Canada Law Journal.

VOL. LV. TORONTO, OCTOBER, 1919. No. 10

THE PRINCE OF WALES AND THE BAR.

A most interesting event took place last month (August 27th) when His Royal Highness the Prince of Wales was welcomed by the Bar of Ontario at their Alma Mater, Osgoode Hall, Toronto.

The Prince was received by Dr. Hoskin, K.C., the Treasurer of the Law Society of Upper Canada, and others of the Benchers; and, with his staff, was conducted to the Convocation Room, where the Benchers and the invited guests were assembled and presented to His Royal Highness.

We give the rest of the proceedings as set forth in the Secretary's official minutes of the meeting as follows:—

"The meeting of Convocation took place on a dais erected at the easterly end of the Great Library on which were seated His Royal Highness and the Benchers present. The guests invited to be present and members of the profession occupied seats in the body of the Library.

His Royal Highness was presented for the degree of Barrister-at-law by Sir Allen Aylesworth in these words:—

"Mr. Treasurer, I have the honour to present His Royal Highness Edward Albert Christian George Andrew Patrick David, Prince of Wales, for the degree of Barrister-at-law."

The Treasurer addressed His Royal Highness as follows:—

"May it please Your Royal Highness—

"As Treasurer of the Law Society of Upper Canada—on behalf of the Society, and of the legal practitioners of this Province—I beg to express to you our grateful recognition of the signal honour you do us in coming to-day to this meeting of Convocation. We are met for the purpose of offering to Your Royal Highness our best welcome to Osgoode Hall, the seat of His Majesty's Superior Courts of Ontario, and of conferring upon you the Degree of

Barrister-at-law, a dignity which you have been graciously pleased to signify your willingness to accept.

"Since the foundation of this Society it has been our custom, before calling anyone to our Bar, to satisfy ourselves by careful examination, that such progress has been made in the acquisition of legal knowledge as will warrant admission to practice as a Counsel. But 'nice customs courtesy to great Kings,' and we know that Your Royal Highness has already been called to the Bar in England.

"In the name of Convocation I have the honour and pleasure of conferring upon you the degree of Barrister-at-Law.

"We shall ask the honour of the signature of Your Royal Highness to our Roll of Barristers, and it is with great satisfaction that we are able to lay before you for that purpose the parchment upon which, in this building, upon an occasion similar to the present Your Royal Grandfather, fifty-nine years ago, when he was Prince of Wales, graciously inscribed his name.

"Assuring you of the loyal remembrance in which his name is held among us, we beg to express the assurance that Your Royal Highness, like him, and like His Majesty your royal Father, may forever be enthroned in the hearts of his people.

"In addressing Your Royal Highness as Edward, Prince of Wales, we are reminded not only of Edward the first Prince of Wales, but as well of that other Prince—the second Prince of Wales—the great Plantagenet known to history as the Black Prince, of whose father, King Edward III., Your Royal Highness is a lineal descendant. We recall that Edward the Black Prince, when still young in years, was made first Duke of Cornwall—the first Dukedom created in England—and that this ancient title is to-day borne by Your Royal Highness in right of inheritance under the terms of the original charter by which it was first vested in Edward the Black Prince nearly six hundred years ago. The name of Edward the Black Prince has endured through the centuries as that of one of the most heroic of Britain's princes of renown. It is our hope that British subjects the wide world over may cherish in deep affection and loyal allegiance the name of Edward Prince of Wales who, like his great predecessor, has returned a soldier and

a veteran, from victorious war, and has, for Great Britain and the world, gallantly done his duty."

His Royal Highness was thereupon elected a Bencher of the Society on motion of the Hon. Featherston Osler, K.C., seconded by Mr. Alexander Bruce, K.C.

His Royal Highness replied to the Treasurer's address as follows:—

"Mr. Treasurer, I am deeply grateful to you and to the Benchers of the Law Society of Upper Canada for the honour that you have done me in conferring on me the degree of Barrister-at-Law, an honour which I very much appreciate. I thank you sincerely for your kind address and I assure you I am very proud to follow my late Grandfather in being called to the Bar of Upper Canada."

The Treasurer then called for three cheers for His Royal Highness, which were given with great heartiness by those assembled, who thereupon sang "For he's a Jolly Good Fellow."

His Royal Highness thereupon signed the Roll of Barristers, and Convocation then arose.

Afterwards His Royal Highness and staff and invited guests and the Benchers were entertained at luncheon in Convocation Hall.

After luncheon the Treasurer proposed a toast to the King, and the guests sang "God Save the King."

After the toast to the King, Dr. Hoskin, K.C., the Treasurer proposed a toast to His Royal Highness in these words.—

"Gentlemen, I have another toast to propose."

"The members of our Bar who have had the honour and pleasure of taking part in the ceremonies of the day and of partaking of this luncheon, will not forget that they have been graciously honoured by the presence of His Royal Highness who has been pleased to be enrolled as a member of our Bar, a member of the Law Society of Upper Canada, a Society which in about two years will pass its century mark. I need scarcely say that what has transpired to-day will be duly preserved in our archives and that this occasion and the former one graced by that wise and great monarch, King Edward, will occupy a prominent place in the history of this Society, a history now being prepared under the authority of the Benchers.

"We sincerely thank His Royal Highness for the honour he has conferred upon us and the pleasure he has given us upon this occasion and trust that his royal progress through Canada will be attended with every success and with much pleasure and I am sure he will take back to the Homeland pleasing recollections of this—one of the greatest of His Majesty's Dominions.

"Perhaps His Royal Highness may become so enamoured of Canada that he may be induced to become, what shall I say—a royal settler, and if so, he may take up in our midst the practice of his profession, the law, and should he do so, I need scarcely say that as a counsel he will never be without a brief.

"Gentlemen, I have the honour of proposing the health and happiness to our youngest Barrister, our new Bencher, His Royal Highness the Prince of Wales."

His Royal Highness replied as follows:—

"Mr. Treasurer and Benchers of the Law Society of Upper Canada: You have already done me a great honour this morning, now you are paying me a further compliment in entertaining me at lunch, for which I am very grateful. It is a great pleasure to me to be able to come to Osgoode Hall to-day, the famous Inn which has produced so many great legal lights. I don't feel I came as a stranger to you because I am already a member, and not only that—a Bencher, of the Middle Temple.

"I cannot say I feel very proficient in my new position, but I think one of the things a barrister expects is to have a large practice in public speaking. I can assure you Canada is certainly trying to give me that. Next time I come I may become more proficient at it.

"I do want to express to you my admiration for the wonderful war service of this Inn. You had 300 barristers serving in the war and are still almost more wonderful, out of 330 students, you had 300 serving at the front. I do congratulate you most heartily on such a record.

"With you I mourn the loss of those 70 barristers and students who will never return. I offer to you my deep sympathy for the splendid men you have lost.

"The Treasurer said he hoped I might come and settle in

Canada. I am afraid I shall not be able to do that, but I will do the next best thing and come to Canada as often as I can. I again thank you for the honour you have done me, and the gentlemen for the kind manner in which they drank my health. Gentlemen, I ask you to drink to the health of the Treasurer of the Law Society of Upper Canada."

This was most heartily responded to; and so ended another historic event of great interest to the Bar of Canada.

THE BOARD OF COMMERCE.

In the good old days the Court of King's Bench was considered sufficient to deal with all matters requiring judicial investigation and determination; but, as business increased, provision had to be made to deal with not only increased business, but with various other matters of interest to the public. The enormous increase of mercantile transactions has produced in these days a system of specializing which has become common in almost every branch of industry, so that now it has been found necessary to have various special Courts to deal with special classes of business activities. A notable example of this was the addition to the Courts of the Dominion of the Board of Railway Commissioners. Now we have another Court, "The Board of Commerce of Canada." Although these are called Boards they are in effect Courts. The Dominion statutes of 1919 (9 & 10 Geo. V.) contain in chap. 37 the Act bringing into force the latter of these so called Boards—"a Court having an official seal which shall be judicially noticed."

The Judges are three Commissioners appointed by the Governor-General in Council who shall hold office during good behaviour, for a period of ten years. One of these is styled the Chief Commissioner. He must have been either a Judge of the Superior Court or a Barrister of 10 years' standing.

This Court or Board is charged with the judicial administration of "Combines and fair prices Act" which appear in the same volume as chap. 45. In respect of the matter contained in the last mentioned Act, the Board has power inquisitorial and mandatory of most exceptionally strong character. And in addition sec. 38 (1)

provides that any decision or order made by the Board under the Act may be made a rule, order or decree of the Exchequer Court, or of any Supreme Court in any Province of Canada and shall be enforced in like manner as any rule, order, or decree of such Court. And such rule, order or decree may be enforced at the will of the Board thus giving the Commissioners all necessary power without the necessity of any procedure of its own Court. The Board has full powers to call and examine witnesses and deal in a summary manner in respect to all matters within the large jurisdiction given to the Commissioners.

The need of such powers as thus given by the Act are admittedly most urgent at the present time, when the public is suffering from the high cost of living resulting not only from the conditions which have come into existence by reason of the great war but also by the greed of profiteers and the innumerable schemes and dodges of manufacturers, traders, agents, middlemen, etc., seeking to make money out of a heavily taxed and helpless community trying to make both ends meet, at a time when all necessaries of life have soared to a height beyond all reason and fairness. Needless to say that this Court and its activities are in the lime light to a degree unknown to any Court in the world's History. If results are produced the Board and its officers will deserve well of the country. The personnel of the Board is now complete, and consists of Hon. H. A. Robson, K.C., formerly a Superior Court Judge, as Chief Commissioner, and W. F. O'Connor, K.C., and James Murdock, Commissioners.

