# Canada Law Journal

VOL. LVII. TORONTO, JUNE-NOVEMBER, 1921. Nos. 6-11.

## LAW AND LABOR.

By HON. W. L. MACKENZIE KING, K.C. *

I desire in the few moments at my disposal to suggest to this gathering points of resemblance between existing features of the industrial unrest of our times and the political unrest of bygone centuries. I do so in the hope that members of this Association, in their efforts to advance the cause of justice in all human relations, may see in clearer perspective the possible contribution of the legal profession to law and order in industry, in a manner which will serve to advance, not more the cause of orderly progress within the State, than the welfare of countless numbers of human beings in the daily round of their lives and toil.

In government within the state, the development has been from autocratic to responsible self-government. In the course of this development, there have been three outstanding and constantly recurring phases of political agitation.

The first has been directed against the exercise of arbitrary power by the existing executive. This agitation takes us back to the days of King John.

The second has been concerned with the right of representation of all the estates in the making and administration of laws. This takes us back to the days of Edward I.

The third, which has aimed at a constitution clearly defined and safeguarding the rights and liberties of all concerned, is associated particularly with the period of revolution which characterized the reigns of James I. and Charles II.

All three phases of agitation have persisted in order to maintain and to secure the broadening down from precedent of the rights and liberties obtained at these respec-

* This was an address delivered at the last annual meeting of the Canadian Bar Association.

tive periods. All these three find their parallel in the industrial agitations of our day. In an appreciation of this truth lies perhaps the surest guarantee of an ultimate solution along lines that will prove both constructive and enduring. Once it is recognized that the industrial struggles of our day, like the political struggles of the past, are in their nature essentially problems of government—the one government or the supreme control within the State, the other government or the supreme control within industry—a flood of light will, I believe, be thrown upon the ultimate solution of the so-called Labor problem.

I.

The struggle between the people and the Crown, which brought forth the Magna Charta, finds it parallel in present-day agitation in the effort on the part of Labor and the friends of Labor to have what they conceive to be Labor's rights—rights that are generally conceded—defined in a form to which appeal may be made at any and all times. An illuminating point with respect to the great Charter is that it contained nothing that was new, nothing that was being conceded for the first time. It was little more than an assertion of recognized fundamental rights between the Sovereign and his people, drafted in a form to which appeal could be made at any and all times. As such it was a shield against unjust exactions on the part of arbitrary authority. Stubbs, in his "Select Charters," says that the whole of the Constitutional History of England is a commentary on this Charter.

With respect to the demands of Labor to have its rights clearly defined, it may, I think, be asserted without fear of contradiction, that no device is better calculated to preserve law and order in industry than a simple statement in written form of the rights of employer and employee respectively on all matters which are likely to become subjects of controversy. In its simplest form such a statement may include little more than principles and policies to govern relations between workers and employers. Elaborated, it may be extended to include all that is essential respecting terms of employment, working, and living conditions, and a clear

statement of procedure in the method of presentation and adjustment of complaints and grievances. The absence of any clearly defined statement with respect to these several particulars is a source of constant fear of injustice and leads to much unrest in industry.

Industrial peace is based on industrial justice. Justice that is uncertain is not justice at all. In the absence of exact knowledge, there is always opportunity for unfair and arbitrary practices. Wherever uncertainty exists, suspicion and distrust are sure to arise.

Labor is entitled to its Magna Charta of industrial liberties. The more comprehensive the charter is, the more explicitly its stipulations are worded, and the wider their application, the better for the peace of industry and all that industrial peace makes possible. When the rights of nations are similarly stated, and a court of the nations is established to which appeals may be made with confidence, wars and the rumors of wars will cease. In the practice of their profession, members of the Bar have exceptional opportunities to establish, by means of exact statement and definition of the rights of all parties, the foundations of industrial and international peace.

II.

The struggle in the political arena for representation of the third estate in Parliament finds its parallel to-day in the agitation of Labor for a voice in the determining of matters pertaining to and affecting its terms of employment, its working and living conditions. That carries us back to the reign of Edward I., and to the innovation of Simon de Montfort in 1265 in directing the sheriffs to return to the central assembly, not only two knights from each shire, but also two citizens from each city, and two burgesses from each borough.

