.—Sale of substituted lands — Will—Prohibition against alienation—Arts. 252, 253a, 968 et seq. C. C.—Res judicata.*—Where a person who might have an eventual interest in substituted lands has not been called to the family council nor made a party in the Superior Court on proceedings for authority to sell the lands, the order authorizing the sale is, as to him, *res inter alios acta*, does not prejudice his rights and, therefore, he cannot maintain an appeal therefrom. *Prévost v. Prévost*, xxxv., 193.

2. *Construction of will—Usufruct — Substitution — Partition between institutes — Validating legislation—60 Vict. c. 95 (Q.)—Construction of statute—Restraint of alienation—Interest of substitutes—Devise of property held by institute under partition — Devolution of corpus of estate en nature—Accretion—Res judicata—Arts. 368, 948 C. C.*—The effect of the statute, 60 Vict. c. 95 (Que.), respecting the will of the late Amable Prévost, read in conjunction with the provisions of the will and codicils therein referred to, is to declare the deed of partition between the beneficiaries thereunder final and definitive and not merely provisional; the judgment of the Court of Queen's Bench, on the appeal side, taken under that statute, has no other effect. Neither the statute nor the judgment referred to sanctions the view that the said

will and codicils constitute more than one substitution; there was but one substitution created thereunder in favour of all the joint legatees and, consequently, accretion takes place among them within the meaning of article 868 of the Civil Code, in the event of any legacy lapsing, under the terms of the will, upon the death of an institute without issue prior to the opening of the substitution. In such case, the share of the institute dying without issue devolves to the other joint legatees, as well in usufruct as in absolute ownership, and, consequently, none of the institutes or substitutes have the right of disposing of any portion of the testator's estate, by will or otherwise, prior to the date of the opening of the substitution.—Judgment appealed from (Q. R. 28 S. C. 257), reversed. *DeHertel v. Goddard* (66 L. J. P. C. 90), distinguished. — (Reversed by Privy Council ([1908] A. C. 541.) *Prévost v. Lamarche*, xxxviii., 1.

3. *Will—Universal legacy—Powers vested in legatee—Devise by legatee of residue undisposed of at her death—Words and phrases—“Or not disposed of”—In her possession.*]—S., by his will, gave all his property absolutely to his wife with a direction that their children should be suitably maintained and educated by her. The will then provided “that should my said wife die leaving any of my said property or rights, in her possession or not disposed of,” upon her said decease the same should be divided “among our said children” in the manner specified.—*Held*, affirming the judgment of the Court of Review (Q. R. 40 S. C. 139, *sub nom. Shearer v. Forman*), that this provision did not empower the wife to dispose of the residue at the time of her death by will, but had the effect of creating a substitution *de residuo* in favour of the children. *Shearer v. Hogg*, xlvii., 492.

4. *Construction of will—Trust—Death of grevé—Accretion—Partition—Apportionment in aliquot shares—Distribution of estate—Partial intestacy—Devolution.*]—By his will, in 1845, M. devised his estate to trustees charging them with its administration in a manner intended to secure the enjoyment of the revenues by his surviving children and their descendants so long as the law would permit; he provided for the division of his estate into as many equal parts as he should leave children him surviving: “pour chacune de ces parts ou portions de mes biens représenter les biens mobiliers et immobiliers dont chacun de mes dits enfants aura seulement la moitié des revenus sa vie durant, ainsi que ci-après pourvu, et pour les revenus de chacune de ces parts ou portions de mes biens être réversibles après le décès de chacun de mes dits enfants aux enfants nés en légitimes mariages d’eux, mes dits enfants, respectivement, et être substitué de descendants en descendants, et ce indéfiniment, ou autant que permis par la loi, en observant que je veux et entends que lors de chaque succession ou transmission de mes biens il en soit fait partage, autant que possible, entre chacun de mes descendants de manière à pouvoir connaître et distinguer la part ou portion des biens dont chacun d’eux aura les revenus sa vie durant.”—At the time of his death, in 1847, eight of his children

survived the testator and his estate was, accordingly, apportioned so far as then possible, the residue, not then conveniently divisible, being held in suspense as a ninth share to be subsequently divided from time to time as it became possible to do so. Of the eight shares, that attributable to L. M., one of the children, was enjoyed by him up to the time of his death, in 1887, intestate as to the share in question and without issue.—*Held*, Brodeur, J., dissenting.—That, as the will did not give the children and grandchildren of the testator any rights as proprietors in his estate, there was no substitution created by its provisions.—*Held*, also, Davies and Brodeur, JJ., dissenting.—That, on the death of L. M. without issue, the share allotted to him remained vested in the trustees subject to distribution among the children of the testator and their descendants in the same manner and upon the same conditions as if L. M. had pre-deceased the testator and the estate had been originally apportioned into seven instead of into eight parts.—*Per* Davies, J.—As there was no provision in the will in respect to children dying without issue, and as there was no collateral substitution, there was intestacy resulting, on the death of L. M. without issue, in regard to the share allotted to him; consequently, it remained vested in the trustees for the benefit of and to be distributed amongst the heirs of the testator living at that date.—*Per* Brodeur, J., dissenting.—The will had the effect of creating a direct and collateral substitution. At the death of L. M. his brothers and sisters became substitutes and their descendants were *appelés*.—Judgment appealed from (Q. R. 20 K. B. 1), reversed. *Masson v. Masson*, xlviii., 42.

5. *Registration—Sheriff's sale—Right of institute—Effect of sale under execution—Arts. 938-941, 950, 953, 2090, 2091 C. C.—Art. 781, C. P. Q.*]—The judgment appealed from (19 R. L. N. S. 444), affirming the judgment of the Superior Court, which maintained the plaintiff's action to recover certain substituted lands on the ground that the rights of the substitute had not been purged by a sheriff's sale thereof, was affirmed with a variation in regard to the *expertise* ordered respecting the amounts to be allowed to the purchaser at the sheriff's sale for improvements made thereon and as to accounts for rents, issues and profits. Brodeur, J., dissented. — *Per* Duff and Anglin, JJ.—The provisions of the Civil Code in regard to the registration of unopened substitutions do not contemplate registration affecting immovables, as such, but refer merely to registration necessary to the operation of the instrument creating the substitution; consequently articles 2090 and 2091 of the Civil Code have no application.—*Per* Duff, J., Brodeur, J., *contra*.—Article 781 of the Code of Civil Procedure deals primarily with procedure and should be construed in connection with article 953 of the Civil Code so as to effectuate rights resting upon the provisions of the Civil Code relating to substantive law. *Vadeboncoeur v. City of Montreal* (29 Can. S. C. R. 91), distinguished. — *Per* Duff and Anglin, JJ.—The registration of an instrument creating a substitution is effective from the date upon which it is registered and

protects the rights of the substitute against the right acquired by a purchaser under a subsequent sale in execution made by the sheriff. *Trudel v. Parent* (Q. R. 2 Q. B. 578), referred to.—*Per Anglin, J.*—In the case of a sale under execution against an institute, subsequent to the registration of the substitution, the purchaser at sheriff's sale acquires merely the personal interest of the institute subject to the substitution; such a title cannot defeat the claim of the substitute.—*Per Brodeur, J.*, dissenting.—Inasmuch as the claim of the execution creditor was for a debt due and exigible prior to the date when the instrument creating the substitution was registered, the effect of the sale by the sheriff was to discharge the immovable sold from the claim of the substitute and to give the purchaser at that sale an absolute title to the land having priority over that of the substitute. *Leroux v. McIntosh*, lii., 1.

## SUCCESSION.

1. *Partition — Litigious rights — Pacte de quotâ litis—Illegal consideration—Pleading — Retrait successoral.*—Where a conveyance affects a specified share of an immovable, the exception of *retrait successoral* cannot be set up under art. 710 C. C. *Baxter v. Phillips* (23 Can. S. C. R. 317) and *Leclerc v. Beaudry* (10 L. C. Jur. 20), referred to.—Moreover, in the present case, as the controversy did not relate to the succession, the assignor could not in any event, exercise the *droit de retrait successoral*.—*Semble*, however, that the retention of a fractional interest in the property might have the effect of preserving the right of *retrait successoral*. (Privy Council refused leave to appeal.) *Meloche v. Deguire*, xxxiv., 24.

AND see TITLE TO LAND.

2. *Successions — Appeal — Jurisdiction — Security by beneficiary—Controversy involved—Future rights—Interlocutory order.*—An application for the approval of security on an appeal to the Supreme Court of Canada from an order directing that a beneficiary should furnish the security required by article 663 of the Civil Code of Lower Canada was refused on the ground that it was interlocutory and could not affect the rights of the parties interested. *Kirkpatrick v. Birks*, xxxvii., 512.

3. *New Brunswick statute—Foreign bank—Special deposit in local branch—Depositor domiciled in Nova Scotia — Debt due by bank—Notice of withdrawal—Enforcement of payment—Domicile.*—L., whose domicile was in Nova Scotia, had, when he died, \$90,000 on deposit in the branch of the Bank of British North America, at St. John, N.B.. The receipt given him when the deposit was made provided that the amount would be accounted for by the Bank of British North America on surrender of the receipt and would bear interest at the rate of 3 per cent. per annum. Fifteen days' notice was to be given of its withdrawal. L.'s executors, on demand of the manager at St. John, took out ancillary probate of his will in that city, and were paid

the money. The Government of New Brunswick claimed succession duty on the amount.—*Held*, reversing the judgment of the Supreme Court of New Brunswick (37 N. B. Rep. 558), *Idington and Duff, JJ.*, dissenting, that the Government was not entitled to such duty.—*Held, per Davies and Anglin, JJ.*, that notice of withdrawal could be given and payment enforced at the head office of the bank in London, England, and perhaps at the branch in Montreal, the chief office of the bank in Canada.—*Attorney-General of Ontario v. Newman* (31 O. R. 340, 1 Ont. L. R. 11), questioned. *Lovitt v. The King*, xliiii., 106.

4. *Constitutional law — Construction of statute—B. N. A. Act, 1867, s. 92, s.-s. 2 — R. S. Q., 1888, s. 1191(b), 1191(c); (Que.) 57 Vict. c. 16, s. 2; 6 Edw. VII. c. 11, s. 1—Legislative jurisdiction — "Direct taxation within the province"—Extra-territorial movables — Decedent domiciled in province.*—The legislative authority of a province in the matter of taxation conferred by s.-s. 2 of s. 92 of the "British North America Act, 1867," which authorizes the levying of "direct taxation within the province," extends to the imposition of duties upon the transmission of movables having a local *situs* outside the provincial boundaries which form part of the succession of a decedent domiciled within the province. *Woodruff v. The Attorney-General for Ontario* (1908), A. C. 508, distinguished. Judgment appealed from (Q. R. 20 K. B. 164), reversed, *Davies and Anglin, JJ.*, dissenting.—At the time of the death of C. L. C., 11th April, 1902, the statutes in force in the Province of Quebec relating to succession duties provided that "all transmissions, owing to death, of the property in, usufruct or enjoyment of movable and immovable property in the province shall be liable to the following taxes calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of the death, etc." Subsequently, by 6 Edw. VII. c. 11, a clause was added (s. 1191(c)), as follows: "The word 'property' within the meaning of this section shall include all property, whether movable or immovable, actually situate or owing within the province, whether the deceased at the time of his death had his domicile within or without the province, or whether the debt is payable within or without the province, or whether the transmission takes place within or without the province, and all movables, wherever situate, of persons having their domicile (or residing), in the Province of Quebec at the time of their death," which was in force at the time of the death of H. H. C., 26th December, 1906. Succession duties were levied, in respect of both estates, upon the whole value of the property devolving including, in each case, movable property locally situated in the United States of America. The action was to recover back those portions of the duties paid in respect of the value of the movables situated outside the limits of the Province of Quebec.—*Held*, reversing the judgment appealed from (Q. R. 20 K. B. 164), *Davies and Anglin, JJ.*, dissenting, that the movable property situated outside the limits of Quebec forming part of the succession of H. H. C. was subject to the duty so im-



posed. — On an equal division of opinion among the judges of the Supreme Court of Canada the judgment appealed from stood affirmed in so far as it held that the movable property situated outside the limits of Quebec forming part of the estate of C. L. C. was not liable to such taxation. *The King v. Cotton*, xlv., 469.

5. *Constitutional law—Provincial legislation—Taxation—Property within province—Bona notabilia—Sale of lands—Covenant—Simple contract—Specialty—Construction of statute—Severable provisions—R. S. M., 1902, c. 161, s. 5 (Man.)—4 & 5 Edw. VII. c. 45, s. 4 (Man.)—Appeal—Jurisdiction—Surrogate Court—Persona designata.*—M., who died in June, 1908, had his domicile in Manitoba and, under a verbal agreement, had erected elevators for L., also domiciled in Manitoba, on lands belonging to the Canadian Pacific Railway Company in the Province of Saskatchewan. Until fully paid for the buildings were to remain the property of M., who was to retain possession and operate the elevators and all net revenues were to be applied in reduction of the price for which they had been constructed. M. also owned lands in Saskatchewan, known as the "Kirkella Lands," which he had agreed to sell to purchasers under agreements under seal, in his possession in Manitoba at the time of his death, by which he remained owner until they had been fully paid for and then the lands were to be conveyed to the purchasers. The agreements contained no specific covenant to pay the price of the lands. The executors denied the right of the Government of Manitoba to collect succession duties in respect of these debts under the Manitoba "Succession Duties Act," R. S. M., 1902, c. 161, s. 5, as re-enacted by the Manitoba statute 4 & 5 Edw. VII., c. 45, s. 4.—*Per curiam.*—The debt due under the contract with L. constituted property within the Province of Manitoba and, as such, was liable for succession duty as provided by the Manitoba statute. Also Davies, J., dissenting, that under the agreements for sale of the "Kirkella Lands" a covenant to pay should be implied and, consequently, they were specialty debts which, as such, constituted property within the Province of Manitoba and were liable for succession duty there.—*Per Davies, Idington, Anglin and Brodeur, JJ.*—The duties imposed by the Manitoba "Succession Duties Act" are direct taxation and, consequently, the legislation imposing them is *intra vires* of the provincial legislature.—*Per Idington and Brodeur, JJ.*—The provincial legislature is competent to impose taxation as a condition for obtaining the benefit of probate.—*Per Duff, J.*—In so far as the statute professes to impose duties in respect of property having a *situs* within Manitoba it is *intra vires* of the provincial legislature. *Rea v. Lovitt* ([1912] A. C. 212), followed. In so far as the statute professes to impose duties on property not having a *situs* in Manitoba, and without respect to the domicile of the owner, the reasoning of Lord Moulton in *Cotton v. The King* ([1914] A. C. 176), applies, the result of which is that such taxation is effectual in cases in which the beneficiary is domiciled

abroad cannot be "direct taxation" within the meaning of s. 92 of the "British North America Act, 1867."—*Per Anglin, J.*—The succession duties imposed by the Manitoba statute are not fees payable for services rendered, but constitute taxation subject to the restrictions mentioned in item 2 of s. 92 of the "British North America Act, 1867."—*Per Duff and Anglin, JJ.*—The provisions of the Manitoba "Succession Duties Act" in respect to taxation which may be *ultra vires* may be treated as severable and do not render the statute ineffective as a whole.—Idington and Anglin, JJ., questioned the jurisdiction of the Supreme Court of Canada under s.s. (d) of s. 37 of the "Supreme Court Act," to entertain an appeal in a matter or proceeding originating in the Surrogate Court of Manitoba.—Anglin, J., suggested that in the proceedings provided for by s. 19 of the Manitoba "Succession Duties Act" the judge of the Surrogate Court would act as *persona designata* and that there may not be an appeal from his order to the Supreme Court of Canada.—The judgment appealed from (24 Man. R. 310), was affirmed. *Standard Trusts Co. v. Treasurer of Manitoba*, li., 428.

6. *Partnership property — Owners not domiciled in province—Interest of deceased partner—R. S. B. C. 1911, c. 217, s. 5, s. s. 1a—Taxation — Legislative jurisdiction — "B. N. A. Act, 1867," s. 92—Constitutional law.*—By s. 5 of the "Succession Duties Act" of British Columbia (R. S. B. C. [1911] c. 217), on the death of any person his property in the province "and any interest therein or income therefrom . . . passing by will or intestacy" is subject to succession duty whether such person was domiciled in the province or elsewhere at the time of his death. M. B. and his brother were partners doing business in Ontario and owning timber limits in British Columbia. The firm had no place of business nor man of business in that province and never worked the limits. The partnership articles provided: "8. If either partner shall die during the continuance of the partnership his executors and administrators shall be entitled to the value of his share in the partnership assets. — 9. On the expiration or other determination of the said partnership a valuation of the assets shall be made and after providing for payment of liabilities the value of such property stock and credits shall be divided equally between the partners, etc." M. B. having died while the partnership existed his share in the partnership assets passed by his will to executors. The Province of British Columbia claimed that his interest in the timber limits was subject to succession duty. — *Held, Davies and Anglin, JJ.*, dissenting, that under the terms of the articles of partnership M. B. at the time of his death had an interest in the timber limits in British Columbia which passed by his will and such interest was subject to duty under section five of the B. C. "Succession Duty Act."—*Held, also*, that the imposition of the duty, if taxation, was "direct taxation within the province" and within the competence of the Legislature of British Columbia. *Boyd v. Attorney-General British Columbia*, li., 532.

**SUDBURY BRANCH, C. P. RY.**

See RAILWAYS.

**SUMMARY CONVICTION.**

1. *Criminal law—Habeas corpus—Certiorari—Keeping house of "ill-fame"—Reviewing evidence—Construction of statute, Cout. Cas. 35.*

See HABEAS CORPUS.

2. *Criminal law—Summary convictions and orders—Procedure by magistrate—Delay in issuing commitment—Term of imprisonment—Commencement of sentence—"Canada Temperance Act, 1878," Cout. Cas. 71.*

See HABEAS CORPUS.

3. *Habeas corpus—Criminal law—Jurisdiction of judge of Supreme Court of Canada—Issue of writ out of jurisdiction of provincial courts—Concurrent jurisdiction—R. S. C. (1886), c. 135, s. 32—Construction of statute—Constitutional law—Powers of Parliament—"Inland Revenue Act"—"Selling and delivering a still and worm"—Cumulative charge—Adjournment—Conviction in absence of accused, Cout. Cas. 110.*

See HABEAS CORPUS.

AND see CRIMINAL LAW.

**SUNDAY OBSERVANCE.**

*Constitutional law—Sunday observance—Reference to Supreme Court—R. S. C. c. 135, s. 37—54 & 55 Vict. c. 25, s. 4—Legislative jurisdiction.]—The statute 54 & 55 Vict. c. 25, s. 4, does not empower the Governor-General in Council to refer to the Supreme Court for hearing and consideration supposed or hypothetical legislation which the legislature of a province might enact in the future. Sedgewick, J., dissenting.—The said section provides that the Governor-in-Council may refer important questions of law or fact touching specified subjects "or touching any other matter with reference to which he sees fit to exercise this power."—Held, Sedgewick, J., *contra*, that such "other matter" must be *ejusdem generis* within the subjects specified.—Legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada. *Attorney-General for Ontario v. Hamilton Street Railway Co.* ([1903] A. C. 524), followed. (Leave to appeal to Privy Council refused, 26th July, 1905.) *In re Legislation respecting Abstention from Labour on Sunday*, xxxv., 581.*

**SUPREME COURT ACT.**

*Constitutional law—Construction of statute—B. N. A. Act, ss. 91, 92, 101—"Supreme Court Act," R. S. C. (1906), c. 139, ss. 3, 60—References by Governor-General in Council—Opinions and advice—Jurisdiction of Parliament—Independence of judges—Judicial functions—Constitution of courts—Administration of laws of Canada—Provincial legislative jurisdiction, xliii., 536.*

*See CONSTITUTIONAL LAW.*

**SURCHARGING AND FALSIFYING.**

*Construction of statute—N.-W. Ter. Ord., 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—Waiver—"Bank Act," R. S. C. (1906) c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages, xliiv., 473.*

See CHATTEL MORTGAGE.

**SURETYSHIP.**

1. *Simple contract—Discharge of one surety under seal—Confirmation of original guarantee—Death of surety—Powers of executors—Continuance of guarantee.]—C. and others, by writing not under seal, agreed to guarantee payment of advances by a bank to a company. Later, by writing under seal, all the sureties but one consented to discharge the latter from liability under the guarantee, the document providing that the parties did in every respect "ratify and confirm the said guarantee and consent to be bound thereby as if the said Ogle Carss had never been a party thereto."—Held, that the last mentioned instrument did not convert the original guarantee into a specialty and C. having died an action thereon by the bank against his executors instituted more than six years after his death was barred by the Statute of Limitations.—Held, *per Davies, Idington and Duff, J.J.*, that the executors had no power to continue the guarantee terminated by C.'s death by consenting to an extension of time for payment of the amount then due notwithstanding the provision in the guarantee that it was to be continuing and that the doctrines of law and equity in favour of a surety should not apply thereto. *Union Bank of Canada v. Clark*, xliiii., 299.*

2. *Insurance—Fidelity bond—Untrue representations—Materiality—R. S. O. [1897] c. 203, s. 141, s.-s. 2.]—The tax collector of a town applied to a guarantee company for a bond to secure the corporation against loss by his dishonesty. The company submitted to the Mayor a number of questions which he answered in writing, one being, "what means will you use to ascertain whether his accounts are correct?" His answer was, "Auditors examine rolls and his vouchers from treasurer yearly." The auditors never examined the rolls during the time the security continued.—Held, *per Fitzpatrick, C.J. and Idington and Anglin, J.J.*, affirming the judgment of the Appellate Division (30 Ont. L. R. 618), *Davies, J.*, dissenting, that this was an untrue representation which avoided the security.—Held, *per Duff, J.*—That the judgment of the court below could be supported on the ground*

that material representations made upon the application for the contract of renewal upon which the action was brought were untrue and that the effect of sub-section (a) is that such misrepresentations avoid the contract *ab initio*.—*Per Davies, J.*—That the answer meant only that the "Municipality Act" required a yearly audit, which would be complied with, and that it was not the Mayor's duty to check such audit and see that it was properly performed.—The bond was renewed without fresh submission of the questions to the Mayor.—*Held*, that as the renewal referred to the Mayor's answers as incorporated therein, and as the latter had signed an agreement that they should form the basis of the bond or any renewal or continuation of the same the answers and representations made thereby applied to such renewal.—*Held*, further, that s. s. 2 of s. 141 of the Ontario "Insurance Act" (R. S. O. [1897] c. 203), does not require the policy to state that any particular representation is material to the contract, its effect being only that no misrepresentation shall void the policy unless it is material.—*Jordan v. Provincial Provident Institution* (28 Can. S. C. R. 554), followed. *Town of Arnprior v. United States Fidelity & Guaranty Co.*, li, 96.

3. *Company law — Trading company — Powers—Contract of suretyship—R. S. O. [1897] c. 191, li., 518.*

See COMPANY LAW.

4. *Debtor and creditor—Surety—Statute of Frauds—Advances to company — Third party's promise to pay. Gilles v. Brown, liii., 557.*

See DEBTOR AND CREDITOR.

See PRINCIPAL AND SURETY.

### SURPRISE.

See COSTS; PLEADING; PRACTICE.

### SURRENDER.

*Crown lands—Lands vesting in Crown—Constitutional law—"B. N. A. Act, 1867," ss. 91(24), 109-117—Title to "Indian lands"—Sale by Commissioner—Property in Canada and the provinces—"Indian Act," 39 Vict. c. 18; R. S. C., 1906, c. 43, s. 42 — Evidence—Public document—Legal maxim. Attorney-General v. Giroux, liii., 172.*

See INDIANS.

### SURVEY.

1. *Highway—Road allowances — Reservations in township survey—General instructions—Model plan—Evidence.]—Where the Crown surveyor returned the plan of original survey of a township without indicating reservations for road allowances upon the boundaries of the township, and his field notes appeared to the court to support the view that no such allowances had been made by him:—Held, that the general instructions and model plan for similar surveys did not afford a presumption sufficiently*

strong for the inference that there was an intention upon the part of the Crown to establish such road allowances.—*Judgment appealed from reversed.—Tanner v. Bissell* (21 U. C. Q. B. 553), and *Boley v. McLean* (41 U. C. Q. B. 260), approved.—(Privy Council refused leave to appeal.) *Township of East Hawkesbury v. Township of Lochiel*, xxxiv., 513.

2. *Boundary—Order for bornage — Evidence — Existing posts and blazings—Injunction—Expertise — Reference to surveyors—Reports and plans—Costs in action en bornage.]—The Court of King's Bench, appeal side (Q. R. 15 K. B. 432), affirmed, with slight variations, a judgment ordering a reference to surveyors to run a boundary line according to a division line, between posts said to exist and blazings on trees, directing them to make a plan and report, and rejecting objections to the reception of certain evidence. The judgment appealed from held that oral testimony as to a former bornage by a surveyor, with his field notes, as to the existence of posts at either end of the division line, blazings along the line and of 18 years possession in conformity therewith was admissible and sufficient to establish a settlement of boundaries, in the absence of an official statement or *proces-verbal* thereof, and that costs had been properly awarded to the successful party in the action *en bornage*, which was governed by the usual rules as to costs. An appeal to the Supreme Court was dismissed for the reasons given in the court below. *Laurentide Mica Co. v. Fortin*, xxxix., 680.*

3. *Expropriation of land—Statutory authority—Manufacturing site—Location—Trespass, xxxiv., 394.*

See EXPROPRIATION.

4. *Appeal — Jurisdiction — Petitory action—Bornage—Surveyor's report — Costs — Order as to location of boundary line — Execution of judgment, xxxiv., 617.*

See BOUNDARY.

5. *Survey — Practice — Pleading — Condition precedent—Construction of statute—59 Vict. c. 62, ss. 9, 25 (B.C.)—Mineral claim — Expropriation — Watercourses — Waterworks—Damages — Waiver—Injunction—Trespass, xxxv., 309.*

See EXPROPRIATION.

6. *Crown land—Mining lease — Trespass — Conversion — Title to land—Evidence — Description in grant — Plan of survey — Certified copy, xxxv., 527.*

See EVIDENCE.

7. *Title to land — Plan of survey—Evidence—Onus of proof—Findings of jury — Error—New trial, xxxviii., 336.*

See NEW TRIAL.

8. *Highways—Old trails of Rupert's Land — Width of highway — Construction of statute — "North-West Territories Act," s. 108—Transfer of highway — Plans—Registration. Rowland v. City of Edmonton, li., 520.*

See HIGHWAYS.

**SWAMP LANDS.**

See MANITOBA SWAMP LANDS.

**SYNDICATE.**

See COMPANY; PARTNERSHIP.

**TARIFF.**

1. *Customs duty—Canadian Tariff, 1907, items 503-506 — Importation of lumber — “Sawn planks” — “Dressed on one side only” — “Not further manufactured” — Sizing by saw—Free entry.*—Under item 504 of the “Customs Tariff, 1907,” the importation into Canada is permitted free of duty of lumber described as “planks, boards and other lumber of wood, sawn, split or cut, and dressed on one side only, but not further manufactured.” — *Held*, reversing the judgment appealed from (14 Ex. C. R. 53), Duff and Anglin, J.J., dissenting, that sawn boards or planks which have been “dressed on one side only” by a machine which not only dresses them on one side but, at the time of such operation, reduces them to uniform widths, by means of another sawing process which has the effect of “sizing” the lumber, have not thereby been subjected to such “further manufacture” as would bring them within the exception from free entry under item 504. *Foss Lumber Co. v. The King*, xlvii., 130.

2. *Construction of statute — “Railway Act,” R. S. C., 1906, c. 37, ss. 26, 318 — Joint freight tariff—Power to supersede — Declaratory decree—Jurisdiction of Board of Railway Commissioners*, xlvii., 155.

See RAILWAYS.

**TAXATION.**

1. *Lease — Construction of covenant — Partial exemption*, xliii., 288.

See LANDLORD AND TENANT.

2. *Succession duty. See Lavitt v. The King*, xliii., 106.

3. *The King v. Cotton*, xlv., 469.

4. *Customs. See Foss Lumber Co. v. The King*, xlvii., 130.

5. *Taxation — Legislative jurisdiction—Ancillary powers. B. C. Electric R. R. Co. v. V. V. & E. R. R. & Nav. Co.*, xlviii., 98.

See RAILWAYS.

6. *Smith v. Vermilion Hills*, xlix., 563.

7. *Municipal by-law — Exemption from taxation — Validating legislation — School rates—“Public School Act,” 55 Vict. c. 60, s. 4 (Ont.)—Special by-law. Can. Niagara Power Co. v. Stamford*, l., 168.

See ASSESSMENT AND TAXES.

8. *Constitutional law—Provincial legislation—Succession duties — Taxation — Property within province—Bona notabilia—Sale of lands—Covenant—Simple contract—Specialty—Construction of statute — Severable provisions—R. S. M., 1902, c. 161, s. 5—4 & 5 Edw. VII. c. 45, s. 4 (Man.)—Appeal—Jurisdiction. Re Muir*, li., 428.

See CONSTITUTIONAL LAW.

See ASSESSMENT AND TAXATION.

9. *Southern Alberta v. McLean, Heron v. Lalonde*, liii., 151.

**TELEPHONE.**

1. *Negligence—Dangerous works — Employer and employee*, xxxvi., 1.

See TRAMWAY.

2. *Pleading—Purchase for value without notice—Onus of proof—Affirmative and negative evidence—Weight of evidence*, xl., 510.

See EVIDENCE.

3. *Evidence — Telephone conversation — Corroboration. Warren, Gzowski & Co. v. Forst & Co.*, xlv., 642.

4. *Railway Board — Powers — “Railway Act” and amendments—Use of long distance lines—Compensation—Loss of local business — Competing companies—Special toll*, liii., 583.

See RAILWAY.

**TEMPERANCE ACT.**

See “CANADA TEMPERANCE ACT.”

**TENANT.**

*Title to land—Room in building—Adverse possession — Statute of Limitations—Incidental, rights — Implied grant—License or easement*, xl., 313.

See TITLE TO LAND.

AND see LANDLORD AND TENANT.

**TENANT FOR LIFE.**

*Title to land—Conveyance of fee—Reservation of life estate — Possession—Ejectment.*—In October, 1853, D. conveyed to his father and two sisters six acres of land for their lives or the life of the survivor. A few days later he conveyed a block of land to M. in fee “saving and excepting” thereout six acres for the life of the grantor’s father and sisters or that of the survivor, or until the marriage of the sisters, on the happening of said respective events the six acres to be and remain the property of M., his heirs and assigns under said deed. Three months later M. conveyed the block of land to R. M. in fee, and when the life estate terminated, in 1903, the latter brought ejectment against the heirs of the life tenants,

who claimed the six acres on the ground that the deed to M. contained no grant of the same and also because the life tenant had had adverse possession for more than twenty years.—*Held*, that as the evidence shewed that the life tenants went into possession under R. M. the title of the latter could not be disputed and the statute would not begin to run until the life estate terminated. *Held*, per Idington, J., that R. M. under his deed and that to his grantor had the reversion to the fee in the six acres after the life estate terminated. The lease of the life estate was given to R. M. with the other title deeds on conveyance of the land to him and on the trial it was received in evidence as an ancient document relating to the title and coming from proper custody. It was not executed by the lessees and no counterpart was proved to be in existence.—*Held*, that it was properly admitted in evidence. *Dods v. McDonald*, xxxvi., 231.

### TENDER.

1. *Judicial sale of railways — Interested bidder — Disqualification as purchaser — Counsel and solicitors—Art. 1484 C. C. — Construction of statute—Discretionary order —Review by Appellate Court—4 & 5 Edw. VII. c. 158 (D.)—Public policy*, xxxvii., 303.

See RAILWAYS.

2. *Accident insurance—Condition of policy—Notice—Tender before action—Waiver*, xlii., 386.

See INSURANCE, ACCIDENT.

3. *Chattel mortgage—Sale under power—Notice—Offer to redeem—Equitable relief—Evidence—Proceedings taken in good faith*, xli., 302.

See CHATTEL MORTGAGE.

### TERMS, INTERPRETATION OF.

See WORDS AND PHRASES.

### THEATRES.

*Construction of statute—Quebec “Sunday Act” — Prohibition of theatrical performances—Local, municipal and police regulations—Criminal law — Legislative jurisdiction — Validation by federal legislation — “Lord’s Day Act,” xli., 502.*

See CONSTITUTIONAL LAW.

### THREE-MILE-ZONE.

*Canadian waters—Fishing by foreign vessels—Legislative jurisdiction — Seizure on high seas—Pursuit beyond territorial limit — International law—Constitutional law — Seacoast fisheries—Construction of statute—B. N. A. Act, 1867, s. 91. s.-s. 12—R. S. C. c. 94, ss. 2, 3, 4, xxxvii., 385.*

See CONSTITUTIONAL LAW.

### TIMBER.

1. *Construction of contract—Sale of timber—Fee simple—Right of removal—Reasonable time.*]—In 1872 M., owner of timber land, sold to B. the pine timber thereon with the right to remove it within ten years. In 1881 another agreement replaced this and conveyed all the timber standing, growing or being on the land to have and to hold the same unto the said party of the second part, his heirs and assigns “forever” with a right at all reasonable times during years to enter and cut and remove the same. B. exercised his rights over the timber at times up to his death in 1893, and his executors did so after his death, M. not objecting. In 1903 persons authorized by said executors entered and cut timber and continued until 1905. The following year B. brought an action for an injunction against further cutting, a declaration that the right to take the timber had lapsed and for damages.—*Held*, affirming the judgment of the Court of Appeal (15 Ont. L. R. 557), Davies and Duff, J.J., dissenting, that the instrument executed in 1881 did not convey to B. the fee simple in the standing timber, but only gave him the right to cut and remove it within a reasonable time, and that such time had elapsed before the entry to cut in 1903 and M. was entitled to damages. *Beatty v. Mathewson*, xl., 557.

2. *Constitutional law—Provincial companies’ powers—Operations beyond province — Insurance against fire—Property insured — Standing timber—Return of premiums—B. N. A. Act, 1867, s. 92 (11), xxxix., 405.*

See INSURANCE, FIRE.

3. *Title to land—Sale — Construction of deed — Reservation of growing timber — Rights of vendor and purchaser—Resolutive condition*, xl., 98.

See DEED..

4. *Mandamus—Driving timber—Order to fix tolls—Past user of stream — Appeal — River improvements—R. S. O. (1897) c. 142, s. 13, xl., 523.*

See MANDAMUS.

5. *Sale of standing timber—Registration of real rights—Ownership — Distinction of things—Movables and immovables—Priority of title*, xli., 105.

See REGISTRY LAWS.

6. *Rivers and streams—Floating logs — Servitude—Faculty or license — Possessory action—Injunction. Price Bros. v. Tanquay*, xliii., 133.

See APPEAL.

7. *Watercourses—Driving timber—“Damages resulting” — Reparation — Riparian rights—Construction of statute—Arts. 7298, 7349 R. S. Q., 1909 — Servitude—Injury caused by independent contractor—Liability of owner of timber. Dumont v. Fraser*, xlviii., 137.

See RIVERS AND STREAMS.

8. *Action—Damages — Timber on pre-empted lands—Rights of pre-emptor—B. O.*

"Land Act," R. S. B. C., 1911, c. 129, ss. 77 et seq. and 132—Negligence—Fire set by railway locomotive, xlix., 33.

See DAMAGES.

9. License to cut timber—Indian lands—R. S. C. [1886] c. 43, ss. 54 and 55—License for twelve months—Regulations—Renewal of license, li., 20.

See CROWN.

### TIMBER LICENSE.

1. Timber license—Crown lands in British Columbia—Real estate—Personalty—Contract—Sale—Exchange—Consideration—Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof—Pleading and practice.]—A sale of rights under licenses to cut timber on provincial Crown lands in British Columbia is a contract for the sale of interests in real estate, and the timber berths are subject to a vendor's lien for the unpaid purchase money.—The doctrine of vendor's lien for unpaid purchase money is applicable to every sale of personal property over which a court of equity assumes jurisdiction. *In re Stucley* (1906), 1 Ch. 67, followed.—In order to protect himself against the enforcement of a vendor's lien, a defendant relying on the equitable defence of purchase for value without notice is bound to allege in his pleadings and to prove that he became purchaser of the property in question for valuable consideration and without notice of the lien. *In re Nisbett and Potts' Contract* ([1905] 1 Ch. 391; [1906] 1 Ch. 386), followed. *Whitehorn Brothers v. Davison* ([1911] 1 K. B. 463), distinguished.—(Leave to appeal to the Privy Council was refused on the 29th of July, 1911.) *Laidlaw v. Vaughan-Rhys*, xlv., 458.

2. Construction of deed—Description of land—License to cut timber—Ambiguities latent—Evidence—Boundary of timber area, xxxviii., 75.

See DEED.

3. Mining Act—Grant of mining land—Reservation of pine timber—Right of grantee to cut for special purposes—Trespass—Cutting pine—Right of action, xlv., 45.

See MINING LAWS.

### TIMBER MARKS.

*Sale of railway ties—Delivery—Bank Act lien—Trade marks—Timber marks.*]—The action was for the price of railway ties sold to the company and the question on the appeal was as to 20,000 of these ties claimed by T. & Co., as purchasers from the Union Bank, which claimed them under a Bank Act lien for advances to G., by whom they had been manufactured. The validity of the lien was contested for want of sufficient description as required in the Bank Act, and questions arose on the appeal as to whether timber brands are property marks or merely trade marks, and if they make *prima facie* proof of ownership under the Timber Marks' Act passed in 1870. Both courts below

decided against the appellant on the ground of the insufficiency of the evidence, and on appeal to the Supreme Court of Canada was dismissed for the reasons given in the Superior Court. *Magann v. Grand Trunk Ry. Co.*, Cout. Cas. 266.

### TIME.

1. Construction of statute—"Marsh Act," R. S. N. S. 1900, s. 66, s.-s. 22, 66—Jurisdiction of Marsh Commissioners—Assessment of lands—Certiorari—Limitation for granting writ—Practice—Expiration of time limit—Delays occasioned by judge—Legal maxim—Order *nunc pro tunc*, xxxvii., 79.

See CERTIORARI.

2. Election petition—Time for trial—Enlargement, xxxvii., 601.

See ELECTION LAW.

3. Chattel mortgage—Renewal—Time for filing—Identification of goods—Sufficiency of description—Proof of judgment and execution, Cam. Cas. 436.

See CHATTEL MORTGAGE.

4. Appeal—Jurisdiction—Final judgment—Time for appealing—Exchequer Court Act, R. S. C., 1906, c. 140, s. 82—Exchequer Court Rules, xli., 1.

See APPEAL.