As to whether the advantages hoped for from this measure will fulfil expectations remains to be seen. That there is a necessity for it, and that it is a step in the right direction must be admitted. The frauds and deception connected with the high cost of living which abound at present are now being revealed in the evidence before the Board and may thereby be checked to some extent.

The war was of course the initial cause of the high prices, but farmers, manufacturers, wholesalers and retailers have taken advantage of the situation to embark on a voyage of misrepresentation as to the cost to them of the articles that they have for sale which is without excuse and without parallel in history.

Those who are familiar with legislation in England in former years, even as far back as the reign of King John, know that the effort now being made to reduce the high cost of living is not a new one. An interested and oppressed public wish it success.

CRIMINAL PRACTICE.

[COMMUNICATED.]

It is desirable that more attention should be paid to this branch of a lawyer's business. It is more important than it was, and there is a growing need as there is more diversity and difficulty in becoming proficient therein.

Without having any knowledge of the scope of the training in the Law School of Ontario as to criminal law or criminal practice, the writer is continually impressed on the one hand with the timidity of young as well as old members of the profession, who, having no hesitation in dealing with civil matters, are compelled to come into the criminal courts nervously aware that they are unprepared for their duty.

There is constant alteration to the Criminal Code and judgments on attempts to break through it. There are Orders-in-Council and extensions of Provincial statutes, which have so greatly widened crime and confused criminal practice; and, in consequence of the latter state of affairs, it is absolutely necessary for one in ordinary practice to become familiar with the practice in the Magistrate's or County Judge's Criminal Court and in Session Courts. If not he should honestly in the interest of his clients hand over to some experienced lawyers all his work in this particular line.

This simply arises from ignorance of the practice. It is therefore desirable that an effort should be made to give students a sufficient knowledge of the practice in the various Courts where clients may need their services.

For instance, the various lines of practice that are necessary between a summary conviction before a magistrate on which an appeal always lies, unless the statutes prohibit it; the trial of

indictable offences by the magistrate, with the consent of the accused, and the necessity, on an appeal in such case, of moving by way of stated case; the necessary steps to obtain a trial before the County Judge's Criminal Court, or the various methods of obtaining bail for a prisoner committed without additional trial, or the several steps which arise until a bill is found by the grand jury, and the case brought before the jury which has to give the verdict.

There have been a good many diverse and confusing judgments from time to time, dealing with the question of how long a man has a right to elect trial by a jury. This question is not entirely settled yet, having been confused by the Ontario Court judgment in *Rex* v. *Sovereen*, and the gradual qualifying of that case by subsequent cases, until the recent judgment in the Supreme Court which gave a man the right to elect at any time up to plea, notwithstanding a bill is found. Then in regard to law of evidence; such as the admission of the evidence of accomplices; of statements to the peace officer by parties when under arrest, and confessions; also as to the necessity of cautioning a man when arrested.

Perhaps it might be well if students were encouraged to spend some of their time in the criminal Courts and so widen their knowledge of the practice, and perhaps pay a visit to the morgue at night, which might be an enlightenment in regard to this branch of practice, as they may be forced to go there at any time in the interests of a client.

If a practitioner has no training in criminal practice he probably retains counsel who is familiar with it, or else seriously affects the interest of his client; and so he loses fees which would otherwise legitimately go into his own pocket.

The experience of the writer of the above communication is so extensive that his remarks are entitled to serious consideration. With regard to the training of students in the Law School, it may be said that the subject of criminal practice is fairly well covered in the lectures, with the exception of summary conviction (Part XV). This branch may not be considered of major importance, and

involves consideration of a large number of unimportant statutes. The suggestion that students should attend criminal sittings to see the practical working out of this phase of the subject is a good one, and we are told has already been advised by one of the lecturers. Whilst it is true that criminal business is in the hands of a very few men in large cities, it may partly be accounted for by the inexperience and ignorance referred to by our correspondent, and this is what he thinks ought to be remedied. We have no doubt that the excellent head of the Law School will see that all that can be done in the premises will be done. Last year he had one of the Crown Attorneys give some lectures to Third Year students on Police Court practice.

DOMINION STATUTES, 1919.

This volume has been received and it is a bulky one, more than usually important.

The first 148 pages are devoted to the following Imperial Acts: (1) An Act amending the law relating to Naval Prize of War; (2) An Act to amend the British Nationality of State and Aliens Act, 1914; (3) An Act to make provision for determining the date of the termination of the present war; (4) An Act to amend the Criminal Code. Various Orders-in-Council, Imperial and Canadian, are also given.

Then follow the Public Acts of the Dominion Parliament, which are numerous. Those of most importance to the profession are: (1) An amendment to the Interpretation Act, defining terms, etc.; (2) The Bankruptcy Act; (3) An Act constituting the Board of Commerce; (4) The Naturalization Act; (5) The Pension Act; (6) The Combines and Fair Prices Act; (7) An Act to amend the income war tax of 1917; (8) An Act to amend the Insurance Act of 1917; (9) An Act to amend the Judges' Act; (10) An Act amending and consolidating the Railway Act.

The Bankruptcy Act was the result largely of the helpful labours of the Canadian Bar Association. Its genesis is referred to in our report of the proceedings at its last annual meeting (see page 292, *post.*) This long expected legislation has come

at last, but the Act will not come into force until a day to be named by proclamation. There is plenty of reading for the profession provided by this Act.

We speak in another place as to the formation of the Board of Commerce for Canada, to which we refer our readers. Amendments to the Criminal Code are somewhat numerous, the principal one dealing with unlawful associations, seditious books, carrying weapons, etc., with a number of other sections, *quae nunc prescribere longum est.* The Act to amend the Judge's Act is of special interest to the Judges as it deals with their salaries, in which, properly enough, they have taken much interest during the past year. If they took as much interest in increasing the tariff of fees of solicitors, the latter might be more sympathetic: ("a nod is as good as a wink.") We trust there will be more said about this hereafter. The Consolidated Railway Act gives all the legislation on that subject and also gives plenty of reading, containing as it does 461 pages.

REDEMPTION BY TENANTS IN COMMON.

The decision in *Adams* v. *Keers*, 16 O.W.N. 347, appears to be a departure from the well-settled rule that tenants in common who have mortgaged their estate are not entitled severally to redeem their respective shares, but must redeem the whole: see *Faulds* v. *Harper*, 2 Ont. R. 405, *per* Proudfoot, J., at p. 411. The circumstances of the case were a little peculiar. The action was for foreclosure of a mortgage made by three persons; the Toronto Railway was made a party as a subsequent encumbrancer by virtue of an execution against one of the three mortgagors. The railway company redeemed the plaintiff's mortgage. It then became a question in what way redemption of the railway company should be directed. The method adopted by the Master is not stated in the note of the case; but whatever it was, his report was set aside, and he was directed to ascertain the respective shares of the several mortgagors and allow each to redeem his respective share; but as to the one whose interest was subject to the railway's execution, the amount of such execution

was to be added to the amount payable by h m for redemption of his share. It might therefore happen that the railway would be redeemed only as to part of the plaintiff's mortgage paid by it, which does not appear to be right, because, as to that mortgage, the railway stood in the plaintiff's shoes and had the same right as he had, and, as to him, each of the mortgagors was bound to redeem the whole and not merely his particular share, and to allow each mortgagor to redeem his particular share is not, we think, according to the usual course of the Court. We are inclined to think that the Master's duty was to ascertain what the share was of the defendant whose interest was bound by the execution, and to appoint one day for all defendants to redeem the railway as to the amount paid the plaintiff, w th subsequent interest and costs, and for the defendant bound by the execut on to pay in addition the amount due thereon—and according as redemption was made, the railway would convey: see *Pearce* v. *Morris*, L.R 5, ch. 227. If only the amount due in respect of the plaintiff's mortgage were paid, the railway would convey subject to its rights in the undivided share of their execution debtor as against whom they would be entitled to a final order of foreclosure The working out of their rights against their execution debtor might ultimately necessitate partition proceedings.

THE CANADIAN BAR ASSOCIATION.

Fourth Annual Meeting.

The fourth annual meeting of this Association was held at Winnipeg, August 27th to 29th. Its President, Sir James Aikins, K.C., Lieutenant-Governor of Manitoba, presided. It was without question the best and most interesting meeting of this Association that has as yet taken place, and prophetic we trust of greater advance in its usefulness in the future.

The existence of the Association has been somewhat of a struggle since its commencement, owing to the fact that members of the profession are so widely scattered over the immense territory bounded on the East by the Atlantic and on the West by the

Pacific Ocean. A realization of this may have dampened the ardour of many who might have been expected to have taken a more active part in the activities of the Association.

The attendance of the profession at this meeting was most satisfactory. In addition to the many eminent names which appear hereafter there were about 330 members of the Dominion Bar present, the representation being from all the Provinces. Naturally there was a large attendance of the Western men, but New Brunswick had ten, with one from the far East, Prince Edward Island.

