

Grove earned on business in partnership. On the death of a partner, his executors were entitled to his capital with 5 per cent. interest. Mr. Grove died on May 9, 1901. Mr. Bourne continued to carry on business in the partnership name until 3rd December 1902, when he died insolvent. At Grove's death the partnership account with Berwick and Co. was overdrawn to £6476. After Grove's death Bourne continued the account in the firm's name for the purpose of the business. On 7th February 1902 he deposited title deeds of real estate forming part of the partnership property, and signed a memorandum of deposit to secure the overdraft which then stood at £5088. Between Grove's death and 7th February 1902 Bourne had paid into the bank to the credit of the account £10,073 and had drawn out £8688. After 7th February 1902 further sums were paid in and drawn out, and at Bourne's death the overdraft stood at £4463 odd. After Bourne's death the business was sold by order of the Court, and the property, the subject of the equitable mortgage was represented by £5300. The Bank and Grove's executors each claimed priority. HELD by the Court of Appeal that a surviving partner, for the purpose of winding up the partnership business, may continue it and mortgage the partnership property, both real and personal, to secure a partnership debt, that the bankers were entitled, in the absence to the contrary, to assume that the surviving partner was continuing the account for the purpose of realisation, that therefore their mortgage was a valid security and took priority over the lien of the deceased partner's executors. *In re Bourne*. 1906, 2 Ch. 427.

LANDLORD AND TENANT. ROOM IN MILL LET WITH MACHINE. CONTRACT TO SUPPLY POWER TO WORK MACHINE.—Metcalf & Co., occupiers of mills, let to Bentley Bros., for the purposes of their trade as mungo manufacturers, certain rooms at the mills with the rag machine therein, and agreed to supply power for working of the machine. The power was supplied by an engine, which had a defect in its governor, and in consequence ran at an excessive speed, and caused the drum of the rag machine to revolve at so high a rate of speed that it broke into pieces and killed Dews, one of Bentley & Co.'s workmen. Bentley & Co. had to pay his widow £202 as compensation and sued Metcalf & Co. for this amount as damages. HELD by the Court of Appeal that the obligations of Metcalf & Co. did not arise as incidents of a demise of property, but arose out of a specific contract to sell and supply "power," and that there was an obligation upon them to see that the power supplied should be reasonably fit for the purpose for which it was to be supplied, that it was not so fit, and Bentley and Co. were therefore entitled to judgment. 1906 2 K.B. 548.

COMPANY. ENTITLED TO COMMENCE BUSINESS. CONTRACTS.—Section 99 (3) of "The Companies Act 1903" provides that any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding. The Otto Electrical Manufacturing Co. (1905) Ltd was registered. Some shares were subscribed for in its memorandum of association, it issued a prospectus inviting the public to subscribe for its shares, but none of its capital was paid up and none of its shares were allotted. The company never had a registered office, was never entitled to commence business, and went into voluntary winding-up. In the liquidation Mr. Jenkins claimed that the company was indebted to him for sums paid for furnishing offices which he took for the company at the request of the directors. HELD by Buckley, J., that the section applied to all contracts of a company, whether preliminary or final or in the course of carrying on its business, that the word "provisional" means that the contract is to be read as if it contained a provision that it shall not be binding on the company unless and until the company becomes entitled to commence business. Mr. Jenkins' claim was therefore disallowed. *In re "Otto" Electrical Manufacturing Company (1905) Limited* 1906 2 Ch 390

TRADE MARK WORD HAVING REFERENCE TO CHARACTER OR QUALITY OF THE GOODS "CENTURY" The Printing Machinery Company made an application to register the word "Century" as a trade mark in respect of machinery. The Comptroller-General refused the application on the ground that the word conveyed the idea that the article to which it was applied included all improvements that had been discovered up to date and therefore had reference to the character or quality of the goods. HELD by Farwell, J., on appeal to the Court that the word "Century" was a commendatory phrase and was therefore rightly refused registration. *Re The Printing Machinery Company's application* 23 Reports of Patent Cases 38.