5. Controverted election—Service of petition—Extension of time—Substitutional service—R. S. C., 1906, c. 7, ss. 17, 18, xli., 410.

See ELECTION LAW.

6. Sale of goods by sample—Delivery—Condition f.o.b.—"Sale of Goods Act," R. S. M., 1902, c. 152—Notice of rejection—Reasonable time—Breach of warranty—Damages, xli., 435.

See SALE.

7. Appeal—Limitation of time—Jurisdiction of Board of Railway Commissioners—Leave by judge—Powers of Board—Completed railway—Order to provide station. *G. T. R. v. Dept. Agriculture of Ont.*, xlii., 557.

See BOARD OF RAILWAY COMMISSIONERS.

### TITLE TO LAND.

1. AGREEMENTS, CONVEYANCES AND DEEDS, 1-26.
2. EVIDENCE OF TITLE, 27-34.
3. INCUMBRANCES, 35-41.
4. INHERITANCE, SUCCESSIONS, &C., 42-45.
5. POSSESSION, 46-61.
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### 1. AGREEMENTS, CONVEYANCES AND DEEDS.

1. Conveyance of land—Description of property sold—Partition—Petitory action—

"Quebec Act, 1774"—Introduction of English criminal laws — Champerty—Maintenance — Affinity and consanguinity—Parties interested in litigation—Litigious rights—Pacte de quotâ litis—Contract—Illegal consideration—Specific performance — Retrait successoral.]—The heirs of M. induced several persons related to them either by consanguinity or by affinity to assist them as plaintiffs in the prosecution of a law suit for the recovery of lands belonging to the succession of an ancestor and, in consideration of the necessary funds to be furnished by these persons, six of the respondents and the *mis en cause*, entered into the agreement sued on by which said plaintiffs conveyed to each of the seven persons giving the assistance one-tenth of whatever might be recovered should they be successful in the law suit. In an action *ou pétitoire et en partage*, by the parties who furnished such funds for specific performance of this agreement:—*Held*, reversing the judgment appealed from (Q. R. 12 K. B. 298), Davies, J., dissenting, that the agreement could not be enforced as it was tainted with champerty notwithstanding that the consanguinity or affinity of the persons in whose favour the conveyance had been made might have entitled them to maintain the suit without remuneration as the price of the assistance.—*Held*, further, 1° That there could be no objection to the *demande au pétitoire* being joined in the action for specific performance. — 2° That the defence of *retrait de droits litigieux* could not avail in favour of the defendants as it is an exception which can be set up only by the debtor of the litigious right in question. *Powell v. Watters* (28 Can. S. C. R. 133), referred to. 3° That as the conveyance affected a specified share of an immovable the exception of *retrait successoral* could not be set up under art. 710 C. C. *Boater v. Phillips* (23 Can. S. C. R. 317) and *Leclerc v. Beaudry* (10 L. C. Jur. 20), referred to.—Moreover, in the present case, the controversy does not relate to the succession and, in any event, the assignor cannot exercise the *droit de retrait successoral*.—*Semble*, however, that the retention of a fractional interest in the property might have the effect of preserving the right to *retrait successoral*. (Leave to appeal to Privy Council refused.) *Meloche v. Déguire*, xxxiv., 24.

AND see CHAMPERTY.

2. *Crown lands—Settlement of Manitoba claims—48 & 49 Vict. c. 50 (D.)—49 Vict. c. 38 (Man.)—Construction of statute — Operation of grant—Transfer in presenti — Condition precedent — Ascertainment and identification of swamp lands — Revenues and emblements—Constitutional law.]—The first section of the "Act for the final Settlement of the Claims of the Province of Manitoba on the Dominion" (48 & 49 Vict. c. 50), enacts that "all Crown Lands in Manitoba which may be shewn, to the satisfaction of the Dominion Government, to be swamp lands, shall be transferred to the province and enure wholly to its benefit and uses." — *Held*, affirming the judgment appealed from (8 Ex. C. R. 337), Girouard and Killam, JJ., dissenting, that the operation of the statutory conveyance in favour of the Province of Manitoba was suspended until such time or times as the lands in*

question were ascertained and identified as swamp lands and transferred as such by order of the Governor-General in Council, and that, in the meantime, the Government of Canada remained entitled to their administration and the revenue derived therefrom enured wholly to the benefit and use of the Dominion. (Affirmed by the Privy Council [1904] A. C. 799.) *Atty.-Gen. for Manitoba v. Atty. Gen. for Canada*, xxxiv., 287.

3. *Title to land—Grant from Crown—Description — Navigable waters — Floatable streams—Inlet of navigable river—Implied reservations—Crown domain—Public law — Construction of deed—Evidence—Estoppel—Waiver.]—By the law of England, no waters can be deemed navigable unless they are actually capable of being navigated.—An arm or inlet of a navigable river cannot be assumed to be either navigable or floatable, in consequence of its connection with the navigable stream, unless it be itself navigable or floatable as a matter of fact.—The land in dispute forms part of the bed of a stream, called the Brewery Creek, which was originally a narrow inlet from the Ottawa River (dry during the summer time in certain parts), the waters of which passed over certain lots shown on the survey of the Township of Hull, and granted by description according to that survey to the defendants' *auteur*, in 1806, without any reservation by the Crown of those portions over which the waters of the creek flowed. Under that grant the grantee and his representatives have, ever since, without interference on the part of the Crown, had possession of the lands on both sides of the creek and of the creek itself. The erection, during recent years, of public works in the Ottawa River has caused its waters to overflow into the creek to a considerable extent at all seasons of the year. In 1902, the City of Hull obtained a grant by letters patent from the Province of Quebec of a portion of the bed of the creek, as constituting part of the Crown domain, and brought the present action, *ou pétitoire*, for a declaration of title, the Attorney-General intervening for the province as warrantor.—*Held*, affirming the judgment appealed from (Q. R. 13 K. B. 164; 24 S. C. 59):—1. That, as the Brewery Creek was neither navigable nor floatable in its natural state, the subsequent overflow of the waters of the Ottawa River into it could not have the effect of altering the natural character of the creek.—2. That, as there was no reservation of the lands covered with water in the original grant by the Crown, in 1806, the bed of the creek passed to the grantee as part of the property therein described, whether the waters of the creek were floatable or not.—3. That the uninterrupted possession of the bed of the creek by the grantee and his representatives from the time of the grant with the assent of the Crown was evidence of the intention of the Crown to make an unqualified conveyance of all the lands and lands covered with water situated within the limits designated in the grant of 1806. *Atty.-Gen. for Quebec and City of Hull v. Scott*, xxxiv., 603.*

4. *Sale of mineral claim—Litigious rights —Champerty.]—In Briggs v. Newswander*

(32 Can. S. C. R. 405), the plaintiff was held entitled to a conveyance from defendants of a quarter interest in certain mineral claims. In that action *Newswander et al.* were only nominal defendants, the real interest in the claim being in F. After the judgment was given plaintiff conveyed nine-tenths of his interest to G., the expressed consideration being moneys advanced and an undertaking by G. to pay the costs of that action and another brought by Briggs, and, by a subsequent deed, which recited the proceedings in the action and the deed of the nine-tenths, he conveyed to G. the remaining one-tenth of his interests, the consideration of that deed being \$500 payable by instalments. Briggs afterwards assigned the above-mentioned judgment and his interest in the claims to F. In an action by G. against F. for a declaration that he was entitled to the quarter interest:—*Held*, affirming the judgment appealed from (10 B. C. Rep. 309), that the transfer to G. of the nine-tenths was champertous and the court would not interfere to assist one claiming under a title so acquired.—*Held*, also, that the transfer of one-tenth was valid, being for good consideration and severable from the remainder of the interest. *Giegerich v. Fleutot*, xxxv., 327.

5. *Servitude—Construction of deed—Reservations—“Representatives”—Owners par indivis—Common lanes—Right of passage—Private wall—Windows and openings on line of lane—Arts. 533-538 C. C.*—A conveyance of lands fronting on public highways with the right of passage merely over a private lane does not create a servitude that can entitle the grantee to make windows and openings in walls which are built upon the line of the lane.—A reservation in a deed of partition to the effect that lanes through subdivided lands should be held in common by the proprietors *par indivis* or their representatives must be construed as reserving the rights in common only to the co-proprietors, their heirs or the persons to whom such rights in the lanes might be conveyed. *Lespérance v. Goné*, xxxvi., 618.

6. *Ambiguous description of grantee—“Greek Catholic Church”—Evidence—Construction of deed—Reversal of concurrent findings.*—Where Crown lands were granted “in trust for the purposes of the congregation of the Greek Catholic Church at Limestone Lake,” N. W. T., and it appeared that this description was ambiguous and might mean either the Greek Orthodox Church or the Greek Church in communion with the Church of Rome, it was held that the construction of the grant should be determined by the facts and circumstances antecedent to and attending the issue of the grant and that, in view of the evidence adduced, the words did not mean a church united with the Roman Catholic Church and subject to the jurisdiction of the Pope. Judgment appealed from reversed, the Chief Justice and (Girouard, J., dissenting, on the ground that the concurrent findings of the courts below upon matters of fact ought not to be disturbed. (Appeal to Privy Council dismissed, [1908] A. C. 65.) *Poisshie v. Zacklinski*, xxxvii., 177.

7. *Sale—Construction of deed—Reservation of growing timber—Rights of vendor and purchaser—Resolutive condition.*—A deed of sale of wild lands to be used for agricultural purposes clearly expressed certain specific reservations and contained in addition, a clause as follows: “Et de plus la présente vente est faite à la condition expresse que le dit acquéreur n’aura pas le droit de couper, enlever ou charroyer aucun bois sur le terrain ci-dessus vendu autrement que pour son propre usage pour faire des bâtisses sur le terrain, des clôtures, et du bois de chauffage; il est, en conséquence, convenu que si l’acquéreur coupait du bois en violation de la présente clause, les vendeurs auront droit de demander la résiliation des présentes et de reprendre possession des immeubles ci-dessus vendus sans rien payer à l’acquéreur pour les améliorations qu’il pourra avoir faites. Et tout bois coupé en violation des présentes deviendra, aussitôt coupé, la propriété des vendeurs, car tel est la convention expresse des parties et sans laquelle les présentes n’auraient pas eu lieu.”—*Held*, that, in the absence of any contrary intention expressed in the deed, the title to the lot of land sold passed absolutely to the purchaser with the exception of the special reservations. — *Held*, also that the clause in question had not the effect of reserving to the vendors all the timber standing upon the land sold, nor can it be construed as giving them the right (without rescission upon breach of the resolutive condition) to re-enter on said land for the purpose of removing stumps or second growth timber. *Rioux v. St. Lawrence Terminal Co.*, xl., 98.

8. *Construction of deed—Easement appurtenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Trespass—Right of action.*—A grant of the right to use a lane in rear of city lots “in common with others,” as an easement appurtenant to the lots conveyed entitles the purchaser to make any reasonable use, consistent with the common user, not only of the surface, but also of the space over the lane. The construction of a fire-escape, three feet wide with its lower end 17 feet above the ground (in compliance with municipal regulations), is not an unreasonable use nor inconsistent with the use of the lane in common by others; consequently, its removal should not be decreed at the suit of the owner of the land across which the lane has been opened.—Judgment appealed from affirmed, *MacLennan, J.*, dissenting. *Meighen v. Pacaud*, xl., 188.

9. *Railway aid—Land grant—Crown patents—Dominion Lands Regulations—Reservation of minerals—53 Vict. c. 4—R. S. C. c. 54—Construction of statute—Free grants—Parliamentary contract.*—The Act, 53 Vict. c. 4 (D.), in 1890, granted, as a subsidy in aid of the construction of the railway, certain wild lands of the Crown in the North-West Territories of Canada. When the lands had been earned, by the construction of the railway, the Government of Canada refused to issue patents granting the lands to the railway company, or to the land company to which their rights had been assigned, except subject to the reservation



of all mines and minerals and the right to work the same.—*Held, per Taschereau, C.J. and Girouard, J.*—That the Dominion Lands Regulations of 1889, paragraph 8, providing for reservations in land grants, did not apply to the lands given as subsidy, but exclusively to grants of land made in ordinary course under the general laws governing the sale, use, occupation, and settlement of Crown lands, which, in regard to this subsidy, had been overridden by the Parliamentary grant made in virtue of a contract between the Crown and the railway company; that the railway company's title was perfect without the issue of a patent, which could avail only as evidence of the allotment of particular lands, and there could be no express or implied derogation from the free grant under the statute.—(This view of the case was affirmed, on appeal, by the Privy Council (1904) A. C. 765.)—*Held, per Davies and Armour, J.J.*—That it must be assumed that the lands to be given as subsidy were to be subject to the Dominion Lands Regulations of 1889, notwithstanding that the Act granting the subsidy declared that the lands to be earned by the railway company should be "free grants." (Reversed by the Privy Council, *ubi sup.*)—The judges being thus equally divided in opinion, the appeal stood dismissed with costs, and the Exchequer Court judgment stood affirmed. *Calgary and Edmonton Ry. Co. and Calgary and Edmonton Land Co. v. The King*, Cout. Cas. 271.

10. *Deed of land — Description — Ambiguity — Admissions.*—In an action for trespass to land both parties claimed title from the same source, and the dispute was as to which title included the locus. The deed under which S. claimed contained the following as part of the description: "Then running in an eastwardly direction along the said highway until it comes to a crossway in the public highway and running in a southerly direction until it comes to the waters of Broad Cove." There were two crossways in the highway, and S. contended that the first one reached on the course was indicated, and B. that it was the second lying a little farther west.—*Held*, reversing the judgment of the Supreme Court of Nova Scotia (44 N. S. Rep. 332), *Idington and Duff, J.J.*, dissenting, that to run the course to the first crossway would take it over land not owned by the grantor; that there were other difficulties in the way of taking that course; that S. had apparently for many years treated the second crossway as the boundary; and what evidence there was favoured that view. The construction should, therefore, be that the crossway mentioned in the description was the second of the two. *Reddy v. Stropole*, xlv., 246.

11. *Canal lands—Mis-user by Crown — Condition subsequent—Forfeiture.* *Wright v. The Queen*, Cout. Cas. 151.

12. *Sale—Falsa demonstratio — Specific performance*, xxxv., 282.

See SPECIFIC PERFORMANCE.

13. *Rivers and streams—Navigable and floatable waters—Obstructions to navigation*

—*Crown lands—Letters patent of grant—Evidence—Collateral circumstances leading to grant—Limitation of terms of grant—Riparian rights—Fisheries — Arts. 400, 414, 503 C. C.*, xxxvii., 577.

See RIVERS AND STREAMS.

14. *Construction of deed—Description of land—License to cut timber — Ambiguitas latens—Evidence—Boundary of timber area*, xxxviii., 75.

See DEED.

15. *Dominion mining regulations — Hydraulic mining — Placer mining—Lease — Water grant—Conditions of grant — User of flowing waters—Diversion of watercourse — Dams and flumes—Construction of deed—Riparian rights—Priority of right—Injunction*, xxxviii., 79.

See MINES AND MINING.

16. *Subaqueous mining—Crown grants — Dredging lease—Breach of contract—Subsequent issue of placer mining licenses—Damages—Pleading and practice—Statement of claim—Cause of action*, xxxviii., 542.

See MINES AND MINING.

17. *Vendor and purchaser—Sale of land — Formation of contract — Conditions — Acceptance of title—New term — Statute of Frauds—Principal and agent — Secret commission—Avoidance of contract—Fraud — Specific performance*, xxxviii., 588.

See CONTRACT.

18. *Agreement for sale of land—Principal and agent—Estoppel — "Land Commissioner"—Specific performance*, xxxix., 169.

See SPECIFIC PERFORMANCE.

19. *Construction of deed—Title to land — Servitude—Acquiescence—Estoppel by conduct—Actio negatoria servitutis—Operation of waterworks*, xxxix., 244.

See DEED.

20. *Contract—Construction of agreement — Fee simple—Sale of timber—Right of removal—Reasonable time*, xl., 557.

See TIMBER.

21. *Municipal corporation — Powers — Land tax sales—Purchase by corporation—Vesting of title—Manitoba Real Property Act — Agreement to re-convey—Necessity of by-law*, xli., 18.

See MUNICIPAL CORPORATION.

22. *Lessor and lessee — Covenant to renew — Severance of term — Consent of lessor—Enforcement of covenant — Espropriation—Persons interested. Alex. Brown Milling Co. v. C. P. R.*, xlii., 600.

See LEASE.

23. *Vendor and purchaser—Sale of land—Agreement — Bond to secure payment of price—Conditions as to title. Colwell v. Neufeld*, xlvi., 506.

See VENDOR AND PURCHASER.

24. *Conveyance in fraud of creditor—Husband and wife—Advancement — Trustees —*

*Equitable relief — Restitution—Evidence—Statute of Frauds*, lii., 625.

See PUBLIC POLICY.

25. *Deed—Reservation—Right of passage—Changed conditions—Object of conveyance. Can. Cement v. Fitzgerald*, liii., 263.

See EASEMENT.

26. *Deed of land—Reservation—Right of passage—Changed conditions — Object of conveyance—Easement*, liiii., 263.

See DEED.

## 2. EVIDENCE OF TITLE.

27. *Crown lands—Mining lease—Trespass—Conversion—Title to lands—Evidence — Description in grant—Plan of survey—Certified copy.*—The provisions of s. 20 of "The Evidence Act," R. S. N. S. (1900), c. 160, do not permit the reception of a certified copy of a copy of a plan of survey deposited in the Crown Lands Office to make proof of the original annexed to the grant of lands from the Crown. *Nova Scotia Steel Co. v. Bartlett*, xxxv., 527.

28. *Conveyance of fee—Reservation of life estate — Possession — Ejectment.*—In October, 1853, D. conveyed to his father and two sisters six acres of land for their lives or the life of the survivor. A few days later he conveyed a block of land to M. in fee "saving and excepting" thereout six acres for the life of the grantor's father and sisters or that of the survivor, or until the marriage of the sisters, on the happening of said respective events, the six acres to be and remain the property of M., his heirs and assigns under said deed. Three months later M. conveyed the block of land to R. M. in fee, and when the life estate terminated in 1903, the latter brought ejectment against the heirs of the life tenants, who claimed the six acres on the ground that the deed to M. contained no grant of the same, and also because the life tenant had had adverse possession for more than twenty years.—*Held*, that as the evidence shewed that the life tenants went into possession under R. M., the title of the latter could not be disputed and the statute would not begin to run until the life estate terminated.—*Held, per* Idington, J., that R. M. under his deed and that to his grantor had the reversion to the fee in the six acres after the life estate terminated.—The lease of the life estate was given to R. M. with the other title deeds on conveyance of the land to him and on the trial it was received in evidence as an ancient document relating to the title and coming from proper custody. It was not executed by the lessees and no counterpart was proved to be in existence.—*Held*, that it was properly admitted in evidence. *Dods v. McDonald*, xxxvi., 231.

29. *Plan of survey — Evidence—Onus of proof — Findings of jury — Error — New trial.*—Where it appeared that in directing the jury, at the trial, the judge attached undue importance to the effect of a plan of survey referred to in a junior grant as

against a much older plan upon which original grants of the lands in dispute depended and that the findings were not based upon evidence sufficient in law to shift the onus of proof from the plaintiff and were, likewise, insufficient for the taking of accounts in respect to trespass and conversion of minerals complained of:—*Held*, affirming the order for a new trial made by the judgment appealed from (1 East. L. R. 293), that in the absence of evidence of error therein, the older grants and plan must govern the rights of the parties. *Bartlett v. Nova Scotia Steel Co.*, xxxviii., 336.

30. *Promise of sale—Entry in land-register—Tenant by sufferance—Squatter's rights—Possession in good faith—Eviction—Possessory action—Compensation for improvements—Rents, issues and profits—Set-off—Tender of deed—Restrictive conditions—Evidence—Commencement de preuve par écrit—Pleading and practice—Arts. 411, 412, 417, 419, 1204, 1233, 1476, 1478 C. C.*—The appellants, plaintiffs, are the grantees of the lands in question, part of the Seigniorship of Metapedia, the former proprietors of which had an agent resident in the seigniorship, who administered their affairs there. It had been customary, on applications by intending settlers for the purchase of their wild lands, for this agent to take memoranda of their names and permit them to enter upon the lands, and this was done in respect to the lots in question and the applicants were allowed to hold possession and make improvements thereon without notice of any special conditions limiting the titles which might, subsequently, be granted to them by the owners. The defendants, respondents, acquired the rights of these applicants and, when the plaintiffs tendered deeds of the said lots to them, they refused to accept them on the ground that conditions were inserted which had not been stipulated for at the time of the original entries upon the lots and of which no notice had been given. In actions *au pétitoire*, the defendants pleaded that their possession had been in good faith in expectation of eventually receiving titles without such restrictive conditions as were sought to be imposed and that, in the event of eviction they were entitled to full compensation for the value of all necessary improvements made on the lands without deductions in respect of rents, issues and profits. — *Heid*, affirming the judgment appealed from, the Chief Justice and Duff, J., dissenting: (1) That the memoranda made by the agent were *commencements de preuve par écrit* and, having been followed by possession of the lots, were equivalent to a binding promise of sale without unusual conditions in limitation of any titles which might be granted; (2) that the entries made upon the lands, the possession thereof held by the defendants and their *autours* and the works done by them thereon could not be held to be in bad faith nor with knowledge of defective title; (3) that, under the circumstances and notwithstanding that the defendants had actual notice of prior title, the plaintiffs could not maintain actions *au pétitoire*, although they might be entitled to declarations in confirmation of the deeds tendered, if approved, and to recover the price of the lots; and (4) that the

defendants could not be evicted without compensation for the full value of the necessary and useful improvements so made upon the lands with the knowledge and consent of the agent, and subject to being retained by the proprietors, without any deductions in respect of the rents, issues and profits derivable from the lands. *Price v. Neault* (12 App. Cas. 110), followed; *Lojoie v. Dean* (3 Dor. Q. B. 69), discussed.—*Per Fitzpatrick, C.J.*—Under article 412 of the Civil Code of Lower Canada, the good faith of a possessor of land is dependent upon a grant sufficient to convey real estate or transmit an interest therein. *Saint Lawrence Terminal Co. v. Hallé*; *Saint Lawrence Terminal Co. v. Rioua*, xxxix., 47.

31. *Vendor and purchaser—Sale of land—Condition dependent—Deferred payment—Disclosure of title—Abstract—Refusal to complete—Lapse of time—Defeasance—Specific performance.*—In an agreement for the sale of an interest in land, for a price payable by deferred instalments at specified dates, there was a condition for defeasance, at the option of the vendor, for default in punctual payments, time was of the essence of the contract, and receipt of a deposit on account of the price was acknowledged. Some time before the date fixed for payment of the first deferred instalment the purchasers made requisitions for the production for inspection of the vendor's evidence of title to the interests he was selling and the vendor refused to comply with the requisitions. The payment was not made on the appointed date, and the vendor declared the agreement cancelled in consequence of such default. In suit for specific performance, brought by the purchasers:—*Held*, affirming the judgment appealed from (17 B. C. Rep. 88), that the vendor was bound, upon requisition made within a reasonable time by the purchasers, to produce for their inspection the documents under which he claimed the interests he was selling in the lands; until he had complied with such demand the purchasers were not obliged to make payment of deferred instalments of the price and, in the circumstances, their failure to make the payment in question was not an answer to the suit for specific performance. *Cushing v. Knight* (46 Can. S. C. R. 555), distinguished.—*Per Duff, J.*—In the absence of any express or implied stipulation to the contrary in an agreement respecting the sale of land in British Columbia, which is not held under a certificate of indefeasible title, the purchaser is entitled, according to the rule introduced into that province with the general body of the law of England, to the production of a solicitor's abstract of the vendor's title to the interest in the land which he has agreed to sell. *Newberry v. Langan*, xlvii., 114.

32. *Dedication—Public highway—Expropriation—Presumption—User*, Cam. Cas. 53.  
See HIGHWAY.

33. *Extinction of title to Indian lands—Payment by Dominion—Liability of province.* Ontario v. Dominion, xlii., 1.  
See CONSTITUTIONAL LAW.

34. *Rivers and streams—Navigable or floatable waters—Crown grant—Riparian*

*rights—Title to bed of river—Erection of townships—Description of area included—Costs.* *Maclaren v. Attorney-General for Quebec*, xlii., 656.

### 3. INCUMBRANCES.

35. *Title to land—Mortgage—Foreclosure—Equitable jurisdiction of court—Opening up foreclosure proceedings—Construction of statute—“Real Property Act,” R. S. M. (1902) c. 148—5 & 6 Edw. VII. c. 75, s. 3 (Man.)—Equity of redemption—Certificate of title.*—Under the provisions of s. 126 of the Manitoba “Real Property Act,” R. S. M. (1902), c. 148, as amended by s. 3 of c. 75 of the statute of Manitoba, 5 & 6 Edw. VII., the court has jurisdiction to open up foreclosure proceedings in respect of mortgages foreclosed under ss. 113 and 114 of the Act, notwithstanding the issue of a certificate of title, in the same manner and upon the same grounds as in the case of ordinary mortgages, at all events where rights of a third party holding the status of a *bona fide* purchaser for value have not intervened. — Judgment appealed from (19 Man. R. 560), reversed.—(Leave to appeal to Privy Council refused, 11th July, 1911.) *Williams v. Box*, xlv., 1.

36. *Vente à réméré—Security for loan—Time for redemption—Promise of re-sale—Condition—Equitable relief—Pleading—Waiver—New points on appeal—Mortgage—Practice—Arts. 1549, 1550 C. C.*—Where the right to redeem lands conveyed à *droit de réméré* as security for a loan has not been exercised within the stipulated term, or an extension thereof, the purchaser becomes absolute owner and there is no power in the courts of the Province of Quebec under which an order may be made which could have the effect of extending the time limited for redemption.—After the expiration of the time limited for redemption of lands conveyed à *droit de réméré*, as security for a loan, the purchaser in a letter written to the vendor, requested payment of the loan before a date mentioned therein and, in default of such payment, insisted upon the rights granted by the conveyance.—*Held*, that the letter might be considered as a promise of re-sale of the lands to the vendor which lapsed on failure to make the payment within the time therein stipulated.—*Duff, J.*, took no part in the decision of the appeal.—*Per Fitzpatrick, C.J.* and *Brodeur, J.*—Questions which have not been raised or brought to the attention of the courts below ought not to be considered on an appeal to the Supreme Court of Canada. *Gagnon v. Bélanger*, liii., 204.

37. *Warranty—Future rights—Hypothec* xxxvi., 221.

See APPEAL.

38. *Equitable mortgage—Mines and minerals—Lease of mining lands—Sheriff's sale—Purchase by judgment creditor of mortgage—Registry laws—Priority—Actual notice—Lien for Crown dues paid as rent—C. S. N. B. (1903), c. 30, s. 139, xxxvii., 517.*

See MINES AND MINING.

39. *Privileges and hypothecs — Tramway — Operation of highway — Immobilization by destination — Sale of tramway by sheriff as a "going concern" — Unpaid vendor — Lien on price of cars — Pledge — Contract — Construction of statute, 3 Edw. VII. c. 91 (Que.) — Priority of claim — Collocation and distribution — Arts. 379, 2000 C. C. — Art. 752 Mun. Code. Ahearn & Soper v. N. Y. Trusts, xlii., 267.*

See PRIVILEGES AND HYPOTHECS.

40. *Crown — Homestead and pre-emption rights — Unpatented Dominion lands — "Transfer" — Incumbrance — Charge to secure debts — Sanction of minister — Absolute nullity — Construction of statute — 60 & 61 Vict. c. 29, s. 5; R. S. C. (1906) c. 55, s. 142, xlii., 377.*

See CROWN.

41. *Mortgage — Manitoba "Real Property Act" — Power of sale — Special covenant — Notice — Statutory supervision — Registered title — Equitable rights — Possession by mortgagee — Limitation of action — Construction of statute — R. S. M., 1902, c. 148, s. 75 — "Real Property Limitation Act," R. S. M., 1902, c. 100, s. 20, xlv., 618.*

See MORTGAGE.

#### 4. INHERITANCE, SUCCESSIONS, ETC.

42. *Will — Trust — Conditional devise.] — The property was devised by will as follows: "I give and bequeath to my beloved wife, Margaret McIsaac, all and singular the property of which I am at present possessed, whether real or personal or wherever situate, to be by her disposed of amongst my beloved children as she may judge most beneficial for herself and them, and also order that all my just and lawful debts be paid out of the same. And I do hereby appoint my brother, Donald McIsaac, and my brother-in-law, Donald McIsaac, tailor, my executors to carry out this my last will and testament." — Held, affirming the judgment appealed from (38 N. S. Rep. 60) that the widow took the real estate in fee with power to dispose of it and the personality whenever she deemed it was for the benefit of herself and her children, to do so. *McIsaac v. Beaton*, xxxvii., 143.*

43. *Doweress — Prescription — Statute of Limitations — Heirs at law — Evidence — Parol admissions — Will — Residuary devise.] — C. R., at the time of his death (1864), was the owner in fee of certain lands and died intestate, leaving him surviving his widow, M. R., but no issue. After his death the widow remained in possession and occupation by herself or her tenants up to her death, October 6th, 1881. By lease on the 3rd May, 1881, she demised the premises to the defendant O. for a term of five years and, at the time of her death, O. was in possession as tenant under this lease. The plaintiff was the devisee of the lands under the will of M. R. The defendant R. claimed to be one of the heirs-at-law of C. R. and procured O. to attorn to him as landlord. — Held, that the widow remaining in possession of the lands of her*

husband after his death for a period of ten years, acquired a prescriptive right to the fee as against the heirs-at-law. — Held, that admissions made by the doweress that she was bound to her husband's heirs to cut thistles on the land, and it was her duty to take care of the property given her by the heirs, made to persons having no interest in the property, were not sufficient evidence of an agreement with the heirs-at-law that she was occupying the land in the lieu of dower. — Held, that a will containing a residuary devise in the words: "All the rest and residue of my estate of which I shall be seized and possessed of or to which I shall be entitled at the time of my decease" was sufficient to include lands the title to which at the time of the making of the will had not, but before the testator's death had, ripened into an estate in fee simple by virtue of the Statute of Limitations. *Oliver v. Johnston* (Cout. Dig. 1418), Cam. Cas. 338.

44. *Right of appeal — Interest of appellant — Parties to action — Art. 77 C. P. Q. — Sales of substituted lands — Will — Prohibition against alienation — Arts. 252, 253a, 968 et seq. C. C. — Res judicata, xxxv., 193.*

See APPEAL.

45. *Construction of will — Usufruct — Substitution — Partition between institutes — Validating legislation — 60 Vict. c. 95 (Q.) — Construction of statute — Restraint of alienation — Interest of substitutes — Devise of property held by institute under partition — Devolution of corpus of estate es nature — Accretion — Res judicata — Arts. 868, 948 C. C., xxxviii., 1.*

See WILL.

#### 5. POSSESSION.

46. *Crown lands — Grant during adverse possession — Inquest of office — Information for intrusion — Possession — 21 Jac. I. c. 14 (Imp.)] — Adverse possession against the Crown for twenty years, under the provisions of the statute 21 Jac. I. c. 14 (Imp.) does not prevent the Crown from validly granting the same without first establishing title on an information for intrusion. Judgment appealed from (36 N. B. Rep. 260), reversed, Davies, J., dissenting. (Appeal to Privy Council dismissed, 47 Can. Gaz., 424.) *Maddison v. Emmerson*, xxxiv., 533.*

47. *Colourable title — Possession — Statute of Limitations — Evidence.] — The possession of a part of land claimed under colour of title is constructive possession of the whole which may ripen into an indefeasible title if open, exclusive and continuous for the whole statutory period. — Carrying on lumbering operations during successive winters with no acts of possession during the remainder of each year does not constitute continuous possession. And it is not exclusive where other parties lumbered on the land continuously or at intervals, during any portion of such period. *Wood v. LeBlanc*, xxxiv., 627.*

48. *Sea beaches — Servitude — Possession annale — Possessory action.] — The possession*

necessary to entitle a plaintiff to maintain a possessory action must (in Quebec), be continuous and uninterrupted, peaceable, public and as proprietor for the whole period of a year and a day immediately preceding the disturbance complained of. *Couture v. Couture*, xxxiv., 716.

49. *Trespass—Right of action—Fences—Enclosure—Possession.*—The action was for trespass, but the question in dispute was, in reality, the title to the lands. The Supreme Court affirmed the judgment appealed from (35 N. S. Rep. 462), which decided that the mere enclosure of the land of another, by the proprietor of the adjoining land, by putting up a fence for the purpose of protecting the lands of both parties against incursions of cattle, such fencing being made by mutual consent and arrangement to that end, could not have the effect of dispossessing the actual owner of the land enclosed nor prevent him from maintaining an action for trespass against an intruder thereon or to prevent any one using his land for purposes other than those for which it had been enclosed. *Conway v. Bookman*, xxxv., 185.

50. *Conveyance in fee—Reservation of life estate—Ejectment.*—Heirs of life tenants deprived of benefit of statute. *Dods v. McDonald*, xxxvi., 231.

See TITLE TO LAND.

51. *Limitation of actions—Unregistered deed—Subsequent registered mortgage—Possession—Right of entry.*—R. T. in 1891, being about to marry W. T. and wishing to convey to him an interest in her land, executed a deed of the same to a solicitor, who then conveyed it to her and W. T. in fee. The solicitor registered the deed to himself, but not the other, forging on the same a certificate of registry, and he, in 1892, mortgaged the land and the mortgage was duly registered. R. T. and W. T. were in possession of the land all the time from 1891, and only discovered the fraud practised against them in 1902. In 1903 the mortgagee brought action to enforce his mortgage.—*Held*, affirming the judgment of the Court of Appeal (9 Ont. L. R. 105), *Davies and Nesbitt, JJ.*, dissenting, that the legal title being in the solicitor from the time of the execution of the deed to him the Statute of Limitations began to run against him then and the right of action against the parties in possession was barred in 1901. (Reversed by Privy Council, [1908] A. C. 60.) *McFity v. Tranouth*, xxxvi., 455.

52. *Statute of Limitations—Possession of land—Constructive possession—Colourable title.*—McI. by his will devised sixty acres of land to his son charged with the maintenance of his widow and daughter. Shortly afterwards the son with the widow and other heirs conveyed away four of the sixty acres and nearly thirty years later they were deeded to McD. Under a judgment against the executors of McI. the sixty acres were sold by the sheriff and fifty, including the said four, were conveyed by the purchaser to McI.'s son. The sheriff's sale was illegal under the Nova Scotia law. The son lived on the fifty acres for a time and then went

to the United States, leaving his mother and sister in occupation until he returned twenty years later. During this time he occasionally cut hay on the four acres, which was only partly enclosed, and let his cattle pasture on it. In an action for a declaration of title to the four acres:—*Held*, that the occupation by the son under colour of title of the fifty acres was not constructive possession of the four which he had conveyed away and his alleged acts of ownership over which were merely intermittent acts of trespass. *McIsaac v. McDonald*, xxxvii., 157.

53. *Ownership—Artificial watercourse—Canal banks—Trespass—Possessory action—Borneage—Practice.*—The possessory action lies only in favour of persons in exclusive possession à titre de propriétaire.—The ownership of a canal serving as a tail-race for a water-mill naturally involves the ownership of the banks of the canal and the right to make use thereof for the purpose of maintaining the tail-race in efficient condition.—In the present case, the bank of the canal had fallen in at a place adjoining lands belonging to D., and the projection thus formed had been, for some years, occupied by him. A. made an entry for the purpose of removing this obstruction, and re-building a retaining wall to support the bank. In a possessory action by D.:—*Held*, that as the original boundary had become obliterated the decision of the question of possession should be postponed until the limits of the canal bank had been re-established. *Parent v. The Quebec North Shore Turnpike Road Trustees* (31 Can. S. C. R. 526), followed. *Delisle v. Arcand*, xxxvii., 668.

54. *Room in building—Adverse possession—Statute of Limitations—Incidental rights—Implied grant—License or easement.*—Possession of an upper room in a building supported entirely by portions of the story beneath may ripen into title thereto under the provisions of the Statute of Limitations.—I., one of several owners of land with a building thereon, sold his interest to a co-owner and afterwards occupied a room in said building as tenant for his business. The room was on the second story and inside the street door was a landing leading to a staircase by which it was reached. I. had the only key provided for this street door and always locked it when leaving at night. He paid rent for the room at first and then remained in possession without paying rent for twelve years. The annual tax bills for the whole premises were generally, during that period, left in the room he occupied and were sent by him to the managing owner who paid the amounts. In an action to restrain the owners from interfering with his possession of said room and its appurtenances:—*Held*, reversing the judgment of the Court of Appeal (15 Ont. L. R. 286) and restoring with a modification that of the trial judge (14 Ont. L. R. 17), *Idington and MacLennan, JJ.*, dissenting, that I. had acquired a title under the Statute of Limitations to said room and to so much of the structure as rested on the soil to which he had acquired title.—*Held, per Davies, J.* He had also acquired a proprietary right to the staircase and the portions of the building supporting said room.—

*Per Fitzpatrick, C.J. and Duff, J.* The Statute of Limitations does not as against the party dispossessed annex to a title acquired by possession incidents resting on the implication of a grant. I, had, therefore, acquired no rights in the supports. — *Per Idington and Maclellan, JJ.* The use of the landing and staircase was, at most, an easement and must continue for twenty years to produce the statutory title, and to give title to the supports there would have to be actual possession which was not the case here. *Iredale v. Loudon*, xl., 313.

55. *Possession—Prescription — Interruptive acknowledgment—Evidence.*—The company claimed prescriptive title to a part of the bed of a small river on which D., as the respondents' *auteur*, had been a riparian owner. D. had leased lands on the banks of the river to the company which, it was alleged, included the property in dispute. The only evidence as to interruption of prescription consisted of a letter by the company to D. enclosing a cheque in payment for "use of your interest in Cap Rouge River this year," with an indorsement by D. acknowledging receipt of the funds "with the understanding that the navigation of the river is not to be prevented."—*Held*, reversing the judgment appealed from (13 Ex. C. R. 116), *Girouard and Idington, JJ.*, dissenting, that the memorandum was too vague to serve as an interruptive acknowledgment sufficient to defeat the title claimed by the company. *Cap Rouge Pier, Wharf and Dock Co. v. Duchesnay*, xlv., 130.