In the development of government in industry, it would appear that we are to-day in a transitional stage closely resembling that of government within the State in the reign of Edward I. We are beginning to recognize that, as in the political realm there was more than one estate entitled to

recognition and representation in the affairs of government, so in the industrial realm there are constituent elements entitled to a degree of recognition and representation not hitherto conceded in the government of industry. Too often problems arising in the field of industrial relations are regarded as problems of only two dimensions—Capital on the one side, and Labor on the other. To my mind, they are problems of four dimensions, embracing rights and duties on the part of Management distinct from those of Capital, and rights and duties on the part of the Community equally as entitled to recognition as any on the part of Labor, Capital or Management.

Here and there to-day large-visioned employers—lesser or greater De Montforts in their way—are calling to their industrial councils representatives of Labor and of the Community, as well as of Capital and Management. They are seeking to work a wise system of joint control. In the field of industry, they have conceded the principle of representation, not to privileged classes only, but to all who participate in production.

III.

How vast has been the transformation in the relative powers of kings, lords, and commons since the days of Edward the First! Control in political government has widened from absolutism to executive authority broad-based upon a people's will. We have here suggested the third point of resemblance in the parallel of the industrial unrest of our day with the political agitation of bygone years.

The effort to work out a political constitution which would recognize all constituent elements and prevent, in the affairs of government, a monoply of control by any one, finds its parallel to-day in the field of industrial agitation in the effort to prevent any one of the four parties to industry exercising a monopoly of control. The revolutionary or extreme movements of our day are mostly in the nature of inevitable reactions against monopoly of control by one of the parties to industry.

As a guide to government in industry, we shall not err

if we go back to the political struggles of the reigns of James I. and Charles II., and accept as a maxim of government, applicable not less to industry than to the State, the words of the illustrious statesman, John Pym, who, speaking of the principles which underlie all free government, said: "That fore of government is best which doth actuate and dispose every part and member of the State to the common good." Making these words of Pym specially applicable to industry, the maxim would read. "That form of government in industry is best which doth actuate and dispose every part and member to the common good." Labor, Capital, Management, and the Community—these are the parts and members of industry. They are the partners in industry, partners in individual enterprises, partners in industry as a whole. Self-government in industry worked out on some basis of adequate representation of all the partners should prove as nearly perfect as any form of industrial government it is possible to conceive.

IV.

The day of ultimate achievement may be far off, but the ideal, if it does nothing more than enlarge our range of vision, serves a useful purpose. It is sufficient for the present to comprehend that a constitution is in the process of making. The expression in words of the constitution industry has already won will do much to promote the development of harmonious and just relations between the parties to industry.

The Magna Charta, the Petition of Right, and the Bill of Rights, constitute, in the words of Lord Chatham, "the Bible of the English Constitution." Taswell-Langmead has pointed out that in each of these documents, whether it be of the 13th or the 17th century, is observable the common characteristic of professing to introduce nothing new. Each professed to assert rights and liberties which were already old, and sought to redress grievances which were for the most part innovations upon the ancient liberties of the people. Is the time not now at hand when, out of rights universally recognized and liberties generally conceded, an

industrial constitutional can be framed which will serve all the parties to industry as a bulwark of freedom in the period of transition through which even now we are passing. Have we perhaps not reached the stage in the evolution of government in industry when, as respects the attempted monopoly of control, we can apply to any one of the four parties to Industry, whether it be Capital, Management. Labor, or the Community, the dignified utterance of Sir Edward Coke:

"Was it ever known that general words were a sufficient satisfation for general grievances? The King's answer is very gracious; but what is the law of the realm? That is the question. I put no diffidence in His Majesty, but the King must speak by record and in particulars, and not in general. Let us put up a petition of right, not that I distrust the King, but that I cannot take his trust save in a parliamentary way."

To take the trust of one and all in a parliamentary way, that is to say, the way of clearly defined rights and powers, the way of the appeal to reason, not of the appeal to force; that is what is needed to frame an industrial constitution in accordance with the requirements of our day. To achieve a wise evolution of government in industry will require time. The surest method is that which proceeds step by step, combining in a practical way the conservative instinct with liberal aspirations, avoiding cataclysmic changes and neglecting no opportunity to unite all parties in effective co-operation to a common end.