PASSING OFF. TRADE DESCRIPTION—Burberry's have for many years manufactured waterproof

garments, which are known and sold in great quantities as "Burberry" and "Burberry Slip-on." Raper & Pulleyn, a firm of makers of waterproof articles, published the following advertisement in the Yorkshire papers—

BURBERRY'S SLIP-ON COATS.

Raper & Pulleyn have now added this Manufacture to their Mackintosh Department. In appearance the coats are identical with Burberry's, and the cloth is equal to theirs in every way, being treble-proofed. The Firm's reputation for Mackintoshes is itself a guarantee to purchasers. The price is Two guineas."

A farmer, reading the advertisement, and wishing to buy a coat of Burberry's, wrote to Raper and Pulleyn for "one of your Burberry Slip-on Coats at 42s" and received a garment manufactured by Raper & Pulleyn. Burberry's brought an action against Raper & Pulleyn for an injunction to restrain passing off. Raper & Pulleyn contended that the terms "Burberry" and "Slip-on" did not indicate manufacture by Burberry's but indicated a coat made by any manufacturer of a particular shape and of a particular class of cloth. HELD by Warrington, J., that the advertisement was calculated to deceive and actually did deceive, and an injunction was granted restraining Raper & Pulleyn from advertising or selling as "Burberry" or "Slip-on" goods not of Burberry's manufacture. *Burberry's v. Raper & Pulleyn*. 23 Reports of Patent Cases 170.

HIGHWAY DEDICATION USER. An intention to dedicate land as a highway will not be presumed from mere user, if that user is explained by circumstances negating such an intention. A mortgagor cannot, without the consent of the mortgagee, dedicate as a highway part of the land the subject of the mortgage. *Resident of the Shire of Navagan v. Leirson* 3, Commonwealth L.R. 846

Mining Meerschaum.

Meerschaum, although the name means "sea foam," is not a marine product, but is a soft, soap-like stone which is mined just as coal is mined. Asia Minor is the principal seat of the industry. In its crude state, meerschaum is yellowish-white in colour, and a red clay coat or skin envelops the blocks taken from the mine. These blocks bring from £7 to £40 a carload. They are soft enough to be cut with a knife. After being dried under the open sun in summer, or in a warm room in winter, the blocks are sorted into different grades. They are then wrapped in cotton and packed in cases for the market. The bulk of the product goes to Vienna, where the best pipe-makers are found. In the estimation of the connoisseur meerschaum makes the lightest, cleanest smoking outfit.

Mineral Wealth of Austria.

There are few if any countries in Europe that surpass Austria-Hungary in mineral wealth. Mining has been a favourite pursuit for centuries. Coal leads in production and value. There are more than 225,000 persons employed in mines. The annual output of rock salt is large, there being no less than 10,000 persons engaged in this industry. Of the other minerals gold, silver, and iron are produced in large quantities, the exports running into millions of dollars annually. Mineral springs are in abundance, the waters from which are sold in nearly every country in the world.

The Homeless Army of San Francisco.

Notwithstanding the progress made in the rebuilding of San Francisco, there are still 50,000 people living in tents. It is impossible to fill the need for houses in the near future (says the *Morning Post*), for there is a lack of skilled artisans and the erection of building premises is monopolising the attention of the available labour at present.

According to the *Machinists' Monthly Journal* more men are killed in Alleghany County Pa. every year than fell in many of the great battles of history. Last year 9000 men were killed and injured in the steel and iron mills and blast furnaces. In other mills the casualties numbered 4000. Railroad employees killed or injured in the country during the same year numbered 4300, making a grand total of 17,700 on the roll.

If a high ball is your first object in the morning, you will play a grounder before night.

Applications for Patents.

The following list of applications for Patents, filed in New Zealand during the month ending 15th December, has been specially prepared for PROGRESS.