56. *Foreshore — Title by possession — Nature of possession—Disclaimer—Evidence of title—Nullum Tempus Act.*—In proceedings by the Dominion Government for expropriation of land on the Miramichi River the owner, T., claimed compensation for the part of the adjoining foreshore of which he had no documentary title. It was proved that in 1818 the original grantee had leased a part of the land and the privilege of erecting a boom for securing timber on the river in front of it; that his successors in title had, by leasing and devising it, dealt with the foreshore as owners; that for over forty years, from about 1840 the boom in front of it was maintained and used by the owners of the land; and that at low tide the logs in the boom would rest on the solum.—*Held*, reversing the judgment of the Exchequer Court (15 Ex. C. R. 177), *Davies and Idington, JJ.*, dissenting, that there was sufficient evidence of adverse possession of the foreshore by the owners of the adjoining land for more than sixty years to give the present holder title thereto.—*Per Anglin, J.*—From a continuous use for more than forty years, which is proved, a prior like user may be inferred. Moreover, from the evidence of assertion of ownership and possession since 1818 a lost grant might, if necessary, be presumed.—*Per Davies and Idington, JJ.*—The placing and use of the boom was only incidental to the lumber business carried on at this place and the consent of the riparian owner thereto cannot be regarded as a claim of adverse possession. The presumption of lost grant was not pleaded and cannot be relied on; moreover, a lost grant could not be presumed in the circumstances.—On application by the Minister

of Justice for a disclaimer of damages for the taking of the foreshore the Government of New Brunswick passed an Order-in-Council stating that the owner of the adjoining land taken claimed title to said foreshore; that it had been used by the owners for booming purposes and otherwise for more than sixty years; that the Attorney-General was of opinion that whatever rights the province may have had were extinguished, and that no claim should be made by it to the said foreshore.—*Held, per Duff, J.*—This is an admission touching the title to the foreshore by the only authority competent to make it, and is evidence against the Dominion Government in the expropriation proceedings; that it is *prima facie* evidence of title by possession in T.; and that there is nothing in the record to impair the strength of this *prima facie* case. *Tweedie v. The King*, lii., 197.

57. *Adverse possession against Crown—“Nullum Tempus Act” — Interruption of possession—Information of intrusion—Judgment by default—Acknowledgment of title—“Real Property Limitations Act” (Ont.)*—A judgment by default, on information of intrusion against persons in possession of Crown lands, which was never enforced, did not interrupt such possession and prevent it ripening into title under the "Nullum Tempus Act."—"The Real Property Limitations Act" of Ontario (C. S. U. C. c. 88, s. 15; R. S. O. [1914] c. 75, s. 14), providing that an acknowledgment of title in writing shall interrupt the adverse possession does not apply to possession of Crown lands and such acknowledgment is not an interruption under the "Nullum Tempus Act."—The provision in the "Ontario Limitation of Actions Act" of 1902, making an acknowledgment apply to interrupt possession of Crown lands is not retroactive or, if it is, it cannot apply to a case in which the adverse possession had ripened into title before it was passed.—*Per Duff, J.*—An intrusion does not, in itself, deprive the Crown of possession, the occupation required to attract the benefit of the first section of the "Nullum Tempus Act," 9 Geo. III. c. 16, is not technically possession; but lands are "held or enjoyed" within the meaning of that section where facts are proved which, in litigation between subject and subject, would constitute civil possession as against the subject owner.—The judgment of the Exchequer Court (16 Ex. C. R. 67), in favour of the Crown on information of intrusion was reversed, *Fitzpatrick, C.J.*, holding that the Crown had failed to prove title, *Idington, J.*, that the claim was barred by the negative clause of the first section of the "Nullum Tempus Act," and the other judges that the defendants had obtained title by operation of the "Nullum Tempus Act." *Hamilton v. The King*, liv., 331.

58. *Injunction — Boundary — Riparian rights—Prescription. City of Hull v. Scott*, Cout. Cas. 264.

59. *Possessory action—Appeal*, xxxvi., 23.  
See ACTION.

60. *Trespass—Easement—Public way — Dedication—User—Prescription — Estoppel —“Law and Transfer of Property Act,” R.*

*S. O.*, 1897, c. 119. *Peters v. Sinclair*, xviii., 57.

See EASEMENT.

61. *Trespass—Crown grant—Conflicting claims—Priority of title—Evidence. Hirtle v. Boehmer*, 1., 264.

## 6. REGISTRATION.

62. *Constitutional law—Imperial Acts in force in Yukon Territory—2 & 3 Vict. c. 11 (Imp.)—R. S. C. c. 50—Title to land—“Torrens System”—Transfer by registered owner—Fraud—Litigious rights—Notice of his pendens—Irregular registration—Indorsements upon certificate of title—Construction of statute—“Land Titles Act, 1894”—Caveat—57 & 58 Vict. c. 28, s. 126 (D.)—61 Vict. c. 32, s. 14 (D.)—Pleading—Objections taken—Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117—Waiver—Estoppel.]—The provisions of the Imperial Act, 2 & 3 Vict. c. 11, in respect to the registration of notices of litiſpendence and for the protection of *bonâ fide* purchasers *pendente lite* are of a purely local character and do not extend their application to the Yukon Territory by the introduction of the English law generally as it existed on the fifteenth of July, 1870, under the eleventh section of “North-West Territories Act,” R. S. C. c. 50.—Under the provisions of “The Land Titles Act, 1904,” section 126, a *bonâ fide* purchaser from the registered owner of land subject to the operation of that statute is not bound or affected by notice of litiſpendence which had been improperly filed and noted upon the folio of the register containing the certificate of title as an incumbrance or charge upon the land. The exception as to fraud referred to in the 126th section of the Act means actual fraudulent transactions in which the purchaser has participated and does not include constructive or equitable fraud. *The Assets Company v. Mere Roihi* (21 Times L. R. 311), referred to and approved.—In an action to set aside a conveyance as made in fraud of creditors, the defendant desiring to meet the action by setting up that there was no debt due, and, consequently that no such fraud could exist, must allege these objections in his pleadings. In the present case the defendant, having failed to plead such defence, was allowed to amend on terms, the Chief Justice dissenting. *Syndicat Lyonnais du Klondyke v. McGrade*, xxxvi., 251.*

63. *Homestead lands—“Land Titles Act,” 6 Edw. VII. c. 24; 8 Edw. VII. c. 29 (Sask.)—Exemption from seizure—Registered incumbrance—“Exemptions Ordinance,” N. W. T., Con. Ord., 1898, c. 27.]—Homestead lands, exempt from seizure under execution by the North-West Territories “Exemptions Ordinance,” are not affected by any charge or incumbrance in consequence of the registration of writs of execution against the homesteader under the provisions of the “Land Titles Act” of the Province of Saskatchewan, 6 Edw. VII. c. 24, s. 129, as amended by 8 Edw. VII. c. 29, s. 10; consequently, the transferee of such lands under conveyance from such homesteader acquires them free and clear of*

any incumbrance resulting from the registration of such execution. Judgment appealed from (3 Sask. L. R. 280), affirmed. *Northwest Thresher Co. v. Fredericks*, xlv., 318.

64. “*Torrens System*”—*Priority of right—Registration—Caveat—Notice—Construction of statute—Saskatchewan “Land Titles Act,” 6 Edw. VII. c. 24—Equities between purchasers—Assignment of contract—Conditions—Right enforceable against registered owner.]—Under the provisions of the Saskatchewan “Land Titles Act” (6 Edw. VII. c. 24), the lodging of a caveat in the land titles office in which the title to the lands in question is registered, prevents the acquisition of any legal or equitable interest in the lands adverse to or in derogation of the claim of the caveator.—A company, being registered owner of lands under the Act, entered into a written agreement to sell them to P., who assigned his interest in the contract to G., who then agreed to transfer his equitable interest, thus acquired, to A. Subsequently, without knowledge of A.’s interest, McK. & B. acquired a like interest from G. A caveat claiming interest in the lands was then lodged by A., in the proper land titles office, and, without inquiry or actual notice of the registration of the caveat, McK. & B. afterwards obtained the approval of the company to the assignment which had been made to them. In an action for specific performance.—*Held, per Davies, Idington, Anglin and Brodeur, JJ.*, that, as the purchasers from G. were on equal terms as to equities, A. had priority in point of time at the date when his caveat was lodged; that such priority had been preserved by the registration of the caveat, and that the subsequent advantage which would, otherwise, have been secured by the company’s approval of the assignment to McK. & B. was postponed to any equitable right which A. might have to a conveyance. And, further, *per Idington, J.*, that, irrespective of the lodging of the caveat, A. had prior equity to the subsequent assignees.—The agreement by the company provided that no assignment of the contract should be valid unless it was for the whole of the purchaser’s interest and was approved by the company, and also that the assignee should become bound to discharge all the obligations of the purchaser towards the company. Until the time of the approval of the assignment to McK. & B., none of these conditions had been complied with.—*Held, per Davies, Idington, Anglin and Brodeur, JJ.*, that the conditions in restriction of such assignments of the original contract could be invoked only by the company.—*Held, per Duff, J.*, dissenting, that, as the rights of G. against the company had never become vested in A., according to the provisions of the contract, he had acquired no enforceable right against the company, the registered owner of the lands, and, consequently, he had no legal or equitable interest in them which could be protected by caveat.—Judgment appealed from (4 Sask. L. R. 111), affirmed, *Duff, J.*, dissenting. *McKillop & Benjafield v. Alexander*, xlv., 551.*

65. “*Land Titles Act*,” R. S. Sask., 1909, c. 41—*Fraud—Cancellation of certificate of*



*title—Appeal—Findings of fact—Review by Appellate Court.*]—The appellant obtained a transfer of lands which had been executed by the registered owner to him through some mistake or inadvertence, and, although he was aware that these lands had been previously transferred by the beneficial owner to the respondent, he registered the transfer and thereby secured a certificate of title therefor in his own name as the owner.—*Held*, affirming the judgment appealed from (1 West. W. R. 148), that the certificate of title issued to the appellant should be cancelled, under the provisions of the "Land Titles Act" (R. S. Sask., 1909, c. 41), as having been fraudulently obtained.—*Per Anglin, J.*—Where error in the findings of the trial judge can be demonstrated wholly by argument it is the duty of an appellate court to review questions of fact even where those findings have been against fraud, and upon oral testimony. *Coghlan v. Cumberland* ([1898] 1 Ch. 704); *The "Gairloch"* ([1899] 2 Ir. R. 1), and *Khooh Sit Hoh v. Lim Thean Tong* ([1912] A. C. 323), followed. *Annable v. Coventry*, xlv., 573.

66. *Married woman—Separate property—Liability for debts of husband—Registry law—"Real Property Act"—"Married Women's Act"—Conveyance during coverture*, xl., 334.

See MARRIED WOMAN.

67. *Sale of standing timber—Registration of real rights—Ownership—Distinction of things—Movables and immovables—Priority of title*, xli., 105.

See REGISTRY LAWS.

68. *Crown lands—Colonization—Location ticket—Transfer by locatee—Sale—Issue of letters patent—Registry laws—Notice—Arts. 1487, 1488, 2082, 2084, 2085, 2098 C. C., l., 311.*

See CROWN LANDS.

69. *Manitoba "Real Property Act," ss. 100, 130—Agreement for mortgage—Caveat—"Interest in land"—Registration subject to incumbrance—Indorsement on instrument registered*, l., 1.

See REGISTRY LAWS.

## 7. TRUSTS.

70. *Title to land—Conveyance upon condition—Public park—Trust—Forfeiture—Assignment of reversionary interest—Decree in favour of assignee—Champernous agreement.*]—C. conveyed lands to the city for the purpose of a park or public recreation place with conditions prohibiting their use for certain specified purposes and, within a time limited, that the city should clear the land of stumps and roots, plough, level and harrow the same according to the natural contour of the ground, seed it down, build a road to it and "maintain the same in such fit, proper and good condition, as aforesaid." In an action by the assignee of C. for a declaration that the city held the lands in trust and for reconveyance of the same to him, under the proviso on breach of conditions, it appeared that about one-

sixth of the land had been left in its natural state, "virgin forest," but that the remainder had been cleared and made fit for "ordinary athletics, Scotch athletics" although not suitable for games or sports requiring "nice" level ground. It appeared, also, that the road has been built, but that, as the population did not increase in the vicinity, the ground was not in demand for athletics or exhibition purposes, they had not been used and had become somewhat covered with undergrowth of chaparral and bracken.—*Held*, Sedgewick, J., dissenting, affirming the judgment appealed from, that there was no such breach of the trusts as could warrant a declaration of forfeiture under the provisos of the deed of conveyance.—*Per Killam, J.*—Had there been a breach of trust, the resulting forfeiture could have been decreed in favour of the assignee of the grantor. *Clark v. City of Vancouver*, xxxv., 121.

71. *Trust—Interest in mining areas—Sale by trustee—Recovery of proceeds of sale—Agreement in writing—Statute of Frauds—R. S. N. S. (1900) c. 141, ss. 4 and 7—Part performance—Acts referable to contract—Evidence—Pleading.*]—M. transferred to C. a portion of an interest in mining areas which he claimed was held in trust for him by the defendant. In an action by C. claiming a share in the proceeds of the sale thereof, no deed or note in writing of the assignment was produced as required by the fourth section of the Nova Scotia Statute of Frauds, and there was no evidence that, prior to the assignment, there had been such a conversion of the interest as would take away its character as real estate.—*Held*, that the subject of the alleged assignment was an interest in lands within the meaning of the Statute of Frauds and not merely an interest in the proceeds of the sale as distinguished from an interest in the areas themselves, and, consequently, that the plaintiff could not recover on account of failure to comply with that statute.—It was shewn that, on settling with interested parties, the defendant had given M. a bond for \$500, as his share of what he had received on the sale of the areas.—*Held*, that, as this act was not unequivocally and in its own nature referable to some dealing with the mining areas alleged to have been the subject of the agreement, it could not have the effect of taking the case out of the operation of the Statute of Frauds. *Maddison v. Alderson* (8 App. Cas. 467), referred to.—Judgment appealed from (41 N. S. Rep. 110), reversed. *McNeil v. Corbett*, xxxix., 608.

72. *Syndicate to promote joint stock company—Partnership—Trust agreement—Construction of contract—Administration by majority of partners—Lapse of time limit—Specific performance*, xxxv., 645.

See SPECIFIC PERFORMANCE.

## 8. OTHER MATTERS.

73. *Ownership—Lease—Sheriff's sale—Insurable interest—Fire insurance—Trust—Beneficiary—Principal and agent—Fraudulent contrivances—Estoppel.*]—The lessor of



real estate insured the leased property "in trust" and notified the insurers that the lessee, his son, was the real beneficiary. The lessee paid all the premiums and, the property having been seized in execution of a judgment against the lessor, the lessee purchased at the sheriff's sale and became owner in fee. He afterwards increased the insurance, the insurer acknowledging, in the second policy, the existence of the first in his favour. The property having been destroyed by fire payment of the amount of the first policy to the lessee was opposed by a judgment creditor of the lessor and the money attached in the possession of the company.—*Held*, that the lessee having had an insurable interest when the first policy issued and being, when he acquired the fee and when the loss occurred, the only person having such interest, he was entitled to the payment of the amount of the policy insured upon the application of the lessor.—*Held*, also, that even if the lessor knew that his father was embarrassed at the time he took the lease and when he purchased the property at the sheriff's sale, that would not make the transaction fraudulent as against the father's creditors.—A creditor who was a party to the action against the lessor in which the property was sold in execution subject to the lease and who did not oppose such sale could not, afterwards, contest payment of the amount of the policy on the ground of fraud. *Langelier v. Charlebois*, xxxiv., 1.

74. *Appeal—Time for bringing appeal—Delays occasioned by the Court—Jurisdiction—Controversy involved.*—An action *au pétitoire* was brought by the City of Hull against the respondents claiming certain real property which the Government of Quebec had sold and granted to the city for the sum of \$1,000. The Attorney-General for Quebec was permitted to intervene and take up the *fait et cause* of the plaintiffs without being formally summoned in warranty.—*Held*, that as the controversy between the parties related to a title to real estate, both appeals would lie to the Supreme Court of Canada notwithstanding the fact that the liability of the intervenant might be merely for the reimbursement of a sum less than \$2,000. *Attorney-General for Quebec and the City of Hull v. Scott*, xxiv., 282.

75. *Constitutional law—Conflict of laws—Legislative jurisdiction—Construction of statute—Retroactive effect—Redemption of land sold for taxes—Vesting of title—Interest in lands—Equitable estate—N. W. T. Ord. 1896, c. 2; 1900, c. 10; 1901, cc. 12, 29 and 30—57 & 58 Vict. c. 28 (D.)—Practice—Form of order.*—The provisions of the N. W. T. Ordinances, c. 2, of 1896, vesting titles of lands sold for taxes in the purchaser forthwith upon the execution of the transfer thereof free of all charges and incumbrances other than liens for existing taxes and Crown dues, are inconsistent with the provisions of the 54th, 59th and 97th sections of the "Land Titles Act, 1894," and, consequently, *pro tanto, ultra vires* of the Legislature of the North-West Territories. *Sedgewick and Killam, JJ., contra.*—The

second section of the N. W. T. Ordinance, c. 12 of 1901, providing for an extension of the time for redemption of lands sold for taxes, deals with procedure only and is retrospective and saves the rights of mortgagees prior to the tax sale so as to permit them to come in as interested persons and redeem the lands. *Sedgewick and Killam, JJ., contra. The Ydun* (15 Times L. R. 361), referred to. *In re Kerr* (5 Terr. L. R. 297), overruled.—*Per Sedgewick and Killam, JJ.* The provisions of the said s. 2 cannot operate retrospectively so as to affect cases in which the transfer had issued and the right of redemption was gone as in the present case. *North British Canadian Investment Co. v. Trustees of St. John School District N. W. T., xxxv., 461.*

76. *Tenant by sufferance—Use and occupation of lands—Art. 1608 C. C.—Promise of sale—Vendor and purchaser—Reddition de compte—Actio ex vendito—Practice.*—The action for the value of the use and occupation of lands does not lie in a case where the occupation by sufferance was begun and contained under a promise of sale; in such a case the appropriate remedy would be by action *ex vendito* or for *reddition de compte*. *Cantin v. Bérubé*, xxxvii., 627.

77. *Specific performance—Tender for land—Agreement for tender—One party to acquire and divide with other—Division by plan—Reservation of portion of land from grant.*—By agreement through correspondence, the G. T. R. Co. was to tender for a triangular piece of land offered for sale by the Ontario Government containing 19 acres and convey half to the C. P. R. Co. which would not tender. The division was to be made according to a plan of the block of land with a line drawn through the centre from east to west, the C. P. R. Co. to have the northern half. The G. T. R. Co. acquired the land, but the Government reserved from the grant two acres in the northern half. In an action by the C. P. R. Co. for specific performance of the agreement:—*Held*, affirming the judgment of the Court of Appeal (14 Ont. L. R. 41), Maclellan and Duff, JJ., dissenting, that the C. P. R. Co. was entitled to one half of the land actually acquired by the G. T. R. Co. and not only to the balance of the northern half as marked on the plan.—The Court of Appeal directed a reference to the master in case the parties could not agree on the mode of division.—*Held*, that such reference was unnecessary and the judgment appealed against should be varied in this respect. *Grand Trunk Ry. Co. v. Canadian Pacific Ry. Co.*, xxxix., 220.

78. *Crown lands—Holders of location ticket—Prior right to mining rights—Privilege reserved to "proprietor of the soil"—Construction of statute—R. S. Q. (1888) ss. 1269, 1440, 1441; 55 & 56 Vict. c. 20 (Que.)*—The expression "proprietor of the soil" in s. 1441 of the Revised Statutes of Quebec, 1888, as amended by 55 & 56 Vict. c. 20, read in connection with s. 1269, Rev. Stats. Que., 1888, is not intended to designate the holder of a location ticket, and, consequently, persons holding Crown lands,

merely as locatees, have no vested preferential rights to grants from the Crown of the mining rights therein, under ss. 1440 and 1441 of the Revised Statutes of Quebec, 1888, as amended by the "Act to amend and consolidate the Mining Law," 55 & 56 Vict. c. 20 (Que.). *Green v. Blackburn*, xl., 647.

79. *Lease for years—Possession by sub-tenant—Purchase at sheriff's sale—Adverse occupation—Evidence—Conveyance of rights acquired—Compromise—Waiver—Estoppel.*—The court held that the acceptance of a deed of compromise in respect to the tenure of real property, which excluded certain lands, estopped the appellant from any claim for compensation for the expropriation of lands forming part of the excluded area. *Sheets v. Tait*, Cout. Cas. 158.

80. *Expropriation of land—Statutory authority—Manufacturing site—Survey—Location—Trespass*, xxxiv., 394.  
See EXPROPRIATION.

81. *Appeal—Jurisdiction—Petitory action—Borinage—Surveyor's report—Costs—Order as to location of boundary line—Execution of judgment*, xxxiv., 617.  
See BOUNDARY.

82. *Declaratory decree—Cloud on title—Injunction*, xxxv., 80.  
See PRACTICE.

83. *Negligence—Electric lighting—Wires on public highway—Proximity to bridge—Injury to child—Dedication*, xxxviii., 27.  
See NEGLIGENCE.

84. *Placer mining—Disputed title—Trespass pending litigation—Colour of right—Invasion of claim—Adverse acts—Sinister intention—Conversion—Blending materials—Accounts—Assessment of damages—Mitigating circumstances—Compensation for necessary expenses—Estoppel—Standing-by—Acquiescence*, xxxviii., 516.  
See MINES AND MINING.

85. *Passory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with water-course—Agreement for user—Expiration of license by non-use—Tacit renewal—Cancellation of agreement—Recourse for damages*, xxxix., 81.  
See ACTION; PRACTICE.

86. *Rights appurtenant to dominant tenement—Construction of ice-house—Change in natural conditions—Flooding of servient tenement—Aggravation of servitude—Injunction—Damages—Abatement of nuisance—Arts. 406, 501, 549 C. C.*, xxxix., 103.  
See NUISANCE.

87. *Liquidation of insolvent corporation—Distribution and collocation—Privileged claim—Expenses for preservation of estate—Fire insurance premium—Notice—Arts. 371, 373, 419, 1043-1046, 1201, 1994, 1996, 2001, 200 C. C.*, xxxix., 318.  
See COMPANY.

88. *Defamation—Printing report of ghost haunting premises—Slander of title—Fair comment—Disparaging property—Special damages—Evidence—Presumption of malice—Right of action*, xxxix., 340.  
See SLANDER OF TITLE.

89. *Rivers and streams—Crown domain—"Flottage"—Driving loose logs—Public servitude—Riparian ownership—Action possessoire—Arts. 400, 503, 507, 2192 C. C.—Art. 1064 C. P. Q.*, xl., 1.  
See RIVERS AND STREAMS.

90. *Mines and minerals—Hydraulic regulations—Application for mining location—Duties imposed on Minister of the Interior—Status of applicant—Vested rights—Contract binding on the Crown*, xl., 258.  
See MINES AND MINING.

91. *Trespass—Conventional line—Boundary—Agreement at trial—Pleading—Practice*, Cam. Cas. 171.  
See TRESPASS.

92. *Easement appurtenant—User of lane—Prescription—Agreement for right of way—Construction of contract—Practice*, Cam. Cas. 352.  
See EASEMENT.

93. *Appeal—Jurisdiction—Action possessoire—Demolition of works—Matter in controversy*, Cout. Cas. 141.  
See APPEAL.

94. *Municipal corporation—Reservation for highway—Opening by-road—Damages*, Cout. Cas. 210.  
See HIGHWAY.

95. *Appeal—Jurisdiction—Supreme Court Act—Duty or fee—Interest in land—Future rights*, xli., 35.  
See APPEAL.

96. *Appeal—Actio pauliana—Controversy involved—Supreme Court Act*, s. 46, xli., 80.  
See APPEAL.

97. *Servitude—Construction of deed—Purchase of dominant and servient tenements—Unity of ownership—Extinction of servitude—Revival by sale of dominant tenement—Effect of sheriff's sale—Purgation of apparent servitude—Reference to former deed creating change—Lost deed—Evidence*, xli., 217.  
See SERVITUDE.

98. *Pre-emption of agricultural land—B. C. Land Act—Water records—Appurtenances*, xli., 286.  
See IRRIGATION.

99. *Easement—Private way—Unity of ownership—Subsequent severance—Revival of easement—Reservation. McClellan v. Powassan Lumber Co.*, xliii., 249.  
See EASEMENT.

100. *Construction of statute—"Alberta Local Improvement Act"—Assessment and*

taxation—Constitutional law—Railway aid—Land subsidy—Crown lands—Interests of private owner, xlv., 170.

See STATUTE.

101. Mining Act—Grant of mining land—Reservation of pine timber—Right of grantee to cut for special purposes—Trespass—Cutting pine—Right of action xlvi., 45.

See MINING LAWS.

102. Appeal—Jurisdiction—Fraudulent conveyance—Statute of Elizabeth. Bateman v. Scott, liii., 145.

See APPEAL.

## TOLLS.

1. Appeal—Jurisdiction—Future rights—Toll-bridge—Exclusive limits—Infringement of privilege—Matter in controversy.]—The plaintiff's action was for \$1,000 for damages for infringement of his toll-bridge privileges, in virtue of the Act, 58 Geo. III. c. 20 (L. C.), by the construction of another bridge within the limit reserved, and for the demolition of the bridge, etc. The judgment appealed from dismissed the action. On a motion to quash the appeal:—*Held*, that the matter in controversy affected future rights and, consequently, an appeal would lie to the Supreme Court of Canada. *Galarneau v. Guilbault* (16 Can. S. C. R. 579) and *Chamberland v. Fortier* (23 Can. S. C. R. 371), followed. *Rouleau v. Pouliot*, xxxvi., 26.

2. Construction of statute—Toll-bridge—Franchise—Exclusive limits—Measurement of distance—Encroachment—58 Geo. III. c. 20 (L.C.).]—The Act, 58 Geo. III. c. 20 (L.C.) authorized the erection of a toll-bridge across the River Etchemin, in the Parish of Ste. Claire, "opposite the road leading to Ste. Thèrèse, or as near thereto as may be, in the County of Dorchester," and by s. 6, it was provided that no other bridge should be erected or any ferry used "for hire across the said River Etchemin, within half a league above the said bridge and below the said bridge."—*Held*, Nesbitt and Idington, J.J., dissenting, that the statute should be construed as intending that the privileged limit defined should be measured up-stream and down-stream from the site of the bridge as constructed.—*Per* Nesbitt and Idington, J.J., that there was not any expression in the statute shewing a contrary intention and, consequently, that the distance should be measured from a straight line on the horizontal plane; but—*per* Idington, J., in this case, as the location of the bridge was to be "opposite the road leading to Ste. Thèrèse," and there was no proof that the new bridge complained of was within half a league of that road, the plaintiff's action should not be maintained. *Rouleau v. Pouliot*, xxxvi., 224.

3. Mandamus—Driving timber—Order to fix tolls—Past user of stream—River improvements—Appeal—R. S. O. [1897] c. 142, s. 13.]—By R. S. O. [1897] c. 142, s. 13, the owner of improvements in a river or stream used for floating down logs may obtain from a district judge an order fixing

the tolls to be paid by other parties using such improvements. On application for a writ of mandamus to compel the judge to make such an order:—*Held*, affirming the judgment of the Court of Appeal (16 Ont. L. R. 21), Davies, J., *dubitante*, and Idington, J., expressing no opinion, that such an order had effect only in case of logs floated down the river or stream after the improvement was made.—*Held, per* Idington, J.—As s. 15 gives the applicant for the order an appeal from the judge's refusal to make it mandamus will not lie.—*Held, per* Duff, J.—The mandamus could issue if the judge had jurisdiction to make the order though he refused to do so in the belief that a prior decision of a Divisional Court was *res judicata* as to his power. *The C. Beck Manufacturing Co. v. Valin and The Ontario Lumber Co.*, xl., 523.

4. Grand Trunk Railway of Canada—Passenger tolls—Third class fares—Construction of statutes—Repeal—16 Vict. c. 37, s. 3 (Can.)—Amendments by subsequent railway legislation, xxxix., 506.

See RAILWAYS.

5. Construction of statute—"Railway Act"—Spur line to industry—Rebate from tolls—R. S. 66, 1906, c. 37, s. 226. G. T. R. v. Hepworth Silica Pressed Brick Co., li., 81.

See RAILWAYS.

6. Construction of statute—"Railway Act"—Spur line to industry—Rebate from tolls—R. S. C. [1906] c. 37, s. 226, li., 81.

See RAILWAY.

## "TORRENS SYSTEM."

1. Title to land—"Land Titles Act," R. S. Sask., 1909, c. 41—Fraud—Cancellation of certificate of title—Appeal—Findings of fact—Review by Appellate Court.]—The appellant obtained a transfer of lands which had been executed by the registered owner to him through some mistake or inadvertence, and, although he was aware that these lands had been previously transferred by the beneficial owner to the respondent, he registered the transfer and thereby secured a certificate of title therefor in his own name as the owner.—*Held*, affirming the judgment appealed from (1 West. W. R. 148), that the certificate of title issued to the appellant should be cancelled, under the provisions of the "Land Titles Act" (R. S. Sask., 1909, c. 41), as having been fraudulently obtained. *Annab v. Coventry*, xlvi., 573.

AND see TITLE TO LAND.

See "LAND TITLES ACT, 1894"; REAL PROPERTY ACT.

2. Homestead lands exemption from seizure, xlv., 318.

See (REGISTRY LAWS.

3. Sale for delinquent taxes—Tax sale deed—Premature delivery—Statutory authority—Condition precedent—Evidence—Presumption—Curative enactment—Certificate of title (B.C.). *Heron v. Lalonde*, liii., 503.

See ASSESSMENT AND TAXATION.

**TORT.**

1. Operation of machinery — Continuing nuisance—Negligence—Droits du voisinage—Vibrations, smoke, dust, etc.—Series of torts—Statutory franchise—Permanent injury—Abatement of nuisance—Prospective damages—Mode of assessing damages—Limitations of actions—Prescription of actions in tort—Arts. 377, 379, 380, 2261 C. C., xxxvi., 329.

See NUISANCE.

2. Negligence—Employee of Crown—Common employment — Defence by Crown — Workmen's Compensation Act, xxxvi., 462.

See NEGLIGENCE.

3. Watercourses—Riparian rights — Expropriation—Trespass—Diversion of natural flow—Injurious affection—Damages—Execution of statutory powers—Arbitration—Injunction—Mandamus—Construction of statute—59 Vict. c. 44 (N.S.), xxxvii., 464.

See RIVERS AND STREAMS.

4. Constitutional law — Construction of statute—"Crown Procedure Act"—R. S. B. C. c. 57—Duty of responsible minister of the Crown—Refusal to submit petition of right—Tort—Right of action—Damages—Pleading—Practice — Withdrawal of case from jury—New trial—Costs, xxxix., 202.

See ACTION.

5. Negligence of fellow servant—Operation of railway—Defective switch—Public work—Liability of Crown—Right of action—Exchequer Court Act, s. 16(c)—"Lord Campbell's Act"—Art. 1056 C. C., xl., 229.

See NEGLIGENCE.

AND see DAMAGES ; NEGLIGENCE.

6. Municipal corporation — Building by-law—Dangerous constructions — Abatement of nuisance—Condition precedent — Notice—Order to repair—Demolition of structure—Trespass — Forcible entry—Damages — Construction of statute — Montreal city charter, xlv., 579.

See MUNICIPAL CORPORATION.

**TRADE AND COMMERCE.**

Constitutional law — Legislative jurisdiction—"Early closing by-law" — Municipal affairs—Property and civil rights — Local and private matters—Regulation of trade and commerce. *Montreal v. Beauvais*, xlii., 211.

See CONSTITUTIONAL LAW.

**TRADE COMBINATION.**

Contract—Public policy — Restraint of trade—Combination—Conspiracy—Construction of statute—"Criminal Code," s. 498—Words and phrases, "unduly" preventing competition, etc., xlv., 1.

See CONTRACT.

**TRADE CUSTOM.**

1. Fire insurance—Contract of re-insurance—Conditions of contract — "Rider" to policy—Limitations of actions—Commencement of prescription—Art. 2236 C. C., xxxv., 208.

See INSURANCE, FIRE.

2. Contract—Sale of goods — Delivery, xxxv., 274.

See CONTRACT.

**TRADE FIXTURES.**

Mining lease—Prospector's license—Testing machinery—Annexation to freehold — Trade fixture—*Fi. ja. de bonis—Sale under execution.*—The licensees of a mining area in Nova Scotia, erected a stamp mill on wild lands of the Crown, for the purpose of testing ores. All the various parts of the mill were placed in position, either resting by their own weight on the soil or steadied by bolts, and the whole installation could be removed without injury to the freehold.—*Held*, that the mill was a chattel or, at any rate, a trade fixture removable by the licensees during the tenure of their lease or license, and, consequently, it was subject to seizure and sale under an execution against goods. Judgment appealed from (36 N. S. Rep. 395), affirmed, but for different reasons.—(Leave to appeal to Privy Council refused, 17th May, 1905.) *Liscombe Falls Gold Mining Co. v. Bishop*, xxxv., 539.

**TRADE MARKS.**

1. Infringement—Inventive term—Coined word—Exclusive use — Colourable imitation—Common idea—Description of goods—Deceit and fraud—Passing-off goods.—The hyphenated coined words "shur-on" and "staz-on", are not purely inventive terms, but are merely corruptions of words descriptive of the goods (in this case, eye-glass frames) to which they were applied, intending them to be so described, and, therefore, they cannot properly be the subject of exclusive use as trade-marks. A trader using the term "staz-on" as descriptive of such goods, is not guilty of infringement of any rights to the use of the term "shur-on" by another trader as his trade-mark, nor of fraudulently counterfeiting similar goods described by the latter term; nor is such a use of the former term a colourable imitation of the latter term calculated to deceive purchasers, as the terms are neither phonetically nor visually alike.—The judgment appealed from (13 Ont. L. R. 144), was affirmed. *Kirstein Sons & Co. v. Cohen Bros.*, xxxix., 286.

2. Sale of railway ties—Delivery—Bank Act lien—Timber marks, *Cout. Cas.* 266.

See LIEN.

3. "Buster Brown"—Validity of registration.—The term "Buster Brown" or "Buster Brown and Tige" for use as the title to a comic section of a newspaper cannot be registered as a trade-mark. — The

judgment appealed from (12 Ex. C. R. 1), was affirmed, Davies and Duff, JJ., dissenting. *New York Herald Co. v. Ottawa Citizen Co.*, xli., 229.

4. *Geographical name — Right to register — Interference.*—A manufacturing company in the United States adopted the word "Bucyrus," the name of a town in Ohio, as a trade name to designate their goods, but did not register it as a trade-mark nor protect their manufactures by patent. They sold their goods in the United States and Canada for many years, and they became well-known as "Bucyrus" manufacturers.—*Held*, affirming the judgment of the Exchequer Court (14 Ex. C. R. 35), that the company was entitled to register the word "Bucyrus" in Canada as a trade-mark for use in connection with such manufactures.—A Canadian company for some years manufactured and sold "Bucyrus" goods as agent for the makers thereof, and built up a good business for the same in Canada. When their agency terminated they sold similar goods of their own manufacture under the name of "Canadian Bucyrus," which they registered as their trade-mark for such goods.—*Held*, affirming the judgment below, that such trade-mark should be expunged from the register. *Canada Foundry Co. v. Bucyrus Co.*, xlvii., 484.

5. *Registration — Rectification of register — Jurisdiction of Exchequer Court — Construction of statute — "Trade Mark and Design Act," R. S. C., 1906, c. 71, ss. 11, 12, 13, 42 — "Exchequer Court Act," R. S. C., 1906, c. 140, s. 23.*—Under the provisions of ss. 11, 12, 13 and 42 of the "Trade Mark and Design Act," R. S. C., 1906, c. 71, and the twenty-third section of the "Exchequer Court Act," R. S. C., 1906, c. 140, the Exchequer Court of Canada has jurisdiction to order the rectification of the register of trade marks, at the suit of any person aggrieved, notwithstanding that the matter has not been referred to the court by the Minister under the provisions of the "Trade Mark and Design Act," Duff, J., dissented.—The judgment appealed from (15 Ex. C. R. 265), was affirmed. *Bergeron, Whissell & Co. v. Joukoping*, li., 411.

## TRAMWAYS.

1. *Municipal franchise — Operation of tramway — Suburban lines — Earnings outside municipal limits — Construction of contract — Payment of percentage — Blended accounts — Estimation of separate earnings.*—The City of Montreal called for tenders for the establishment and operation of an electric passenger railway, within its limits, in accordance with specifications and, subsequently, on the 8th of March, 1893, entered into a contract with a company then operating a system of horse tramways in the city which extended into adjoining municipalities. The contract granted the franchise for the period of thirty years from the 1st of August, 1892, and one of its clauses provided that the company should pay to the city annually, during the term of the franchise, "from the 1st of September, 1892, upon the total amount of its gross earnings arising from the whole operation of its said rail-

way, either with cars propelled by electricity or with cars drawn by horses" certain percentages specified, according to the gross earnings from year to year. Upon the first settlement, on the 1st of September, 1893, the company paid the percentage without any distinction between earnings arising beyond the city limits and those arising within the city, but, subsequently, they refused to pay the percentage except upon the estimated amount of the gross earnings arising within the city. In an action by the city to recover the percentage upon the gross earnings of the tramway lines both inside and outside of the city limits:—*Held*, reversing the judgment appealed from, the Chief Justice and Killam, J., dissenting, that the city was entitled to the specified percentage upon the gross earnings of the company arising from the operation of the tramway both within and outside of the city limits.—(Reversed by Privy Council [1906] R. C. 100). *City of Montreal v. Montreal St. Railway Co.*, xxxiv., 459.

2. *Construction of railway — Injunction — Interested party — Public corporation — Public interest — Lapse of powers — "Railway" or "Tramway" — Local territory — Invalid contract — Public policy — Dominion and Quebec Railway Acts — General advantage of Canada — Municipal Code — Limitations of powers.*—*Per* Sedgewick and Killam, JJ.—A company having power to construct a railway within the limits of the municipality has not such an interest in the municipal highways as could entitle it to an injunction prohibiting another railway company from constructing a tramway upon such highways with the permission of the municipality under the provisions of article 479 of the Quebec Municipal Code. The municipality has power, under the provisions of the Municipal Code, to authorize the construction of a tramway by an existing corporation notwithstanding that such corporation has allowed its powers as to the construction of new lines to lapse by non-user within the time limited in its charter.—*Per* Girouard and Davies, JJ. A railway company which has allowed its powers as to construction to lapse by non-user within the time limited in its charter and which does not own a railway line within the limits of a municipality where such powers were granted has no interest sufficient to maintain an injunction prohibiting the construction therein of another railway or tramway. Where a company subject to the Dominion Railway Act, with powers to construct railways and tramways, has allowed its powers as to the construction of new lines to lapse by non-user within the time limited, it is not competent for it to enter into an agreement with a municipality for the construction of a tramway within the municipal limits under the provisions of article 479 of the Quebec Municipal Code. *Montreal Park and Island Railway Co. v. Chateauguay & Northern Railway Co.*, xxxv., 48.