There is hope for the evolution of government in industry, and for the part which the legal profession may be expected to play in bringing it about in a form which will serve the highest interests of mankind, when we recall the part the profession has taken, in and out of Parliament, in helping to mould and fashion political and constitution development, and when we remember that the English constitution to-day is universally recognized as the first of all free constitutions, in age and in adaptability, and that it has served more or less the model of all existing constitutions. What the

British constitution stands for in the government of the State, we should aim at effecting in the working out of a constitution for industry. Towards the accomplishment of this great aim, members of the Bar, by tradition, by training, by natural inclination and the opportunities of their calling, are peculiarly fitted to render their day and generation a signal service. Is it too much to expect that, inspired not less by the need than by the magnitude of the task, they will yet parallel in their contributions to government in industry the many and noble achievements of the profession in the government of the State?

## JUSTICE—ITS ESSENCE, PLACE AND POWER.

By HON. CHIEF JUSTICE LEMIEUX.*

This was the subject of an eloquent address by Hon. Sir Francois Lemieux, Chief Justice of the Superior Court of Quebec, at the annual dinner of the Canadian Bar Association. We give his remarks in full as follows:—

It is a hard task to deliver an address after eloquent speeches such as we have listened to during the last few days. But the task is all the more arduous that I am about to address you in a language which is not my own, for which presumption on my part, I crave your utmost indulgence.

The series of social and professional functions which we have had within the past two or three days and this magnificent banquet once more evidence the spirit of cordial confraternity which exists among the legal family to a higher degree than in any of the other professions or crafts composing the social body. Such fact caused a great orator of the ancient times to state that in the midst of judicial controversies and of the vicissitudes of public life, he had never enjoyed a more relaxing recreation than while feasting in the intellectual company of praetors and jurisconsults.

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That sentiment is, I think, particularly apposite on this occasion when we are fraternizing with the very flower of the Canadian legal profession which is comprised in that great and highly useful institution called the Canadian Bar Association extending its ramifications throughout the several Provinces of our Confederation, "a mare usque ad marem."

The Canadian Bar Association is a progressive institution, and I say that it cannot be otherwise under the eminent and able direction of its very worthy and most popular President, whose fine tact, untiring energy and Maecenian munificence have given it a vigor and prestige such that the Association is now in a fair way to realize the ideals cherished by all men of law—to promote the glorious aims of Justice.

I have uttered the word "Justice," which is perhaps the most solemn that may be found in any dictionary among the civilized nations.

Justice! I need not define what it consists in, as every one of us knows it is the firm and perpetual determination to give everyone his due. To attain that end, to realize that purpose, the Roman law had enacted three outstanding, immutable rules: live honestly, honeste vivere; injure no one, neminef laedere; give everyone his due, suum cuique tribuere. In fact, what is the fundamental basic principle which underlies society? What is the governing spirit which rules the world, protects virtue and avenges crime? Is it religion, idealism, interest, love, might? No, the great organic principle of society is Justice, which is the very essence of humanity.

History shows that at all times has Justice been revered among the nations of the world either as a divinity, either as the very standard of social excellence, or as the greatest of Christian virtues, Justice being the most peculiar attribute of the Almighty. From the most remote ages down to modern times, Justice has been as a beacon light guiding civilization to higher and yet higher ideals. What is history itself but a work of justice, but an impartial judgment

passed on men and nations? And to procure such impartial justice in all the events of life, no more definite canon of equity was ever enacted than, for instance, those specified in the Magna Charta, that most admirable monument of legislation, that very constitutional gospel of the English people, where it is prescribed as follows: Nulli vendimus, nulli negabimus aut differemus justitiam vel rectum,—to none shall we sell, to none shall we deny or delay right of justice.

Those words have been considered so cogent and so solemn an expression of justice that they have been embodied in the oath of coronation, and over forty times the British sovereigns have sworn to abide by their prescriptions.

And so is it the most imperative duty of magistrates to render justice without ever considering to what nationality the litigants belong, to what party they give allegiance nor to what particular church they go on Sunday. Such sentiment inspired the illustrious Sir John Moore when he exclaimed: "Shall I ask the brave soldier who fights by my side for the cause of mankind if his creed agrees with my creed?"