The Association, through its committees, has been doing excellent practical work. For instance, in its effort to secure unification of the law relating to bankruptcy, and also in reference to fire insurance conditions, sales of goods, etc. At the first annual meeting of the Association in 1915, it took up the question of insolvency. Interest was continued in this by the Montreal Committee, until the matter was pressed in the House of Commons by Mr. Jacobs, K.C., who introduced a bill. It was not passed in the form in which he introduced it, but it was taken up with the Credit Men's Association; and their legal representative was present at the meeting in Montreal and submitted their proposed bill to the Association. At the last meeting of the Council in Toronto in April, Mr. Eugene Lafleur, K.C., and Mr. S. W. Jacobs, K.C., were asked on behalf of the Association to give their assistance in advising in reference to some of the provisions of the Bill, which they most cordially did. This revised Bill is now in substance chap. 36 of the Dominion Statutes 1919 (9 & 10 Geo. V.).

While the Association continues its committee on uniformity of law, it suggested the appointment of Provincial Commissioners to deal with the subject. Most of the Provinces have concurred and appointed, either under special legislation or general executive authority, representative lawyers to meet in conference. The first working conference was held in Winnipeg on the day before the annual meeting of the Bar Association, and continued its sessions at intervals during the meeting. Mr. J. D. Falconbridge is the Recording Secretary of the body and has been giving the subject earnest attention.

Reports were presented by the Committees dealing with the various subjects. These were discussed with keen interest and they were as follows:—

Report on Legal Ethics presented by Angus MacMurchy, K.C., of Toronto. This was accompanied by a very able paper by Mr. Justice Riddell of the Ontario Bench. These appear in extenso on a subsequent page.

The report of the Committee on Legal Education was presented by Dr. R. W. Lee, Dean of the Faculty of Law in McGill University. This report is also given in full on another page.

The report of the Committee on the Uniformity of Law was in charge of W. H. Trueman, K.C., of Winnipeg. This important subject is being fully dealt with by the Provincial Commissioners, who are endeavouring to put into practical form the suggestions of the Associations as expressed through the Committee and in the discussion which followed the reading of the report. We shall refer to this subject again when the Commissioners have more information to impart.

The Committee which had to deal with the Administration of Justice was in charge of W. J. McWhinney, K.C., of Toronto. After a full discussion some changes were made and the report was adopted in the form hereafter set forth.

Several interesting and important addresses were delivered. The opening address was by Sir James Aikins, President of the Association, and two by Viscount Finlay, Ex-Lord Chancellor of England; another was by Hon. J. B. Winslow, Chief Justice of Wisconsin, and another by Col. Geoffrey Lawrence of the English Bar. The addresses of Lord Finlay were of special interest dealing with many important subjects discussed by one whose views and opinions are valuable both for present interest and for future reference. We shall give them to our readers hereafter as far as space permits.

At the close of the business session Chief Justice Harvey of Alberta seconded by W. E. Bentley, K.C., of Prince Edward Island, moved a resolution of appreciation of the invaluable services of Sir James Aikins in connection with the Association since its organization in March, 1914. This was received and carried with great enthusiasm.

The annual dinner took place on the evening of the last day followed by brief speeches by Viscount Finlay, Chief Justice Winslow, Hon. W. F. A. Turgeon, Attorney-General of Saskatchewan Mr. Justice Mignault of the Supreme Court of Canada, Mr. Lafleur, K.C., and Isaac Campbell, K.C., of Winnipeg, Vice-President of the Association for Manitoba. Those present displayed their appreciation of the work and personality of Mr. Campbell by a memorable ovation which must have been very gratifying to this beloved leader of the Western Bar.

The list of officers for the ensuing year is given in another place (*post* p. 317)

REPORT OF THE COMMITTEE ON LEGAL ETHICS.

At the Annual Meeting of the American Bar Association in 1905 attention was called by the President, Henry St. George Tucker, of Virginia, to a striking statement by President Theodore Roosevelt, "that many of the most influential and most highly remunerated members of the Bar, in every centre of wealth, made it their special task to work out bold and ingenious schemes by which their very wealthy clients, individual or corporate, can evade the laws which are made to regulate, in the interest of the public, the use of great wealth . . . that such a lawyer is doing all that in him lies to encourage the growth in this country of a spirit of dumb anger against all laws and a disbelief in their efficiency. Such a spirit may breed the demand that laws shall be made even more drastic against the rich, or else it may manifest itself in hostility to all laws."

In his address Mr. Tucker suggested the adoption in all Schools of Law of an enlarged and comprehensive course in the subject of legal ethics to be taught by men of lofty ideals which they try to live up to and not merely talk of.

Thereupon a committee of five was appointed, of which Mr. Tucker was chairman, to report at the next meeting upon the advisability and practicability of the adoption of a code of professional ethics by the Association.

At the annual meeting in 1906 the Committee reported that the adoption of such a code was not only advisable but under existing conditions of very great importance, that unless the public had confidence in the integrity of the administration of justice there could be no lasting permanence to republican institutions, that with the influx of increasing numbers who seek admission to the profession mainly for its emoluments, have come new and changed conditions. Never having realized or grasped that indefinite ethical something which is the soul and spirit of law and justice these men not only lower the morale within the profession but debase our high calling in the eyes of the public.

It was considered that the adoption of a code by the American Bar Association would tend to develop uniformity of practice between the various States.

Another reason given for the adoption of a code was that many men depart from honourable and accepted standards of practice early in their legal careers as the result of ignorance.

In 1907 the same Committee presented a report recommending that Sharwood's well-known and instructive essay on Professional Ethics, first published in 1854, should be reprinted and issued in a volume supplementary to the Annual Report. The Committee was directed to have the proposed canon of professional ethics prepared by 1st May, 1908, to transmit a copy to each member and to the Committees, of the respective State Bar Associations for criticism and suggestions, and that the final report should be ready for submission at the 1908 meeting, when it was adopted in its present form.

The Law Society of Upper Canada considered a code of professional ethics several years ago at the suggestion of the late Mr. Justice Rose, with the approval of Dr. Hoyles, Principal for over twenty years of the Law School at Osgoode Hall. The matter was considered by the Legal Education Committee, of the Benchers, but was not favourably entertained at that time. The late Mr. Christopher Robinson, K.C., was one of the principal opponents. He took the position that legal ethics could not be taught in that way, that it was merely a matter of mental and moral education, and not one that could be reached by the adoption

of formal rules, and the proposal was abandoned. For a number of years, however, lectures on professional ethics have been given to the students in attendance at the Law Schools at Osgoode Hall, by Mr. Justice Riddell, Mr. Hamilton Cassels, K.C., Mr. Edwin Bell, Secretary of the Law Society, and others. The Principal, Dr. Hoyles, and lecturers on the staff of the Law Schools also endeavour to impress on the students the broad principles of legal morality. Whether or not this was the proper conclusion at the time, Dr. Hoyles still remains of opinion that it would be a very desirable thing to have something in the way of definite principles formulated for the guidance of students of the law, without going too much into details, where the difficulties suggested by some of the opponents of a code might be likely to arise. Dr. Hoyles is of opinion that something is needed to impress upon practitioners the viewpoint of the profession which is set out by Mr. Elihu Root, in an address delivered before the American Bar Association in 1916. He speaks of the "true spirit of the profession" as being one "not of mere controversy or mere gain, of mere individual success. To the student of the law there come from all the glorious history of the profession of advocacy great traditions and ethical ideals and lofty conceptions of the honour and dignity of the profession, of courage and loyalty for the maintenance of the law and the liberty that it guards. It is to a Bar inspired by these traditions, imbued with this spirit, not commercialized, not playing a sordid game, not cunning and subtle and technical, or seeking unfair advantage—a Bar jealous of the honour of the profession and proud of its high calling for the maintenance of justice—that we must look for the effective administration of the law."

In view of the changed and changing conditions of this country, and the large number of students now admitted to practice, many of whom come from various countries whose traditions and surroundings have not been similar to those of our own and the Motherland, the time may be considered as having arrived when it is necessary to reduce to writing for the information of the members of the Bar and the guidance of our law students some of the most important general principles governing the conduct of

the profession towards the Bench, the public, and their clients, setting forth among other things the ideals and standards of the profession, its honour, dignity and traditions, but without going too much into particulars as the American Bar Association appears to have done, and without being deemed exhaustive of the subject. This statement should not go into minute details or essay to accomplish the impossible task of providing for changing circumstances which are bound to arise in future.

The Saskatchewan Bar Association and the Benchers of Alberta have both taken steps towards the preparation of a code, and a draft has been submitted by Dr. James Muir, of Calgary, to the Law Society of Alberta.

Your Committee would recommend that a select Committee be appointed by the President of the Association to prepare such a statement of the principles of legal ethics as has been suggested in this report, using amongst other data the code of the American Bar Association supplemented by the draft code prepared for the Law Society of Alberta, as well as a similar code prepared some years ago and adopted by the Ontario Bar Association, and that such Committee make its report at the next meeting of the Association.

A CODE OF LEGAL ETHICS.

Paper prepared by Hon. Mr. Justice Riddell, at the request of the Association to accompany the foregoing Report.

(After certain preliminary remarks.)

In my own Province for nearly a century and a quarter, jurisdiction over the Bar has been exercised by the Law Society of Upper Canada, organized in 1797 under the authority of the statute of that year of the young Province of Upper Canada—and since that time no advocate has been heard by the Courts unless and until he has been called to the Bar by that Society. Full jurisdiction over the attorney or solicitor the Law Society does not possess: it prescribes the curriculum, it educates, it examines, it certifies the fitness to be admitted as a solicitor of the candidate, but there its authority and duty end—and

even that jurisdiction was not original, but was given by the statute of 1858. But in our system it has always been and is now the case that all but a very small percentage of solicitors are barristers, and of barristers are solicitors.