AND see RAILWAYS.

3. *Negligence — Dangerous works — Ordinary precautions — Employer and employee — Knowledge of risk — Contributory negligence — Voluntary exposure to danger.*—An employee carrying on hazardous works is obliged

to take all reasonable precautions, commensurate with the danger of the employment, for the protection of employees and, where this duty has been neglected, the employer is responsible in damages for injuries sustained by an employee as the direct result of such omission. *Lepitre v. The Citizens Light and Power Company* (29 Can. S. C. R. 1), referred to by Nesbitt, J.—In such a case it is not sufficient defence to shew that the person injured had knowledge of the risks of his employment, but there must be such knowledge shewn as, under the circumstances, leaves no doubt that the risk was voluntarily incurred and this must be found as a fact. *Montreal Park & Island Railway Co. v. McDougall*, xxxvi., 1.

4. *Negligence—Trial—Finding of jury—Exercise of statutory privilege.*—Where a street car company has by its charter privileges in regard to the removal of snow from its tracks and the city engineer is given power to determine the condition in which the highway shall be left after a snow storm, a duty is cast upon the company to exercise its privilege in the first instance in a reasonable and proper way and without negligence. *Mader v. Halifax Electric Tramway Co.*, xxxvii., 94.

5. *Contract—Breach of conditions—Liquidated damages—Penalty—Cumulative remedy—Operation of tramway—Construction and location of lines—Use of highways—Car service—Time-tables—Municipal control—Territory annexed after contract—Abandonment of monopoly—55 Vict. c. 99 (Ont.).*—Except where otherwise specially provided in the agreement between the Toronto Railway Company and the City of Toronto set forth in the schedules to c. 99 of the Statutes of Ontario, 55 Vict., in 1892, the right of the city to determine, decide upon and direct the establishment of new lines of tracks and tramway service, in the manner therein prescribed, applies only within the territorial limits of the city as constituted at the date of the contract. Judgment appealed from (10 Ont. L. R. 657), reversed, Girouard, J., dissenting.—The city, and not the company, is the proper authority to determine, decide upon and direct the establishment of new lines, and the service, time-tables and routes thereon. Judgment appealed from affirmed, Sedgewick, J., dissenting.—As between the contracting parties, the company, and not the city, is the proper authority to determine, decide upon and direct the time at which the use of open cars shall be discontinued in the autumn and resumed in the spring, and when the cars should be provided with heating apparatus and heated. Judgment appealed from reversed, Girouard, J., dissenting.—Upon the failure of the company to comply with requisitions for extensions as provided in the agreement, it has no right of action against the city for grants of the privilege to others; the right of making such grants accrues, *ipso facto*, to the city, but is not the only remedy which the city is entitled to invoke. Judgment appealed from affirmed. Sedgewick, J., dissenting.—Cars starting out before midnight as day-cars may be required by the city to complete their routes, although it

may be necessary for them to run after midnight or transfer their passengers to a car which would carry them to their destinations without payment of extra fares, but at midnight their character would be changed to night cars and all passengers entering them after that hour could be obliged to pay night fares. Sedgewick, J., dissenting.—(Varied on appeal by Privy Council, 26th April, 1907, 49 Can. Gaz. 102.) *Toronto Ry. Co. v. City of Toronto*, xxxvii., 430.

6. *Negligence—Operation of tramway—Precautions for safety of passengers—Crossing cars—Sounding gong—Slackening speed at dangerous places—Neglect of rules—Passenger alighting from front of car—Contributory negligence.*—A passenger on a crowded tram-car, being near the front of the car, on reaching his destination, made his way past several persons standing in the aisle and front vestibule and alighted from the front steps on the side next the parallel track upon which another car was coming at considerable speed in the opposite direction, and was injured. The space between the crossing cars was about 44 inches and there was no rule of the company to prevent passengers alighting from the front steps. The passenger was not aware of the car approaching from the opposite direction when he alighted, and the motorman of the car which struck him had neglected to observe a rule of the company requiring that speed should be slackened and the gong rung continuously while cars were passing each other on the double tracks. The courts below held (15 Man. Rep. 338), that the company was liable in damages on account of the motorman's negligence; that the plaintiff had not been guilty of contributory negligence, under the circumstances; and that the company was obliged to take proper precautions for the safety of passengers, even after they had alighted upon the street beside the tracks. Without calling upon counsel for the respondent, the Supreme Court of Canada dismissed the appeal with costs. *Winnipeg Electric St. Ry. Co. v. Bell*, xxxvii., 515.

7. *Operation of street railway—Carriage of passengers—Contract—Continuous passage.*—The plaintiff wished to proceed to a certain part of Halifax and, when a car came along labelled as going in the required direction, boarded a trailer attached to it which, however, was not so labelled. There was an unusual amount of travel on the street cars that day and when the car containing plaintiff had proceeded a certain distance it was stopped and the passengers informed that it would not go farther in that direction. The plaintiff insisted on his right to be carried to his destination in that car, refused a transfer and hired a cab. In an action for damages the courts below held (38 N. S. Rep. 212), that there was no obligation on the company's part to carry plaintiff to his destination on that particular car, that it was his duty to inquire of the conductor and ascertain where such car was going, and he could not recover. This judgment was affirmed on appeal, Idington, J., dissenting. *O'Connor v. Halifax Tramway Co.*, xxxvii., 528.

8. *Municipal corporation—Agreement with Electric Street Ry. Co.—Use of streets — Payment for—Percentage of receipts—Traffic beyond city—Validity of agreement.*—By agreement between the City of Hamilton and the Hamilton Street Ry. Co. the latter was authorized to construct its railway on certain named streets and agreed to pay to the city, *inter alia*, certain percentages on their gross receipts.—*Held*, following *Montreal Street Ry. Co. v. City of Montreal* ([1906] A. C. 100), that such payment applies in respect to all traffic in the city including that originating or terminating in the adjoining Township of Barton.—*Held*, also, that as, when the railway was extended into Barton, the company agreed with that township to carry passengers from there into the city at city rates, the percentage was payable on the whole of such traffic and not on the portion within the city only.—*Held*, further, that the power of the company to construct its railway was not derived wholly from its charter, but was subject to the permission of the city corporation; the city had, therefore, a right to stipulate for payment of such percentages and the agreement therefor was *intra vires*.—The judgment of the Court of Appeal (10 Ont. L. R. 575), affirming that of Meredith, J., at the trial (8 Ont. L. R. 455), was affirmed. *Hamilton St. Ry. Co. v. City of Hamilton*, xxxviii., 106.

9. *Negligence—Street railway—Excessive speed—Gong not sounded — Contributory negligence — Damages.*—A passenger on a street car in Toronto going west alighted on the side farthest from the other track and passed in front of the car to cross to the opposite side of the street. The space between the two tracks was very narrow and seeing a car coming from the west, as she was about to step on the track, she recoiled, and at the same time the car she had left started, and she was crushed between the two, receiving injuries from which she died. In an action by her father and mother for damages the jury found that the company was negligent in running the east bound car at excessive speed and starting the west bound car and not sounding the gong in proper time. They found also that deceased was negligent, but that the company could, nevertheless, have avoided the accident by the exercise of reasonable care.—*Held*, that the case having been submitted to the jury with a charge not objected to by the defendants and the evidence justifying the findings the verdict for the plaintiffs should not be disturbed. — The plaintiffs should not have had the funeral and other expenses incurred by the father of deceased allowed as damages in the action. *Toronto Ry. Co. v. Mulvaney*, xxxviii., 327.

10. *Negligence — Street Railway Co. — Rules—Contributory negligence — Motorman.*—Rule 212 of the rules of the London St. Ry. Co. provides that "when the power leaves the line the controller must be shut off, the overhead switch thrown and the car brought to a stop . . ." A car on which the lights had been weak and intermittent for some little time passed a point on the line at which there was a circuit breaker when the power ceased to operate. The motorman shut off the controller but,

instead of applying the brakes, allowed the car to proceed by the momentum it had acquired, and it collided with a stationary car on the line ahead of it. In an action by the motorman claiming damages for injuries received through such collision: — *Held*, that the accident was due to the motorman's disregard of the above rule and he could not recover. *Harris v. London St. Ry. Co.*, xxxix., 398.

11. *Negligence—Operation of tramway — Approaching cross-street—Rules of company — Charge of judge—Contributory negligence — Findings of jury.*—A rule of the Toronto Ry. Co. provides that "when approaching crossings and crowded places where there is a possibility of accidents the speed must be reduced and the car kept carefully under control. Go very slowly over all curves, switches and intersections; never faster than three miles an hour . . ." A girl on the south side of Queen Street wished to cross to University Avenue which reaches but does not cross Queen. She saw a car coming along the latter street from the east and thought she had time to cross, but she was struck and severely injured. On the trial of an action for damages the judge in his charge said: "It is not a question, gentlemen of the jury, as to the motorman's duty under the rule, it is a question of what is reasonable for him to do." The jury found that defendants were not guilty of negligence; that plaintiff by the exercise of reasonable care could have avoided the injury; and that she failed to exercise such care by not taking proper precautions before crossing. The action was dismissed at the trial: a Divisional Court ordered a new trial on the ground that the judge had misdirected the jury in withdrawing from their consideration the rules of the company. The Court of Appeal restored the judgment of the trial.—*Held*, affirming the judgment of the Court of Appeal (15 Ont. L. R. 195), which set aside the order of the Divisional Court for a new trial (13 Ont. L. R. 423), Idington, J., dissenting, that the action was properly dismissed.—*Held*, *per* Girouard and Duff, J.J.—The judge's charge was open to objection, but as under the findings of the jury and the evidence plaintiff could not possibly recover, a new trial should be refused.—*Per* Davies, J.—There was no misdirection. The jury were not led to believe that the rules were not to be considered, but only that they should be the standard as to what was or was not negligence, which question should be decided on the facts proved. — *Per* Maclellan, J.—The place at which the accident occurred, where University Avenue meets Queen Street, is not a crossing or intersection within the meaning of the rules and they do not apply in this case. *Brenner v. Toronto Ry. Co.*, xl., 540.

12. *Negligence—Operation of tramway—Use of highway—Repair of streets—Dangerous way—Speed—Headlights — Exercise of ordinary and reasonable care.*—The company's tramway line was laid upon a highway which it was not bound to keep in repair, and there was no provision by which headlights were required to be used on its tram-cars during the night-time. The highway had become dangerous at a curve on



the line on account of accumulations of ice and snow that inclined towards the tracks. After passing the front of a car, coming from the opposite direction, after dark, at the rate of about seven miles an hour and without a head-light, either through a sudden movement of the horse or on account of the inclination of the roadway, the vehicle in which the plaintiff was seated slid towards the side of the car, which struck it with great force and injured him. — *Held, per Taschereau, C.J., and Sedgewick and Davies, J.J.,* that, under the circumstances, the rate of speed at which the car was driven and the absence of a head-light did not constitute actionable negligence on the part of the company.—*Held, per Girouard and Mills, J.J.,* that, as the company was aware of the dangerous condition of the highway at the place where the accident occurred, during the night-time, it was liable for negligence in failing to slacken speed and provide sufficient lights. — *Per Armour, J.* — As the questions involved related merely to questions of fact, the appeal should be dismissed.—The judges being thus equally divided in opinion, the appeal stood dismissed with costs and the judgment appealed from stood affirmed. *Montreal Street Ry. Co. v. McDougall, Cout. Cas. 284.*

13. *Operation of tramway—Negligence—Dangerous way—Removal of ice and snow—Right of way—Costs.*—The action was for damages sustained while the plaintiff was driving along the street railway tracks, on a public highway, between high banks of snow and ice. The car came behind the plaintiff's vehicle, warning was given by sounding the gong and the rate of speed was reduced; plaintiff, however, delayed getting off the tracks until the car was very close to him, and then, in turning out his sleigh slid on the inclined banks, was struck by the side of the car, and he was injured. The courts below held that the tramcar had the right of way, that the injuries were the direct result of the plaintiff's imprudence and dismissed the action. On an equal division in opinion, the appeal stood dismissed with costs. *Vincent v. Montreal Street Ry. Co., Cout. Cas. 309.*

14. *Negligence—Street railway — Explosion—Defective controller—Inspection.*—S. was riding on the end of the seat of an open street car in Toronto when an explosion occurred. The car was still in motion when other passengers in the same seat, apparently in a panic, cried to S. to get off, and when he did not do so, endeavoured to get past him whereby he was pushed off and injured. In an action for damages it appeared that the explosion was caused by a defective controller and that the motorman at once cut off the current, but did not apply the brakes, and the jury found the company negligent in using a rebuilt controller in a defective condition and not properly inspected, and the motorman negligent in not applying the brakes.—*Held, affirming the judgment of the Court of Appeal (27 Ont. L. R. 332),* that the evidence justified the jury in finding that the controller had not been properly inspected and that a proper inspection might have avoided the accident. — *Held, per Idington and Brodeur, J.J., Anglin and Davies, J.J., contra,* that the

motorman was guilty of negligence in not applying the brakes. *Toronto Ry. Co. v. Fleming, xlvii., 612.*

15. *Tramway company—Construction of works—Independent contractor — Dangerous system—Injury to property—Negligence—Exercise of statutory authority—Correlative duty—Damages — Special release.*—A company with statutory authority to construct a tramway acquired a strip of plaintiff's land for its right-of-way, the vendor granting a release for all damages which he might sustain by reason of the construction and operation of the tramway and the severance of his farm. The company let the work to a contractor who, in the construction of the road-bed blasted away a hill-side by a method known as "top-lifting" thereby throwing large quantities of rock outside the right-of-way and upon plaintiff's adjoining lands in such a manner as to interfere with his use thereof. This injury could have been avoided by proper precautions. — *Held, affirming the judgment appealed from (18 B. C. Rep. 81), Fitzpatrick, C.J., hesitante,* that the company was responsible in damages for the omission of their contractor to take precautions necessary to prevent his blasting operations producing the injury to the plaintiff's lands. *Held, further,* that the general language of the release should be so construed as to restrict it to the matters in regard to which it had been granted with reference to the proper exercise of the powers of the company to construct the tramway in question, and that it could not apply to injuries caused through negligence.—*Per Duff, J.*—Where statutory powers respecting the construction of works are being exercised through an independent contractor, the correlative obligation of the beneficiaries of those powers to see that due care is taken to avoid unnecessary injurious consequences to the property of other persons is not discharged when their contractor fails to perform that duty, and they are responsible accordingly. *Hardaker v. Idle District Council ((1896) 1 Q. B. 335), and Robinson v. Beaconsfield Rural Council ((1911) 2 Ch. 188),* referred to. *Vancouver Power Co. v. Hounsome, xlix., 430.*

16. *Negligence—Operation of tramway—"Block and staff" system — Disregard of rules—Defective system.*—A motorman in the defendants' employ was injured in a collision with the car ahead of that upon which he was performing his work. The company's operation rules provided that cars operated in the same direction, as "double-headers," unless block signals were in use, should be kept at least five minutes apart, except in closing up at stations; also that, when the view ahead was obscured, cars should be kept under such control that they might be stopped within the range of vision, but the rule was not enforced. The plaintiff, one of the company's motormen, on a foggy night, ran his car into the rear of another car standing at the station he was entering, and sustained injuries for which he claimed damages, alleging a defective system. The defence set up contributory negligence on the part of the motorman, but made no allusion to the breach of these regulations. A judgment, entered on the



verdict of the jury in favour of the plaintiff, was set aside by the Court of Appeal on the ground that the injury had resulted in consequence of the plaintiff's disregard of the rules.—*Held*, that as the rules had not been enforced by the defendants nor set up in their pleadings they could not be relied upon in support of the charge of contributory negligence.—Judgment appealed from (17 B. C. Rep. 498), reversed and a new trial ordered. *Daynes v. British Columbia Electric Ry. Co.*, xlix, 518.

AND *see* PRACTICE AND PROCEDURE.

17. *Negligence—Operation of tramway—Carriage of passengers—Crossing cars—Undue speed—Sounding gong—Findings of jury. Montreal Street Railway Co. v. Deslongchamps*, xxxvii., 685.

18. "Railway Act, 1903," ss. 23, 184—Construction, etc., of street railways and tramways—Removal of tracks—Board of Railway Commissioners for Canada—Jurisdiction—Condition precedent—Use of highways in cities and towns—Consent by municipal authority—Approval of by-law—Quebec Municipal Code, Arts. 464, 481, xxxvi., 369.

*See* RAILWAYS.

19. "Railway Act, 1903," ss. 47, 186—Board of Railway Commissioners—Jurisdiction—Construction of subway—Apportionment of cost—Person interested or affected—Street railway—Agreement with municipality, xxxvii., 354.

*See* RAILWAYS.

20. *Contract with municipality—Limited tickets—Specific performance—Injunction—Right of action—Parties*, xxxix., 673.

*See* INJUNCTION.

21. *Special leave to appeal—Discretion—Matter in controversy*, Cout. Cas. 322.

*See* APPEAL.

22. *Operation of tramway—Negligence—Evidence—Findings of jury*, Cout. Cas. 349.

*See* PRACTICE.

23. *Operation of tramway—Powers of municipal corporation—Legislative authority—Use of streets—By-law—Conditions imposed—Penalty for breach of conditions—Repeal of by-law—Contractual obligations—Offences against by-law—Jurisdiction of Recorder's Court—Prohibition*, xli., 145.

*See* RECORDER'S COURT.

24. *New trial—Misdirection—Questions for jury—Verdict on issues—Damages*, xli., 431.

*See* DAMAGES.

25. *Privileges and hypothecs—Operation on highway—Title to land—Immobilization by destination—Sale of tramway by sheriff as "going concern"—Unpaid vendor—Lien on price of cars—Pledge—Contract—Construction of statute*, 3 Edw. VII. c. 91 (Que.)—Priority of claim—Collocation and distribution—Arts. 379, 2000 C. C.—Art. 752 Mun. Code, xlii., 267.

*See* LIEN.

26. *Operation of tramway—Negligence—Injury to infant—Reckless running of car. Sydney and Glace Bay Railway Co. v. Lott*, xlii., 220.

27. *Provincial railway—"Through traffic"—Constitutional law—Legislative jurisdiction—Powers of Board of Railway Commissioners—Construction of statute—R. S. C. (1906), c. 37, s. 3(b)—B. N. A. Act, 1867, ss. 91, 92, xliiii., 197.*

*See* RAILWAY.

28. *Damages—Negligence—Physical injuries—Mental shock—Severance of damages*, xliiv., 268.

*See* DAMAGES.

29. *Negligence—Electric railway—Breach of company's rules. Winnipeg Electric Railway Co. v. Hill*, xlvi., 624.

30. *Negligence—Operation of tramway—Passenger riding on platform—Dangerous arrangement of car—Evidence*, xlvii., 395.

*See* NEGLIGENCE.

31. *Negligence—Operation of tramway—Carelessness of person injured—Reckless conduct of motorman.*—The carelessness of the plaintiffs in driving across the tracks of a tramway was, in this case, excused by the reckless conduct of the defendant's motorman in failing to use proper precautions to avoid the consequences of their negligence after he had become aware of it. Judgment appealed from (11 D. L. R. 3; 4 West. W. R. 263), affirmed. *City of Calgary v. Harnovis*, xlviii., 494.

32. *Constitutional law—Board of Railway Commissioners—Highways—Overhead crossings—Apportionment of cost—Legislative jurisdiction—"Railway Act," R. S. C. 1906, ss. 5, 59, 237, 238—B. C. 8 & 9 Edw. VII. c. 32—"B. M. A. Act, 1867," s. 92, item 10. B. C. Electric R. R. Co. v. V. V. & E. R. R. & Nav. Co.*, xlviii., 98.

*See* RAILWAYS.

33. *Practice—Action by dependents—B. C. "Families Compensation Act"—Release by deceased—Defence to action—Repudiation—Fraud—Setting aside release—Personal representative—Right of action—Return of money paid—Limitation of actions—General statutory provision—Carriers—Private Act—B. C. "Consolidated Railway Company's Act"—Statute—R. S. B. C., 1911, c. 82—"Lord Campbell's Act"—(B. C.) 59 Vict. c. 55, s. 60, xlix., 470.*

*See* PRACTICE AND PROCEDURE.

*See* NEGLIGENCE.

*See* RAILWAYS.

## TRANSACTION.

*Fire insurance—Statutory conditions—Notice—Conditions of application—R. S. Q., 1909, arts. 7034-7036—Conditions indorsed on policy—Keeping and storing coal oil—Agent's knowledge—Waiver—Adjustment of claim—Offer of settlement by adjuster—Es-toppel. Laforest v. Factories Ins.*, liii., 296.

*See* INSURANCE, FIRE.

## TRANSCONTINENTAL RAILWAY COMMISSIONERS.

*Petition of right—Contract — Powers of Commissioners of the Transcontinental Railway—Liability of Crown—Construction of statute—3 Edw. VII. c. 71 (D.), xlv., 448.*

See CROWN.

AND see RAILWAY.

## TRANSFER.

See ASSIGNMENT; CONVEYANCE; TITLE TO LAND.

## TREATIES.

1. *Ontario v. Dominion*, xlii., 1.

See INDIANS.

## TRENT VALLEY CANAL.

*Navigation—Trent canal crossing—Swing bridge—Cost of construction—Maintenance—Order in council*, xxxviii., 211.

See RAILWAYS.

## TRESPASS.

1. *Expropriation of land—Arbitration proceedings—Unlawful entry.*—The company, after a void award was made under arbitration, entered upon land and cut down trees and removed gravel therefrom without giving the owners the notice required by statute of their intention to take their property. The owners, by their action above mentioned, claimed damages for trespass as well as the amount of the award.—*Held*, that as the action of the company was not authorized by statute the owners could sue for trespass and as at the trial the action on this claim was dismissed on the ground that such action was prohibited there should be a new trial. *Inverness Ry. and Coal Co. v. McIsaac*, xxxvii., 134.

AND see EXPROPRIATION.

2. *Possession—Evidence — Expropriation—Railway.*—The casual use of land for pasturing cattle in common with other persons does not constitute evidence of possession sufficient to maintain an action for trespass.—Judgment appealed from (1 East. L. R. 524), reversed. *Temiscouata Ry. Co. v. Clair*, xxxviii., 230.

AND see APPEAL.

3. *Placer mining — Disputed title—Trespass pending litigation—Colour of right — Invasion of claim—Adverse acts—Sinister intention—Conversion—Blending materials—Accounts—Assessment of damages—Mitigating circumstances — Compensation for necessary expenses — Estoppel—Standing by—Acquiescence.*—After a favourable judgment by the Gold Commissioner in respect to the boundary between contiguous placer

mining locations and while an appeal therefrom was pending, the defendants, with the knowledge of the plaintiffs, entered upon the location and removed a quantity of auriferous material from the disputed and undisputed portions thereof, intermixed the products without keeping any account of the quantities taken from these portions respectively and appropriated the gold recovered from the whole mass.—In an action for damages, taken subsequently, the plaintiffs recovered for the total value of the gold estimated to have been taken from the disputed portion of the claim, without deduction of the necessary expenses of workings and winning the gold.—*Held*, affirming the judgment appealed from, *Davies, J.*, dissenting, that a correct appreciation of the evidence disclosed a sinister intention on the part of the defendants, that they had deliberately blended the materials taken from both parts of the location, converted the whole mass to their own use and thereby destroyed the means of ascertaining the respective quantities so taken and the proportionate expense of recovering the precious metal therefrom and that, consequently, they were liable in damages for the total value of so much of the intermixed products as were not strictly proved to have come from the undisputed portion of the location.—*Quere.*—Does the English rule governing the assessment of damages in respect of trespasses in coal mines supply a method of assessment applicable in its entirety to placer mining locations? *Lamb v. Kincaid*, xxxviii., 516.

4. *Damages—Cutting timber — Sale to bonâ fide purchaser—Action by owner of land.*—F. conveyed land to his wife for valuable consideration. Shortly after it was discovered that a trespasser had cut timber on said land and sold it to G. who bought in good faith and sold to another *bonâ fide* purchaser. In an action by F.'s wife against the two purchasers the money was paid into court and an interpleader issue granted to decide which of the claimants, the plaintiff or G., was entitled to have it.—*Held*, affirming the judgment of the Court of Appeal (16 Ont. L. R. 123), which reversed the decision of the Divisional Court (14 Ont. L. R. 360), that the plaintiff was entitled to the whole sum. *Duff, J.*, expressed no opinion on the question.—*Held*, also, *Idington, J. dubitante*, and *Duff, J.* dissenting, that if necessary the writ and interpleader order could be amended by adding F. as a co-plaintiff with his wife. *Greer v. Faulkner*, xl., 399.

5. *Title to land—Boundaries — Conventional line—Agreement at trial—Pleading.*—In an action for damages for trespass by McL. on M.'s land and by closing ancient lights McL. claimed title in himself and pleaded that a conventional line between his lot and that of M. had been agreed to by L., a predecessor in title. On the trial the parties agreed to strike out the pleadings in reference to lights and drains and to try the question of a boundary only. McL. alleged that some fourteen years previous he and L. had agreed upon a conventional boundary line between their properties and that a fence was erected thereon, and that all parties had recognized this as the boundary ever since. The Supreme Court of Nova

Scotia held that although the general principle was established that where a lot of land is conveyed describing it as bounded by an adjoining lot, the true dividing line between these lots must be presumed to have been referred to as the boundary of the land conveyed, this is subject to the qualification that the facts do not indicate a different intention on the part of the grantor (which is a question of fact and not of law), and that in the present case the plaintiff's grantor never intended to grant and to covenant for good title land which he did not himself claim and which he knew was in the adverse possession of another, and that M. not being in possession could not recover damages in an action for trespass *quare clausum fregit*.—*Held*, Sir W. J. Ritchie, C.J. and Gwynne, J., dissenting, that the judgment of the court below in favour of the defendant should be affirmed and the appeal dismissed with costs. — *Held*, per Henry, J., that M. had failed to establish title to the land in question, and that he took the deed from his grantor with full knowledge of the apparent boundary line as shewn by the fence erected thereon, and must be taken to have purchased on the understanding that the fence was the boundary line settled upon and agreed to by those under whom he claimed. — *Per* Henry, J., that the plaintiff could not possibly recover in an action *quare clausum fregit*.—*Held*, per Gwynne, J., that upon the evidence all that was intended by L. was to agree upon a conventional line as the southern boundary of the lane, which at that time and continuously down to the institution of the action had been used by both parties, and which was indispensable to the beneficial enjoyment of the property of M., and the parties did not, in so agreeing, intend to affect in any way the title of M. to the land on which the lane was situate. *Grasett v. Carter* (10 Can. S. C. R. 105), discussed. — *Held*, per Gwynne, J.—The Judicature Act, R. S. N. S. (5 ser.) c. 104, has abolished all forms of action and the technicalities incident thereto, and, even if the action was improperly brought in trespass, M. should have been granted the relief to which he was entitled upon the facts proved. *Mooney v. McIntosh*, (xiv., 740); Cam. Cas. 171.

6. *Negligence — Trespasser — Licensee — Overholding tenant.*]—A trespasser or bare licensee injured through negligence may maintain an action. *Sievert v. Brookfield*, xxxv., 494.

AND see MASTER AND SERVANT.

7. *Expropriation of land—Statutory authority—Manufacturing site — Survey—Location*, xxxiv., 394.

See EXPROPRIATION.

8. *Negligence—Electric wires—Trespasser on electric company's poles—Evidence—Remarks of counsel—Contributory negligence—Disagreement of jury—New trial*, xxxiv., 698.

See NEGLIGENCE.

9. *Title to land—Trespass — Possession—Right of action — Enclosure by fencing*, xxxv., 185.

See TITLE TO LAND.

10. *Practice—Pleading—Condition precedent—Construction of statute—59 Vict. c. 62, ss. 9, 25 (B.C.)—Mineral claim—Expropriation — Watercourses — Waterworks — Damages—Waiver—Injunction*, xxxv., 309.

See EXPROPRIATION.

11. *Crown lands—Mining lease—Conversion—Title to land—Evidence—Description in grant—Plan of survey—Certified copy*, xxxv., 527.

See TITLE TO LAND.

12. *New trial—Contradictory evidence — Wilful trespass—Rule in assessing damages — Practice—Adding party—Reversal on appeal*, xxxvi., 152.

See DAMAGES.

13. *Construction of statute—Toll-bridge—Franchise—Exclusive limits—Measurement of distance—Encroachment—58 Geo. III. c. 20 (L.C.)*, xxxvi., 224.

See TOLLS.

14. *Operation of railway—Straying animals—Negligence—Duty as regards trespassers on railway—Herding stock—Evidence—Inferences as to facts*, xxxvi., 641.

See NEGLIGENCE.

15. *Watercourse—Riparian rights — Expropriation — Torts — Diversion of natural flow—Injurious affection—Damages — Execution of statutory powers—Arbitration — Injunction — Mandamus — Construction of statute—59 Vict. c. 44 (N.S.)*, xxxvii., 464.

See RIVERS AND STREAMS.

16. *Title to land—Ownership—Artificial watercourse—Canal banks—Possessory action—Barnage—Practice*, xxxvii., 668.

See TITLE TO LAND.

17. *Negligence—Horse racing — Intruder upon race-track—Carelessness*, xxxviii., 226.

See NEGLIGENCE.

18. *Title to land — Plan of survey—Evidence—Onus of proof—Findings of jury—Error—New trial*, xxxviii., 336.

See NEW TRIAL.

19. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis — Interference with watercourse — Agreement for user — Expiration of license by non-use—Tacit renewal — Conciliation of agreement — Recourse for damages*, xxxix., 81.

See ACTION: PRACTICE.

20. *Negligence—Railway Act, 1903 — 3 Edw. VII. c. 58, s. 237—Animals at large—Construction of statute—Words and terms—"At large upon the highway or otherwise"—Fencing of railway—Trespass from lands not belonging to owner of animals*, xxxix., 251.

See NEGLIGENCE.

21. *Negligence — Electric lighting—Dangerous currents — Breach of contract—Sur-reptitious installations — Liability for damages*, xxxix., 326.

See NEGLIGENCE.

22. *Title to land—Construction of deed—Easement appurtenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Right of action, xl., 188.*

See DEED.

23. *Appeal—Jurisdiction—Title to land—Action possessoire—Demolition of works—Matter in controversy, Cout. Cas. 141.*

See APPEAL.

24. *Mines and minerals—Boundary—Hill-side claim—Jurisdiction—Appeal per saltum—Practice, Cout. Cas. 281.*

See MINES AND MINING.

25. *Municipal corporation—Building by-law—Dangerous constructions—Abatement of nuisance—Condition precedent—Notice—Order to repair—Demolition of structure—Forcible entry—Tort—Damages—Construction of statute—Montreal city charter, xlv., 579.*

See MUNICIPAL CORPORATION.

26. *Mining Act—Grant of mining land—Reservation of pine timber—Right of grantee to cut for special purposes—Cutting pine—Right of action, xlvi., 45.*

See MINING LAWS.

27. *Railway company—Occupation of lands—Side tracks—Continuous trespass—Damages. Canadian Pacific Railway Co. v. Carr, xlvi., 514.*

## TRIAL.

1. *Criminal law—Practice—Charge to jury—Crown case reserved—Reserved questions—Dissent from affirmation of conviction—Appeal—Jurisdiction—Criminal Code, 1892, ss. 742, 743, 744, 750—R. S. C. (1906) c. 146, ss. 1013, 1015, 1016, 1024—Admission of evidence—Res gesta, xxxviii., 284.*

2. *Criminal law—Trial for murder—Improper admission of evidence—Substantial wrong or miscarriage—Criminal Code, s. 1019, xlv., 331.*

See CRIMINAL LAW.

AND see NEW TRIAL; PRACTICE.

## TROVER.

*Ships and shipping—Material used in construction—Sale of goods—Contract—Principal and agent—Misrepresentations—Mistake—Conversion—Evidence—Misdirection—New trial—Ship's husband—Pledging credit of owners—Necessary outfitting at home port, Cout. Cas. 131.*

See SHIPS AND SHIPPING.

## TRUSTS.

1. *Title to land—Conveyance upon conditions—Public park—Trust—Forfeiture—*

*Assignment of reversionary interest—Decree in favour of assignee—Champertous agreement.]—C. conveyed lands to the city for the purposes of a park or public recreation place with conditions prohibiting their use for certain specified purposes and, within a time limited, that the city should clear the land of stumps and roots, plough, level and harrow the same according to the natural contour of the ground, seed it down, build a road to it and "maintain the same in such fit, proper and good condition, as aforesaid." In an action by the assignee of C. for a declaration that the city held the lands in trust and for re-conveyance of the same to him, under the proviso on breach of conditions, it appeared that about one-sixth of the land had been left in its natural state, "virgin forest," but that the remainder had been cleared and made fit for "ordinary athletics, Scotch athletics" although not suitable for games or sports requiring "nice" level ground. It appeared, also, that the road had been built, but that, as population did not increase in the vicinity, the grounds were not in demand for athletic or exhibition purposes, they had not been used and had become somewhat covered with undergrowth of chaparral and bracken. — *Held*, Sedgewick, J., dissenting, affirming the judgment appealed from, that there was no such breach of the trusts as could warrant a declaration of forfeiture under the provisos of the deed of conveyance.—*Per* Killam, J. Had there been a breach of trust, the resulting forfeiture could have been decreed in favour of the assignee of the grantor. (Appeal from 10 B. C. Rep. 31, dismissed.) *Clark v. City of Vancouver*, xxxv., 121.*

2. *Will—Construction of residuary clause—Power of selection—Discretion of trustees—Vagueness or uncertainty—Designated class of beneficiaries.]—A devise in a will directing the distribution of the residue of the testator's estate among his brothers and sisters or nephews and nieces who should be most in need of it, at the discretion of trustees therein named, is valid and confers absolute power upon the trustees of selecting beneficiaries from the classes of persons mentioned. *McGibbon v. Abbott* (10 App. Cas. 653), followed; *Ross v. Ross* (25 Can. S. C. R. 307), referred to. *Brosseau v. Doré*, xxxv., 205.*

3. *Will—Conditional devise.]—The property was devised by will as follows: "I give and bequeath to my beloved wife, Margaret McIsaac, all and singular, the property of which I am at present possessed, whether real or personal or wherever situated, to be by her disposed of amongst my beloved children as she may judge most beneficial for herself and them, and also order that all my just and lawful debts be paid out of the same. And I do hereby appoint my brother, Donald McIsaac, and my brother-in-law, Donald McIsaac, tailor, my executors to carry out this my last will and testament." — *Held*, affirming the judgment appealed from (38 N. S. Rep. 60), that the widow took the real estate in fee with power to dispose of it and the personalty whenever she deemed it was for the benefit of herself and her children, to do so. *McIsaac v. Beaton*, xxxvii., 143.*

4. *Breach of trust—Accounts—Evidence—Nova Scotia “Trustee Act” 2 Edw. VII. c. 13—Liability of trustee—N. S. Order XXXII., r. 3—Judicial discretion—Statute of Limitations.*—By his last will N. bequeathed shares of his estate to his daughters A. and C. and appointed A. executrix and trustee. C. was weak-minded and infirm and her share was directed to be invested for her benefit and the revenue paid to her half-yearly. A. proved the will, assumed the management of both shares and also the support and care of C. at their common domicile, and applied their joint incomes to meet the general expenses. No detailed accounts were kept sufficient to comply with the terms of the trust nor to shew the amounts necessarily expended for the support, care and attendance of C., but A. kept books which shewed the general household expenses, and consisted, principally, of admissions against her own interests. After the decease of both A. and C. the plaintiffs obtained a reference to a master to ascertain the amount of the residue of the estate coming to C. (who survived A.), and the receipts and expenditures by A. on account of C. On receiving the report the judge referred it back to be varied, with further instructions and a direction that the books kept by A. should be admitted as *prima facie* evidence of the matter therein contained. (Section 37 N. S. Rep., pp. 452-464.) This order was affirmed by the Supreme Court of Nova Scotia *in banco*.—*Held*, affirming the judgment appealed from (37 N. S. Rep., 451), that the allowances for such expenditures need not be restricted to amounts actually shewn to have been so expended; that, under the Nova Scotia statute, 2 Edw. VII. c. 13, and Order XXXII., rule 3, a judge may exercise judicial discretion towards relieving a trustee from liability for technical breaches of trust and for that purpose, may direct the admission of any evidence which he may deem proper for the taking of accounts. *Cairns v. Murray*, xxxvii., 163.

5. *Company law—Illegal consideration for shares—Fraud—Breach of trust.*—With a view to concealing the financial difficulties of a mining company and securing control of its property, the manager entered into a secret arrangement with the respondent whereby the latter was to acquire the liabilities, obtain judgment thereon, bring the property to sale under execution and purchase it for a new company to be organized in which the respondent was to have a large interest. The manager, who was a creditor of the company, was to have his debt secured and to receive an allotment of shares in the new company proportionate to those held by him in the old company and he agreed that he would not reveal this understanding to the other shareholders.—*Held*, affirming the judgment appealed from (11 B. C. Rep. 466), Sedgewick, J., dissenting, that the agreement could not be enforced as the consideration was illegal and a breach of trust by which the other shareholders were defrauded. *Lasell v. Hannah*, xxxvii., 324.

6. *Co-trustees—Joint action—Delegation of trust.*—A trustee in Toronto wrote to a co-trustee in St. Mary's stating that an offer

had been made to purchase a portion of the trust estate for \$12,000 and giving reasons why it should be accepted. The co-trustee replied concurring in said reasons and consenting to the proposed sale. The Toronto trustee afterwards had negotiations with the solicitors of G. and at their suggestion offered to sell the same property to G. for \$13,000, but without further notice to his co-trustee. The offer was accepted by the solicitors, whereupon the party who had offered \$12,000 raised his offer to \$14,000 and the trustee notified the solicitors of G. that the sale to him was cancelled. In a suit by G. for specific performance:—*Held*, affirming the judgment of the Court of Appeal (9 Ont. L. R. 522), that the letter written by the co-trustee in St. Mary's contained a consent to the particular sale mentioned therein only and could not be construed as a general consent to a sale to any person even for a higher price. Even if it could there were circumstances which occurred between the time it was written and the signing of the contract with G., which should have been communicated to the co-trustee before he could be bound by said contract. *Gibb v. McMahon*, xxxvii., 362.