- 22055—J. I. Moss, Abbotsford, Vic. : Window-fastener.
- 22056—A. Doxey, Seymour, Vic. : Testing dampness in wool.
- 22057—H. J. Marks, Toowoomba, Queensland : Buffer-coupling.
- 22058—United Shoe Machinery Company, Paterson, U.S.A. : Guides for inseam-sewing machine.
- 22059—United Shoe Machinery Company, Paterson, U.S.A. : Sewing-machine.
- 22060—United Shoe Machinery Company, Paterson, U.S.A. : Machine for inserting and producing fasteners.
- 22061—E. B. Killen, London, Eng. : Rubber tread or tire for wheel.
- 22062—E. Burt, El Oro, Mexico : Filters for metal ores, slimes, etc.
- 22063—G. Brennan, Petersham, N.S.W. : Folding bedstead.
- 22064—A. A. Stephenson, C. P. Kelly, and J. B. Zander, Melbourne, Vic. : Hydrocarbon-gas manufacture.
- 22065—W. Tyree, Nelson : Feeding hydrocarbons to incandescent burner.
- 22066—United Shoe Machinery Company, Paterson, U.S.A. : Machine for inserting and producing fasteners.
- 22067—United Shoe Machinery Company, Paterson, U.S.A. : Clipping-press.
- 22068—A. W. Chatfield, Auckland : Transplanting teeth.
- 22069—P. Morice, Sydney, N.S.W. : Utilising force of sea-waves.
- 22070—J. H. Crutchley, Kyeburn : Protector for inner tubes of tires.
- 22071—S. G. Roseman and J. Lock, Auckland : Bundling materials used in brush and broom making.
- 22072—F. R. Christie, Dunedin : Level inlets for drainage purposes.
- 22073—G. Dunne, Palmerston North, Device for cutting string.
- 22074—F. L. Davis, Auckland : Sash window.
- 22075—S. B. Hunter, Moreland, Vic., and H. Wilson and E. J. Rigby, St. Kilda, Vic. : Boring-appliance.
- 22076—C. Suttie, Waharoa, and M. H. Wynyard, Auckland : Cleaning flax-fibre, etc.
- 22077—T. Read, Auckland : Rubber heel-protector.
- 22078—C. O. Marklund, Lowburn Ferry : Water-engine.
- 22079—E. Shadgett, Kilbirnie : Treating bananas for preparation of a food.
- 22080—G. H. Saywell, Feilding : Race-starter.
- 22081—G. G. Turri, Melbourne, Australia : Centrifugal cream-separator.
- 22082—G. G. Turri, Melbourne, Australia : Centrifugal cream-separator.
- 22083—G. G. Turri, Melbourne, Australia : Centrifugal separator.
- 22084—G. Stacy and G. A. Juhus, Perth, W.A. : Voting-machine.
- 22085—National Cash Register Company, Dayton, U.S.A. : Store service credit system apparatus.
- 22086—W. J. Teese, Balaclava, Vic. : Milking-apparatus.
- 22087—F. H. Jackson, New Plymouth : Gate.
- 22088—E. McFee, Dunedin : Desk.
- 22089—H. A. Cole, Wanganui : Swing.
- 22090—D. N. Wilson, Kumeroa : Temperature-indicator.
- 22091—S. Allen, Kilmilly : Potato-digger.
- 22092—E. Deister, Port Wayne, U.S.A. : Ore-concentrator.
- 22093—H. Howell, London, Eng. : Incandescent burner.
- 22094—G. Schauli, London, Eng. : Electric cell.
- 22095—W. and H. B. Bell, Mosman, N.S.W. : Half-tone-printing block.
- 22096—L. W. and R. A. Potier, Brisbane, Queensland : Boot or shoe with attachable toe-cap.
- 22097—L. W. and R. A. Potier, Brisbane, Queensland : Shoe or slipper with attachable instep fronts.
- 22098—C. Burt, New Plymouth : Room-heater.
- 22099—J. T. Hunter, Wellington : Joint for earthenware pipe.
- 22100—A. Gunn, Wanganui : Liquid washing-soap.
- 22101—H. V. Johansen, Auckland : Explosive engine.
- 22102—J. A. Yule, Gore : Wrench for operating nuts of fish-plate bolts.
- 22103—H. Ellis, Geelong, Vic. : Making bands of straw, etc., for binding sheaves.