Justice! Everyone wants Justice, asks for her help, craves her intervention. And yet, what prejudices there are against Justice, specially in these times of social turmoil when political authority is weakening, religious authority losing its grasp and paternal authority waning!

Some call for an unwavering justice . They are right if by that they mean a firm, fearless and independent justice. Others there are—oftentimes well-meaning people, but who, every day, will commit blunders in the ordinary affairs of life—who seem to forget that human nature is deficient and that the most righteous and learned man is subject to the error humana. They insist that the judge be infallible even in the most complicated legal problems, i.e., that he be the equal of the All-Knowing who may fathom the hearts of men.

Some believe that justice is controlled by the rich and

powerful. The rich may truly intimidate the poor, shake the assurance they repose in their rights by dint of proceedings, appeals and other artifices, but such dilatory methods or obstructions are not attributable to justice or to judges, but verily to the laws which the legislators, the spokesmen of the people, may repeal or amend. Let me say, in presence of this select gathering, and I wish my voice would reach all the citizens of this country, that, in the plates of the scales of Justice, the rich and powerful weigh no more than the most humble subject of His Majesty.

People there are who look with distrust upon court houses and consider them as so many dens of iniquity and injustice. Others consider the interpreters of the law, magistrates or advocates, as so many parasites or sycophants living on the miseries of human life. The former Prime Minister of Great Britain, Mr. Asquith, gave expression to a similar view when, speaking before the London Bar, at the opening of the Courts, he once said: "The general public, which has never realized the debt that England owes to the practitioners of law, notwithstanding the spread of education, is still apt to look on the legal profession as a parasitic and as an unnecessary excrescence upon the organism of a healthy society."

Yet history, as sanctioned by Truth, is there to demonstrate that Justice has never had more valiant defenders than the lawyers. The foremost writers throughout the world are agreed that the legal men have inspired and inaugurated that legislative revival which hs been the corner stone of the social edifice, the initiation of true civilization, the pride of human intellect and the great organ through which the sovereign power of society moves.

I am well aware that the impressive though austere idea of justice is eclipsed by the shining prestige of warriors and heroes, whose deeds always appeal to popular imagination, such as Themistocles, Miltiades, Alexander the Great, Caesar, Turenne, Conde, Napoleon, Nelson, Wellington, to whom the coming historians will compare Joffre, Foch, Haig, Jellicoe and Byng of Vimy, our new Governor-General, to

whom we Canadians have so spontaneously extended the most cordial welcome, for this, that besides being a great general, he showed himself, on the battlefield, the friend and protector of our boys who were ready to lay down their lives, as a great many did, in order that Justice may prevail among the nations. But too often, military genius has achieved no enduring results, while the work of such men as Pericles, Aeschylus, Demosthenes, Cicero, etc., has produced lasting effects, the benefit of which is still felt.

Caesar's legions conquered the world, though the great Empire soon declined and fell, but the Roman jurists have brought everlasting glory on their country, whose laws have proven to be for the world at large an inexhaustible fountain of knowledge and an indestructible monument of wisdom.

And what were Napoleon's own words at St. Helena? "My glory," said he, "shall not consist in having won forty battles. Waterloo will wipe out the memory of all my victories, while nothing can ever destroy what will last forever, and that is my Civil Code." That Code, the pride of the fallen Emperor, that Code so highly praised and now sanctioned by over a century's experience, from which nations have borrowed their domestic legislation, that Code was not the work of a conqueror, but of advocates and jurists who, themselves, derived their inspiration from the Roman Law and from the great Justinian Code which has come down to us, through sixteen hundred years, as the very model of all codes of law devised or yet to be devised.

And England, proud Albion, whose fleet covers the seas, upon whose domains the sun never sets, to what does she owe her immense prosperity, her leading influence in the Council of Nations, if not to the excellence of her maritime and commercial laws, to the fairness and humanity of her criminal laws, of those laws which so jealously safeguard the liberty of the subject that it has been said of them that the moment a colored man sets his foot in England he is no longer a slave.