7. *Breach of contract—Breach of trust—Assessment of damages—Sale of mining areas—Promotion of company—Failure to deliver securities—Principal and agent—Account—Evidence—Salvage—Indemnity for necessary expenses—Laches—Estoppel.*—The plaintiffs transferred certain mining areas to the defendant in order that they might be sold together with other areas to a company to be incorporated for the purpose of operating the consolidated mining properties, the defendants agreeing to give them a proportionate share of whatever bonds and certificates of stock he might receive for these consolidated properties upon the flotation of the scheme then being promoted by him and other associates. In order to hold some of the areas it became necessary to borrow money, and the lender exacted a bonus in stock and bonds which the defendant gave him out of those received for conveyance of the properties to the company. After deducting a ratable contribution towards this bonus, the defendant delivered to the plaintiffs the remainder of their proportion of stock and bonds, but did not then inform them that such deductions had been made, and they, consequently, made no demand upon him for the balance of the shares and bonds until some time afterwards when they brought the action to recover the securities or their value.—*Held*, affirming the judgment appealed from, that whether the defendant was to be regarded as a trustee or as the agent of the plaintiffs, he was not entitled, without their consent, to make the deductions, either by way of salvage, or to indemnify himself for expenses necessarily incurred in the preservation of the properties; and that, under the circumstances, their failure to demand delivery of the remainder of the securities before action did not deprive the plaintiffs of their right to recover.—If the defendant is to be considered a trustee wrongfully withholding securities which he was bound to deliver, he is liable for damages calculated upon the assumption that they would

have been disposed of at the best price obtainable. If, however, he is to be regarded as a contractor who has failed to deliver the securities according to the terms of his agreement, he is liable for damages based on the selling price of the securities at the time when his obligation to deliver them arose. *Nant-Y-Glo and Blaina Ironworks Co. v. Gray* (12 Ch. D. 738); *The Steamship Carrisbrooke Co. v. The London and Provincial Marine and General Ins. Co.* ((1901) 2 K. B. 861), and *Michael v. Hart & Co.* ((1902) 1 K. B. 382), followed. *McNeil v. Fultz*, xxxviii., 198.

8. *Partnership — Dissolution—New partnership by continuing partner—Liability of new firm—Rights of creditors — Trust — Novation.*—A firm consisting of two persons dissolved partnership, the retiring partner receiving a number of promissory notes in payment of his share in the business, which notes he indorsed to the plaintiff H. The continuing partner of the firm afterwards entered into partnership with the defendants and transferred to the new firm all the assets of his business, his liabilities, including the above mentioned promissory notes, being assumed by the co-partnership and charged against him. The new firm paid two of the notes and interest on others, and made a proposal for an extension of time to pay the whole which was not entertained. —*Held*, reversing the decision of the Court of Appeal (17 Ont. App. R. 456, *subnomine Henderson v. Killey*), and of the Divisional Court (14 O. R. 137), *Fournier, J.*, dissenting, that the agreement between the continuing partner and the defendants did not make the defendants trustees of the former's property for the payment of his liabilities, and the act of the defendants in paying some of the notes did not amount to a novation as it was proved that plaintiff had obtained and still held a judgment against the maker and indorser of the notes in an action thereon and there was no consideration for such novation. *Osborne v. Henderson* (xviii., 698); *Cam. Cas* 323.

9. *Banking — Hypothecation of securities — Terms of pledge—Duty of pledgee.*—B. sold property to the Syndicat and took as security for the price mortgages on real and personal property and a promissory note and transferred the securities to the bank to secure his present and future indebtedness to it. He signed a document authorizing the bank to realize on the same in its discretion, to grant extensions and give up securities, accept compositions, grant releases and discharges and otherwise deal with them as it might see fit without prejudice to B.'s liability. The note not being paid at maturity, the Bank sued the Syndicat and B. upon it and on the covenants in the mortgages and obtained judgment against both. In the same action, the Syndicat, on counterclaim for damages for deceit, had judgment against B. which was eventually set aside, but, while it existed, the bank made a settlement with the Syndicat and discharged the latter from all liability on the judgment of the bank on payment of over \$20,000 less than the debt. B. was not a party to this settlement, and the bank afterwards refused to give him any information about it or to give him a statement of his account

with the bank itself. In an action by B. for an account and to have the bank enjoined from further dealings with the securities:—*Held*, that the power given to the bank to deal with the securities was to be exercised for the purpose of liquidating B.'s debt, and, as to the surplus, for B.'s benefit; that, the settlement having been made solely for the benefit of the bank and in sacrifice of B.'s interests, the bank violated its duty, and had not satisfied the onus upon it of shewing that, had the whole amount of the judgment been recovered from the Syndicat, B. would not have benefited thereby. *Canadian Bank of Commerce v. Barrette*, xli., 561.

10. *Ownership — Lease — Sheriff's sale— Title to land—Insurable interest—Fire insurance — Beneficiary—Principal and agent — Fraudulent contrivances — Estoppel*, xxxiv., 1.

See LEASE.

11. *Syndicate to promote joint stock company — Partnership — Trust agreement — Construction of contract—Administration by majority of partners—Lapse of time limit — Specific performance*, xxxv., 645.

See SPECIFIC PERFORMANCE.

12. *Probate of will — Promoter — Evidence — Subsequent conduct of testator — Residuary devise*, xxxvii., 404.

See WILL.

13. *Title to land—Ambiguous description of grantee — "Greek Catholic Church" — Evidence—Construction of deed—Reversal of concurrent findings*, xxxvii., 177.

See TITLE TO LAND.

14. *Crown — Breach of trust—Purchase of debentures out of Common School Fund — Knowledge of misappropriation of moneys — Payment of interest — Statutory prohibition—Evasion of statute—Estoppel against Crown—Action—Adding parties — Practice*, xxxviii., 62.

See QUEREK NORTH SHORE TURNPIKE ROAD TRUST.

15. *Constitutional law—Liabilities of province at confederation — Special funds — Rate of interest — Trust funds of debt—Award of 1870—B. N. A. Act, 1867, ss. 111 and 142*, xxxix., 14.

See CONSTITUTIONAL LAW.

16. *Executor and trustee — Moneys of testator — Sale by executor — Under value—Jurisdiction of Probate Court*, xxxix., 122.

See EXECUTORS AND ADMINISTRATORS.

17. *Title to land — Interest in mining areas—Sale by trustee — Recovery of proceeds of sale—Agreement in writing—Statute of Frauds—R. S. N. S. (1900) c. 141, ss. 4 and 7—Part performance—Acts referable to contract—Evidence—Pleading*, xxxix., 608.

See TITLE TO LAND.

18. *Trust — Company law — Extra remuneration — Ultra vires act of directors—*

*Ratification — Recovery of moneys illegally paid—Mistake of law, xxxix., 614.*

See COMPANY.

19. *Principal and agent—Secret profit — Clandestine transactions by broker — Sham purchaser—Commission — Quantum meruit, xl., 134.*

See PRINCIPAL AND AGENT.

20. *Breach of trust — Interest on bonds—Unlawful acts by Crown officers—Ultra vires —Withholding interest from Crown—Necessity of impleading other interested parties—Practice, Cout. Cas. 316 .*

See PRACTICE.

21. *Sale of land—Principal and agent—Secret profit by broker — Participation in breach of trust — Implied partnership — Liability to account — Purchaser in good faith—Disclosure of suspicious circumstances —Cross-appeal — Parties — Practice, xlv., 543.*

See BROKER.

22. *Will—Trust for benefit of son—Discretion of executor—Death of beneficiary—Funds not disposed of. In re Rispin, Canada Trust Co. v. Davis, xlvi., 649.*

23. *Construction of will—Substitution — Death of grevé—Accretion—Partition — Apportionment in aliquot shares—Distribution of estate — Partial intestacy — Devolution, xvii., 42.*

See WILL.

24. *Assignment—Insolvency — Preference —Statute of Frauds, xvii., 392.*

See ASSIGNMENT.

### UNDUE INFLUENCE.

*Contract — Security for debt — Promissory note — Husband and wife — Parent and child, xxxv., 393.*

See CONTRACT.

AND see DURESS.

### UPPER CANADA BUILDING FUND.

See CONSTITUTIONAL LAW.

### UPPER CANADA GRAMMAR SCHOOL FUND.

See CONSTITUTIONAL LAW.

### UPPER CANADA IMPROVEMENT FUND.

See CONSTITUTIONAL LAW.

### USE.

*Dominion mining regulations — Hydraulic mining — Placer mining—Lease — Water-*

*grant—Conditions of grant—User of flowing waters — Diversion of watercourse — Dams and flumes—Construction of deed — Riparian rights—Priority of right—Injunction, xxxviii., 79.*

See MINES AND MINING.

### USER.

1. *Canal lands—Condition subsequent — Mis-user by Crown—Forfeiture. Wright v. The Queen, Cout. Cas. 131.*

2. *Highway — Dedication—Acceptance by public, xxxvii., 210.*

See HIGHWAYS.

3. *Possessory action—Trouble de possession—Right of action—Actio negatoria servitutis—Trespass—Interference with watercourse—Agreement as to user—Expiration of license by non-user—Tacit renewal—Cancellation of agreement — Recourse for damages, xxxix., 81.*

See ACTION ; PRACTICE.

4. *Mandamus—Driving timber—Order to fix tolls—Past user of stream—River improvements—R. S. O. (1897) c. 142, s. 13, xl., 523.*

See MANDAMUS.

5. *Title to land—Dedication—Public highway—Expropriation — Presumption, Cam. Cas. 53.*

See HIGHWAY.

6. *Title to land—Basement appurtenant—User of lane—Prescription—Agreement for right-of-way — Construction of contract — Practice, Cam. Cas. 352.*

See EASEMENT.

7. *Trespass—Easement — Public way — Dedication — Prescription — Estoppel — "Law and Transfer of Property Act," R. S. O., 1897, c. 119, xlviii., 57.*

See HIGHWAY.

8. *Sale of land — Stipulation as to user —Covenant or condition—"Detached dwelling-house"—Apartment house. Pearson v. Adams, 1., 204.*

See DEED.

9. *"Quebec Workmen's Compensation Act"—Incompatible enactment — Repeal — Right of action. Lamontagne v. Quebec Railway, Light, Heat & Power Co., 1., 423.*

See ACTION.

### USUFRUCT.

*Construction of will—Substitution—Partition between institutes—Validating legislation—60 Vict. c. 95 (O.)—Construction of statute—Restraint of alienation—Interest of substitutes—Devise of property held by institute under partition — Devolution of corpus of estate es nature—Accretion—Res judicata—Arts. 868, 948 C. C. xxxviii., 1.*

See WILL.

**VALUATION.**

*Street railway—Franchise — Assumption by municipality — Principle of valuation — Operation in two municipalities — Compulsory taking—R. S. O. (1897) c. 203, xlii., 581.*

See TRAMWAY.

**VENDOR AND PURCHASER.**

1. *Misrepresentation—Fraud — Error — Rescission of contract—Sale or exchange—Dation en paiement—Improvements on property given in exchange—Option of party aggrieved—Action to rescind—Actio quantum minoris—Latent defects — Damages—Warranty — Agreement in writing — Formal deed.*—An action will lie against the vendor to set aside the sale of real estate and to recover the purchase price on the ground of error and of latent defects, even in the absence of fraud.—In such a case, the purchaser alone has the option of returning the property and recovering the price or of retaining the property and recovering a portion of the price paid; he cannot be forced to content himself with the action *quantum minoris*, and damages merely, upon the pretext that the property might serve some of his purposes notwithstanding the latent defects. — Where the vendor has sold, with warranty, a building constructed by himself, he must be presumed to have been aware of latent defects, and, in that respect, to have acted in bad faith and fraudulently in making the sale. — The vendor, defendant, in the agreement for sale, represented that a block of buildings which he was selling to the plaintiff had been constructed by him of solid stone and brick and so described them in formal deeds subsequently executed relating to the sale. The walls subsequently began to crack, and it was discovered that a portion of the buildings had been improperly built of framed lumber filled in and encased with stone and brick in a manner to deceive the purchaser.—*Held*, that the contract was vitiated on account of error and fraud and should be set aside, and that, as the vendor knew of the faulty construction, he was liable not only for the return of the price, but also for damages.—*Held*, also, that the nature of the contract depended upon the intentions of the parties as disclosed by the last instrument signed by them in relation thereto.—*Held*, further, that the action *quantum minoris* and for damages does not apply to cases where contracts are voidable on the grounds of error or fraud, but only to cases of warranty against latent defects if the purchaser so elects, the only recourse in cases of error and fraud being by rescission under art. 1000 of the Civil Code. — In the present case, the sale was made in part in consideration of vacant city lots given in payment *pro tanto*, and, during the time the defendant was in possession of the lots he erected buildings upon them with his own materials.—*Held*, that, even if the contract amounted to a contract of exchange, it was subject to be rescinded in the same manner and for reasons similar to those which would avoid a sale, and, if the contract be set aside for bad faith on the part of the defendant,

the plaintiff has options similar to those mentioned in articles 417, 418, 1526 and 1527 of the Civil Code, that is to say, he may either retain the property built upon, on payment of the value of the improvements, or cause the defendant to remove them without injuring the property, or compel the defendant to retain the property built upon and to pay its value, besides having the right to recover damages according to the circumstances.—The judgment appealed from was reversed. *Pagnuello v. Choquette*, xxxiv., 102.

2. *Agreement for the sale of land—Falsa demonstratio — Position of vendor's signature—Specific performance.*—On the conclusion of negotiations between C. and B. as to the sale of two city lots on the corner of Hastings street and Westminster Avenue, in Vancouver, B.C., C. signed a document as follows:—"Vancouver, June 28th, 1902.—Received from James Borland the sum of ten dollars being a deposit on the purchase of Lots Nos. 9 and 10, Block No. 10, District Lot 196, purchase price twenty thousand dollars (\$20,000), the balance to be paid within (10 July) days, when I agree to give the said James Borland a deed in fee simple free from all incumbrances. (Sgd.) Jos. Coote, N. W. Cor. Hastings & Westr. Ave."—The lots on the corner of the streets mentioned were, in fact, lots 9 and 10 in block 9, and were the only lots defendant owned. In an action for specific performance of the agreement for sale of the lands the trial judge found that these were the lots intended to be sold, and also that the words below the signature formed part of the receipt.—*Held*, affirming the judgment appealed from (10 B. C. Rep. 493), Killam, J., dissenting, that the inaccuracy of the description in the receipt was a mere discrepancy which should be disregarded and the decree made for specific performance in respect of the lots actually bargained for between the parties. (Leave to appeal to Privy Council refused 5th July, 1905.) *Coote v. Borland*, xxxv., 282.

3. *Mines and mining—Sale in mining locations—Consideration in lump sum—Separate valuations—Misrepresentation — Deceit and fraud—Measure of damages.*—Upon representations made by the vendor the plaintiffs purchased several mining locations, the consideration therefor being stated in a lump sum. In an action of fraud and deceit brought by the purchaser against the vendor the trial judge, in discussing the total consideration for the properties purchased, found that there was evidence to shew the values placed by the parties upon each of two of these properties as to which false and fraudulent representations had been made, and which had turned out worthless or nearly so.—*Held*, reversing the judgment appealed from, the Chief Justice and Idington, J., dissenting, that the finding of the trial judge as to the consideration ought not to be disturbed upon appeal and that the proper measure of damages, in such a case, was the actual loss sustained by the purchaser by acting upon the misrepresentations of the vendor in respect of the two mining locations in question irrespectively of the results or values yielded by the other locations purchased at the same time and as to



which no false representations had been made. *Peek v. Derry* (37 Ch. D. 541), followed. (Appeal to Privy Council allowed, 9th May, 1907.) *Syndicate Lyonnais du Klondyke v. Barrett*, xxxvi., 279.

4. *Sale of land—Formation of contract—Conditions—Acceptance of title—New terms—Statute of Frauds—Principal and agent—Secret commission—Avoidance of contract—Fraud—Specific performance.*—While A. was absent abroad, B. assumed, without authority, to sell certain of his lands to C. and received from C., a deposit on account of the price. On receipt of a cablegram from B., notifying him of what had been done, but without disclosing the name of the proposed purchaser, A. replied, by letter, stating that he was willing to sell at the price named, that he would not complete the deal until he returned home, that the sale would be subject to an existing lease of the premises and that he would not furnish evidence of title other than the deeds that were in his possession, and requesting B. to communicate these terms to the proposed purchaser. On learning the conditions C., in a letter by his solicitors, accepted the terms and offered to pay the balance of the price as soon as the title was evidenced to their satisfaction. In a suit for specific performance:—*Held*, that the correspondence which had taken place constituted a contract sufficient to satisfy the requirements of the Statute of Frauds, that the words "so soon as title is evidenced to our satisfaction," in the solicitors' letter accepting the conditions, did not import the proposal of a new term and that A. was bound to specific performance.—*Held*, also, that an arrangement, unknown to A. and made prior to the receipt of his letter, whereby B. was to have a commission on the transaction from C., could not have the effect of avoiding the contract, as B. was not, at that time, the agent of A. for the sale of the property.—Judgment appealed from (12 B. C. Rep. 236), affirmed. *Andrews v. Calori*, xxxviii., 588.

5. *Agreement for sale of land—Principal and agent—Estoppel—"Land Commissioner"—Specific performance.*—The plaintiffs, as assignees, claimed specific performance of an alleged agreement for the sale of lands based upon the following letter:—"Ferne, B.C., June 5th, 1900.—D. V. Mott, Esq., Ferne, B.C.:—*Re sale to you of mill site.*—Dear Sir:—The Crow's Nest Pass Coal Company hereby agree to sell to you a piece of land at or near Hosmer Station, on the Crow's Nest line, to contain at least one hundred acres of land, at the price of \$5.00 per acre; payable as follows: When title issued to purchaser. Title to be given as soon as the company is in a position to do so. Purchaser to have possession at once. The land to be as near as possible as shewn on the annexed sketch plan. Yours truly, W. Ferne, "Land Commissioner."—The lands claimed were not those shewn on the sketch plan, but other lands alleged to have been substituted therefor by verbal agreement with another employee of the defendant company, at the time of survey.—*Held*, affirming the judgment appealed from (12 B. C.

Rep. 433), but on different grounds, that specific performance could not be decreed in the absence of any proof of authority of the agent to sell the lands of the defendant company, and that the mere fact of investing their employee with the title of "Land Commissioner" did not estop the defendants from denying his power to sell lands. *Elk Lumber Co. v. Crow's Nest Pass Coal Co.*, xxxix., 169.

6. *Agreement for sale of land—Principal and agent—Fiduciary relationship—Specific performance.*—Where an intending purchaser, by disguising his intentions under the role of a disinterested friend, imposed on the confidence thus established and induced the owner of land to accept an offer for the purchase of it which probably would not otherwise have been accepted without independent investigation, specific performance of an agreement for sale thus procured should not be enforced. *Fellowes v. Lord Gwydyr* (1 Sim. 63), discussed and distinguished. *Henderson v. Thompson*, xli., 445.

7. *Agreement to convey lands—Consideration—Price in money—Breach of contract—Recovery for "money had and received"—Sale or exchange—Damages.*—S. sold his interest in certain lands to W. for a consideration, fixed at \$19,000, of which \$16,000 was to be satisfied by the conveyance of other lands, alleged to be owned by W. W. then executed a written agreement purporting to sell these other to S., for the sum of sixteen thousand dollars, acknowledged then and there to have been received by the vendor; bound himself to convey them to the purchaser, with a clear title, within one year from the date of the agreement, and time was stated to be of the essence of the contract. Upon default by the vendor to convey the lands, according to the agreement, the plaintiff sued to recover the \$16,000, as money had and received for which no consideration had been given. In his defence, W. contended that the consideration mentioned in the agreement was not actually in cash, but consisted merely of lands to be conveyed in exchange at a valuation fixed at that amount and, consequently, that the plaintiff could recover only damages to be assessed according to the value of the lands which he had failed to convey.—*Held*, that, in the absence of evidence of any special purpose as the basis of the agreement, the terms of the contract in writing governed the rights of the parties that the consideration mentioned in the agreement should be regarded as a price paid in money and consequently, the plaintiff was entitled to the relief sought. Judgment appealed from (20 Man. R. 562), affirmed. *Webster v. Snider*, xlv., 296.

8. *Condition of agreement—Sale of land—Payment on account of price—Cancellation—Notice—Return of money paid—Rescission—Form of action—Practice.*—An agreement for the sale of lands acknowledged receipt of \$600 on account of the price and provided, in the event of default in the payment of deferred instalments, that the vendor might, on giving a certain notice,

declare the agreement null and void and retain the moneys paid by the purchaser. On default by the purchaser to make payments according to the terms of the agreement the vendor served him with a notice for cancellation which incorrectly recited that the contract contained a stipulation for its cancellation, in case of default, "without notice," and concluded by declaring the contract null and void "in accordance with the terms thereof as above recited." The vendor, subsequently, refused a tender of the unpaid balance of the price and re-entered into possession of the lands. In an action by the purchaser for specific performance or the return of the amount paid, rescission was not asked for.—*Held*, that, as the vendor had not given the notice required by the conditions of the agreement he could not retain the money as forfeited on account of the purchaser's default; that, as the payment had not been made as earnest, but on account of the price, the purchaser was entitled to recover it back on the cancellation of the contract, and that, as the relief sought by the action could not be granted while the contract subsisted, a demand for rescission must necessarily be implied from the plaintiff's claim for the return of the money so paid. *March Bros. & Wells v. Banton*, xlv., 338.

9. *Broker—Sale of land—Principal and agent—Disclosing material information — Secret profit—Agent's right to sell or purchase—Specific performance.*—A broker being informed by the owners that they would sell certain lands entered a description of the property in his list of lands for sale through his agency. The lands being still unsold about three months later, the broker, in consideration of a payment of \$50, obtained an exclusive option from the owners for the sale or purchase by himself, within 30 days, of the lands at a price named, which was to include his commission in the event of his effecting a sale, but without disclosing information of which he was then possessed that there was a probability of the lands selling within a short time at an increased price. Within a few days after the date of the option he effected a sale, in his own name, of the lands for double the price named therein, notified the owners that he exercised his option to purchase and demanded a conveyance. In an action for specific performance, brought by the broker on refusal of such conveyance.—*Held*, per Fitzpatrick, C.J.—That by the terms of the written agreement the broker became an agent for the sale of the lands with the option of purchasing them for himself; that he could not become purchaser until he had divested himself of his character as agent; that he was, as agent, bound to disclose to his principals the knowledge he had acquired respecting the improved prospects of a sale at enhanced value, and his exercise of the option to purchase did not relieve him of this obligation. He was, therefore, not entitled to a decree for specific performance. — *Per* Davies, Idington, Anglin and Brodeur, J.J.—That the broker was an agent for the sale of the lands at the time he procured the option and, having failed in his duty to disclose to his principals all material information he had as to the probability of the lands selling at a higher price

than that mentioned, specific performance of the agreement to sell to him should be refused.—The judgment appealed from (16 B.C. Rep. 308), was reversed. *Bentley v. Nasmith*, xlv., 477.

10. *Sale of mortgaged lands—Agreement—Condition precedent—Cash payment—Default—Objection to title — Repudiation — Specific performance.*—An agreement for the sale of land provided that the purchase-money was to be paid by instalments "\$10,000 cash on the signing of this agreement, the receipt of which is hereby acknowledged," the remaining instalments to be paid in one, two and four years, with interest from the date of the agreement, and there was a proviso making time of the essence of the contract and, on default in performance of conditions and payment of instalments, for the cancellation of the agreement by the vendors on giving written notice to the purchaser. The land in question formed part of a larger area and there was an undischarged mortgage upon the whole property of which both parties had knowledge at the time of the agreement. The cash payment was not made, the purchaser refusing to pay this amount until the mortgage was severed and apportioned so that the land mentioned in the agreement should bear only a determinate share thereof, and the agreement amended to this effect. The vendors then withdrew from the agreement by a letter addressed to the purchaser's solicitor. In an action against the vendors for specific performance.—*Held*, per Davies, and Anglin, J.J.—The execution of the agreement constituting the relationship of vendors and purchaser was the consideration for the cash payment then to be made and, in default of such payment, the obligation to sell and convey the lands with a good title did not become binding upon the vendors.—*Per* Duff and Brodeur, J.J.—Payment of the ten thousand dollars in cash was a condition precedent to the constitution of any obligation by the vendors to sell or convey the lands and, consequently, to shew good title.—*Per* Idington, J. — In the circumstances the purchaser's refusal to make the cash payment was a repudiation of the agreement which deprived him of the right to a decree for specific performance. — Judgment appealed from (1 D. L. R. 331; 1 West. W. R. 563), reversed.—(Leave to appeal to Privy Council was refused, 9th December, 1912.) *Cushing v. Knight*, xlv., 555.

11. *Sale of land—Condition dependent — Deferred payment—Disclosure of title—Abstract—Refusal to complete—Lapse of time — Defeasance — Specific performance.*—In an agreement for the sale of an interest in land, for a price payable by deferred instalments at specified dates, there was a condition for defeasance, at the option of the vendor, for default in punctual payments, time was of the essence of the contract, and receipt of a deposit on account of the price was acknowledged. Some time before the date fixed for payment of the first deferred instalment the purchasers made requisitions for the production for inspection of the vendor's evidence of title to the interests he was selling and the vendor refused to comply with the requisitions. The payment was not made on the appointed

date, and the vendor declared the agreement cancelled in consequence of such default. In suit for specific performance, brought by the purchasers:—*Held*, affirming the judgment appealed from (17 B. C. Rep. 88), that the vendor was bound, upon requisition made within a reasonable time by the purchasers, to produce for their inspection the documents under which he claimed the interests he was selling in the lands; until he had complied with such demand the purchasers were not obliged to make payment of deferred instalments of the price and, in the circumstances, their failure to make the payment in question was not an answer to the suit for specific performance. *Cushing v. Knight* (46 Can. S. C. R. 555), distinguished.—*Per Duff, J.*—In the absence of any express or implied stipulation to the contrary in an agreement respecting the sale of land in British Columbia, which is not held under a certificate of indefeasible title, the purchaser is entitled, according to the rule introduced into that province with the general body of the law of England, to the production of a solicitor's abstract of the vendor's title to the interest in the land which he has agreed to sell. *Newberry v. Langan*, xlvii., 114.

12. *Sale of land—Contract—Defeasance—“Time to be of the essence of the agreement”—Deferred payments—Notice after default—Laches—Abandonment—Specific performance.*]—In an agreement for the sale of lands, for a price of which half was paid and the balance to be paid by deferred instalments at specified dates, there was a clause for forfeiture, both of the agreement and the payments made upon default in punctual payments; time was of the essence of the contract and, on default, the vendor had the right to give the purchasers thirty days' notice in writing demanding payment; in case of continuing default, at the expiration of that time, forfeiture would become effective and the vendor might retake possession and re-sell the lands. On default in payment as provided, a notice was given in the terms mentioned, but only to one of the purchasers, an extension of time was applied for and refused and, after thirty days from the time of the notice the vendor re-entered. Five days later the purchasers tendered the balance unpaid, which was refused by the vendor on the grounds that no conveyance was tendered for execution and that the purchasers had abandoned the agreement. Two weeks later the purchasers sued for specific performance. — *Held*, reversing the judgment appealed from (18 B. C. Rep. 271), that the clause making time of the essence of the contract had reference not to the date, but to the time mentioned in the notice; that the notice as given did not comply with the condition of the agreement requiring notice to all of the purchasers, and that, in the circumstances of the case, there were not such laches chargeable against the purchasers as would amount to abandonment of their rights under the agreement or deprive them of their remedy of specific performance. *Bark-Fong v. Cooper*, xlix., 14.

13. *Agreement for sale of land—Option—Acceptance—Uncertainty as to terms—Con-*

*dition precedent—Specific performance.*]—On 26th November, 1910, R. gave C. a memorandum respecting the sale of his land, as follows: “In consideration of a payment of \$10, I agree to give to Major A. B. Carey the option of my quarter-section—N.E. ¼ of 20, Tp. 12, Medicine Hat, at the rate of \$25 per acre. Balance to be paid ½ on the last day of January of each year till paid.” On the 20th January, 1911, a letter was written, by C.'s solicitor, to R., as follows: “Major Carey is prepared to make payment of one-third of purchase price, and we are anxious to close the matter out at once. We would suggest that, rather than give an agreement for sale, you execute a transfer of the land in favour of our client and take a mortgage back for unpaid balance. We would be obliged if you would let us hear from you at once. We would be pleased to prepare the necessary documents, and you can submit same to your solicitor at Medicine Hat.”—*Held*, reversing the judgment appealed from (5 Alta. L. R. 125), *Davies and Anglin, JJ.*, dissenting, that the memorandum constituted an offer requiring acceptance; that the letter of the solicitor was not an unqualified acceptance of the terms of the contract such as was called for in the circumstances, and that C. was, therefore, not entitled to a decree for specific performance. (Leave to appeal to Privy Council refused, 7th May, 1914.) *Roots v. Carey*, xlix., 211.

14. *Contract for sale of land—Payment by instalments—Specified dates—Time of essence—Forfeiture—Penalty—Payment declared to be deposit.*]—An offer to purchase land provided for payment of the price as follows: \$500 “as deposit accompanying this offer” to be returned if offer not accepted, the balance by instalments at specified dates; it also provided that if the vendor was unable or unwilling to remove any valid objection to the title, and purchaser did not wish to accept it otherwise, the former could return the deposit and cancel the contract; that the offer if accepted should constitute a binding contract of purchase and sale and “time shall in all respects be strictly of the essence hereof”; and that should the purchaser fail to complete the purchase in the manner and at the time specified the vendor could retain any monies paid on account as liquidated damages, rescind the contract and re-sell the property.—*Held*, reversing the judgment appealed from (28 Ont. L. R. 358), *Fitzpatrick, C.J.* and *Anglin, J.*, dissenting, that the \$500 paid “as deposit” was part of the purchase money, that the retention by the vendor of monies paid when the purchase was not completed was only a penalty for failure to make the payments promptly; and that the court could grant the purchaser relief from the consequences of such failure. *Kilmer v. British Columbia Orchard Lands* ([1913] A. C. 319), followed. *Snell v. Brickles*, xlix., 360.

15. *Agreement for sale—Agent to procure purchaser—Agent joining in purchase—Non-disclosure to co-purchaser—Payment of commission—Rescission of contract.*]—H. was owner of mining land and offered S. a commission of ten per cent. for finding a pur-

chaser thereof. H. afterwards wrote to S. stating that the mine was very rich and urging him to induce some of his friends to join in a syndicate or company to purchase and work it. S., without disclosing his agency, induced W. to take up the matter and they agreed to join in the purchase and divide the profits. A contract was entered into with H. and W. paid \$20,000 on account of the purchase price on which S. was paid his commission. Default having been made in the further payments H. brought action claiming possession of the property and the right to retain the amount paid. W. counterclaimed for rescission of the contract and return of the money paid with interest and on the trial swore that he knew nothing of S.'s agency for several months after the contract was signed.—*Held*, affirming the judgment of the Appellate Division (29 Ont. L. R. 6), Fitzpatrick, C.J., dissenting, that it was the duty of H., on becoming aware that S. was a co-purchaser with W., to satisfy himself that the latter was aware of the agency of S.; and that W. was entitled to the relief asked by his counterclaim.—*Held*, per Davies and Anglin, J.J. (Duff, J., *contra*), that S. by concealing from W. the fact that he was to receive a commission from the vendor was guilty of a fraud for which H. was responsible as agent. (Leave to appeal to Privy Council refused, 23rd July, 1914.) *Hitchcock vs Sykes*, xlix., 403.

16. *Contract—Sale of mining land—Substituted purchaser—Reservation of claim against original purchaser—Forfeiture of second contract—Sale of land to other parties—Effect on reserved claim.*—In June, 1903, V. & Co., by agreement in writing, contracted to sell, and C. to buy, mining property for \$125,000, to be paid \$5,000 down and the balance in annual instalments of \$24,000. The \$5,000 was paid and in March, 1905, when an instalment was overdue and the second accruing a new agreement was executed, to which C. was a party, for sale of the property to a mining company for the same price and on the same terms. This agreement provided that nothing in it should affect the right of the vendor to claim from C. the amount payable under the original contract up to March, 1905, otherwise the latter was to be merged in the new contract. The mining company made default in their payments and, as provided in their contract, the vendors gave notice that the contract was at an end and, later, sold the property for \$75,000. They then took action against C. for the amount unpaid on the original agreement and recovered judgment. After the final sale of the mine C. applied for and obtained from a judge an order declaring that V. & Co. were not entitled to enforce their judgment against him except for the costs. On appeal from the affirmance of this order by the Appellate Division.—*Held*, affirming the decision of the Appellate Division (32 Ont. L. R. 200), that by extinguishing the interest of the mining company in the land and then selling it V. & Co. had put it out of their power to place C. in the position he was entitled to occupy on making payment and had thus disabled themselves from

enforcing their judgment. *Vivian v. Clergue*, li., 527.

17. *Sale of land—Deferred payment—Omission of date—Completion of contract—Acceptance by purchaser—New term—Instruments of title—Delivery—Arts. 1025, 1235, 1472, 1491-1494, 1533, 1534 C. C.—Specific performance.*—A contract for the sale of land, in the Province of Quebec, by which the date of the deferred payment of an instalment of the price is not fixed is, nevertheless, according to the law of that province, a completed contract of which specific performance may be enforced. (Duff and Brodeur, J.J., *contra*.)—In his letter accepting the offer of sale, the purchaser requested the vendor to send to his notary the documents of title and the registrar's certified abstract of the deeds affecting the property.—*Held*, per Fitzpatrick, C.J. and Anglin, J., that this request did not intend the stipulation of a new term to the contract.—*Per Brodeur, J.*—Although the vendor is obliged to furnish the documents of title, including the registrar's certified abstract, yet, in the present case, as it appeared that the vendor made it a condition that the titles and certificate were not to be delivered into the possession of the purchaser the request in the letter of acceptance was a stipulation of a new term which left the contract incomplete. *La Banque Ville Marie v. Kent* (Q. R. 22 S. C. 162), and *Souvé v. Picard* (20 Rev. de Jur. 142), referred to.—Judgment appealed from (Q. R. 23 K. B. 495), affirmed. *Lareau v. Potrier*, li., 637.

18. *Judicial sale of railways—Interested bidder—Disqualification as purchaser—Counsel and solicitors—Art. 1484 C. C.—Construction of statute—Discretionary order—Review by Appellate Court—4 & 5 Edw. VII. c. 158 (D.)—Public policy*, xxxvii., 303.

See RAILWAYS.

19. *Principal and agent—Sale of land—Authority to make contract—Specific performance*, xxxvii., 422.

See SALE.

20. *Tenant by sufferance—Use and occupation of lands—Art. 1608 C. C.—Promise of sale—Reddition de compte—Actio ex vendito—Practice*, xxxvii., 627.

See ACTION.

21. *Sale of securities—Interpretation of contract—Arts. 1018, 1019 C. C.—Railways—Debtor and creditor—Right of way claims—Legal expenses incurred in settlement*, xxxviii., 422.

See CONTRACT.

22. *Title to land—Sale—Construction of deed—Reservation of growing timber—Rights of vendor and purchaser—Resolutive condition*, xl., 98.

See DEED.

23. *Principal and agent—Secret profit—Trust—Clandestine transactions by broker—Sham purchaser—Commission—Quantum meruit*, xl., 134.

See PRINCIPAL AND AGENT.

24. *Sale of lands—Conditions — Deposit of price—Compliance with instructions — Vendor refusing to complete—Broker's commission—Remuneration for procuring purchaser*, xli., 577.

See BROKER.

25. *Contract—Agreement for sale of land —Deferred conveyance—Default in payment —Remedy of vendor—Reading "or" as "and,"* xli., 607.

See CONTRACT.

26. *Sale of land—Contract for sale—Time of essence—Delay of vendor—Description—Statute of Frauds — Specific performance*, xlii., 251.

See SALE OF LAND.

27. *Timber license—Crown lands in British Columbia—Real estate — Personality — Contract—Sale—Exchange — Consideration —Payment in joint stock shares—Vendor's lien—Evidence—Onus of proof — Pleading and practice*, xlv., 458.

See LIEN.

28. *"Torrens System"—Priority of right —Registration — Caveat—Construction of statute — Notice — Saskatchewan "Land Titles Act," 6 Edu. VII. c. 24—Equities between purchasers—Assignment of contract — Conditions — Right enforceable against registered owner*, xlv., 551.

See TITLE TO LAND.

29. *Sale of land—Condition—Approval of assignments—Equitable estate or interest—Priority between transferees—Principal and agent—Fraudulent and criminal practices—Notice of previous transfer—Implied knowledge. MacLeod v. Sawyer-Massey Co.*, xlvi., 622.

30. *Sale of land — Agreement—Bond to secure payment of price—Conditions as to title. Colwell v. Neufeld*, xlviii., 506.

## VENUE.

1. *Criminal law—Venue — Indictment — Commitment to penitentiary—Warrant — Criminal Code, 1892, ss. 609, 754—R. S. C. 1886, c. 182, s. 42.]—The venue mentioned in s. 609 of the Criminal Code, 1892, means the place where the crime is charged to have been committed and, in cases where local description is not required, there is an implied allegation that the offence was committed at the place mentioned in the venue in the margin of the record. It is of no consequence whether or not the trial court should be considered an inferior court. *Smitheman v. The King*, xxxv., 490.*

AND see CRIMINAL LAW.

2. *Commitment—Form of warrant — Imprisonment in penitentiary — Venue—Commencement of sentence*, xxxv., 189.

See CRIMINAL LAW

## VERDICT.

1. *Criminal law—Criminal Code, 1892, ss. 241, 242—Wounding with intent — Conviction—Crown case reserved.]—On an indictment for wounding with intent a verdict of "guilty without malicious intent" is an acquittal. Judgment appealed from (9 Can. Crim. Cas. 53), reversed, *Davies and Idington, J.J.*, dissenting. *Slaughenwhite v. The King*, xxxv., 607.*

2. *Negligence — Finding of jury — Evidence.]—A. brought an action, as administratrix of the estate of her husband, against the C. P. R. Co., claiming compensation for his death by negligence and alleging in her declaration that the negligence consisted in running a train at a greater speed than six miles an hour through a thickly populated district and in failing to give the statutory warning on approaching the crossing where the accident happened. At the trial questions were submitted to the jury who found that the train was running at a speed of 25 miles an hour, that such speed was dangerous for the locality and that the death of deceased was caused by neglect or omission of the company in failing to reduce speed as provided by "The Railway Act." A verdict was entered for the plaintiff and on motion to the court *en banc*, to have it set aside and judgment entered for defendants, a new trial was ordered on the ground that questions as to the bell having been rung and the whistle sounded should have been submitted to the jury. The plaintiff appealed to the Supreme Court of Canada to have the verdict at the trial restored and the defendants, by cross-appeal, asked for judgment.—*Held*, *Idington, J.*, dissenting, that by the above findings the jury must be held to have considered the other grounds of negligence charged, as to which they were properly directed by the judge, and to have exonerated the defendants from liability thereon, and the new trial was improperly granted on the ground mentioned.—*Held*, also, that though there was no express finding that the place at which the accident happened was a thickly peopled portion of the district it was necessarily imported in the findings given above; that this fact had to be proved by the plaintiff and there was no evidence to support it; and that, as the evidence shewed it was not a thickly peopled portion, the plaintiff could not recover and the defendants should have judgment on their cross-appeal. *Andreas v. Canadian Pacific Ry. Co.*, xxxvii., 1.*

3. *Negligence — Railway company—Finding of jury—"Look and listen."]*—M. attempted to drive over a railway track which crossed the highway at an acute angle where his back was almost turned to a train coming from one direction. On approaching the track he looked both ways, but did not look again just before crossing when he could have seen an engine approaching which struck his team and he was killed. In an action by his widow and children the jury found that the statutory warnings had not been given and a verdict was given for the plaintiffs and affirmed by the Court of Appeal.—*Held*, affirming the judgment of the Court of Appeal (12 Ont. L. R. 71), *Fitz-*

patrick, C.J., *hesitante*, that the findings of the jury were not such as could not have been reached by reasonable men and the verdict was justified. *Wabash Railroad Co. v. Misener*, xxxviii., 94.