The first chapter of the first statute of the Province of Upper Canada (32 Geo. III., c. 1), introduced the laws of England as the rule for decision in all matters of property and civil rights, while the criminal laws of England formally prescribed for the conquered colony by the Royal Proclamation of 1763 had been left untouched by the Quebec Act of 1774 (14 Geo. III., c. 85). Accordingly, when the profession in the Province was organized the law, civil and criminal, in force was the existing law of England (with a few trifling exceptions).

The Act of 1797 was intended to place the profession of law on much the same basis as in England, but the circumstances of the colony did not allow of this being fully accomplished. One attempt to introduce the English system of prohibiting the same person to be both barrister and solicitor was defeated by the Benchers themselves, a second by the Judges, and the third and last by the Legislature; and the system is too firmly established to be now shaken.

It may, therefore, be said with reasonable accuracy that the Law Society has jurisdiction over the profession at large.

The Bar and the Bench of our Province have followed the traditions of England, recognizing that England is their intellectual ancestor. We in Ontario are inclined to claim, perhaps to make rather a boast, that the Bar and Bench of the Western Provinces have been largely recruited from our Province and share our traditions. Where that is not the case, the traditions of the profession in England are equally potent as with us.

The Bar and Bench of the Maritime Provinces have their own traditions, but these, like ours, are based on England.

Our illustrious sister, Quebec, stands in a different position: her criminal law indeed is English in its origin, but her civil law is based not upon the Common Law of England, but upon the Civil Law of Rome. Yet most of her rules, customs and practices are the same as ours.

Remembering the history of our profession, I thought it wise to consult the Chiefs of Bench and Bar in England; and as Ireland has much the same system and traditions, I at the same time consulted those in that land. Scotland has a law based on the Civil Law as has Quebec, and I asked the opinion of some of the leaders in Scotland. Without a single exception, all who replied were opposed to a written Code of Ethics.

The opinion of the profession in the British Isles is most persuasive, but, of course, it should not, it cannot be considered conclusive upon us, however closely we are affiliated, however much we owe to the Mother Country, however near the practice of the Courts. Circumstances in this Dominion, as in other Dominions, may make a difference advisable if not imperative in system.

As against the practice in the Old Land we may be inclined to consider that in the various States of the American Union—the usages of trade and of society, the "genius of the people" are much more near our own in many of these States than in England; while politically we are intensely British (and have no desire to change our position), in the general conduct of business, and of intercourse, in form and customs we are inclined rather to the American. Most of the Bar Associations of the various States of the Union have their formal Codes of Ethics as has the general Society—the American Bar Association. I am favoured in being an honorary member of several of these Bar Associations, and have enjoyed the privilege of frequent and somewhat close association with their members; and I have found an almost universal approval of the written code. Although in most cases other reasons were alleged for that approval, I am wholly of the opinion that in many instances that view is due in no slight degree to the fact that the United States and the separate States have all a written Constitution. The mind of the American lawyer naturally and instinctively inclines to written formulation of all precepts, all rules, all principles.

The difference in the connotation of the words "Constitutional" and "Unconstitutional" in the American usage and our own will illustrate my meaning. In the United States the

"Constitution" is a written document of so many words and letters, with us the Constitution is the indefinite and indefinitely formulated principles upon which a British people should be governed—what is "Constitutional" and what is "Unconstitutional" in the United States is for the Court to decide on legal principles and methods by an examination of the formal document to be known and read of all men—in Canada it is for Parliament, or in the last resort the electorate, by the consideration of what is for the benefit of the people. In the United States anything transgressing the written document is illegal however wise it may be. With us to say a proceeding is "Unconstitutional" is to say it is legal, however unwise, or even oppressive, it may be. Whether my impression of the cause of the formulation of a Code of Ethics in the United States is well founded or not, it is manifest that the practice in that land is not binding upon us, like as the two countries are in most particulars.

In the first place, it may be assumed that it is not proposed to lay down a Code, disobedience to which would result in disbarment temporarily or otherwise. Our Law Society of Upper Canada has ample power to disbar in a proper case, but the power has been exercised only in the case of crime whether after conviction or otherwise. So far as I know it has never been suggested that a Code of Rules should be laid down to govern the Discipline Committee or Convocation in their duties in that regard, and I can see infinite difficulties in the way of such codification.

Not to dwell upon that phase, however, let us consider the real proposition, which is to lay down a Code the breach of which will lead to the disapproval of professional brethren, to exclusion from association and fellowship, to ostracism by respectable members of the Bar. If it were proposed to make the Code, a Penal Code violation of which would render the offender liable to disbarment, legislation would be necessary, and many considerations would arise which may now be passed over—considerations which to my mind would be fatal to the proposition.

What of a Code without such consequences? of a Code

intended to govern the conduct of the practitioner, but the violation of which would involve only social punishment? or a Code intended simply as advice as to conduct?

It seems to me much like drawing up a Code of Etiquette to make a gentleman.

When I used to deliver lectures to the students of the Osgoode Hall Law School on Legal Ethics, I devoted most of my time and efforts to shewing that the profession of law is a liberal as well as a learned profession, that there is and can be nothing in the practice of law inconsistent with the highest type of scholar, gentleman and Christian. With that as a text, all else follows—the lawyer, a gentleman, will act as such, he will treat all, whether professional brethren or laymen, as he would be treated in like case—that, it seems to me, is the whole of the law and the prophets. I would have in every law school two or three lectures in each year on legal ethics in that sense—lectures either by the president or (preferably by) some one in active and extensive practice, devoted to inculcating in the mind of the students the all-important fact that the lawyer who is worthy of his profession is not a mere money-making machine, but a gentleman respecting himself and his fellow men—he may and should make all the money he honestly and honourably can, but only so much and how as he honestly and honourably can. Is there any more need for a Code for lawyers than for members of a club? Both are expected to act as gentlemen, but no one would think of codifying the duties of club members. In that view a Code is superfluous, unnecessary.

There are, however, positive objections to a Code which states any but the most indefinite generalities. Any Code which entered into particulars would in my view do more harm than good—and for two reasons: First, when a Code of Rules has been formulated it is most natural, almost inevitable, indeed, for its provisions to be considered exhaustive; whatever is forbidden is wrong, and in most minds the old logical fallacy of the "undistributed middle" is not avoided, but it is considered that what is not forbidden is not wrong. When one is charged with wrongdoing, and told that he must act in a particular way,

his defiance is "on what compulsion must I?" "It is not so written in the Code."

It is the natural and inevitable consequence of any written code to divide sharply what is forbidden from what is not—and what is not forbidden too often is considered to be allowed. Anyone who is accustomed to refer to a written Code for the rule to direct his conduct will be apt to believe that it is complete, and will generally give himself the benefit of any doubt or on ission.

Again, unless I am quite in error, any attempts to particularize would be dangerous. Let me take two examples.

A well-known compilation by a Bar Association of the highest rank, both as to members and otherwise, has it: "His," *i.e.*, the lawyer's, "appearance in Court should be deemed equivalent to an assertion on his honour that in his opinion his client's case is one proper for judical determination." That I make bold to deny—while the lawyer may not bring into Court a dishonest claim, or set up a dishonest defence (because he is an honest man, and the law compels no man to dishonesty), the client is entitled to the services of his lawyer to enforce any claim or defence which is not dishonest; the client is entitled to the full and candid opinion of his lawyer, but when that is given, he is entitled to have his case put to the Court whatever may be the lawyer's opinion on the law. Neither Court nor client is at all concerned with the opinion of counsel—the client demands, the Court enforces the law, as it is found to be—that is the duty of the Court, the right of the client. Counsel makes no assertion by implication of his own opinion when he argues the case of his client; and it would be unjust and improper to consider that counsel when arguing is representing that there was in his opinion doubt as to the law.

[The Rule as to Champerty is discussed and not wholly agreed in as an ethical is anything but a legal rule.]

* * *

I know it will be answered *interest reipublicae ut sit finis litium*. But that does not mean that it would be for the advantage of people at large, that there should be no law suits—so long

as injustice prevails a lawsuit to end an injustice is infinitely better—and, I add, infinitely more in harmony with the genius of our people—than passive submission to the injustice. The maxim means that it is for the interest of the people that a lawsuit when started should be carried to a conclusion with all due expedition—and if it means anything more, it is that it will be a good thing for the people when wrong shall cease, and there will be no further need for litigation.

The real difference is that one contract is forbidden by law and the other is not.

So long and in such places as this rule is law, it is proper to say, as one Code does, "the lawyer should not purchase any interest in the subject-matter of the litigation which he is conducting"—but that there is a general ethical rule I deny.

Contingent or conditional fees are in the same category.

These are some of the reasons which, to my mind, make it inadvisable to formulate a Code of Ethics.

My opinion in short is that a Code of Legal Ethics, if sufficiently general, is unnecessary—if specific is dangerous.

William Renwick Riddell.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION.

In connection with this important subject your Committee has taken into consideration the existing law and practice in the several Provinces, and submits a scheme which it trusts may be found suitable for general adoption. Its features are:

(1) To adhere in the main to the existing system, which is essentially the same throughout Canada; (2) To remove unessential differences; (3) To leave to the several Provinces a wide discretion in matters of detail.

The subject is dealt with under the four heads of:

(1) Admission to Study; (2) Period and Course of Study; (3) Transfer of Students; (4) Admission to Practice.