4. *Negligence—Railway company—Death from contact with train—Absence of eye witness—No warning at crossing—Findings of jury—Reasonable inferences—Balance of probabilities.*]—About 5.30 on a December afternoon, G. left his place of employment to go home. An hour later his body was found some 350 yards east of a crossing of the Grand Trunk Railway, nearly opposite his house. There was no witness of the accident, but it was shewn on the trial of an action by his widow and children, that shortly after he was last seen an express train and a passenger train had passed each other a little east of the crossing, and there was evidence shewing that the latter train had not given the statutory signals when approaching the crossing. The jury found that G. was killed by the passenger train, and that his death was due to the negligence of the latter in failing to give such warnings. This finding was upheld by the Court of Appeal.—*Held* that the jury were justified in considering the balance of probabilities and drawing the inference from the circumstances proved, that the death of G. was caused by such negligence. *Grand Trunk Ry. Co. v. Griffith*, xlv., 380.

5. *Order for new trial—Findings against weight of evidence—Discretionary order*, xxxiv., 338.

See APPEAL.

6. *Master and servant—Contract of service—Termination by notice—Incapacity of servant—Permanent disability—Findings of jury—Weight of evidence*, xxxiv., 366.

See MASTER AND SERVANT.

7. *Evidence—Verdict—New trial—Life insurance—Accident policy—Contract—Conditions—Misrepresentations—Non-disclosure—Warranty*, xxxv., 266.

See EVIDENCE.

8. *Negligence—Dangerous ways, etc.—Master and servant—Findings of jury—New trial*, xxxv., 625.

See NEGLIGENCE.

9. *Negligence—Trial—Finding of jury—Exercise of statutory privilege*, xxxvii., 94.

See NEGLIGENCE.

10. *Negligence—Street railway—Excessive speed—Gong not sounded—Contributory negligence—Damages*, xxxviii., 327.

See NEGLIGENCE.

AND see JURY.

11. *Negligence—Common employment. Waugh-Milburn Construction Co. v. Slater*, xlviii., 609.

See JURY.

12. *Damages—Excessive award. C. P. R. v. Jackson*, lii., 281.

See JURY.

13. *Railways—System of construction—Exposed switch-rods—Negligence—Dangerous contrivance—Findings against evidence. Mallory v. Wpg. Joint Terminals*, liiii., 323.

See RAILWAYS.

## VIEW.

*Title to land—Servitude—Construction of deed—Reservations—“Representatives”—Owners par indivis—Common lanes—Right of passage—Private wall—Windows and openings on line of lane—Arts. 533-538 C. C.*, xxxvi., 618.

See SERVITUDE.

## VIS MAJOR.

1. *Negligence—Careless mooring of vessels—Vis major.*]—The plaintiff's tug, "Vigilant," was moored at a wharf in Vancouver Harbour with another tug, the "Lois," belonging to the defendant, lying outside and moored there by a line attached to the "Vigilant." The "Lois" was left in that position all night with no one in charge and no fenders out on the side next the "Vigilant." During the night a heavy gale came up and the "Lois" pounded the "Vigilant" causing her considerable damage.—*Held*, affirming the judgment appealed from, that, as the defendant was not a trespasser, he was not guilty of negligence, under the circumstances, in leaving his tug as he did and that he was not obliged to observe extreme and unusual precautions to avoid injury by a storm of exceptional violence. *Bailey v. Cates*, xxxv., 293.

2. *Negligence—Construction of building—Contract for construction—Collapse of wall—Building not completed.*]—*Held*, per Davies and MacLennan, JJ.—The owner of a building in course of construction owes to those whom he invites into or upon it the duty of using reasonable care and skill in order to have the property and appliances upon it intended for use in the work fit for the purposes they are to be put to. Such duty is not discharged by the employment of a competent architect to prepare plans for the building and a competent contractor to attend to the work of construction.—*Per* Idington, J.—The fact that the building is in an unfinished state may render the obligation of the owner towards a workman employed upon it less onerous in law than it would be in the case of a completed structure.—*Per* Duff, J.—Does the rule governing the duty of occupiers respecting the safe condition of the premises apply without qualification where the structure is incomplete and the invitee is engaged in completing it or fitting it for its intended use?—*Per* Davies and MacLennan, JJ.—In the present case the failure to guard against the effect of a sudden storm of so violent and extraordinary a character that it could not have been expected was not negligence for which the owner was liable.—*Judgment of the Court of Appeal* (12 Ont. L. R. 4) and of the Divisional Court (9 Ont. L. R. 57), affirmed, Idington, J., *dubitante. Valiquette v. Fraser*, xxxix., 1.

3. *River improvements — Precaution against danger to existing constructions — Alteration of natural conditions — Responsibility for damages.*—Where works constructed in a river so altered its natural conditions as to create a reservoir in which ice formed in larger quantities than it did, prior to such works, and which during the spring freshets after a severe winter, was driven with such force against the superstructure of a bridge as to partially demolish it, those who constructed the works are responsible for the damages so caused, notwithstanding that they had taken ineffectual precautions for the protection of the bridge against like troubles, foreseen at the time of the construction of the works, and that the formation of ice in increased weight and thickness in the reservoir had resulted from natural climatic conditions during an unusually rigorous winter.—Judgment appealed from (Q. R. 16 K. B. 410), affirmed. *Montreal Light, Heat and Power Co. v. Attorney-General of Quebec*, xli., 116.

4. *Construction of railway — Defects in road-bed — Dangerous way—Latent defect*, xxxvii., 632.

See NEGLIGENCE.

5. *Rivers and streams—Floating saw-logs — Use of booms—Action—Quantum meruit— Salvage—Riparian rights*, xxxvii., 657.

See RIVERS AND STREAMS.

6. *Municipal corporation — Negligence — Drainage—Capacity of drain—Unusual rain storm*, xli., 190.

See MUNICIPAL CORPORATION.

7. *Operation of railway — Equipment — Coupling apparatus — Duty to provide and maintain—Protection of employee—Inspection — Weather conditions—"Inevitable accident"—Negligence — Findings of jury — Evidence—Common employment—Conflict of laws—"Railway Act," R. S. C., 1906, c. 37, s. 264—Construction of statute. Phelan v. G. T. P. R. R. Co.*, li., 113.

See RAILWAYS.

## VOLUNTARY SETTLEMENT.

*Fraudulent conveyance—Statute of Elizabeth — Husband and wife—Evidence.*—In August, 1908, M. and his brother bought a hotel business in Ottawa for \$8,000, paying \$6,000 down and securing the balance by notes which were afterwards retired. In November, 1908, M. conveyed a hotel property in Madoc to his wife subject to a mortgage which she assumed. M. and his brother carried on the Ottawa business until March, 1910, when they assigned for benefit of creditors who brought suit to set aside the conveyance to M.'s wife. On the trial it was shewn that for some time before November, 1908, M.'s wife had been urging him to transfer to her the Madoc property which she had helped him to acquire, as a provision for herself and their children; that she had joined in a conveyance of a property in Toronto in which they both believed she had a right of dower, and the

proceeds of the sale of which were applied in the purchase of the Ottawa business; and that all of M.'s liabilities at the time of said conveyance had been discharged. M. ascribed his failure in Ottawa to the action of the License Commissioners in compelling him to move his bar to the rear of the premises whereby his receipts fell off and he lost rents that he had theretofore received, and had to make expensive alterations; and to a fire on the premises early in 1910. The trial judge set aside the conveyance to M.'s wife; his judgment was reversed by a Divisional Court (24 Ont. L. R. 591), but restored by the Court of Appeal.—*Held*, affirming the judgment of the Court of Appeal (27 Ont. L. R. 319), Davies, J., dissenting, that the conveyance by M. to his wife was voluntary; that it denuded him of the greater part of his available assets and was made to protect the property conveyed against his future creditors and is, therefore, void as against them. *McGuire v. Ottawa Wine Vaults Co.*, xlviii., 44.

## VOTING.

*Municipal Act—Vote on by-law — Local option—Ward divisions—Single or multiple voting—R. S. O. (1897) c. 245, s. 141—3 Edw. VII. c. 19, s. 355, xxxix., 236.*

See STATUTE; ELECTION LAW.

## WAIVER.

1. *Pleading—Objections taken on appeal — Yukon territorial Court Rules — Yukon Ordinances—Waiver.*—In an action to set aside a conveyance as made in fraud of creditors, the defendant desiring to meet the action by setting up that there was no debt due and, consequently, that no such fraud could exist, must allege these objections in his pleadings. In the present case the defendant, having failed to plead such defence, was allowed to amend on terms, the Chief Justice dissenting. *Syndicat Lyonnais du Klondyke v. McGrade*, xxxvi., 251.

AND SEE YUKON TERRITORY.

2. *Title to lands—Grant from Crown — Description—Navigable or floatable waters— Inlet of navigable river—Implied reservations—Crown domain—Public law — Construction of deed—Evidence — Estoppel — Possession adverse to Crown*, xxxiv., 603.

See TITLE TO LAND.

3. *Case on appeal—Security for costs — Waiver by consent—Reduction of amount of security*, xxxv., 187.

See PRACTICE.

4. *Practice—Pleading—B. C. Rule 163 — New points raised on appeal—Condition precedent—Construction of statute—Damages— Injunction*, xxxv., 309.

See PRACTICE.

5. *Assessment and taxes—Constitutional law—Exemptions from taxation—Land sub-*

sides of the Canadian Pacific Railway—Extension of the boundaries of Manitoba—Construction of statutes respecting the constitution of Canada, Manitoba and the North-West Territories—Construction of contract—Grant in present—Cause of action—Jurisdiction—Waiver, xxxv., 550.

See ASSESSMENT AND TAXES.

6. Constitutional law—Imperial Acts in force in Yukon Territory—Title to land—"Torrens System"—Transfer by registered owner—Fraud—Litigious rights—Notice of lis pendens—Irregular registration—Indorsements upon certificate of title—Construction of statute—Pleading—Objections taken on appeal—Yukon Territorial Court Rules—Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117—Estoppel, xxxvi., 251.

See ESTOPPEL.

7. Pleading—Cross-demand—Compensation—Arts. 3, 203, 205, 207, C. P. Q.—Practice—Damages—Construction of contract—Liquidated damages—Penal clause—Arts. 1076, 1187, 1188 C. C.—Estoppel, xxxvi., 347.

See CONTRACT.

8. Title to land—Lease for years—Possession by sub-tenant—Purchase at sheriff's sale—Adverse occupation—Evidence—Conveyance of rights acquired—Compromise—Estoppel, Cout. Cas. 158.

See TITLE TO LAND.

9. Mechanics' lien—Contract—Overpayment—Liability of owner of land—Attaching of lien—Negotiation of note—Claim of lien-holder—Estoppel. *Travis v. Breckinridge-Lund Lumber & Coal Co.*, xliii., 59.

See MECHANICS' LIEN.

10. Suretyship—Simple contract—Discharge of one surety under seal—Confirmation of original guarantee—Death of surety—Powers of executors—Continuance of guarantee. *Union Bank of Can. v. Clark*, xliiii., 299.

See SURETYSHIP.

11. Implied warranty—Fitness of machinery—New agreement. *Sawyer & Massey Co. v. Ritchie*, xliiii., 614.

See WARRANTY.

12. Benefit association—Life insurance—By-laws and regulations—Transfers between lodges—Member in good standing—Regularity of affiliation—Payment of dues and assessments—Evidence—Presumption, xlix., 145.

See INSURANCE, LIFE.

13. Accident insurance—Condition of policy—Notice—Tender before action, xlix., 386.

See INSURANCE, ACCIDENT.

14. Fire insurance—Condition of policy—Notice of loss—Imperfect proofs—Non-payment of premium—Waiver—Application of statute—Remedial clause, xlix., 419.

See INSURANCE, FIRE.

15. Construction of statute—N. W. T. Con. Ord., 1898, c. 34—Extra-judicial seizure—Chattel mortgage—Sale through bailiff—Excessive costs—Penalty—"Bank Act," R. S. C., 1906, c. 29, s. 91—Interest—Contract—Excessive charges—Settlement of account stated—Voluntary payment—Sur-charging and falsifying—Reduction of rate—Removal of mortgaged property—Negligence—Measure of damages, xlix., 473.

See CHATTEL MORTGAGE.

16. Action against minor—Exception of minority—Practice—Irregularity in procedure—Waiver after majority—Ratification—Prejudice—Nullity—Review by Appellate Court, xlvii., 103.

See PRACTICE.

17. Sale of goods—Condition as to prices—Lost invoices—Secondary evidence—Breach of contract—Damages, xlvii., 289.

See SALE.

18. Builders and contractors—Breach of contract—Action for quantum meruit—Rescission—Cross-action for damages—Appropriate relief. *Favreau et al. v. Rochon*, xlii., 647.

19. Cancellation of contract—Expelling contractor—Condition precedent—Possession of plant—Seizure in execution—Interpleader—Insolvency—Abandonment of works—Suretyship. *Uplands, Limited v. Goodacre*, l., 75.

See CONTRACT.

20. Specific performance—Lease of land—Option for purchase—Acceptance of new lease—Waiver of option. *Mathewson v. Burns*, l., 115.

See LEASE.

21. Contract—Cancellation—Expelling contractor—Condition precedent—Possession of plant—Seizure in execution—Interpleader—Insolvency—Abandonment of works—Suretyship, l., 75.

See CONTRACT.

22. Specific performance—Lease of land—Option for purchase—Acceptance of new lease—Waiver of option, l., 115.

See SPECIFIC PERFORMANCE.

23. Fire insurance—Bawdy house—Immoral contract—Legal maxim—*Ex turpi causa non oritur actio*—Cancellation of policy—Statutory condition—Notice to insured—Return of premium—Principal and agent. *Dom. Fire Ins. v. Nakata*, lii., 294.

See INSURANCE, FIRE.

24. Fire insurance—Statutory conditions—Notice—Conditions of application—R. S. Q., 1909, arts. 7034-7036—Conditions indorsed on policy—Keeping and storing coal oil—Agent's knowledge—Adjustment of claim—Offer of settlement by adjuster—Estoppel—Transaction. *Laforest v. Factories Ins.*, liii., 296.

See INSURANCE, FIRE.



**WALL.**

*Title to land—Servitude—Construction of deed—Plan of subdivision—Reservations — “Representatives”—Owners par indivis — Common lanes—Right of passage—Private wall—Windows and openings on line of lane —Arts. 533-538 C. C., xxxvi., 618.*

See **SERVITUDE.**

**WARRANT.**

1. *Commitment to penitentiary—Form of warrant—Copy of sentence.*—Under s. 42 of “The Penitentiary Act,” R. S. C. c. 182, a copy of the sentence of the trial court certified by a judge or by the clerk or acting clerk of that court is a sufficient warrant for the commitment and detention of the convict. Judgment appealed from (35 Can. S. C. R. 189), affirmed. *Smitheman v. The King*, xxxv., 490.

AND see **CRIMINAL LAW.**

2. *Commitment—Form of warrant — Imprisonment in penitentiary — Venue—Commencement of sentence*, xxxv., 189.

See **CRIMINAL LAW.**

**WARRANTY.**

1. *Latent defects—Bad faith—Presumption.*—Where the vendor has sold, with warranty, a building constructed by himself he must be presumed to have been aware of latent defects and, in that respect, to have acted in bad faith and fraudulently in making the sale. *Pagneuello v. Choquette*, xxxiv., 102.

AND see **VENDOR AND PURCHASER.**

2. *Appeal—Jurisdiction — Matter in controversy—Warranty of title—Future rights —Hypothec for rent charges—R. S. C. c. 135, s. 29.*—In an action for the price of real estate sold with warranty, a plea alleging troubles and fear of eviction under a prior hypothec to secure rent charges on the land does not raise questions affecting the title nor involving future rights so far as to give the Supreme Court of Canada jurisdiction to entertain an appeal. *The Bank of Toronto v. Le Curé et les Marguilliers de la Nativité* (12 Can. S. C. R. 25); *Winberg v. Hampson* (19 Can. S. C. R. 369); *Jermyn v. Tew* (28 Can. S. C. R. 497); *Waters v. Manigault* (30 Can. S. C. R. 304); *Fréchette v. Simoneau* (31 Can. S. C. R. 13); *Toussignant v. The County of Nicolet* (32 Can. S. C. R. 353), and *The Canadian Mutual Loan and Investment Co. v. Lee* (34 Can. S. C. R. 224), followed. *L'Association Pharmaceutique de Québec v. Livernois* (30 Can. S. C. R. 400), distinguished. *Carrier v. Sirois*, xxxvi., 221.

3. *Sale of goods by sample—Delivery — Condition f.o.b.—“Sale of Goods Act.” R. S. M. (1902) c. 152—Notice of rejection—Reasonable time — Breach of warranty — Damages.*—By contract made at Winnipeg, Man., plaintiffs sold to the defendants, by

sample, a carload of cured fish to be shipped during the winter from their warehouse at Causo, N.S., “f.o.h. Winnipeg.” The sample was sound and satisfactory. The fish arrived in Winnipeg in a frozen state and were received by the defendants and kept by them in an outhouse for several weeks before being placed in the freezer, the atmospheric conditions being such that the fish could not, in the meantime, have deteriorated by thawing. Some of the fish when sold proved unsound, were returned by customers and the whole shipment was found not up to sample and unfit for food. On inspection the health inspector condemned the whole carload and it was destroyed. About six weeks after the fish had been received by them, the defendants notified the plaintiffs of the rejection of the carload so delivered. In an action for the price at which the fish had been sold, the defendants counterclaimed for damages for breach of warranty and consequent loss in their business.—*Held*, reversing the judgment appealed from (17 Man. R. 620), that the sale had been made subject to delivery at Winnipeg, that any loss occasioned by deterioration in transit not necessarily incidental to the course of transit should be borne by the sellers, that the loss in this case was not so incidental, and that under the circumstances, the purchasers had notified the sellers of the rejection within a reasonable time, as contemplated by the “Sale of Goods Act,” R. S. M. (1902) c. 152; that the plaintiffs could not recover and that the defendants were entitled to have damages on their counterclaim. *Winnipeg Fish Co. v. Whitman Fish Co.*, xli., 453.

4. *Contract—Assignment of patent rights —Implied warranty—Priority — Validity of patent—Caveat emptor—Novelty—Combination—New and useful results.*—In the absence of an express agreement or of special circumstances from which warranty might be implied, an assignment of “all the right, title and interest” in a patent of invention does not import any warranty on the part of the assignor as to the validity of the patent. Judgment appealed from (Q. R. 34 S. C. 388), affirmed.—*Per* Idington, J.—In the present case the patents were valid. *Electric Fireproofing Co. of Canada v. Electric Fireproofing Co.*, xliii., 182.

5. *Fire insurance—Insurance on lumber —Conditions—Warranty — Railway on lot.*—A policy insuring against loss by fire a quantity of sawn lumber in a specified location contained a warranty by the assured “that no railway passes through the lot on which said lumber is piled, or within 200 feet.” — *Held*, that a railway partly constructed and hauling freight through the said lot, though not authorized to run passenger cars and do general business, is a “railway” within the meaning of the warranty. *Guimond v. Fidelity-Phoenix Fire Ins. Co.*, xvii., 216.

AND see **INSURANCE, FIRE.**

6. *Evidence—Verdict—New trial—Life insurance—Accident policies — Conditions of contract — Misrepresentations — Non-dis-*

closure—Words and terms—Rule of interpretation, xxxv., 266.

See EVIDENCE.

7. Mutual life insurance—Natural premium system—Level premium—Mortuary calls—Rate of assessment—Rating at attained age—Fraud—Puffing statements—Misrepresentation—Aequiescence—Mistake—Rescission of contract—Estoppel, xxxv., 330.

See INSURANCE, LIFE.

8. Banks and banking—Forged cheque—Negligence—Responsibility of drawee—Payment—Mistake—Indorsement—Implied warranty—Principal and agent—Action—Money had and received—Change in position—Laches, xl., 366.

See BANKS AND BANKING.

9. Life insurance—Mis-statements—Concealment of material facts—Pleading—Questions at issue—Findings of fact—Amendment—Practice—Successful party moving against findings, Cam. Cas. 463.

See INSURANCE, LIFE.

10. Appeal—Amount in dispute—Interest—Costs—Collateral matter, xli., 43.

See APPEAL.

11. Contract—Implied warranty—Fitness of machinery—New agreement—Breaches prior to new contract—Relinquishment of rights under former agreement, xliii., 614.

See CONTRACT.

12. Sale of goods—Express or implied warranty—Evidence. Canadian Gas Power and Launches v. Orr Brothers, xlii., 636.

13. Sale of goods—Designated quality—Fraud on purchaser—Damages—Loss of market. Bigelow v. Graham, xlvi., 512.

See SALE.

## WATERCOURSES.

1. Driving timber—"Damages resulting"—Reparation—Riparian rights—Construction of statute—Arts. 7298, 7349 R. S. Q. (1909)—Servitude—Injury caused by independent contractor—Liability of owner of timber.]—The privilege of transmitting timber down watercourses in the Province of Quebec given by article 7298 of the Revised Statutes of Quebec, 1909, is not granted in derogation of the obligation imposed upon those making use of watercourses for such purposes to make reparation for damages resulting therefrom by article 7349 (2) of the Revised Statutes of Quebec. The effect of the articles is that persons who avail themselves of the privilege thereby conferred are obliged to compensate riparian owners for all damages which result from the exercise of that right except in regard to such as cannot be avoided by the exercise of reasonable care and skill and those in respect of which the riparian proprietor himself may have contributed, or which have been occasioned by his own fault. *Tourville v. Ritchie* (21 R. L. 110),

referred to.—The judgment appealed from was reversed, *Davies and Anglin, JJ.*, dissenting.—*Per Davies and Anglin, JJ.*, dissenting.—The evidence shewed that the damages complained of were caused by the fault of a *bonâ fide* independent contractor and, consequently, the owner of the timber which was being driven down the watercourse in question was not responsible for them.—(NOTE.—Leave to appeal to the Privy Council was granted on 15th July, 1913.) *Dumont v. Fraser*, xlvi., 137.

2. Riparian rights—Interference—Evidence.]—M., claiming to be a riparian owner on the shore of Ashbridge Bay (part of Toronto harbour), claimed damages from, and an injunction against, the city for interfering with his access to the water when digging a channel along the north side of the bay.—*Held*, affirming the judgment of the Court of Appeal (27 Ont. L. R. 1), by which an appeal from a Divisional Court (23 Ont. L. R. 365), was dismissed, that the evidence established that between M.'s land and the bay was marsh land and not land covered with water as contended and, therefore, M. was not a riparian owner. *Merritt v. City of Toronto*, xlvi., 1.

3. Floating saw-logs in rivers and streams—Damages—R. S. N. S. (1900) c. 95, s. 17—Procedure—Charge to jury—Report by trial judge—New trial—Review on appeal, xxxiv., 265.

See RIVERS AND STREAMS.

4. Practice—Pleading—Condition precedent—Construction of statute—59 Vict. c. 62, ss. 9, 25 (B.C.)—Mineral claim—Expropriation—Watercourses—Waterworks—Trespass—Damages—Waiver—Injunction, xxxv., 309.

See EXPROPRIATION.

5. Local works and undertakings—Navigable waters of Canada—Works for general advantage of Canada—Legislation—Jurisdiction, xxxvi., 596.

See CONSTITUTIONAL LAW.

6. Lease—Canal—Water-power—Improvements on canal—Temporary stoppage of water—Compensation—Total stoppage—Measure of damages—Loss of profits, xxxvii., 259.

See LEASE.

AND see CANAL; RIVERS AND STREAMS.

7. River improvements—Precautions against danger, xli., 116.

8. Right of floating logs—Servitude, xlii., 133.

See APPEAL.

9. Constitutional law—Legislative jurisdiction—Crown lands—Terms of union. B.C., art. 11—Railway aid—Provincial grant to Dominion—Intrusion—Provincial legislation—Water-records within "Railway Belt"—Construction of statute—B. N. A. Act, 1867, ss. 91, 109, 117, 146—Imperial Order in Council, 16th May, 1871—"Water Clauses Consolidation Act, 1897," R. S. B. C.

c. 190—*British Columbia waters. Burrard Power Co. v. The King*, xliii., 27.

See CONSTITUTIONAL LAW.

10. *Sea-coast and inland fisheries—Canadian waters — Tidal waters — Navigable waters—Open sea—B. C. "Railway Belt"—Foreshores—Fera natura—Legislative jurisdiction—Construction of statute*, xviii., 493.

See FISHERIES.

See RIVERS AND STREAMS.

11. *Industrial improvements*, xlix., 344.

## WATERS.

See ALLUVION; DAMS; NAVIGATION; RIVERS AND STREAMS; SEA BEACHES.

## WATER LOTS.

*Expropriation of land—Expectation of enhanced value—Crown grant — Statutory authority*, xliii., 88.

See EXPROPRIATION OF LAND.

## WATERWORKS.

1. *Water commission—Act of Incorporation — Construction — Appropriation of water.*—The Act for construction of water works in the City of London empowered the commissioners to enter upon any lands in the city or within fifteen miles thereof and set out the portion required for the works, and to divert and appropriate any river, pond, spring or stream therein. — *Held*, Sedgewick and Killam, JJ., dissenting, that the water to be appropriated was not confined to the area of the lands entered upon, but the commissioners could appropriate the water of the River Thames by the erection of a dam and setting aside of a reservoir, and that such water could be used to create power for utilization of other waters and was not necessarily to be distributed in the city for drinking and other municipal purposes. (Reversed by Privy Council [1906] A. C. 110.) *Water Commissioners of London v. Saunby*, xxxiv., 650.

2. *Municipal corporation—Water rates — Discrimination.*—*Held*, affirming the judgment of the Court of Appeal (12 Ont. L. R. 75), which sustained the verdict at the trial (10 Ont. L. R. 230), that the rate for water supplied to any class of consumers must be an equal rate to all members of such class and a by-law providing for a rate on certain manufacturers higher than that to be paid by others was illegal. *Attorney-General v. City of Toronto* (23 Can. S. C. R. 514), followed. *City of Hamilton v. Hamilton Distillery Co.*; *City of Hamilton v. Hamilton Brewing Association*, xxviii., 239.

AND see MUNICIPAL CORPORATION.

3. *Statutory contract — Exclusive franchise—Condition of defeasance—Forfeiture of monopoly—Demurrer—Right of action by municipality—Rescission—Art. 1065 C. C.—40 Vict. c. 68 (Que.).*—By the Quebec statute, 40 Vict. c. 68, Louis Molléur and

others, now represented by the defendants, were substituted as sole owners of the waterworks of St. John's in the place of "The Waterworks Co. of St. John's," incorporated under R. S. C. (1859), c. 65, charged with all the obligations and responsibilities of said company, and, by the said Act, 40 Vict. c. 68, the new proprietors were granted the exclusive right and privilege of placing pipes or water conduits under the streets and squares of the Town of Saint John's (now the City of St. John's, the appellant), under certain other conditions and obligations in the last mentioned statute recited, and the monopoly created was, by s. 3, liable to be forfeited in case of neglect or refusal in discharging the obligations thereby imposed.—*Held*, that the contract existing between the parties, in virtue of the above recited statutes, was liable to rescission under the provisions of the 1065th article of the Civil Code of Lower Canada, upon default in the specific performance by the defendants of the obligations thereby imposed, and that, upon proof of default in the specific performance of any of the said obligations, the municipal corporation was entitled to maintain an action in its corporate capacity to have the exclusive right and privilege granted by the statute declared forfeited, surrendered and annulled. The judgment appealed from (Q. R. 16 K. B. 559), deciding that the action would lie only for breach of obligations expressly declared to involve forfeiture was reversed, Davies, J., dissenting. *Ville de St. Jean v. Molléur*, xl., 629.

4. *Practice—Pleading — Condition precedent—Construction of statute—59 Vict. c. 62, ss. 9, 25 (B.C.)—Mineral claim—Expropriation—Watercourses — Waterworks—Trespass — Damages—Waiver—Injunction*, xxxv., 309.

See EXPROPRIATION.

5. *Watercourses—Riparian rights — Expropriation—Trespass—Torts—Diversion of natural flow—Injurious affection—Damages—Execution of statutory powers—Arbitration—Injunction—Mandamus — Construction of statute — 59 Vict. c. 44 (N.S.)*, xxxvii., 464.

See RIVERS AND STREAMS.

6. *Construction of deed—Title to land—Servitude—Acquiescence — Estoppel by conduct—Actio negatoria servitutis—Operation of waterworks*, xxxix., 244.

7. *Municipal corporation—Water rates — Statutory authority—Construction of statute—Water for domestic, fire and other purposes—Motive power—Discretion of council*, xlv., 606.

See MUNICIPAL CORPORATION.

8. *Municipal corporation—Statutory powers — Electric light and power — Immoveable outside boundaries—Purchase on credit — Promissory notes—Hypothec—By-law — Loans—Approval of ratepayers — Special rate—Sinking fund—Construction of statute—(Que.) 8 Edw. VII. c. 95—R. S. Q., 1909, tit. XI.—"Cities and Towns Act," xlv., 585.*

See MUNICIPAL CORPORATION.

**WAY BILL.**

*Shipment by railway—Carriage of passenger—Special contract—Notice of condition—Negligence—Exemption from liability, xviii., 622.*

See RAILWAYS.

**WIFE.**

*Construction of will—Description of legatee—Devise "to my wife"—Bigamous marriage—Evidence—Burden of proof, xl., 210.*

See MARRIAGE; HUSBAND AND WIFE.

AND see MARRIED WOMAN.

**WILL.**

1. *Corporation sole — Roman Catholic Bishop—Devise of personal and ecclesiastical property—Construction of will.*—The will of the Roman Catholic Bishop of St. John, N.B., a corporation sole, contained the following devise of his property:—"Although all the church and ecclesiastical and charitable properties in the diocese are and should be vested in the Roman Catholic Bishop of St. John, New Brunswick, for the benefit of religion, education and charity, in trust according to the intentions and purposes for which they were acquired and established, yet to meet any want or mistake I give and devise and bequeath all my estate, real and personal, wherever situated, to the Roman Catholic Bishop of St. John, New Brunswick, in trust for the purposes and intentions for which they are used and established."—*Held*, affirming the judgment appealed from (36 N. B. Rep. 229), that the private property of the testator as well as the ecclesiastical property vested in him as bishop was devised by this clause and the fact that there were specific devises of personal property for other purposes did not alter its construction. *Travers v. Casey*, xxxiv., 419.

2. *Discretion of executors — Withholding income—Reasonable time—Failure of object of devise—Cy-pres—Costs.*—The Supreme Court of Nova Scotia (35 N. S. Rep. 526), affirming Townshend, J., declared that the direction in the will to apply a portion of the income of the residue for the introduction and support of Jesuit Fathers in the City of Halifax was inexpedient and impracticable and could not now be accomplished and ordered such unapplied revenue with accumulations to be applied to charitable purposes having regard to the will, and that the defendants should formulate a scheme to be submitted to the court within three months from the date of the decree. The action was for inquiry and account in respect to the estate, a decree that the income of the residue should be applied to charitable purposes and for the settlement of a scheme for its disposition and the application *cy-pres* of such portion of the income as could not be applied in the particular mode directed by the will, with further directions. The Supreme Court made an order varying the decree by striking out the

introductory paragraph so as, in effect, to declare the direction in the will at present impracticable and adjudging that the unapplied income of the residue should, from and after a date named, be applied semi-annually by the defendants to the promotion and support, in the City of Halifax or its vicinity, of such charitable institutions and religious orders in connection with the Roman Catholic Church, and in such manner and in such proportions as the executors, in their discretion, might think proper in accordance with the terms of the will and the powers thereby conferred upon them. And the court reserved further directions, with leave to either party to apply to the court below, and ordered the costs of all parties to be paid out of the funds of the estate in the hands of the defendants. *Power v. Attorney-General for Nova Scotia*, xxxv., 182.

3. *Construction of residuary clause — Power of selection—Discretion of trustees—Vagueness or uncertainty—Designated class of beneficiaries.*—A devise in a will directing the distribution of the residue of the testator's estate among his brothers and sisters or nephews and nieces who should be most in need of it, at the discretion of trustees therein named, is valid and confers absolute power upon the trustees of selecting beneficiaries from the classes of persons mentioned. *McGibbon v. Abbott* (10 App. Cas. 653), followed; *Ross v. Ross* (25 Can. S. C. R. 307), referred to. *Brosseau v. Doré*, xxxv., 205.

4. *Testamentary capacity—Evidence—Art. 831 C. C.—Marriage contract—Duress.*—An action to annul a marriage contract and set aside a will and codicil on grounds of insanity and duress [under circumstances stated in the judgments of the courts below (Q. R. 25 S. C. 275)], was dismissed at the trial, and the appeal was against the judgment of the Court of Review, affirming that decision. The Supreme Court of Canada dismissed the appeal with costs, for the reasons given in the court below. *Hotte v. Birabin*, xxxv., 477.

5. *Signature of will—Execution — Evidence — Appeal.*—In proceedings for probate of a will, the solicitor who drew it testified that it was signed by the testatrix when the subscribing witnesses were absent; that on their arrival he asked the testatrix if the signature to it was hers and if she wished the two persons present to witness it and she answered "yes;" each of the witnesses acknowledged his signature to the will but swore that he had not heard such question asked and answered. The Judge of Probate held that the will was not properly executed and his decision was affirmed by the Supreme Court of Nova Scotia.—*Held*, affirming the judgment appealed from (36 N. S. Rep. 482), that two courts having pronounced against the validity of the will such decision would not be reversed by a second Court of Appeal. (Leave to appeal to Privy Council refused, July, 1905.) *McNeil v. Cullen*, xxxv., 510.

6. *Will—Execution of will—Promoter — Evidence—Testamentary capacity.*—Where

the promotor of, and a residuary legatee under a will executed two days before the testator's death and attacked by his widow and a residuary legatee under a former will, the devise to the latter of whom was revoked, failed to furnish evidence to corroborate his own testimony that the will was read over to the testator who seemed to understand what he was doing, and there was a doubt under all the evidence of his testamentary capacity, the will was set aside. Girouard, J., dissenting, held that the evidence was sufficient to establish the will as expressing the wishes of the testator.—*Per Davies, J.*—The will should stand except the portion disposing of the residue of the estate, the devise of which, in the former will, should be admitted to probate with it. *British and Foreign Bible Society v. Tupper*, xxxvii., 100.

7. *Trust—Conditional devise.*—The property was devised by will as follows: "I give and bequeath to my beloved wife, Margaret McIsaac, all and singular the property of which I am at present possessed, whether real or personal or wherever situated, to be by her disposed of amongst my beloved children as she may judge most beneficial for herself and them, and also order that all my just and lawful debts be paid out of the same. And I do hereby appoint my brother, Donald McIsaac, and my brother-in-law, Donald McIsaac, tailor, my executors to carry out this my last will and testament."—*Held*, affirming the judgment appealed from (38 N. S. Rep. 60), that the widow took the real estate in fee with power to dispose of it and the personality whenever she deemed it was for the benefit of her children to do so. *McIsaac v. Beaton*, xxxvii., 143.

8. *Probate of will—Promoter—Evidence—Subsequent conduct of testator—Residuary devise—Trust.*—In proceedings for probate by the executors of a will which was opposed on the ground that it was prepared by one of the executors who was also a beneficiary, there was evidence, though contradictory, that before the will was executed it was read over to the testator who seemed to understand its provisions.—*Held*, Idington, J., dissenting, that such evidence and the facts that the testator lived for several years after it was executed and on several occasions during that time spoke of having made his will and never revoked nor altered it, satisfied the onus, if it existed, on the executor to satisfy the court that the testator knew and approved of its provisions.—*Held*, also that where the testator's estate was worth some \$50,000 and he had no children, it was doubtful if a bequest to the propounder, his brother, of \$1,000 was such a substantial benefit that it would give rise to the onus contended for by those opposing the will. *Connell v. Connell*, xxxvii., 404.

9. *Construction of will—Usufruct—Substitution—Partition between institutes—Validating legislation—60 Vict. c. 95 (Q.)—Construction of statute—Restraint of alienation—Interest of substitutes—Devise of property held by institute under partition—Devolution of corpus of estate en nature—Accretion—Res judicata—Arts. 868, 948*

C. C.]—The effect of the statute, 60 Vict. c. 95 (Que.), respecting the will of the late Amable Prévost, read in conjunction with the provisions of the will and codicils therein referred to, is to declare the deed of partition between the beneficiaries thereunder final and definitive and not merely provisional; the judgment of the Court of Queen's Bench, on the appeal side, taken under that statute, has no other effect. Neither the statute nor the judgment referred to sanctions the view that the said will and codicils, constitute more than one substitution; there was but one substitution created thereunder in favour of all the joint legatees and, consequently, accretion takes place among them within the meaning of article 868 of the Civil Code, in the event of any legacy lapsing, under the terms of the will, upon the death of an institute without issue prior to the opening of the substitution. In such case the share of the institute dying without issue devolves to the other joint legatees, as well in usufruct as in absolute ownership, and, consequently, none of the institutes or substitutes have the right of disposing of any portion of the testator's estate, by will or otherwise, prior to the date of the opening of the substitution.—Judgment appealed from (Q. R. 28 S. C. 257), reversed. *DeHertel v. Goddard* (66 L. J. P. C. 90), distinguished. (Reversed by Privy Council [1908] A. C. 541. *Prévost v. Lamarche*, xxxviii., 1.

10. *Revocation of will—Testamentary capacity—Findings of fact—Practice—Improper suggestion—Undue influence—Captation—Bounty taken by promotor—Fraudulent representations—Evidence—Onus of proof.*—While the testator was suffering from a wasting disease of which he died shortly afterwards, the defendant, his brother, took advantage of his weakness of mind and secretly obtained the execution of a will, in which he was made the principal beneficiary, by fraudulently suggesting and causing the testator to believe that his malady was caused and aggravated by the carelessness and want of skill of his wife in the preparation of his food. The testator and his wife had lived together in harmony for a number of years and, shortly after their marriage, had made wills by which each of them, respectively, had constituted the other universal residuary legatee and the testator's former will, so made, was revoked by the will propounded by the defendant.—*Held*, that, as the promotor of the will, by which he took a bounty, had failed to discharge the onus of proof cast upon him to shew that the testator had acted freely and without undue influence in the revocation of the former will, the second will was invalid and should be set aside.—The judgment appealed from was reversed, on the ground of captation and undue influence, but the Supreme Court of Canada refused to interfere with the concurrent findings of both courts below against the contention as to the testator's unsoundness of mind. *Mayrand v. Dussault*, xxxviii., 460.

11. *Legacy—"Moneys"—Construction of will.*—Where by will money was bequeathed to the testator's daughter "to hold

and be enjoyed by her while she remained unmarried," with a bequest over in case of her decease or marriage:—*Held*, that the daughter was only entitled to the income from said money and not to possession and deposition thereof.—Remarks on the absence from the record of the decree of the Court of original jurisdiction. *Re Daly; Daly v. Brown*, xxxix., 122.

AND see EXECUTORS AND ADMINISTRATORS.

12. *Construction of will—Description of legatee—Devise "to my wife"—Bigamous marriage—Evidence—Burden of proof.*]—A devise made in a will "to my wife" was claimed by two women, with both of whom the testator had lived in the relationship of husband and wife.—*Held*, per Idington, J.—That, even if the first marriage was assumed to have been validly performed, all the surrounding circumstances shewed that, by the words "to my wife," the testator intended to indicate the woman with whom he was living, in that relationship, at the time of the execution of the will and thereafter up to the time of his death.—*Held*, per Duff, J.—That the woman who claimed to have been first married to the testator had not sufficiently proved that fact, and that the other woman, who was living with the testator as his wife at the time of the execution of the will and up to the time of his death, was entitled to the devise.—*Held*, per Davies and MacLennan, JJ., dissenting.—That the first marriage was sufficiently proved and, consequently, that the devise went to the only person who was the legal wife of the testator.—Fitzpatrick, C.J., was of opinion that the appeal should be dismissed.—Judgment appealed from (13 B. C. Rep. 161), affirmed. *Davies and MacLennan, JJ.*, dissenting. *Marks v. Marks*, xl., 210.

13. *Powers of executors—Winding-up estate—Time limit—Legacy—Special legislation—Extension of time—3 Edw. VII. c. 136 (Que.)—Construction of statute.*]—The provisions of the Quebec Statute, 3 Edw. VII. c. 136, have not the effect of extending indefinitely the time limited by the will of the late Owen McGarvey for the investment of \$50,000 for the appellant's benefit as directed by the will.—Judgment appealed from (Q. R. 32 S. C. 364), reversed. *McGarvey v. McNally*, xl., 489.

14. *Testamentary capacity—Captation—Suggestion—Undue influence—Interdiction—Evidence—Onus of proof.*]—The existence of circumstances which might raise suspicion that the execution of a will was procured by captation, improper suggestions or undue influence on the part of those promoting it is not a sufficient ground to justify an Appellate Court in interfering with the concurrent findings of the courts below as to the validity of the will.—Judgment appealed from (Q. R. 17 K. B. 215), affirmed, (Laramée and MacLennan, JJ., dissenting. *Laramée v. Ferron*, xli., 391.

15. *Universal legacy—Powers vested in legatee—Devise by legatee of residue undisposed of at her death—Substitution—Words and phrase—"Or not disposed of"—"In her possession."—S.*, by his will,

gave all his property absolutely to his wife with a direction that their children should be suitably maintained and educated by her. The will then provided "that should my said wife die leaving any of my said property or rights, in her possession or not disposed of, upon her said decease the same should be divided among our said children" in the manner specified.—*Held*, affirming the judgment of the Court of Review (Q. R. 40 S. C. 139, *sub nom. Shearer v. Forman*), that this provision did not empower the wife to dispose of the residue at the time of her death by will, but had the effect of creating a substitution, *de residuo* in favour of the children. *Shearer v. Hogg*, xvi., 492.

16. *Construction of will—Substitution—Trust—Death of grevé—Accretion—Partition—Apportionment in aliquot shares—Distribution of estate—Partial intestacy—Devolution.*]—By his will, in 1845, M. devised his estate to trustees charging them with its administration in a manner intended to secure the enjoyment of the revenues by his surviving children and their descendants so long as the law would permit; he provided for the division of his estate into as many equal parts as he should leave children him surviving: "Pour chacune de ces parts ou portions de mes biens représenter les biens mobiliers et immobiliers dont chacun de mes dits enfants aura seulement la moitié des revenus sa vie durant, ainsi que ci-après pourvu, et pour les revenus de chacune de ces parts ou portions de mes biens être réversibles après le décès de chacun de mes dits enfants aux enfants nés en légitimes mariages d'eux, mes dits enfants, respectivement, et être substitué de descendants en descendants, et ce indéfiniment, ou autant que permis par la loi, en observant que je veux et entends que lors de chaque succession ou transmission de mes biens il en soit fait partage, autant que possible, entre-chacun de mes descendants de manière à pouvoir connaître et distinguer la part ou portion des biens dont chacun d'eux aura les revenus sa vie durant."—At the time of his death, in 1847, eight of his children survived the testator and his estate was, accordingly, apportioned so far as then possible, the residue, not then conveniently divisible, being held in suspense as a ninth share to be subsequently divided from time to time as it became possible to do so. Of the eight shares, that attributable to L. M., one of the children, was enjoyed by him up to the time of his death, in 1887, intestate as to the share in question and without issue.—*Held*, Brodeur, J., dissenting.—That, as the will did not give the children and grandchildren of the testator any rights as proprietors in his estate, there was no substitution created by its provisions.—*Held*, also, *Davies and Brodeur, JJ.*, dissenting.—That, on the death of L. M. without issue, the share allotted to him remained vested in the trustees subject to distribution among the children of the testator and their descendants in the same manner and upon the same conditions as if L. M. had predeceased the testator and the estate had been originally apportioned into seven instead of into eight parts.—*Per Davies, J.*—As there was no provision in the will in respect to

children dying without issue, and as there was no collateral substitution, there was intestacy resulting, on the death of L. M. without issue, in regard to the share allotted to him; consequently, it remained vested in the trustees for the benefit of and to be distributed amongst the heirs of the testator living at that date.—*Per Brodeur, J.*, dissenting.—The will had the effect of creating a direct and collateral substitution. At the death of L. M. his brothers and sisters became substitutes and their descendants are *appelés*.—Judgment appealed from (Q. R. 20 K. B. 1), reversed. *Masson v. Masson*, xvii., 42.

17. *Execution—Testamentary capacity — Undue influence—Captation — Approval by testatrix—Evidence—Beneficiary propounding will—Onus of proof.*—A person propounding a will, in the preparation of which he was instrumental and by which he is sole beneficiary, is obliged to support it by evidence sufficient not only to shew that the will was duly executed, but also to justify the righteousness of the transaction and to establish that it truly expresses the last testamentary wishes of the testator and that the testator knew and appreciated the effect of its dispositions and approved of them.—Two days before her death the testatrix, to whom morphine was being administered to alleviate pain, executed two wills in the English form. She requested her husband to have a will prepared and, on his instructions, his brother, an advocate, drafted a will whereby the husband was made sole beneficiary. Upon this will being read over to her, in the forenoon, the testatrix took exception to it because it ignored a promise, made to her father, that certain property she had received from him should ultimately revert to members of her own family; and she did not then execute it. Another will was drafted by the husband's brother to meet her wishes, but, either on account of her drowsiness or because of the presence in her bedroom of friends, including her sister, the plaintiff, the second will, though ready at noon, was not presented to the testatrix for signature until late in the afternoon, when she attempted to sign it, but the brother declared it worthless owing to the illegibility of the signature. On being told of this opinion, the will read to her in the morning, or one similar in its contents, was presented to her for signature and her husband offered to read it to her, but she declined to have this done, saying that she had already heard it read and knew its contents; she then signed it with her mark in presence of witnesses. In an action to set aside the last will, the evidence failed to establish that the testatrix understood its contents and the difference between its provisions and those of the will which she had attempted to sign, nor did it remove suspicion arising from the fact that the impeached will had been prepared under the instructions of the sole beneficiary, and other peculiar circumstances attending its execution.—*Held*, reversing the judgment appealed from (Q. R. 22 K. B. 252), the Chief Justice dissenting, that the evidence failed to establish that the will in question expressed the true last testamentary wishes of the testatrix and, consequently, that it should be

set aside. *Barry v. Butlin* (2 Moo. P. C. 480); *Fulton v. Andrews* (L. R. 7 H. L. 448); *Tyrell v. Panton* (1894), P. 151); *McLaughlin v. McLennan* (26 Can. S. C. R. 646); *Brown v. Fisher* (63 L. T. 465); *St. George's Society of Montreal v. Nicholls* (Q. R. 5 S. C. 273); *Harwood v. Baker* (3 Moo. P. C. 282); *Tribe v. Tribe* (13 Jur. 793); *Mignault v. Malo* (16 L. C. Jur. 288), and *Mayrand v. Dussault* (38 Can. S. C. R. 460), referred to. (Leave to appeal to Privy Council granted, 15th May, 1914.) *Lamoureux v. Craig*, xlix., 305.

18. *Construction of — Legacy to church committee—Contribution to "building fund"—Uterior disposition—Application to purpose intended—Lapse of devise—Art. 964 (C. C.)*—At a time when the congregation of St. Matthew's Presbyterian Church, in Montreal, was heavily encumbered with debt incurred in building the church, a committee was formed to collect contributions to be applied in liquidating the debt by means of a "building fund," and the testatrix made her will by which she bequeathed certain real property to that committee. Several years later the committee were relieved of their duty and the building fund ceased to exist, and during the year previous to the death of the testatrix the original debt in respect of which the building fund had been established was fully paid. There remained, however, at the time of her death balances of debt still due for expenses incurred for other building purposes. In an action to have the bequest declared to have lapsed on account of failure in its ulterior disposition.—*Held*, affirming the judgment appealed from (Q. R. 46 S. C. 97), Duff and Anglin, JJ., dissenting, that, in the circumstances of the case, the bequest must be construed as a bounty to the trustees of the church for the purposes of building expenses, including debts incurred for such purposes subsequent to the construction of the church; that the motive of the testatrix was not to make a contribution to any particular fund, but to benefit the congregation in respect to its building liabilities generally, and that the legacy did not lapse in consequence of the "building fund" having ceased to exist and the extinction of the debt in regard to which contributions to that fund were to be applied.—*Per* Duff and Anglin, JJ., dissenting.—It was of the essence of the gift that it should be capable, at the time of the death of the testatrix, of being applied in furtherance of the specific purpose for which the "building fund" had been instituted and, that having become impossible, it lapsed under the provisions of article 964 of the Civil Code. *Pringle v. Anderson*, l., 451.

19. *Construction — Devise of income — Trust—Codicil—Postponement of division—Maintenance of children.*—The will of S. contained the following provision: "I direct my said trustees to pay to my wife Annie Singer, during the term of her natural life and as long as she will remain my widow, the net annual income arising from my estate for the maintenance of herself and our children; should, however, my wife remarry then such annuity shall cease."—*Held*, that Annie Singer was entitled to said income during her widowhood for her own



use absolutely, but subject to an obligation to provide, in her discretion, for the maintenance of the children, which discretion would not be controlled nor interfered with so long as it was exercised in good faith. Such obligation did not extend to a child married or otherwise forisfamiliarated.—*Per Anglin, J.*—The jurisdiction to determine the good or bad faith of the widow on an originating notice is questionable.—Another clause of the will directed the trustees “to pay to each of my sons who shall reach the age of thirty years a sum equal to half that portion of my estate to which such son is entitled under this will upon the death of his mother. . . . Such payment to be considered as a loan from the estate.” A codicil added several years later contained this provision: “I hereby further direct that my real property shall not be divided among the beneficiaries as directed by my will until after the lapse of ten years from my death.”—*Held*, that the division so postponed was not the final division to be made on the death or marriage of the widow; that it had the effect of postponing any advance to a son thirty years old of half his portion until the ten years from the testator's death had expired so far as such advance would necessitate the sale or mortgage of any of the real estate.—Judgment of the Appellate Division (33 Ont. L. R. 602), affirmed. *Singer v. Singer*, lii., 447.

20. *Construction—Estate for life—Power of appointment—Trust.*—A will devised all the testator's real and personal property to his two daughters (naming them) upon trust as follows:—To make certain payments and then “to hold all my property in lots eight and nine . . . for my said daughters for themselves and to make such disposition thereof from time to time among my children or otherwise as my said daughters decide to make, they my said daughters in the meantime to have all the rents and profits therefrom.”—*Held*, affirming the judgment of the Appellate Division (34 Ont. L. R. 33), Fitzpatrick, C.J. and Idington, J., dissenting, that the said two daughters took a beneficial life interest in the property; and that the words “or otherwise” where they occur gave them an unfettered power of disposition which they could exercise in favour of any person, including themselves. *Meagher v. Meagher*, liii., 393.

21. *Execution of will—Mismanagement of estate—Fraud against creditors of beneficiary.* *Union Bank of Canada v. Brigham*, Cout. Cas. 355.

22. *Construction of will—Executors and trustees—Power of appointment—Appeal—Jurisdiction—Matter in controversy—Special leave to appeal refused.* *Bradley v. Saunders*. Cout. Cas. 380.

23. *Doweress—Title to land—Prescription—Statute of Limitations—Heirs-at-law—Parol evidence—Residuary devise*, Cam. Cas. 338.

See TITLE TO LAND.

24. *Trust for benefit of son—Discretion of executor—Death of beneficiary—Funds not disposed of.* *In re Rispin, Canada Trust Co. v. Davis*, xlvii., 649.

## WINDING-UP ACT.

1. *Joint stock company—Contributories—Consideration for shares.*—H. and others, interested as creditors and otherwise in a struggling firm, agreed to purchase the latter's assets and form a company to carry on its business and they severally subscribed for stock in the proposed company to an amount representing the value of the business after receiving financial aid which they undertook to furnish. A power of attorney was given to one of the parties to purchase said assets, which was done, payment being made by the discount of a note for \$2,000 made by H. and indorsed by another of the parties. The company having been formed the said assets were transferred and the said note was retired by a note of the company for \$4,000 indorsed by H., which he afterwards had to pay. H. also, or the company in Buffalo of which he was manager, advanced money to a considerable amount for the company which eventually went into liquidation. After the company was formed, in pursuance of the original agreement between the parties, stock was issued to each of them as fully paid up according to the amounts for which they respectively subscribed, and in the winding-up proceedings they were respectively placed on the list of contributors for the total amount of said stock. The ruling of the local master in this respect was affirmed by a judge of the High Court and by the Court of Appeal.—*Held*, reversing the judgment of the Court of Appeal, Davies and Nesbitt, J.J., dissenting, that as all the proceedings were in good faith and there was no misrepresentation of material facts, and as H. and S. had paid full value for their shares, the agreement by which they received them as fully paid up was valid and the order making them contributories should be rescinded.—*Held, per Davies and Nesbitt, J.J.*, that as they did not pay cash or its equivalent for any portion of the shares as such the order should stand. *Hood v. Eden*, xxxvi., 476.

2. *Appeal per saltum—Winding-up Act—Application under s. 76—Defective proceedings.*—Leave to appeal *per saltum*, under s. 26 of the Supreme Court Act, cannot be granted in a case under the Dominion Winding-up Act. An application under s. 76 of the Winding-up Act, for leave to appeal from a judgment of the Supreme Court of New Brunswick was refused where the judge had made no formal order on the petition for a winding-up order and the proceedings before the full court were in the nature of a reference rather than of an appeal from his decision. *In re Cushing Sulphite Fibre Co.*, xxxvi., 494.

3. *Appeal—Jurisdiction—Discretionary order—Stay of foreclosure proceedings—Final judgment—Controversy involved—R. S. C. c. 129, s. 76—R. S. C., 1886, c. 135, s. 28.*—Leave to appeal to the Supreme Court of Canada under the seventy-sixth s. of the “Winding-up Act” can be granted only where the judgment from which the appeal is sought is a final judgment and the amount involved exceeds two thousand dollars. A judgment setting aside an order, made under the “Winding-up Act,” for the



postponement of foreclosure proceedings and directing that such proceedings should be continued is not a final judgment within the meaning of the Supreme Court Act, and does not involve any controversy as to a pecuniary amount. *Re Cushing Sulphite Fibre Co.*, xxxvii., 173.

4. *Appeal—Jurisdiction—Winding-up order—Leave to appeal—Amount involved—R. S. C. c. 129, s. 76.*—In a case under the "Winding-up Act," R. S. C. c. 129, an appeal may be taken to the Supreme Court of Canada by leave of a judge thereof if the amount involved exceeds \$2,000.—*Held*, that a judgment refusing to set aside a winding-up order does not involve any amount and leave to appeal therefrom cannot be granted. *Cushing Sulphite Fibre Co. v. Cushing*, xxxvii., 427.

5. *Insolvent bank—Appointment of liquidators—Right to appoint another bank—Discretion of judge.*—The Winding-up Act provides that the shareholders and creditors of a company in liquidation shall severally meet and nominate persons who are to be appointed liquidators, and the judge having the appointment shall choose the liquidators from among such nominees. In the case of the Bank of Liverpool the judge appointed liquidators from among the nominees of the creditors, one of them being the defendant bank.—*Held*, affirming the judgment of the Court below, that there is nothing in the Act requiring both creditors and shareholders to be represented on the board of liquidators; that a bank may be appointed liquidator; and that if any appeal lies from the decision of the judge in exercising his judgment as to the appointment, such discretion was wisely exercised in this case. *Forsyth v. Bank of Nova Scotia; In re Bank of Liverpool* (xviii., 707), *Cam Cas.* 209.

6. *Appeal—Jurisdiction—Matter in controversy—Discretionary order—R. S. C. c. 129, s. 76—Winding-up insolvent bank.*—In order to give a right to appeal under s. 76 of the "Winding-up Act," the existing real value of the matter in controversy must be shewn to exceed \$2,000; mere supposititious valuations cannot be accepted.—Where no useful result can be obtained as the result of an appeal, the discretion of the judge should be exercised by the refusal of special leave to appeal under the "Winding-up Act."—(NOTE.—*Cf. Cushing Sulphite Fibre Co. v. Cushing* (37 *Can. S. C. R.* 427). See also *In re Central Bank of Canada* (28 *Can. S. C. R.* 192). *Hogaboom v. Central Bank of Canada*, *Cout. Cas.* 119.)

7. "Winding-up Act"—*Leave to appeal—Discretion—Construction of Dominion statutes—Appeal de plano—R. S. C. (1886) c. 129, s. 76.*—Where an important question respecting the construction of a Dominion statute is involved, the discretion allowed by section seventy-six of the "Winding-up Act" should be exercised, and leave to appeal granted, but that Act does not give the right of appealing *de plano*. *The Lake Erie and Detroit River Railway Co. v. Marsh* (35 *Can. S. C. R.* 197), followed. *In re Montreal Cold Storage and Freezing Co.; Ward v. Mullin*, *Cout. Cas.* 341.

8. *Leave to appeal.*—Leave to appeal to the Supreme Court of Canada from a judgment in proceedings under the "Winding-up Act" will not be granted, though the amount in controversy exceeds \$2,000, if no important principle of law nor the construction of a public Act, nor any public interest is involved, especially if the judgment sought to be appealed against appears to be sound. *Ontario Sugar Co.*, xlv., 659.

9. *Procedure—Suit in P. E. I.—Winding-up in B. C.—Leave of court of B. C.—R. S. C. c. 144, ss. 22 and 23.*—Where a trust company incorporated by the Parliament of Canada with headquarters in Vancouver is being wound up in British Columbia, leave of the Supreme Court of that province is necessary before suit can be brought in Prince Edward Island against the liquidator and the company to have the latter declared a trustee of moneys deposited with it for investment, for its removal from office and appointment of a new trustee and for the vesting in such new trustee of the securities representing said moneys. *Davies, J.*, dissenting.—Judgment appealed against (24 *D. L. R.* 554), reversed. *Stewart v. LePage*, liii., 337.

10. *Will—Extension of powers of executors—Universal legatee—Special legacy—Appeal—Jurisdiction—Amount in controversy—Order to take accounts—Interlocutory judgment—Costs*, xvii., 400.

See APPEAL.

11. *Company in liquidation—Sale of assets—Consent to sale of mortgaged ship—Sale by order of court—Mariners' liens—Sale free from incumbrances—Special fund—Privileged charge—Priority—Valuation of security—Release of mortgage—Marshalling securities—Subrogation*, xlviii., 593.

See COMPANY.

12. *Appeal—Jurisdiction—Time for appealing—Amount in controversy—Construction of statute—"Supreme Court Act," R. S. C., 1906, c. 139, ss. 46, 69, 71—"Winding-up Act," R. S. C., 1906, c. 144, ss. 104, 106—Practice—Affirming jurisdiction—Motion in court—Discretionary order by judge*, liii., 128.

See APPEAL.

## WINDOWS.

*Title to land—Servitude—Construction of deed—Plan of subdivision—Reservations—"Representatives"—Owners par indivis—Common lanes—Right of passage—Private wall—Windows and openings on line of lane—Arts. 533-538 C. C., xxxvi., 618.*

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**WORDS AND PHRASES.**

- a. "Accident insurance," xxxv., 266.  
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- b. "All ways used and enjoyed," Cam. Cas. 352.  
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- c. "Acquire," xxxvi., 42.  
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- d. "All aboard," Cam. Cas. 589.  
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- e. "Assent," xl., 458.  
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- f. "Assigns," xxxix., 567.  
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- g. "At large upon the highway or otherwise," xxxix., 251.  
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- h. "At owner's risk," Cam. Cas. 66.  
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1. "Accident in course of employment," xlix., 136.  
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2. "Accepted orders." Whyte v. National Paper Co., li., 162.  
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3. "Actually delivered." Montreal v. Montreal Light, etc., xlii., 431.  
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4. "Adjoining." Pouliot v. Fraserville, liv., 310.  
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5. "And," xli., 607.  
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6. "Baggage," Cam. Cas. 66.  
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7. "Branch," xl., 431.  
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8. "Block and staff" system, xlix., 518.  
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9. "Business." Ontario Bank v. McAllister, xliii., 338.  
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10. "Carrying on business," xlvi., 208.  
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11. "Carrying on business." Lunde Refriger. Co. v. Sask. Creamery, li., 400.  
See COMPANY.
12. "Chattel mortgage" does not mean a security receipt given under the Bank Act. Guimond v. Fidelity Phenix Fire Ins. Co., xlvii., 216.  
AND see INSURANCE, FIRE.
13. "Comment." Price v. Chicoutimi, li., 179.  
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14. "Consistent conditions." Browning v. Masson, lii., 379.  
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15. "Construction," xlv., 355.  
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16. "Construct," xxxvi., 42.  
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17. "Criminal case," xxxvii., 394.  
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18. "Current year," xxxix., 151.  
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19. "Doing business in the City of Halifax," xxxix., 174.  
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20. "During trial," xl., 272.  
See CRIMINAL LAW.
21. "Damages to property injuriously affected by the construction of a public work." Pigott v. The King, liii., 626.  
See CROWN.
22. "Damages resulting." Dumont v. Fraser, xlvi., 137.  
See RIVERS AND STREAMS.
23. "Deposit," xlix., 360. -  
See VENDOR AND PURCHASER.
24. "Detached dwelling house." Pearson v. Adams, l., 204.  
See DEED.
25. "Dig for minerals." Dome Oil v. Alberta Drilling Co., lii., 561.
26. "Double-headers," xlix., 518.  
See TRAMWAYS.
27. "Duly filed." G. T. Ry. Co. v. Brit-Am. Oil Co., xliii., 311.  
See STATUTE.
28. "Dressed on one side only," xlvii., 130.  
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29. "Dwelling house." Mahomed v. Anchor Fire, etc., xlvi., 546.  
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30. "Every other company," xxxix., 174.  
See ASSESSMENT AND TAXES.
31. "Extension," xl., 431.  
See RAILWAYS.
32. "Final judgment," xlvii., 559.  
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33. "Final judgment." Stephenson v. Gold Medal Fur. Mfg. Co., xlvi., 497.  
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34. "Flottage," xl., 1.  
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35. "F. O. B.," xli., 453.  
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36. "Free grant," xlv., 170.  
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37. "Greek Catholic Church," xxxvii., 177.  
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38. "Heirs," xxxix., 567.  
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39. "Have not otherwise been guilty of negligence." *Leger v. The King*, xliii., 164.  
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40. "Heat of passion," xlvii., 1.  
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41. "Highway." *G. T. R. v. Toronto*, xlii., 613.  
See RAILWAYS.
42. "If the subject of insurance be personal property, and be or become encumbered by a chattel mortgage," xlvii., 216.  
See INSURANCE, FIRE.
43. "Indian." *Attorney-Gen. v. Giroux*, liii., 172.  
See INDIANS.
44. "Indian lands." *Attorney-Gen. v. Giroux*, liii., 172.  
See INDIANS.
45. "Inevitable accident." *Phelan v. G. T. P. R. R. Co.*, li., 113.  
See RAILWAYS.
46. "In all cases to which this Act applies." *Lamontagne v. Quebec R. R. Light, Heat and Power Co.*, l., 423.  
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47. "Insurance on life," xxxv., 266.  
See EVIDENCE.
48. "Interested person," xxxvii., 354.  
See RAILWAYS.
49. "Interested or affected," xxxvii., 354.  
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50. "Interest in land." *Re Heinze Fleitman, etc.*, lii., 15.  
See ASSESSMENT AND TAXES.
51. "Interest in land." *Yockney v. Thompson*, l., 1.  
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52. "Interested or affected." *Toronto R. R. v. Toronto*, liii., 222.  
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53. "Interested parties." *B. C. Electric R. Co. v. V. V. & E. R. R. & Nav. Co., etc.*, xlviil., 98.  
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54. "In pursuance of and by authority of this act." *Greer v. C. P. R.*, li., 338.  
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55. "Judicial proceeding," xlvii., 550.  
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56. "Judicial proceeding." *Finseth v. Ryley Hotel Co.*, xliii., 646.  
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57. "Land Commissioner," xxxix., 169.  
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58. "Land." *Southern Alberta v. Rural McLean*, liii., 151.  
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59. "Land damages." *Burt v. City of Sydney*, l., 6.  
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60. "Last voyage," xl., 45.  
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61. "Lay out," xxxvi., 42.  
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62. "Listing." *Peacock v. Wilkinson*, li., 319.  
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63. "Longshoreman," xxxix., 311.  
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64. "Look and listen," xxxviii., 94.  
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65. "Located Indian." *Attorney-Gen. v. Giroux*, liii., 172.  
See INDIANS.
66. "Lodging house." *Mahomed v. Anchor Fire, etc.*, xlviil., 546.  
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67. "Lot," xlv., 364.  
See ASSESSMENT AND TAXES.
68. "Margins," xlix., 545.  
See BROKER.
69. "Matter in controversy," xlix., 163.  
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70. "Matter or judicial proceeding." *Svenson v. Bateman*, xlii., 146.  
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71. "Member in good standing," xlv., 145.  
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72. "Mineral." *Dome Oil v. Alberta Drilling*, lii., 561.  
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73. "Digging for minerals," lii., 561.  
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### WORKMEN.

See MASTER AND SERVANT.

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### WORKMEN'S COMPENSATION ACT.

1. *Employer and employee—Compensation for injury—Contributory negligence—Construction of statute—2 Edw. VII. c. 74, s. 2, s.-s. 2 (c) and 4, sch. 2, Art. 4 (B. C.)—Remedial legislation—Refusal of damages—Right of appeal—Evidence.*—In an action in the Supreme Court of British Columbia claiming damages under the "Employers' Liability Act" and, alternatively, under the "Workmen's Compensation Act," the plaintiff, at the trial, abandoned the claim under the former Act and, thereupon, the judge dealt with the case as a claim under the "Workmen's Compensation Act." found that the plaintiff's deceased husband came to his

death solely in consequence of his own "wilful and serious misconduct," and, therefore, under s.-s. 2(c) of s. 2 of the Act, held that she was precluded from obtaining compensation in consequence of his death.—*Per Davies, Duff and Anglin, JJ.*—The right of appeal from a decision in the course of proceedings to which article 4 of the second schedule of the "Workmen's Compensation Act" applies is available only for questioning the determination of the court or judge upon some question of law. Decisions upon questions of fact in adjudicating upon a claim brought before the Supreme Court under s.-s. 4 of s. 2 of that Act are not subject to appeal. Whether or not there is any reasonable evidence to support a finding of wilful and serious misconduct is an appealable question.—In the circumstances of the case the Court held, *Davies and Anglin, JJ.*, dissenting, that there was not reasonable evidence to support the finding of wilful and serious misconduct.—The appeal from the judgment of the Court of Appeal for British Columbia (15 B. C. Rep. 198), was dismissed, *Davies and Anglin, JJ.*, dissenting. *British Columbia Sugar Refining Co. v. Granick*, xlv., 106.

2. *Negligence—Operation of tramway — Employers' liability—Accident in course of employment — "Workmen's Compensation Act"—Right of action—Dependent relations—Construction of statute—(Que.) 9 Edw. VII. c. 66, ss. 3, 15—R. S. Q., 1909, arts. 7321, 7323, 7335—Incompatible enactment—Repeal—Art. 1056 C. C. — Practice — Charge to jury — Misdirection—Excessive damages—Modification of verdict — New trial—Art. 503 C. P. Q. Lamontagne v. Quebec R. R., etc., 1., 423.*

See NEGLIGENCE.

## YUKON TERRITORY.

*Constitutional law—Imperial Acts in force in Yukon Territory—2 & 3 Vict. c. 11 (Imp.) R. S. C. c. 50 — Title to land—"Torrens System"—Transfer by registered*

*owner—Fraud—Litigious rights—Notice of lis pendens — Irregular registration — Indorsements upon certificate of title—Construction of statute — "Land Titles Act, 1894"—Caveat—57 & 58 Vict. c. 28, s. 126 (D.)—61 Vict. c. 32, s. 14 (D.)—Pleading—Objections taken on appeal—Yukon Territorial Court Rules—Yukon Ordinances, 1902, c. 17—Rules 113, 115, 117—Waiver—Estoppel.]—The provisions of the Imperial Act, 2 & 3 Vict. c. 11, in respect of the registration of notices of litiſpendence and for the protection of *bonâ fide* purchasers *pendente lite* are of a purely local character and do not extend their application to the Yukon Territory by the introduction of the English law generally as it existed on the fifteenth of July, 1870, under the eleventh section of "North-West Territories Act," R. S. C., 1886, c. 50.—Under the provisions of "The Land Titles Act, 1894," s. 126, a *bonâ fide* purchaser from the registered owner of land subject to the operation of that statute is not bound or affected by notice of litiſpendence which has been improperly filed and noted upon the folio of the register containing the certificate of title as an incumbrance or charge upon the land. The exception as to fraud referred to in the 126th section of the Act means actual fraudulent transactions in which the purchaser has participated and does not include constructive or equitable frauds. *The Assets Company v. Mere Roihi* (21 Times L. R. 311), referred to and approved.—In an action to set aside a conveyance as made in fraud of creditors, the defendant desiring to meet the action by setting up that there was no debt due and, consequently, that no such fraud could exist, must allege these objections in his pleadings. In the present case the defendant having failed to plead such defence, was allowed to amend on terms, the Chief Justice, dissenting. *Syndicat Lyonnais du Klondyke v. McGrade*, xxxvi., 251.*

## YUKON MINING REGULATIONS.

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# APPENDIX A.

## CATCH-WORD INDEX

Throughout the Digest will be found many decisions which are only referred to by catch-words, but elsewhere in the Digest these cases are reported in full head-notes under other titles. If the fuller note is wanted, turn to this catch-word index and under the same title as that under which the catch-word appears in the Digest and opposite the catch-word number will be found the other title with the number of the item where the head-note is set out.

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# APPENDIX B.

## MEMORANDUM

Respecting Appeals from Judgments of the Supreme Court of Canada to the Judicial Committee of the Privy Council since 2nd December, 1903.\*

### A.

"ALBANO," THE SS., *v.* THE SS. "PARISIAN" (37 Can. S. C. R. 284). Leave to appeal granted, 9th May, 1906, (47 Can. Gaz. 153); judgment of the Supreme Court reversed, 27th February, 1907, ([1907] A. C. 193).

ALBERTA RLY. & IRRIGATION CO. *v.* THE KING (44 Can. S. C. R. 505). Leave to appeal to the Privy Council was granted, 20th July, 1911. Appeal to Privy Council allowed, 25th July, 1912 (1912, A. C. 827).

ALBERTA RLY. LEGISLATION, IN RE (48 Can. S. C. R. 9). Leave to appeal to Privy Council granted, 23rd July, 1913. Appeal to Privy Council dismissed without costs, 22nd Oct., 1914 (1915, A. C. 363).

ANDERSON *v.* MUNICIPALITY OF SOUTH VANCOUVER (45 Can. S. C. R. 425). Leave to appeal to Privy Council refused, 25th July, 1912.

"ARRANMORE," THE SS., *v.* RUDOLPH (38 Can. S. C. R. 176). Under Rule V. of 13th June, 1853, the appeal stood dismissed with costs for want of prosecution within three months.

ATTORNEY-GENERAL FOR CANADA ET AL. *v.* RITCHIE CONTRACTING & SUPPLY CO. (52 Can. S. C. R. 78). Leave to appeal to Privy Council granted, 20th Dec., 1915.

ATTORNEY-GENERAL FOR CANADA *v.* STANDAARD TRUST CO. (not reported). Appeal to Privy Council dismissed with costs, 23rd May, 1911 (1911, A. C. 498).

ATTORNEY-GENERAL FOR MANITOBA *v.* ATTORNEY-GENERAL FOR CANADA (34 Can. S. C. R. 287). Appeal to Privy Council dismissed, August, 1904; no order as to costs (43 Can. Gaz. 438; [1904] A. C. 799).

ATTORNEY-GENERAL OF NEW BRUNSWICK *v.* ATTORNEY-GENERAL OF CANADA ([1905] A. C. 37). See "Representation in the House of Commons of Canada," *infra*.

ATTORNEY-GENERAL OF PRINCE EDWARD ISLAND *v.* ATTORNEY-GENERAL OF CANADA ([1905] A. C. 37). See "Representation in the House of Commons of Canada," *infra*.

ATTORNEY-GENERAL FOR QUEBEC *v.* FRASER AND ADAMS (37 Can. S. C. R. 577). Peti-

tion for leave to appeal withdrawn by permission of the Privy Council, the case having been settled between the parties, 5th June, 1907.

ATTORNEY-GENERAL OF QUEBEC *v.* FRASER & ADAMS (37 Can. S. C. R. 577). On the application of one of the heirs of Fraser, special leave to appeal was granted by the Privy Council, 12th May, 1909 (*Cf.* 38 Can. S. C. R. p. ix.). The appeal by Wyatt *et al.* was dismissed with costs, 13th June, 1911 (1911, A. C. 489).

### B.

BANK OF MONTREAL *v.* THE KING (38 Can. S. C. R. 258). Leave to appeal refused with costs, 31st July, 1907.

BEAMISH *v.* JAMES RICHARDSON & SONS (49 Can. S. C. R. 595). Leave to appeal to Privy Council refused with costs, 25th Nov., 1914.

BELCHER *v.* McDONALD (33 Can. S. C. R. 321). Judgment of the Supreme Court reversed with costs ([1904] A. C. 429).

BELL *v.* GRAND TRUNK RLY. CO. (48 Can. S. C. R. 561). Leave to appeal to Privy Council was refused, 22nd May, 1914.

BELL BROS. *v.* HUDSON BAY INS. CO. (44 Can. S. C. R. 419). Leave to appeal to Privy Council refused, 23rd Nov., 1911 (London Times, 24th Nov., 1911).

BERLIN, TOWN OF, *v.* BERLIN & WATERLOO ST. RLY. (42 Can. S. C. R. 581). Leave to appeal to Privy Council refused, 15th July, 1910.

BOECKH *v.* GOWGANDA QUEEN MINES (46 Can. S. C. R. 645). Leave to appeal to Privy Council refused, 25th July, 1912.

BONANZA CREEK GOLD MINING CO. *v.* THE KING (50 Can. S. C. R. 534). Appeal to Privy Council allowed, 24th Feb., 1916. (1916, A. C. 566).

BONANZA CREEK HYDRAULIC CONCESSION *v.* THE KING (40 Can. S. C. R. 281). Leave to appeal to Privy Council refused with costs, 18th July, 1908; 51 Can. Gaz. 438.

BOOTH *v.* LOWERY (54 Can. S. C. R. 421). Leave to appeal to Privy Council granted, July, 1917.

\* For prior appeals, see *Coutlee's Digest*, 1903, p. 1583.

BOW McLACHLAN Co. v. THE "CAMOSUN" (40 Can. S. C. R. 418). Appeal *de plano* to Privy Council pending. Appeal to Privy Council allowed with costs, 23rd July, 1909.

B. C. EL. RLY. v. TURNER (49 Can. S. C. R. 470). Leave to appeal to Privy Council was refused, 2nd July, 1914.

B. C. EL. RLY. v. VICTORIA, VANCOUVER & EASTERN RLY. Co. (48 Can. S. C. R. 98). Leave to appeal to Privy Council granted, 14th July, 1913. Appeal allowed with costs, 26th July, 1914.

B. C. FISHERIES, IN RE (47 Can. S. C. R. 493). Leave to appeal to Privy Council granted, April 21st, 1913. The three questions submitted were answered in the negative by the Privy Council, 2nd Dec., 1913 (1914, A. C. 153).

BURCHELL v. GOWRIE (not reported). Leave to appeal to Privy Council granted, 1st Dec., 1909. Appeal allowed with costs, 29th July, 1910.

BURKE v. RITCHIE (Cout. Cas. 365). Petition for special leave to appeal to Privy Council dismissed with costs, 18th July, 1907.

BURRARD POWER Co. v. THE KING (43 Can. S. C. R. 27). A petition for leave to appeal direct from the Exchequer Court of Canada was dismissed without costs, 9th July, 1909. Subsequently an appeal to the Supreme Court of Canada heard on the 15th Feb., 1910, was dismissed with costs; a cross-appeal by the Crown was not dealt with in view of the grounds on which the company's appeal was disposed of by the majority of the judges. Leave to appeal to the Privy Council was granted 26th April, 1910. Appeal to Privy Council dismissed with costs, 1st Nov., 1910.