(1) *Admission to Study.*—Your Committee recommends that every candidate for admission to study be required to have

passed an examination at least equivalent to the standard attained by a student at the end of the first year of the course leading to the degree of B.A. at an approved University. No student to be admitted to study who has not attained the full age of 18 years.

(2) *Period and Course of Study.*—Your Committee recommends that the course of study shall consist in attendance at the office of a practising barrister, or under indentures at the office of a practising solicitor, for a period of five years, provided that attendance as aforesaid for a period of three years shall be sufficient in the case of students who, at the time of their admission to study, are graduates of an approved University; provided further that in Provinces in which an approved law school exists, the obligation of office attendance shall be suspended during the period of the year in which a student is duly following a course of study at such law school. An approved University and an approved Law School mean respectively a University and a Law School, or the Law Faculty in a University, approved for the purpose by the Council of the Canadian Bar Association.

(3) *Transfer of Students.*—In order to provide for the case of students who may desire to continue their course of study in a Province other than that in which they have been admitted to study, your Committee recommends that, in computing the period of study in any Province, credit shall be given for previous office and law school attendance in any other Province or Provinces, if the requirements in respect thereof are substantially equivalent to the requirements in respect of office and law school attendance in the Province in which any such student desires to continue his course of study.

(4) *Admission to Practice.*—Your Committee recommends that the examination to be passed by students before admission to practice remain as heretofore under the direction and control of the constituted authority in each Province. It is suggested however, that the provincial authorities be invited to co-operate with this Association with a view to securing a reasonable degree of uniformity, and effecting other improvements in the examinations and in the prescribed courses of study.

Your Committee further recommends that a Sub-Committee be appointed to prepare and submit a standard curriculum for adoption by the various Law Schools in the Common Law Provinces and that in such curriculum increased attention should be paid to the training of the students in legal ethics and public speaking. Your Committee further recommends that a Sub-Committee be appointed to consider and bring in a report on the method of teaching in law schools.

COMMENT ON THE ABOVE REPORT BY DR. R. W. LEE, CHAIRMAN OF THE COMMITTEE.

This report is a remodelled version of the report of the late Committee on Legal Education and Ethics which was presented at the Montreal meeting. It is hoped that it may prove generally acceptable. In addition to the features referred to in the body of the report, the following points may be referred to:—

(1) *Limitation of the report to the Common Law Provinces.*—This was introduced at the instance of the Montreal members of the Committee, who felt that they were not sufficiently representative of the various elements in the Province, and therefore preferred to refrain from making any recommendation.

(2) *Admission to Study.*—The Committee adheres to the idea that a student should not be admitted before he reaches the age of 18. It is objected that a boy may leave High School at 16; what is he to do in the meantime? The answer is obvious. Put in his time in the Arts Faculty of a university or in some remunerative employment. He is too young to study law.

(3) *Period and Course of Study.*—The Committee accepts the principle of office attendance during the whole course, but with the qualification that students need not go to the office while actually attending the Law School. In accordance with existing practice the period of study is reduced in favour of graduates.

(4) *Transfer of Students.*—The principle of free transfer is admitted. The Committee recommends that credit be given in any Province for previous extra-provincial studies, but does not determine the amount of credit. This is left to the discretion of the Province to which the student seeks to transfer.

(5) *Uniformity of Curriculum.*—This subject should be taken in hand without delay by a small Sub-Committee.

REPORT OF COMMITTEE ON ADMINISTRATION OF JUSTICE.

1. The Judiciary.

The Committee begs to report that since the adoption of its report as amended at the Annual Meeting in 1918, action has been taken by the Dominion respecting the salaries of Judges of County and District Courts. The amount aimed at in that report was $6,000 and the result of the legislation referred to is a straight salary of $4,000. It is illogical that with the present high cost of living and the wave of increased remuneration for salaries in commercial and other lines that there should have been any hesitation to give Judges the minimum asked for—$6,000. Your Committee regrets to have to report that the general principle that the salaries of Judges of Supreme Courts should be increased has not been recognized and that with the exception of an attempt at partial adjustment as between trial and appellate Judges no action has been taken. It is respectfully suggested that the Association be asked to reaffirm the salaries set forth in clause 9 of the report submitted at the Annual Meeting of 1918, except that it is recommended that there should be no distinction between the Judges of the Appellate Courts and those of the Superior Court and that the minimum for each of such Judges be $10,000.00, and that all duties assigned to the Judiciary either by Dominion or Provincial Governments be performed without fees, and that the practice of appointing the Judges as commissioners and arbitrators be discontinued. Your Committee further regrets that the established principle of leaving Judges' salaries exempt from taxation is being infringed upon, and recommends that a communication be addressed to the Minister of Justice that the statutes be amended by striking out section 13 of the 1919 amendment to the Judges' Act and leaving subsection 3 of section 27 of chapter 138, R.S.C., 1906, as it originally stood. Your Committee feel that the proposed legislation requiring Judges to make a statutory declaration before receiving their salaries is a reflection upon the Bench and your Committee recommends that a protest be sent to the Honourable the Minister of Justice.

2. Tariffs and Fees for Services in the Profession Generally.

While certain of the Provinces have recognized the necessity of an increased tariff of fees and have effected increases to the extent

of about 50%, your Committee regrets that in other Provinces the authorities have not yet done so. Your Committee would recommend that this Association give this matter its fullest support in Provinces where an adequate increase has not been made.

3. Marriage Contracts and Divorce.

There has been considerable controversy on the subject of transferring to the jurisdiction in divorce and marriage contracts from the Dominion Parliament to the Provincial Courts and W. F. Nickle, Esq., K.C., M.P., introduced legislation with that object in view—a copy of which is attached to this report—but your Committee deals with the question of principle and strongly advocates that paragraph 7 of the 1918 Report be reaffirmed and that the Association pledge itself to support any legislation making uniform the grounds on which marriages can be annulled or contracting parties divorced and transferring jurisdiction in such matters to the Superior Courts of each Province, and excepting operation of the Act from the Province of Quebec until that Province, by an Act, puts into force the Dominion legislation suggested.

Your Committee further recommends that a Committee be appointed to watch and deal with any legislation that may be introduced in the Dominion House on the question of Divorce. (It was moved and carried that the Committee on the Administration of Justice be the committee to carry out the above work.)

4. Reports.

Your Committee recommends that the President be requested to appoint a special Committee of this Association to correspond with the respective Law Societies and Provincial Associations in Canada, to consider the matter of reporting and the practicability of the reporting of cases for all Canada, so as to prevent duplicating and overlapping of Reports and to reduce the expense thereof, and that the Committee report its conclusions and recommendations to the Council of the Association, the Council to bring in a report before the next annual meeting of this Association.

Your Committee is strongly of the opinion that the present

system of Reports is highly unsatisfactory and creates undue burden on the profession.

5. SUPREME COURT.

Your Committee recommends that this Association urge that two days should elapse between the completion of the hearing of the last case in any Province, and the calling of the first case from the Province next in order on the list.

6. CAPITAL PUNISHMENT.

There is at the present time pending before the House of Commons legislation providing for the carrying out of capital sentences at some central point or points where proper accommodation, protection and equipment can be furnished, and your Committee recommends that such legislation be endorsed.

MARRIAGE AND DIVORCE.

Fifty divorce Acts were passed at the last session of the Dominion Parliament. Of these 26 were granted on the applications of men, and 24 on the applications of women. Owing to the recent decision of the Judicial Committee of the Privy Council, holding that the Provincial Courts in Manitoba, Saskatchewan and Alberta have jurisdiction in divorce, we presume that there will be a considerable reduction in the number of future applications for divorce to the Dominion Parliament. It has been said that there are likely to be above 1,000 cases in Manitoba alone. We trust this is a mere exaggeration; that the married relations in that Province are not so widely strained as this number would lead one to suppose.

With the exception of Ontario and Quebec, all the Provinces of the Dominion have now Provincial Divorce Courts. All efforts to get the Parliament of Canada to take the matter of marriage and divorce in hand, and establish a uniform law throughout the Dominion, have hitherto failed, but it is to be hoped that before long this reluctance to deal with the matter may be overcome, and that the Parliament of Canada will assume that control of marriage and divorce which the B.N.A. Act intends that it shall.

REVIEW OF CURRENT ENGLISH CASES.

(Registered in accordance with the Copyright Act.)

INSURANCE—STATEMENT IN PROPOSAL FORMING BASIS OF CONTRACT—MISSTATEMENT TO RENDER CONTRACT VOID—ARBITRATION CLAUSE—CONDITION PRECEDENT TO ACTION—CLAIM THAT CONTRACT VOID.

Woodall v. *Pearl Assurance Co.* (1919) 1 K.B 593. This was an act on on an accident policy. In the proposal for the insurance the applicant stated his occupation and signed a declaration that his answers were true, and agreed that the declaration should be the basis of the contract. The policy sued on recited the declaration and stated that it was the basis of the contract and any misstatement therein should render the policy null and void. The policy also contained a condition that in case any question shall arise touching the policy, or the liability of the company thereunder, the assured, if the company required, should be bound to refer the same to arbitration and no person was to be entitled to bring an action except for the sum awarded. The company set up as a defence (1) that the claim was required to be referred to arbitration, and that the obtaining of an award was a condition precedent to bringing an action; (2) that there was a change of occupation by the assured whereby the risk was increased, and that the defendants were therefore not liable. Shearman, J., who tried the action, held that the defendants were insisting, under the terms of the policy, that it was void on the ground of misdescription of the assured's occupation, and that this amounted to a repudiation of the policy and therefore the defendants could not rely on the arbitration clause. And on the merits he found that there was no misstatement or change of occupation by the assured and gave judgment in favour of the plaintiff. The Court of Appeal (Bankes, Warrington, and Duke, L.JJ.), however, held that this view was erroneous and notwithstanding the defendant's contention that the policy was void, they were entitled to rely on the arbitration clause. Their Lordships distinguish the case from *Jureidini* v. *National & B.M.I. Co.* (1915) A.C. 499, on the ground that in that case the defendants repudiated the existence of any contract at all, whereas in the present case the defendants accepted the existence of a contract as a binding contract, but were disputing their liability under it. The action was therefore dismissed, although on the merits the Court of Appeal agreed with Shearman.

J., because the obtaining of an award was made by the contract a cond tion precedent to bringing the action.

CHARTERPARTY—STOWAGE—OWNERS RESPONSIBLE FOR PROPER STOWAGE—CHLORIDE OF LIME STOWED UNDER DECK—INJURY TO OTHER CARGO.

Union Castle S.S. Co. v. *Borderdale Shipping Co.* (1919) 1 K.B. 612. This was an action by the charterers of a vessel against the owners, to recover damages to cargo by reason of the alleged improper stowage by the defendants. The charterparty provided that the charterers shall bear the expense of loading and discharging cargo "but the stowage shall be under the control of the master, and the owners shall be responsible for the proper stowage and correct delivery of the cargo." Chloride of lime in iron drums, apparently in good condition, was stowed under deck by the charterers' agents, neither they nor the master knowing or having any reason to suspect that it would be likely to do harm by being stowed there. The iron drums proved to be defective and fumes escaping therefrom damaged other cargo. The charterers paid the claims of the owners of the cargo thus damaged, and the present action was brought by the charterers again t the shipowners to determine which of them was in fact liable for the loss. Bailhache, J., who tr ed the action, held that the clause as to stowage did not amount to an absolute warranty, and that there had been no negligence on the part of the master and therefore that the defendants were not liable.

CHARTERPARTY—REQUISITION OF SHIP BY ADMIRALTY—SUSPENSION OF HIRE UNDER CHARTER DURING REQUISITION—SALE OF SHIP DURING REQUISITION—REPUDIATION OF CONTRACT.

Omnium D'Enterprises v. *Sutherland* (1919) 1 K.B. 618. This was an action to recover damages for breach of a charterparty. The circumstances were, that by a charterparty in 1916, the defendants chartered the vessel in question to the plaintiffs for three years. The charterparty provided that if the vessel should be requisitioned by the Admiralty the contract with the latter should be for the owners' account, and hire under the charterparty should cease for such period, and that the contract should be prolonged for such period as the vessel might be under requisition so that the full three years' contract between owners and charterers should be carried out. The vessel was requisitioned by the Admiralty and still remained so when the action was begun, but the defendant, whilst the vessel was requisitioned had sold it

free from charter engagements, and the purchasers refused to carry out the charterparty of the plaintiff. Rowlatt, J., who tried the action, held that there had been a repudiation of the contract by the defendants and that the plaintiffs were entitled to recover; and his judgment was affirmed by the Court of Appeal (Bankes, Warrington and Duke, L.JJ.).

INSURANCE (MARINE)—WAR RISK— "WARLIKE OPERATIONS"—SHIP LOST WHILE SAILING IN CONVOY.

British India Steam Navigation Co. v. *Green* (1919) 1 K.B. 632. This was an action to recover against one defendant on a policy of insurance on a vessel "against all consequences of hostilities or warlike operations by, or against the King's enemies" or alternatively against another defendant on a policy of insurance against marine risks. The vessel in question was in a convoy under the direction of a King's officer. The vessels in the convoy were zig-zagging and were upon an unaccustomed course where the currents were variable and of unknown direction and force. The master was not responsible for the course taken, but his business was to keep his position relatively to the other ships in the convoy. There was no negligence proved to have been committed by either the master or the King's officer. In the result the vessel stranded and was subsequently torpedoed. Apart from the torpedoing she would have been a total loss. Bailhache, J., who tried the action, held that the loss was due to a warlike operation. The learned Judge however suggests that if the loss had been occasioned by negligence of the master it would have been a marine risk, whereas if due to negligence of the King's officer it would still have been due to warlike operations.

BANKER—CUSTOMER'S ACCOUNT—DEPOSIT BY CUSTOMER OF STOLEN CHEQUE—CHEQUE PAYABLE TO AND INDORSED BY PUBLIC OFFICIAL—NEGLIGENCE—LIABILITY OF BANKER—CHEQUE DRAWN BY BANKER ON HIMSELF—BILLS OF EXCHANGE ACT, 1882 (45-46 Vict. ch. 61) ss. 3, 72, 82—(R.S.C. ch. 119, ss. 17, 165, 175.)

Ross v. *London County Westminster and P. Bank* (1919) 1 K.B. 678. This was an action by the Paymaster-General of the Canadian Forces to recover for the conversion of certain cheques payable to and indorsed by him, which had been stolen by an official in his office, a quartermaster-sergeant, and deposited to the latter's private account in the defendant's bank and collected by the bank. One of these cheques was drawn by the Dominion

Bank on itself. This cheque the plaintiff contended was not a cheque within the definition given in ss. 3, 72 (R.S.C. ch. 119, ss. 17, 165) but was rather a promissory note and therefore not within the protection of s. 82 (R.S.C. ch. 119, s. 165) on which the defendants relied as relieving them from liability. The plaintiff did not deny that the defendants had acted in good faith, but claimed that they had been negligent in not inquiring as to the right of the depositor to the cheques deposited. The cheques were payable to: "The officer in charge, Estates Office, Canadian Overseas Military Forces," and were indorsed by the officer under the same description. Bailhache, J., who tried the action, was of the opinion that this fact was sufficient to put the bank on inquiry why these cheques were being used apparently for paying the debt of a private individual; and that when such cheques were presented for deposit to a private account a cashier of ordinary intelligence and experience would be put upon inquiry whether or not the credit ought to be given. The learned Judge thought the cheque drawn by the bank itself was a cheque within the Act and came within the same category as the others, and that the negligence of the defendants disentitled them to the protection of s. 82 (R.S.C. ch. 119, s. 175).

ADMIRALTY—COLLISION—LIGHTS—MOTOR AUXILIARY BARQUE—VESSEL UNDER SAIL WITH MOTOR ALSO ACTING—REGULATIONS FOR PREVENTING COLLISIONS AT SEA, ARTS. 2, 20.

The Cupica (1919) P. 122. This was an action in Admiralty for damages occasioned by a collision. The vessel in question was a motor auxiliary barque. At the time of the collision she was under sail but was also using her motor which in the opinion of the Court gave her some extra speed. She was only shewing lights required for a sailing vessel. Roche, J., held she ought also to have shewn lights required to be carried by a steamship under art. 2 of the regulations. The defendant contended that it was the duty of the plaintiff's vessel under art. 20 to keep clear of the defendant vessel. The learned Judge held that both vessels were to blame in equal degree on account of both having had a bad lookout and being badly navigated.

PRIZE COURT—CLAIMANTS—RIGHT TO APPEAR—PROPERTY IN GOODS NOT IN CLAIMANTS AT DATE OF SEIZURE—PROPERTY IN CLAIMANTS AT DATE OF CLAIM.

The Frogner (1919) P. 127. The simple question decided in this case is that claimants of goods seized in prize are entitled to

appear to make claim, although the property in the goods did not vest in the claimants until after the seizure.

PROBATE—COSTS—CO-PLAINTIFFS PROPOUNDING WILL — WILL OBTAINED BY UNDUE INFLUENCE OF ONE OF THE PLAINTIFFS—COSTS OF INNOCENT PLAINTIFF.

In re Barlow, Haydon v. *Pring* (1919) P. 131. This was an appeal from the decision of Horridge, J. (1914) P. 14. The action was brought by two plaintiffs who propounded a will for probate. The will was set aside as having been obtained by undue influence of one of the plaintiffs. Horridge, J., ordered the costs of the innocent plaintiff to be paid out of the estate and to be repaid by the co-plaintiff to the defendant. The Court of Appeal (Eady, M.R., and Scrutton, L.J.) held that the action should have been dismissed with costs as to both plaintiffs.

WILL—CONSTRUCTION—GIFTS TO NEPHEWS AND THEIR ISSUE AS TENANTS IN EQUAL SHARES PER STIRPES—COMMENCEMENT OF STIRPITAL DIVISION.

In re Alexander, Alexander v. *Alexander* (1919) 1 Ch. 371. In this case the question to be determined on the construction of a will was when a stirpital division was to commence. By the will in question the testator gave a fund upon trust for certain persons for their lives or life and after the death of the survivor he directed the fund to be held in trust for such of his nephews and nieces (being children of my own brothers and sisters) living at the death of the survivor of the life tenants, and for the issue then living of any such nephews and nieces of mine who may have previously died as being male shall have attained 21, or being female should have attained that age or married, and if more then one as tenant in equal shares per stirpes. Sarah Alexander, the last survivor of the tenants for life died. The testator had four brothers, and nineteen nephews and nieces the children of these brothers. Fourteen of these survived Sarah Alexander, and five predeceased her, and of the latter four left children and one of them left a child. It was conceded, (1) that the word "issue" in the bequest was not confined to children but included issue of all degrees; (2) that issue of a more remote degree in the same line of descent were excluded by those of a nearer degree; (3) and that issue took as tenants in common. Sargant, J., who heard the application, held that the stirpital division took effect on the death of the surviving tenant for life

and the fund was then divisible into nineteen parts—being the number of nephews and nieces who survived her either by themselves or by their stocks.