BYRON N., WHITE, Co. v. THE STAR MINING & MILLING Co. (41 Can. S. C. R. 377). Leave to appeal refused by Privy Council, 29th June, 1909.

C.

CALGARY AND EDMONTON RAILWAY Co. v. THE KING; CALGARY AND EDMONTON LAND Co. v. THE KING (33 Can. S. C. R. 673; Cout. Cas. 271). Order of the Supreme Court of Canada, on an equal division of opinion, reversed with costs. ([1904] A. C. 765). See Cout. Cas. 272.

CAMERON v. CUDDY ET AL. (not yet reported). Leave to appeal to Privy Council granted, 12th Dec., 1912. Appeal to Privy Council allowed with costs (61 Can. Gaz. 726). 7th Aug., 1913.

CANADA NIAGARA POWER Co. v. TOWNSHIP OF STAMFORD (not yet reported). Leave to appeal to Privy Council was refused, 4th Aug., 1914.

CAN. NOR. RLY. v. ANDERSON (45 Can. S. C. R. 35). Leave to appeal to Privy Council was refused, 20th Mar., 1912.

CAN. NOR. RLY. Co. v. HOLDITCH (50 Can. S. C. R. 265). Appeal to Privy Council dismissed with costs, 7th Feb., 1916 (1916, A. C. 536).

CAN. NOR. RLY. Co. v. ROBINSON (43 Can. S. C. R. 387). Leave to appeal to Privy Council granted, 22nd Nov., 1910. Appeal to Privy Council dismissed with costs as between solicitor and client (1911, A. C. 739).

CAN. NOR. RLY. Co. v. CITY OF WINNIPEG (54 Can. S. C. R. 589). Leave to appeal refused, July, 1917.

CANADIAN PACIFIC RAILWAY Co. v. BLAIN (34 Can. S. C. R. 74). Leave to appeal to Privy Council refused, ([1904] A. C. 453).

CAN. PAC. RLY. Co. v. CHALIFOUR ET AL. (51 Can. S. C. R. 234). Leave to appeal to Privy Council granted, 8th July, 1915.

CAN. PAC. RLY. Co. AND GRAND TRUNK RLY. Co. v. CANADIAN OIL COMPANIES (not yet reported); and C. P. R. v. BRITISH AMERICAN OIL Co. (not yet reported). Leave to appeal granted in both cases; appeals to be consolidated; 13th Dec., 1912. Appeals dismissed with costs 14th July, 1914.

CANADIAN PACIFIC RAILWAY Co. v. HANSEN (40 Can. S. C. R. 194). Leave to appeal to Privy Council refused, 21st July, 1908.

CAN. PAC. RLY. Co. v. McDONALD (49 Can. S. C. R. 163). Leave to appeal to Privy Council granted, 15th July, 1914. Appeal to Privy Council dismissed with costs, 22nd July, 1915.

CAN. PAC. RLY. Co. v. CITY OF TORONTO ET AL. (42 Can. S. C. R. 613). Leave to appeal to Privy Council granted, on two petitions, 22nd July, 1910. (NOTE.—The petitions for leave related to the "Viaduct Case," cited above, and to the "Yonge Street Bridge Case" (19 O. L. R. 663).

CAN. PAC. RLY. Co. v. WOOD (decided May 15th, 1911, reversing judgment appealed from, 20 Man. R. 92, not reported). Leave to appeal to Privy Council was refused, 20th Mar., 1912.

"CAPE BRETON," THE SS. v. THE RICHELIEU AND ONTARIO NAVIGATION Co. (36 Can. S. C. R. 564). Appeal to Privy Council dismissed with costs, and judgment of Supreme Court of Canada affirmed, 14th December, 1906 (48 Can. Gaz. 279; [1907] A. C. 112).

CARROLL ET AL. v. ERIE COUNTY NATURAL GAS & FUEL Co. ET AL. (29 Can. S. C. R. 591). As noted in Cout. Dig. 1903, at p. 1584, a petition for leave to appeal to the Privy Council was refused (34 Can. Gaz.); subsequently, however, after damages had been assessed, an appeal direct from the Court of Appeal for Ontario upon the judgment settling such damages was heard by the Privy Council and, on the 11th Dec., 1910, the appeal was allowed in part, with costs,

and a cross-appeal was dismissed with costs. The effect of the decision of the Privy Council was to vary the decision of the Supreme Court of Canada.

CLARK *v.* BAILLIE (45 Can. S. C. R. 50). Leave to appeal to Privy Council was refused, 13th Dec., 1911.

COLONIST PRINTING AND PUBLISHING CO. *v.* DUNSMUIR (34 Can. S. C. R. 679). Leave to appeal to Privy Council refused, February, 1904.

COMO *v.* HERRON (49 Can. S. C. R. 1). Leave to appeal to Privy Council refused, 20th Mar., 1914.

COMPANIES, IN RE (48 Can. S. C. R. 331). On appeal to Privy Council, answers were given to the questions submitted to the Supreme Court of Canada (1916, 1 A. C. 598).

CONNIE *v.* THE SECURITIES HOLDING CO. ET AL. (38 Can. S. C. R. 601). Petition for special leave to appeal to Privy Council dismissed with costs, 19th July, 1907; 49 Can. Gaz. 391.

COÛTE *v.* BORLAND (35 Can. S. C. R. 282). Leave to appeal to Privy Council refused with costs, 5th July, 1905.

CORNWALLIS, MUNICIPALITY OF *v.* CAN. PAC. RLY. (19 Can. S. C. R. 702); approved in *Rea v. Can. Pac. Rly. Co.* (1911, A. C. 328).

CORNWALL, TOWNSHIP OF, *v.* NEW YORK & OTTAWA RLY. (52 Can. S. C. R. 466). Leave to appeal to Privy Council granted, 27th July, 1916. Appeal dismissed with costs, June, 1917.

COUNTY OF CARLETON *v.* CITY OF OTTAWA (41 Can. S. C. R. 552). Leave to appeal to Privy Council refused, 22nd Feb., 1910.

CUSHING *v.* KNIGHT (46 Can. S. C. R. 555). Leave to appeal to Privy Council refused, 9th Dec., 1912.

CUSHING SULPHITE FIBRE CO. *v.* CUSHING ET AL. (37 Can. S. C. R. 427). Leave to appeal to Privy Council refused, 16th July, 1906.

## D.

DAVID *v.* SWIFT (44 Can. S. C. R. 179). On a judgment, subsequent to the decision of the Supreme Court of Canada, by the Court of Appeal for British Columbia, an appeal was taken direct to the Privy Council. The appeal was dismissed with costs, 18th June, 1912.

DAY *v.* THE CROWN GRAIN CO. (39 Can. S. C. R. 258). Appeal to Privy Council dismissed with costs ([1908] A. C. 504).

DOMINION CARTRIDGE CO. *v.* McARTHUR (31 Can. S. C. R. 392). Arguments on appeal to Privy Council noted (43 Can. Gaz. at p. 370); judgment of the Supreme Court reversed, and that of Court of King's Bench, appeal side, restored ([1905] A. C. 72).

DOMINION CREOSOTING CO. *v.* NIXON (55 Can. S. C. R. 303). Leave to appeal refused, June, 1917.

DUMONT *v.* FRASER (48 Can. S. C. R. 137). Leave to appeal to Privy Council granted, on terms as to costs, 15th July, 1913. Appeal to Privy Council dismissed with costs, 27th July, 1914.

## E.

EAST HAWKESBURY, TOWNSHIP OF, *v.* TOWNSHIP OF LOCHIEL (34 Can. S. C. R. 513). Leave to appeal to Privy Council refused, July-Aug., 1904.

ELECTRICAL DEVELOPMENT CO. *v.* TOWNSHIP OF STAMFORD (not reported). Leave to appeal to Privy Council was refused, 4th Aug., 1914.

EQUITY FIRE INS. CO. *v.* THOMPSON (41 Can. S. C. R. 491). Leave to appeal to Privy Council granted 15th July, 1909.—Appeal to Privy Council allowed with costs, 15th July, 1910.

EWING *v.* THE DOMINION BANK (35 Can. S. C. R. 133). Leave to appeal to Privy Council refused with costs ([1904] A. C. 806).

## F.

FARBELL *v.* MANCHESTER ET AL. (40 Can. S. C. R. 339). Leave to appeal refused by Privy Council, 24th Feb., 1909.

FRALICK *v.* GRAND TRUNK RLY. CO. (43 Can. S. C. R. 494). Leave to appeal to Privy Council was refused, 25th July, 1910.

FRANCO-CANADIAN MORTGAGE CO. *v.* GREIG (55 Can. S. C. R. 395). Leave to appeal refused.

## G.

GAYNOR AND GREENE *v.* THE UNITED STATES OF AMERICA (36 Can. S. C. R. 247). Petition for leave to appeal (41 Can. Gaz. 415) to Privy Council abandoned; application dismissed with costs, 26th July, 1905.

GIBB *v.* THE KING (52 Can. S. C. R. 402). Leave to appeal to Privy Council granted, 7th July, 1916.

GRANBY, VILLAGE OF, *v.* MÉNARD (31 Can. S. C. R. 14). Leave to appeal to Privy Council was refused, 13th July, 1901.

GRAND TRUNK PACIFIC RLY. COMPANY'S BONDS, IN RE (42 Can. S. C. R. 505). Leave to appeal to Privy Council granted, 18th Mar., 1910. Appeal to Privy Council allowed, 2nd Nov., 1911.

GRAND TRUNK PACIFIC RLY. CO. *v.* B. C. EXPRESS CO. (55 Can. S. C. R. 328). Leave to appeal granted, June, 1917.

GRAND TRUNK PACIFIC RLY. CO. *v.* CITY OF FORT WILLIAM (43 Can. S. C. R. 412). Leave to appeal to Privy Council granted, 8th Nov., 1910. Appeal to Privy Council allowed with costs, 2nd Nov., 1911 (1912, A. C. 224).

GRAND TRUNK RAILWAY Co. v. ATTORNEY-GENERAL OF CANADA ([1907] A. C. 65). See "Railway Act Amendment Act, 1904," *infra*.

GRAND TRUNK RLY. Co. v. McDONALD (not reported). Leave to appeal to Privy Council refused, 25th July, 1910.

GRAND TRUNK RAILWAY Co. OF CANADA v. ROBERTSON (39 Can. S. C. R. 506). Special leave to appeal to Privy Council granted, 8th March, 1908 (50 Can. Gaz. 591); appeal dismissed with costs, 17th Feby., 1909 (1909 A. C. 325).

GRAND TRUNK RLY. Co. v. CITY OF TORONTO (Viaduct Case) (42 Can. S. C. R. 613). Appeal to Privy Council dismissed with costs (1911, A. C. 461).

GRENIER v. THE KING. See THE QUEEN v. GRENIER (30 Can. S. C. R. 42). Leave to appeal to Privy Council refused, 21st July, 1908.

GUIMOND ET AL. v. FIDELITY PHOENIX INS. Co. (47 Can. S. C. R. 216). Leave to appeal to Privy Council refused, 28th Nov., 1913.

## H.

HAMBURG-AMERICAN PACKET Co. v. THE KING (33 Can. S. C. R. 252). Leave to appeal to Privy Council granted, 20th July, 1903 (41 Can. Gaz. 415), and, on 28th July, 1906, the order granting such leave was rescinded and the appeal dismissed.

HANSON v. VILLAGE OF GRAND'MÈRE (33 Can. S. C. R. 50). Appeal to the Privy Council dismissed with costs, August, 1904, (43 Can. Gaz. 439; [1904] A. C. 789).

HAWLEY v. WRIGHT (32 Can. S. C. R. 40). Leave to appeal to Privy Council refused, August, 1904.

HAY v. COSTE (not reported). Leave to appeal to Privy Council refused, 25th July, 1916.

HEINZE, RE; FLEITMAN v. THE KING (52 Can. S. C. R. 10). Leave to appeal to Privy Council refused, 3rd Feb., 1916.

HESELTEINE ET AL. v. NELLES (47 Can. S. C. R. 320). Leave to appeal to Privy Council granted, 18th July, 1913. Appeal dismissed with costs, 20th Oct., 1914 (1915, A. C. 355).

HITCHCOCK v. SYKES (49 Can. S. C. R. 463). Application for special leave to appeal to Privy Council refused with costs, 23rd July, 1914.

HORNE v. GORDON (42 Can. S. C. R. 240). Leave to appeal to Privy Council granted, 1st Dec., 1909. Appeal to Privy Council allowed with costs, 29th July, 1910.

HOWARD v. MILLER (not reported). Leave to appeal to Privy Council granted, 7th July, 1913. Appeal to Privy Council allowed with costs, 6th Nov., 1914 (1915, A. C. 319).

HUGHES v. NORTHERN EL. & MANUFACTURING Co. (50 Can. S. C. R. 626). Leave to appeal to Privy Council refused, 26th July, 1915.

## I.

IMPERIAL BOOK Co. v. BLACK (35 Can. S. C. R. 488). Leave to appeal to Privy Council refused with costs, 24th May, 1905.

"INSURANCE ACT," 1910, IN RE (48 Can. S. C. R. 260). Leave to appeal to Privy Council granted, 27th Jan., 1914. On appeal to P. C. the answers to questions submitted to Supreme Court of Canada were approved (1916, 1 A. C. 588).

IREDALE v. LOUDON (40 Can. S. C. R. 313). Leave to appeal to Privy Council refused, 9th July, 1909.

## J.

JAMES BAY RAILWAY Co. v. ARMSTRONG (38 Can. S. C. R. 511). Special leave to appeal to Privy Council was granted on terms, 19th July, 1907.

JAMES BAY RLY. Co. v. ARMSTRONG (38 Can. S. C. R. 511). Appeal to Privy Council dismissed with costs, 30th July, 1909.

JAMIESON v. HARRIS (35 Can. S. C. R. 625). Petition for special leave to appeal to Privy Council dismissed with costs, 4th July, 1907.

JOHNSON'S Co. v. WILSON (Cout. Cas. 356). Petition for special leave to appeal to Privy Council dismissed with costs, 17th July, 1907.

JONES v. BURGESS (decided 8th May, 1911, affirming the judgment of the Supreme Court of New Brunswick). Leave to appeal to Privy Council was refused, 23rd Jan., 1912.

## K.

KING, THE, v. ARMSTRONG (40 Can. S. C. R. 226). Leave to appeal to the Privy Council refused with costs, 18th July, 1908.

KING, THE, v. BURRARD POWER Co. The Privy Council refused to hear an application by the Atty-Gen. of Canada for leave to appeal direct from the Exchequer Court of Canada, made on the 15th July, 1909 (see 53 Can. Gaz. 385). *Vide supra*, Burrard Power Co. v. The King.

KING, THE, v. COTTON (45 Can. S. C. R. 469). Leave to appeal to Privy Council granted, 2nd July, 1912. Appeal to Privy Council allowed and cross-appeal dismissed with costs against the Crown, 11th Nov., 1913 (1914, A. C. 176).

KING, THE, v. THE "KITTY-D." (34 Can. S. C. R. 673). Leave to appeal to Privy Council granted, 8th February, 1905 (44 Can. Gaz. 472); judgment of the Supreme Court reversed, and that of Hodgins, L. J. in Ad., restored, 21st December, 1905 (45 Can. Gaz. 422).



*KING, THE v. LEFRANCOIS* (40 Can. S. C. R. 431). Leave to appeal to Privy Council refused, 18th July, 1908.

*KING, THE, v. TRUDEL* (49 Can. S. C. R. 501). Leave to appeal to Privy Council was refused, 20th May, 1914.

*KING v. WALLBERG* (44 Can. S. C. R. 208). Leave to appeal to P. C. refused, 11th July, 1911.

*KIRKPATRICK v. MCNAMEE* (36 Can. S. C. R. 152). Leave to appeal to Privy Council refused, 4th August, 1905.

*KLONDYKE GOVERNMENT CONCESSION v. THE KING* (40 Can. S. C. R. 294). Leave to appeal to Privy Council refused with costs, 18th July, 1908.

*KOHLER v. THOROLD NAT. GAS* (52 Can. S. C. R. 514). Leave to appeal to P. C. refused, 2nd June, 1916.

## L.

*LADLAW v. VAUGHAN-RHYS* (44 Can. S. C. R. 458). Leave to appeal to P. C. refused, 29th July, 1911.

*LAMOUREUX v. CRAIG* (49 Can. S. C. R. 305). Leave to appeal to Privy Council was granted, 15th May, 1914.

*LAPOINTE v. MESSIER* (49 Can. S. C. R. 271). Leave to appeal to Privy Council was granted, 7th July, 1914.

*LARIN v. LAPOINTE* (42 Can. S. C. R. 521). Leave to appeal to Privy Council granted, 16th Feb., 1910. Appeal allowed with costs, 28th June, 1911 (1911, A. C. 520).

*LEAHY v. TOWN OF NORTH SYDNEY* (37 Can. S. C. R. 464). Leave to appeal to Privy Council refused, 17th July, 1906.

*LISCOMBE FALLS GOLD MINING Co. v. BISHOP* (35 Can. S. C. R. 539). Leave to appeal to Privy Council refused, 17th May, 1905.

*LONG v. TORONTO RLY. Co.* (not reported). Leave to appeal to Privy Council was refused, 4th Aug., 1914.

*LOVITT v. THE KING* (43 Can. S. C. R. 106). Leave to appeal to Privy Council was granted, 15th July, 1910. Appeal to Privy Council allowed with costs, 2nd Nov., 1911.

## MC.

*MCGILLIVRAY v. KIMBER ET AL.* (52 Can. S. C. R. 146). Leave to appeal to Privy Council granted, 14th Apr., 1916.

*MCLEAN v. THE KING* (38 Can. S. C. R. 542). Appeal to Privy Council dismissed with costs, 10th July, 1908.

*MCELLELLAN v. POWASSAN LUMBER Co.* (41 Can. S. C. R. 249). Special leave to appeal granted by Privy Council, 29th June, 1909.

Appeal to Privy Council dismissed by consent, 8th March, 1911.

*McMULLIN v. THE NOVA SCOTIA STEEL AND COAL Co.* (39 Can. S. C. R. 593). Leave to appeal to Privy Council refused, 12th May, 1908.

*MCNEIL v. CULLEN* (35 Can. S. C. R. 510). Leave to appeal to Privy Council refused, 18th July, 1905.

*MCNICHOL v. MALCOLM* (39 Can. S. C. R. 265). Leave to appeal to Privy Council refused, 12th March, 1908.

*MCPHERSON v. GRAND COUNCIL PROVINCIAL WORKMEN'S ASS.* (Not yet reported). Leave to appeal to Privy Council refused, 4th Aug., 1914.

*MCVITY v. TRANOUTH* (36 Can. S. C. R. 455). Judgment of the Supreme Court reversed with costs ([1908] A. C. 60).

## M.

*MACKENZIE, MANN & Co. v. EASTERN TRUST Co.* (not reported). Leave to appeal to Privy Council was granted, 4th Aug., 1914. Appeal to Privy Council allowed with costs, 27th Apr., 1915.

*MACKENZIE v. MONARCH LIFE INS. Co.* (45 Can. S. C. R. 323). Leave to appeal to Privy Council granted, 17th May, 1912. Appeal to Privy Council allowed, 17th Oct., 1913.

*MACLAREN v. ATTY-GEN. FOR QUE. ET AL.* (46 Can. S. C. R. 656). Leave to appeal to Privy Council granted, 16th July, 1912. Appeal to Privy Council allowed with costs, 28th Jan., 1914. (1914, A. C. 258).

*MADDISON v. EMMERSON* (34 Can. S. C. R. 533). Appeal to Privy Council dismissed, no costs allowed, 27th July, 1906 (47 Can. Gaz. 424).

*MALLROY v. WINNIPEG JOINT TERMINALS.* (53 Can. S. C. R. 323). Leave to appeal to Privy Council refused, 11th Dec., 1916.

"MARRIAGE LAWS." IN RE (46 Can. S. C. R. 132). The judgment of the Supreme Court of Canada was affirmed by the Privy Council, 29th July, 1912 (1912, A. C. 880). See, 59 Can. Gaz. pp. 531, 618, 658.

*MAYRAND v. DUSSAULT* (38 Can. S. C. R. 460). Petition for special leave to appeal to Privy Council dismissed with costs, 18th July, 1907.

*MEEKEE v. NICOLA VALLEY LUMBER Co.* (55 Can. S. C. R. 494). Leave to appeal refused, February, 1918.

*MELOCHE v. DÉGUIRE* (34 Can. S. C. R. 24). Leave to appeal to Privy Council refused, March, 1904.

*MIDLAND NAVIGATION Co. v. DOMINION ELEVATOR Co.* (34 Can. S. C. R. 578). Leave to appeal to Privy Council refused, July, 1904.

MILLER *v.* GRAND TRUNK RAILWAY CO. (34 Can. S. C. R. 45). Judgment of the Supreme Court reversed with costs ([1906] A. C. 187).

MONTCALM, THE, SS. *v.* THE SS. KRON-PRINZ-OLAV (not reported). Security for an appeal to the Privy Council was approved on the 14th Aug., 1912. Consolidated appeals to Privy Council allowed with costs, 2nd Aug., 1913.

MONTREAL, CITY OF, *v.* BEAUVAIS (42 Can. S. C. R. 211). Leave to appeal to Privy Council refused with costs, 1st Dec., 1909.

MONTREAL, CITY OF, *v.* CANTIN (35 Can. S. C. R. 223). Judgment of the Supreme Court affirmed ([1906] A. C. 241).

MONTREAL LIGHT, HEAT & POWER CO. *v.* REGAN (40 Can. S. C. R. 580). Leave to appeal to Privy Council refused with costs, 20th July, 1909.

MONTREAL, CITY OF, *v.* MONTREAL STREET RAILWAY CO. (34 Can. S. C. R. 459). Judgment of Supreme Court reversed, and that of the Court of King's Bench, Appeal Side, restored, 14th November, 1905 ([1906] A. C. 100).

MONTREAL ST. RLY. *v.* CITY OF MONTREAL (41 Can. S. C. R. 427). Leave to appeal to Privy Council refused with costs, 30th July, 1909.

MONTREAL ST. RLY. *v.* CITY OF MONTREAL (43 Can. S. C. R. 197). Leave to appeal to Privy Council was granted, 25th July, 1910. Appeal to Privy Council dismissed with costs, 16th Jan., 1912 (58 Can. Gaz. 656, 691).

MONTREAL PARK & ISLAND RLY. CO. *v.* CITY OF MONTREAL (43 Can. S. C. R. 256). See case last noted above.

MORGAN *v.* BEIQUE (37 Can. S. C. R. 303). Leave to appeal to Privy Council refused, 25th July, 1906.

N.

"NANNA," THE, *v.* THE "MYSTIC" (41 Can. S. C. R. 169). Appeal *de plano* to Privy Council pending. Appeal to Privy Council dismissed with costs, 7th July, 1910.

NATIONAL TRUST CO. *v.* MILLER; SCHMIDT *v.* MILLER (46 Can. S. C. R. 45). Leave to appeal to Privy Council granted, 25th July, 1912. Appeal to Privy Council allowed, 21st Oct., 1913 (1914, A. C. 197).

NORTH CYPRESS, RURAL MUNICIPALITY OF, *v.* CAN. PAC. RLY. CO. (35 Can. S. C. R. 550). Approved in *Rex v. Can. Pac. Rly.* (1911, A. C. 328).

NORTH CYPRESS ET AL., MUNICIPALITY OF, *v.* THE CANADIAN PACIFIC RAILWAY CO. (35 Can. S. C. R. 550). Petition for special leave to appeal to Privy Council dismissed, 27th February, 1907.

NORTON *v.* FULTON (39 Can. S. C. R. 202). Special leave to appeal was granted (50 Can. Gaz. 131), and the appeal to the Privy Council was dismissed with costs ([1908] A. C. 451).

NOVA SCOTIA CAR WORKS *v.* CITY OF HALIFAX (47 Can. S. C. R. 406). Leave to appeal to Privy Council granted, 13th July, 1913. Appeal to Privy Council dismissed, 4th Aug., 1914.

O.

ONTARIO ASPHALT BLOCK CO. *v.* MONTREUIL (52 Can. S. C. R. 541). Leave to appeal to Privy Council refused, 26th May, 1916.

ONTARIO, PROVINCE OF, *v.* DOMINION OF CANADA (42 Can. S. C. R. 1). Leave to appeal to Privy Council granted, 20th July, 1909 (See 53 Can. Gaz. 415). Appeal to Privy Council dismissed, 29th July, 1910 (1910, A. C. 637).

ONTARIO BANK *v.* McALLISTER (43 Can. S. C. R. 338). Leave to appeal to Privy Council refused, 28th Feb., 1911.

OUTREMONT, TOWN OF, *v.* JOYCE (43 Can. S. C. R. 611). An appeal to the Privy Council taken direct after the appeal sought to the Supreme Court of Canada had been quashed, was dismissed with costs.

P.

PAULSON *v.* THE KING (52 Can. S. C. R. 317). Leave to appeal to Privy Council granted, 11th Dec., 1916.

PETERS *v.* SINCLAIR (48 Can. S. C. R. 57). Leave to appeal to Privy Council granted; 25th July, 1916. Appeal dismissed, 4th Aug., 1914.

PILLING ET AL. *v.* ATTY.-GEN. OF CANADA; IN RE QUE. SOUTHERN RLY. (not reported). Leave to appeal to Privy Council was granted, 26th Apr., 1910. Appeal withdrawn by virtue of P. C. Rule No. 32 and stands dismissed without further order, 5th Dec., 1910.

PITT *v.* DICKSON (42 Can. S. C. R. 478). Leave to appeal to Privy Council refused, 22nd Feb., 1910.

POLUSHIE *v.* ZACKLYNSKY (37 Can. S. C. R. 177). Appeal to Privy Council dismissed with costs. ([1908] A. C. 65).

PRESCOTT, THE, *v.* THE HAVANA (not yet reported). Appeal *de plano* to Privy Council pending. Appeal to Privy Council dismissed with costs, 29th Oct., 1909.

PRÉVOST *v.* LAMARCHE (38 Can. S. C. R. 1). Appeal to Privy Council allowed with costs, and judgment of Supreme Court reversed ([1898] A. C. 541).

PROVIDENT SAVINGS LIFE ASSURANCE CO. OF NEW YORK *v.* BELLEW (35 Can. S. C. R. 35). Leave to appeal to Privy Council refused, July, 1904.

## Q.

QUEBEC, PROVINCE OF, *v.* PROVINCE OF ONTARIO (42 Can. S. C. R. 161). Leave to appeal to Privy Council granted, 1st Dec., 1909. Appeal to Privy Council dismissed, 29th July, 1910.

QUEBEC SOUTHERN RAILWAY Co.; IN RE (37 Can. S. C. R. 303). See MORGAN *v.* BÉIQUE, *supra*; RUTLAND RAILROAD Co. *v.* BÉIQUE, and WHITE *v.* BÉIQUE, *infra*.

QUONG-WING *v.* THE KING (49 Can. S. C. R. 440). Leave to appeal to Privy Council refused, 19th May, 1914.

## R.

"RAILWAY ACT AMENDMENT, 1904," IN RE (36 Can. S. C. R. 136). Appeal by Grand Trunk Railway Co. to Privy Council dismissed, 5th November, 1906 ([1907] A. C. 65).

RAINBOTH *v.* O'BRIEN (not reported). Leave to appeal to Privy Council refused, 27th July, 1916.

RED MOUNTAIN RLY. Co. *v.* BLUE ET AL. (39 Can. S. C. R. 390). Appeal to Privy Council allowed; judgment of the Supreme Court of Canada reversed with costs and judgment of Supreme Court of British Columbia, *in banco*, restored with costs; 31st Mar., 1909 (1909, A. C. 361).

REFERENCES BY GOVERNOR-GENERAL IN COUNCIL, IN RE (43 Can. S. C. R. 536). Leave to appeal to Privy Council granted, 7th Feb., 1911. Appeal to Privy Council dismissed, 16th May, 1912 (1912, A. C. 571).

RENTON *v.* GALLIGHER (not reported). Leave to appeal to Privy Council in *forma pauperis* refused, 15th May, 1911.

REPRESENTATION IN HOUSE OF COMMONS OF CANADA, IN RE (33 Can. S. C. R. 475, 594). Appeals to Privy Council dismissed without costs ([1905] A. C. 37).

ROBERTSON *v.* CITY OF MONTREAL AND CANADIAN AUTOBUS Co. (not yet reported). Leave to appeal to Privy Council refused, 18th Dec., 1915.

ROBINSON *v.* GRAND TRUNK RLY. (47 Can. S. C. R. 622). Leave to appeal to Privy Council granted, 4th July, 1913. Appeal to Privy Council allowed, 20th Apr., 1915.

ROOTS *v.* CAREY (49 Can. S. C. R. 211). Leave to appeal to Privy Council was refused, 7th May, 1914. See 6 West. W. R. 1060 for remarks by the Lord Chancellor.

"ROSALIND," THE, *v.* THE "SENLAZ" (41 Can. S. C. R. 54). Appeal *de plano* to Privy Council pending. Appeal to Privy Council dismissed with costs, 29th Oct., 1909.

ROSENTHAL *v.* SLINGSBY MANUFACTURING Co. (not yet reported). Leave to appeal to Privy Council refused, 26th February, 1909.

RUTLAND RAILROAD Co. ET AL. *v.* BÉIQUE (37 Can. S. C. R. 303). Leave to appeal to Privy Council refused, 25th July, 1906.

RYCKMAN *v.* SCULLY (not reported). Leave to appeal to Privy Council refused, 2nd Apr., 1914.

## S.

STE. ANNE, CLUB DE CHASSE AND DE PECHE DE, *v.* RIVIERE OUELLE PULP AND LUMBER Co. (45 Can. S. C. R. 1). Leave to appeal to Privy Council refused, 15th May, 1911.

ST. JOHN PILOT COMMISSIONERS *v.* CUMBERLAND RLY. & COAL Co. (38 Can. S. C. R. 169). Appeal to Privy Council allowed with costs, 28th Oct., 1909.

"ST. PIERRE MIQUELON," THE SS., *v.* THE SS. "RENNICK" (not reported). Security for an appeal to the Privy Council was approved, 11th Dec., 1912. Appeal to Privy Council dismissed with costs, 4th Mar., 1914.

SEDGWICK *v.* MONTREAL LIGHT, HEAT & POWER Co. (41 Can. S. C. R. 639). Leave to appeal to Privy Council granted, 20th July, 1909. Appeal to Privy Council allowed with costs, 25th July, 1910.

SERLING *v.* LAVIGNE (47 Can. S. C. R. 103). Leave to appeal to Privy Council granted, 19th Dec., 1912. Appeal to Privy Council allowed with costs, 21st May, 1914 (London Times. 22nd May, 1914).

SMITH *v.* NATIONAL TRUST Co. (45 Can. S. C. R. 618). Leave to appeal to Privy Council refused, 16th July, 1912.

SMITH *v.* RURAL MUNICIPALITY OF VERMILLION HILLS (49 Can. S. C. R. 563). Leave to appeal to Privy Council granted, 16th July, 1914. Appeal to Privy Council dismissed with costs, 26th July, 1916 (1916, 2 A. C. 596).

SNELL *v.* BRICKLES (49 Can. S. C. R. 360). The Privy Council reversed the decree of the Supreme Court of Canada and restored that of the Supreme Court of Ontario, dated 18th Mar., 1913 (1916, 2 A. C. 599).

SOUTH SHORE RAILWAY Co.; IN RE (37 Can. S. C. R. 303). See MORGAN *v.* BÉIQUE; RUTLAND RAILROAD Co. *v.* BÉIQUE, *supra*, and WHITE *v.* BÉIQUE, *infra*.

SOUTHERN ALTA. LAND Co. *v.* RURAL MUNICIPALITY OF McLEAN (53 Can. S. C. R. 151). Leave to appeal to Privy Council was refused, 30th Oct., 1916.

STANDARD MUTUAL FIRE INS. Co. *v.* THOMPSON (41 Can. S. C. R. 491). Leave to appeal to Privy Council granted, 20th July, 1909.

STANDARD TRUST Co. *v.* ATTY.-GEN. OF CANADA (not reported). Leave to appeal to Privy Council was granted, 13th July, 1910.

STECHEE LITHOGRAPHIC Co. *v.* ONTARIO SEED Co. & UFFLEMAN (46 Can. S. C. R. 540). Leave to appeal to Privy Council granted, 14th July, 1913. Appeal to Privy Council dismissed with costs, 9th Nov., 1914.

STONE *v.* CAN. PAC. RLY. Co. (47 Can. S. C. R. 634). Leave to appeal to Privy Council granted on terms, 22nd July, 1913. Under Rule 32 of 1908 of the Judicial Com-

mittee of the Privy Council the appeal to the Privy Council was withdrawn and stands dismissed, 26th June, 1914.

*STUART v. THE BANK OF MONTREAL* (41 Can. S. C. R. 516). Leave to appeal to Privy Council granted, 9th July, 1909. Appeal to Privy Council dismissed with costs, 2nd Dec., 1910.

*SUNDAY OBSERVANCE LEGISLATION, IN RE* (35 Can. S. C. R. 581). Leave to appeal to Privy Council refused, 26th July, 1905.

*SYNDICAT LYONNAIS DU KLONDIKE v. BARRETT* (36 Can. S. C. R. 279). Appeal to Privy Council allowed with costs, 9th May, 1907; 46 Can. Gaz. 280.

## T.

*TEMPLE v. MUNICIPALITY OF NORTH VANCOUVER* (not reported). Leave to appeal to Privy Council was refused, 4th Aug., 1914. See 18 B. C. Rep. 546; 6 West. W. R. 70; 25 West. L. R. 245, 350.

"*TORDENSKJOLD*," *THE, v. THE "EUPHEMIA"* (41 Can. S. C. R. 154). Appeal *de plano* to Privy Council pending. The appeal to the Privy Council, noted in 41 Can. S. C. R. at p. viii., was not prosecuted; the case was settled between the parties in Oct., 1909.

*TORONTO EASTERN RLY. Co. v. RUDDY* (not reported). Leave to appeal to Privy Council refused, 13th Dec., 1916.

*TORONTO, CITY OF, v. GRAND TRUNK RAILWAY Co.* (37 Can. S. C. R. 232). Leave to appeal to Privy Council refused, 16th July, 1906.

*TORONTO RAILWAY Co. v. CITY OF TORONTO* (37 Can. S. C. R. 430). Judgment of the Supreme Court varied, with costs, in favor of the company ([1907] A. C. 315). On 2nd July, 1907, an application on behalf of the city to have the terms of the judgment modified was refused by the Privy Council, with costs.

*TORONTO RAILWAY Co. v. KING* (not reported). Special leave to appeal to Privy Council granted, 2nd July, 1907 (49 Can. Gaz. 343). Appeal to Privy Council, by the company, dismissed with costs of the court below (the Court of Appeal for Ontario); the plaintiff, King, being also permitted to urge further damages by way of cross-appeal, and his cross-appeal allowed with costs, a verdict for him, on his amended claim, being ordered to be entered for \$3,999 ([1908] A. C. 260).

*TRAVIS v. BREKENRIDGE-LUND LUMBER Co.* (43 Can. S. C. R. 59). Leave to appeal to Privy Council was refused, 28th Feb., 1911.

*TURGEON v. ST. CHARLES* (48 Can. S. C. R. 473). Leave to appeal to Privy Council was granted, 7th May, 1914.

## U.

*UNION BANK OF CANADA v. BRIGHAM ET AL.* (Cout. Cas. 355). Petition for special leave to appeal to Privy Council dismissed, 27th February, 1907.

*UNION BANK OF CANADA v. FELIX MCGHUGH* (44 Can. S. C. R. 473). Leave to appeal to Privy Council granted, 8th Nov. 1911. Appeal to Privy Council allowed in part, 17th Feb., 1913 (1913, A. C. 299).

*UNION BANK OF CANADA v. T. P. MCGHUGH* (not reported). Leave to appeal to Privy Council granted, 8th Nov., 1911. Appeal to Privy Council allowed in part, 17th Feb., 1913 (1913, A. C. 299).

*UNION INVESTMENT Co. v. WELLS* (39 Can. S. C. R. 625). Leave to appeal to Privy Council refused with costs, 18th July, 1908.

## V.

*VANCOUVER LUMBER Co. v. THE KING* (unreported). Leave to appeal to Privy Council granted, Dec., 1915.

*VANDRY ET AL. v. QUE. RLY. LIGHT, HEAT & POWER Co.* (53 Can. S. C. R. 72). Leave to appeal to Privy Council granted, 9th May, 1916.

*VAUGHAN v. EASTERN TOWNSHIPS BANK* (41 Can. S. C. R. 286). Leave to appeal to Privy Council granted, 9th July, 1909. By virtue of the Judicial Committee's Rule, No. 32, the appeal was withdrawn and stood dismissed, 5th Sept., 1910.

*VICTORIA MUTUAL FIRE INSURANCE Co. v. HOME INSURANCE Co. of NEW YORK* (35 Can. S. C. R. 208). Appeal to Privy Council allowed with costs, 2nd November, 1906; ([1907] A. C. 59).

*VOLCANIC OIL & GAS Co. v. CHAPLIN* (unreported). Leave to appeal to Privy Council refused with costs, 20th Dec., 1915.

## W.

*WADE v. KENDRICK* (37 Can. S. C. R. 32). Leave to appeal to Privy Council refused, 17th July, 1906.

*WADSWORTH v. CAN. RLY. ACCIDENT INS. Co.* (49 Can. S. C. R. 115). Leave to appeal to Privy Council was refused, 1st July, 1914.

*WATER COMMISSIONERS OF LONDON v. SAUNBY* (34 Can. S. C. R. 650). Judgment of the Supreme Court reversed, and that of the Court of Appeal for Ontario restored, with the variation that the damages should be confined to the period beginning six months prior to the commencement of the action; ([1906] A. C. 110).

*WEST v. CORBETT* (47 Can. S. C. R. 596). Leave to appeal to Privy Council refused, 2nd Dec., 1913.

*WHITE v. BÉTIQUE* (37 Can. S. C. R. 303). Leave to appeal to Privy Council refused, 25th July, 1906.

*WILLIAMS v. BOX* (44 Can. S. C. R. 1). Leave to appeal to Privy Council refused, 11th July, 1911.

*WILLIAMS v. THE GRAND TRUNK RAILWAY* (36 Can. S. C. R. 321). Leave to appeal to Privy Council refused, 2nd August, 1905; 45 Can. Gaz. 447.

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