VENDOR AND PURCHASER—AGREEMENT FOR SALE OF LAND SIGNED BY AGENT LAWFULLY AUTHORIZED—OMISSION OF TERM — WAIVER — SPECIFIC PERFORMANCE — STATUTE OF FRAUDS (29 Car. 2, c. 3) s. 4—(R.S O. c. 102, s. 5).

North v. *Loomes* (1919) 1 Ch. 378. This was an action for specific performance of a contract for the purchase of land in which two questions arose, (1) whether the purchaser had by his agent signed a memorandum in writing sufficient to satisfy the Statute of Frauds (29 Car. 2, c. 3) s. 4 (R.S.O. c. 102, s. 5), and (2) whether the omission of a term in favour of the vendor from the written contract was any bar to specific performance, the vendor waiving that term. A verbal agreement was made for the sale and purchase of the premises in question at a specified sum and t was agreed that the purchaser should pay the vendor s costs. The purchaser paid a deposit of £50 whereupon the vendor gave him a receipt which specified the premises, the price and the balance due, but omitted any statement as to costs. This receipt the purchaser sent to his solicitor to whom the vendor's solicitor sent a draft contract for perusal and approval. The purchaser's solicitor wrote back: "I need not trouble you to send me another contract as the one which your client has signed is quite sufficient." Younger, J., who tried the action held that this letter was sufficient to bind the purchaser under the statute, and that the omission of the term as to costs was not open to the defendant as a defence as the plaintiff did not seek to enforce that part of the agreement which was solely for his benefit and moreover, in the opinion of the learned Judge, the point was not open to the defendant, because it was not specifically raised on the pleadings; and the defence of the statute was pleaded to the contract as pleaded by the plaintiff, and the production of the signed memorandum was a complete answer to that plea.

ANCIENT LIGHTS—THREATENED OBSTRUCTION OF LIGHTS—QUIA TIMET ACTION FOR INJUNCTION—PROSPECTIVE DAMAGE SUBSTANTIAL—DECLARATORY JUDGMENT—COSTS.

Litchfield-Speer v. *Queen Anne's Gate Syndicate* (1919) 1 Ch. 407. This was an action *quia timet* to restrain the defendants from interfering with the plaintiff's ancient lights by the erection of buildings on the opposite side of the street. The plaintiffs

had torn down buildings which were about 46 feet high and were proposing to erect in their place buildings 84 feet high. At the time of the trial the new buildings had not reached the height of the old buildings which had been torn down. It was contended on behalf of the defendants that since the decision of the House of Lords in *Colls* v. *Home & Colonial Stores* (1904) A.C. 186, the Court would not grant an injunction in a *quia timet* action unless it is shewn that damage will inevitably result and will be irreparable. Lawrence, J., who tried the action, held that it was maintainable, and he made a declaratory judgment in favour of the plaintiffs' rights and gave them liberty to apply for an injunction. The plaintiffs having claimed for more lights than they were able to shew themselves entitled, the learned Judge gave them only one-half the costs of the action and made no order as to the other half.

COMPANY—VOLUNTARY LIQUIDATION—LEASEHOLD PREMISES—OCCUPATION OF LEASEHOLD PREMISES BY LIQUIDATOR—DILAPIDATION—BREACH OF COVENANT TO REPAIR—RIGHT OF REVERSIONER TO BE PAID IN FULL.

In re Levi & Co. (1919) 1 Ch. 416. A company being the assignee of certain leasehold premises subject to covenants to repair and deliver up in good repair, went into voluntary liquidation, and for the purposes of the liquidation the liquidator entered upon and occupied the leasehold premises and continued in possession until the lease expired, in the meantime receiving large profit rental from under-lessees of parts of the premises. When the lease expired it was found that the premises were considerably out of repair. The liquidator made a summary application to the Court to determine whether the reversioners were entitled to be paid in full their claim for damages for breach of the covenants to repair and leave in repair or whether they were only entitled to such dividend as was payable to the creditors of the company. Although there appears to be no direct authority on the point, Astbury, J., held, following the cases which have decided that in such cases rent and other outgoings are payable by the liquidator, that where a liquidator for the purposes of the liquidation continues in possession of leasehold he does so subject to the terms of the lease including covenants for repair, and that the reversioners were entitled to be paid in full.

SOLICITOR—CHARGING ORDER—"PROPERTY RECOVERED OR PRESERVED"—PROPERTY OF PERSON NOT EMPLOYING SOLICITOR—PLAINTIFF MAKING CLAIM TO PROPERTY OF DEFENDANT—APPOINTMENT OF INTERIM RECEIVER ON PLAINTIFF'S APPLICATION—SUBSEQUENT ABANDONMENT OF CLAIM BY PLAINTIFF.

Wingfield v. *Wingfie'd* (1919) 1 Ch. 462. This was an application by the plaintiffs' solicitor for a charging order in respect of his costs, in the following circumstances: the action was by a wife against her husband claiming to be the owner of certain chattel property; an interim receiver was appointed of the property on the application of the wife who subsequently abandoned her claim in the action. Peterson, J., was of the opinion that the appointment of a receiver was a preservation of the property, and granted the order, but the Court of Appeal (Eady, M.R., Scrutton, L.J., and Eve, J.) unanimously reversed it, holding that the making of an unfounded claim to property of another could not furnish any basis for a charging order in favour of the claimants' solicitor on the property wrongfully claimed.

RAILWAY COMPANY—REFRESHMENT ROOMS—OPTION OF RENTING—CHOSE IN ACTION—ASSIGNABILITY—UNCERTAINTY—ULTRA VIRES.

County Hotel & Wine Co. v. *London and N.W. Ry.* (1919) 2 K.B. 29. This was an appeal from the judgment of McCardie, J., (1918) 2 K.B. 251 (noted *ante*, vol. 54, p. 434). The question at issue was the enforcement of an agreement made by the defendants with the plaintiffs' assignor contained in a lease assigned to the plaintiffs, whereby it was claimed that the tenant was to have the option of renting the refreshment rooms at the defendants' station. McCardie, J., dismissed the action on the ground that the agreement was void for uncertainty and if not it was *ultra vires* of the defendant company; and the Court of Appeal (Bankes, Warrington, and Duke, L.JJ.) have affirmed his decision, but not on the grounds he assigned, but because in their view, on a proper construction of the contract, there had been no breach; their lordships being of the opinion that what the contract really meant was, that if the defendants were minded to offer the refreshment rooms at a rent to anyone, the occupier of the plaintiffs' hotel should have the option of taking them at that rent.

Bench and Bar

CANADIAN BAR ASSOCIATION

OFFICERS AND COUNCIL FOR 1919-1920.

Honorary President, Hon. C. J. Doherty; Preside t, Sir James Aikins, K.C., Winnipeg; Honorary Secretary, E. Fabre Surveyer, K.C., Montreal; Honorary Treasurer, John F. Orde, K.C., Ottawa; Acting Secretary and Treasurer (appointed by the Council), E. H. Coleman, P.O. Box 324, Winnipeg.

Nova Scotia:—Hon. Vice-President, Hon. O. T. Daniels, K.C.; Vice-President, J. L. Ralston, K.C., Halifax; C. J. Burchell, K.C., W. L. Hall, K.C.; Stuart Jenks, K.C., Halifax; A. D. Gunn, K.C., Sydney; F. L. Milner, K.C., Amherst; W. A. Henry, K.C., Halifax.

New Brunswick:—Hon. Vice-President, Hon. J. P. Bryne; Vice-President, E. Albert Reilly, K.C., Moncton; M. G. Teed, K.C.; F. R. Taylor, K.C.; J. B. M. Baxter, K.C.; J. D. P. Lewin, St. John; R. B. Hanson, K.C., Fredericton; J. Allen Leblanc, Dalhousie.

Prince Edward Island:—Hon. Vice-President, The Attorney-General; Vice-President, A. B. Warburton, K.C., Charlottetown. W. E. Bentley, K.C.; C. R. Smallwood, K.C.; K. J. Martin, K.C.; C. G. Duffy; G. S. Inman, K.C.; D. A. Mackinnon, K.C., Charlottetown.

Quebec:—Hon. Vice-President, Hon. L. A. Taschereau, K.C., Quebec; Vice-President, Eugene Lafleur, K.C., Montreal; Hon. Mr. Justice Mignault, Supreme Court of Canada, Ottawa; Hon. Mr. Justice Martin, Court of King's Bench, Montreal; E. E. Howard, K.C.; G. Desaulniers, K.C.; Henry J. Elliott, K.C.; R. G. deLorimier, K.C.; S. W. Jacobs, K.C.; Leon Garneau, K.C ; F. E. Meredith, K.C.; George H. Montgomery, K.C.; Montreal; J. N. Francoeur, K.C.; L. St. Laurent, K.C., Quebec; Aug. M. Tessier, K.C., Rimouski.

Ontario:—Hon. Vice-President, Hon. I. B. Lucas, Toronto; Vice-President, M. H. Ludwig, K.C., Toronto; Angus MacMurchy, K.C.; W. J. McWinney, K.C.; Daniel Urquhart; George C. Campbell; R. J. Maclennan, Toronto; William R Wh te, K.C.; Pembroke; George F. Henderson, K.C., Ottawa; W. T. Henderson, K.C., Brantford; George S. Gibbons, London; F. M. Field, K.C. Cobourg; W. F. Kerr, Cobourg; Nicol Jeffrey, Guelph.

Representatives of Law Society to be named.

Manitoba:—Hon. Vice-President, Hon. T. H. Johnson, Winnipeg; Vice-President, Isaac Campbell, K.C., Winnipeg; T. A. Hunt, K.C.; D. H. Laird, K.C.; W. H. Trueman, K.C.; A. B.

Hudson, K.C.; A. J. Andrews, K.C., Winnipeg; E. A. McPherson, K C., Portage la Prairie.

Representatives of Law Society to be named.

Saskatchewan:—Hon. Vice-President, Hon. W. F. A. Turgeon, K.C., Regina; Vice-President, Colonel J. A. Cross, D.S.O., Regina; William Grayson, K.C.; Hon. W. B. Willoughby, K.C., Moose Jaw; J. F. Frame, K.C.; G. H. Barr, K.C.; Douglas J. Thom, K.C.; H. E. Sampson, K.C., Regina; J. A. M. Patrick, K.C., Yorkton; P. E. Mackenzie, K.C., Saskatoon.

Alberta:—Hon. Vice-President, Hon. J. R. Boyle, Edmonton; Vice-President, R. B. Bennett, K.C., Calgary; J. C. F. Bown, K.C.; S. B. Woods, K.C., Edmonton; W. E Payne, Red Deer; C. F. P. Conybeare, K.C., D.C.L., Lethbridge; T M Tweedie, K.C.; C. F. Adams, K.C.; James Muir, K.C., D.C.L., Calgary.

Representatives of Law Society to be named.

British Columbia:—Hon. Vice-President, Hon. J. W. deB. Farris, Victoria; Vice-President, L. G. McPhillips, K.C., Vancouver; H. A. McLean, K.C.; Harold B. Robertson, Victoria; G. E. Corbould, K.C., New Westminster; Sir Charles Hibbert Tupper, K.C.; S. S. Taylor, K.C.; E. P. Davis, K.C., Vancouver.

COMMITTEES.

Publications.

Sir James Aikins, K.C.; M. H. Ludwig, K.C.; E. Fabre Surveyer, K.C.; R. W. Craig, K.C.; R. J. Maclennan.

R. W. Craig, K.C., *Convenor.*

Legal Education.

Nova Scotia:—Stuart Jenks, K C.; D. A. MacRae, Ph.D.

New Brunswick:—J. Roy Campbell, K.C.; F. J. G. Knowlton, H. O. McInerney.

Prince Edward Island:— C. R. Smallwood, K.C.; K. J. Martin, K.C.; Gilbert Gaudet, K.C.

Quebec:—R. W. Lee, D.C.L.; R. Taschereau, K.C.; E. E. Howard, K.C.; Alph. Pouliot, K.C.

Ontario:—W. F. Kerr, J. D. Falconbridge, Geo. C. Campbell.

Manitoba:—Hon. H. A. Robson, K.C.; J. B. Coyne, K.C.; E. Loftus, K.C.; Alex. McLeod, K.C.; S. E. Clement.

Sasketchewan:—T. D. Brown, K.C.; Arthur Moxon; J. A. M. Patrick, K.C.

Alberta:—T. M. Tweedie, K.C.; Walter S. Scott, LL.D.

British Columbia:—D. A. Macdonald, K.C.; W. C. Moresby, L. W. Patmore.

Dr. R. W. Lee, Montreal, *Convenor.*

Professional Ethics.

Nova Scotia:—Hector McInnes, K.C.; Hon. A. K. Maclean, K.C.

New Brunswick:—H. A. Connell, K.C.· H. A. Powell, K.C.

Prince Edward Island:—A. B. Warburton, K.C.; H. J. Palmer, K.C.

Quebec:—Alex Falconer, K.C.; J. C. H. Dessault, K.C.; A. R. Holden, K.C.; L. E. Beaubien, K.C.

Ontario:—Angus MacMurchy, K.C.; F. M. Field, K.C.; Hon. Mr. Justice Riddell.

Manitoba:—Hon. Chief Justice Mathers; E. K. Williams; S. J. Rothwell, K.C.

Saskatchewan:—J. F. Frame, K.C.; N. Gentles; H. E. Sampson, K.C.

Alberta:—James Muir, K.C D.C.L.; J. C. F. Bown, K.C.

British Columbia:—J. L. G. Abbott, David Whiteside.

Angus MacMurchy, K.C., Toronto, *Convenor.*

Administration of Justice.

Nova Scotia:—W. A. Henry, K.C.; F. L. Milner, K.C.; A. W. Jones.

New Brunswick:—W. P. Jones, K.C.; P. J Hughes; J. Allen Leblanc.

Prince Edward Island:—D A. Mackinnon, K.C.; W. E. Bentley, K.C.; J. D. Stuart, K.C.

Quebec:—S. W. Jacobs, K.C.; J. L. Perron, K C.; G. Desaulniers, K.C.

Ontario:—W. J. McWhinney, K.C.; Mr. Justice Riddell; G. F. Henderson, K.C.

Manitoba:—A. J. Andrews, K.C.; C. P. Wilson, K.C. W. R. Mulock, K.C.; E. Loftus, K.C.; W. A. T. Sweatman; J. F. Kilgour; F. E. Simpson.

Saskatchewan:—P. E. Mackenzie, K C.; J. F. Hare, H. F. Thomson.

Alberta —S. B. Woods, K.C.; Clifford T. Jones, K.C.; W. A. Begg, K.C.

British Columbia:—A. H. McNeill, K.C.; H. C. Hall; W. D. Ladner.

W. J. McWhinney, K.C., Toronto, *Convenor.*

UNIFORM LEGISLATION AND LAW REFORM.

Nova Scotia:—C. J. Burchell, K.C.; Stuart Jenks, K.C.; Fred Mathers, K.C. Two additional members to be appointed from Commissioners when these are named.

New Brunswick:—F. R. Taylor, K.C.; J. B. M. Baxter, K.C.; W. B. Wallace, K.C.; J. D. F. Lewin.

Prince Edward Island:—W. E. Bentley, K.C.; C. G. Duffy; G. S. Inman, K.C. Two additional from Commissioners when named.

Quebec:—E. Lafleur, K.C.; Gordon W. Macdougall, K.C.; Pierre Beulac, K.C.; F. J. Laverty, K.C.; E. Fabre Surveyer, K.C.; G. H. Montgomery, K.C.; F. E. Meredith, K.C.; L. St. Laurent, K.C.

Ontario:—W. T. Henderson, K.C.; Daniel Urquhart; Francis King, J. D. Falconbridge.

Manitoba:—W. H. Trueman, K.C.; A. B. Hudson, K.C.; D. H. Laird, K.C.; T. A. Hunt, K.C.; H. A. Bergman, F. M. Burbidge, K.C.; Isaac Pitblado, K.C.; H. J. Symington, K.C.

Saskatchewan:—Hon W. B. Willoughby, K.C.; D. J. Thom, K.C.; G. H. Barr, K.C.; G. E. McCraney, K.C.; Hon. W. F. A. Turgeon, R. W. Shannon, K.C.

Alberta:—C. F. P. Conybeare, K.C., D.C.L.; J. E. Wallbridge, K.C.; A. McLeod Sinclair, K.C.; A. H. Clarke, K.C.; Frank Ford, K.C.

British Columbia:—R. M. Macdonald; Frank Higgins, K.C.; A. J. Fisher; J. N. Ellis, K.C.; H. E. A. Courtney.

W. H. Trueman, K.C., Winnipeg, *Convenor.*

Membership.

Nova Scotia:—W. A. Henry, K.C.; A. D. Gunn, K.C.

New Brunswick — A. R. Slipp, K.C.; M. L. Hayward.

Prince Edward Island:—W. E. Bentley, K.C.

Quebec:—F. E. Meredith, K.C.; Leon Garneau, K.C.; Hon. Jacques Bureau; C. D. White, K.C.; Maurice Dupre.

Ontario:—N. B. Gash; J F. Orde, K.C

Manitoba:—A. J. Andrews, K.C.; R. W. Craig, K.C.; J. L. Bowman; G. A. Eakins, H. E. Henderson, K.C.; H. R. Hooper.

Saskatchewan:—R. J. Hogarth; D. A. McNiven, D. J. Thom, K.C.

Alberta:—C. F. Adams, H. R. Milner.

British Columbia:—W. C. Brown, W. H. Bullock-Webster.

D. J. Thom, K.C., Regina, *Convenor.*

Finance.

Nova Scotia:—W. A. Henry, K.C.

New Brunswick:—A. R. Slipp, K.C.

Prince Edward Island:—D. A. Mackinnon, K.C.

Quebec:—L. St. Laurent, K.C.

Ontario:—M. H. Ludwig. K.C., Angus MacMurchy, K.C.

Manitoba:—I. Pitblado, K.C.; Horace Ormond; A. C. Campbell.

Saskatchewan:—G. A. Cruise.

Alberta:—William Short, K.C.

British Columbia:—R. S. Lennie.

John F. Orde. K.C., Ottawa, *Convenor.*