Such laws to which Great Britain owes her supremacy

more than to the military genius of her great wrriors have been elaborated by men whose names are revered throughout the Empire, such as Coke, the greatest oracle on municipal jurisprudence, by whom the petition of right was established; Lord Mansfield, whose name is a by-word for judicial sanctity, and so many master minds who, generation after generation, have adorned the English Bar, of which we enjoy, to-night, the presence of a worthy representative in the distinguished person of the Right Honourable Sir John Simon, former Attorney-General of Great Britain.

The people, after all, are rather sound in their logics, quite alive to their best interests. If we cast a retrospective glance on the civilized countries of the globe during the past century, we cannot escape the conclusion that the nations of the world have persistently thought that Justice, i.e., their destinies, their liberty, their very existence, could not be entrusted to safer hands than when in the keeping of legal men. And so it is that the United States, that great country numbering over one hundred and twenty million inhabitants, perhaps the most prosperous country in the world to-day, has elected twenty-four advocates out of the thirty Presidents of the great republic. So it is that France, since 1870, has almost invariably had at her head, either as her Presidents or Prime Ministers, men belonging to the profession. So it is that the Premiers of Great Britain, for upwards of one hundred years, have nearly always been distinguished members of the Bar. And so it is also that the history of our dear Canada is so closely linked with the history of the Canadian Bar, that it is identified, so to speak, with such men as Baldwin, Lafontaine, Morin, Macdonald, Cartier, Thompson, Laurier, Borden, and last but not least, the Right Honourable Mr. Meighen, all foremost barristers who, besides the brilliant role they played before our courts of justice, have shown themselves to be nation-builders in this part of America, the most precious gem in the British crown.

Justice is not dead in the world, and it shall not die as long as the Bar lives; Justice will live as long as the advo-

cates maintain the great traditions of honor left by their predecessors. No, Justice is not dead by any means. The sun of Justice shall yet shine upon all the nations. Its rays shall yet dispel all ill-will in the hearts of men and instill a warm feeling of human solidarity in the souls of the ploughmen and of the laborers, of all of us, whatever our professions or trades, that we may toil in harmony for the welfare of our homes and the greatness of our country. (Prolonged applause and cheers.)

## THE PRODUCTION OF DESIRABLE LEGISLATION.

We are impressed with the value and aptness of the remarks made on this subject by Mr. Justice Hodgins at the banquet following the recent meeting of the Canadian Bar Association. We give his thoughts in his own words as follows:—

"I have only two things to say to-night—one is that the Canadian Bar Association is equipped with all that is best in our profession and is now strong enough to take up a task which is urgently needed and which is open to those who do not enter political life as well as those who do.

I mean what I may term the originating of Constructive Legislation or the constructive work which precedes legislation.

This involves the selection of some social or economic condition in our country which needs a solution or betterment, the making of it your own by real inquiry and through investigation and then either examining and readjusting the existing laws on the subject or framing them ab initio.

This has not yet been tried here, but has, in a measure, been done by the American Bar Association, and in England by Commissioners rather than by an organization such as this.

No great social or economic reform or advance can succeed

without a suitable framework of law to rest upon, but that framework cannot be built until the conditions are thoroughly understood. A lawyer's powers of analysis and his tendency towards accomplishing some practical result make this the ideal work for members of this body. Let me suggest some illustrations.

The most pressing problem consists in the relation between capital and labor and the prevention of strikes. Canadian legislation upon this subject is looked upon as the most successful experiment yet evolved, and I think we have with us to-night its author, Mr. Mackenzie King—but it does not yet accomplish two necessary things. It do , not secure a full and intelligent survey for the benefit of the public—who suffer most—of the real matters in issue, and the exact conditions which have given rise to the difficulty —nor has it yet constituted a really impartial conciliation tribunal, since each side appoints a member, who is committed in advance to one or other view, leaving only one in an independent position.

It would, we are sure, be of the greatest value to this country if the ablest legal minds in it were to meet together and after thorough inquiry and getting into touch with leading men on both sides, endeavour to work out some improvement in the machinery of conciliation, and to ascertain how far outsiders are responsible for its frequent breakdown.

There are plenty of other spheres of usefulness. The enlargement of the scope of the Workmen's Compensation Acts, to include the rehabilitation of the injured workman and his re-education so as to fit him to be again a self-supporting unit; the complete reform of criminal justice by introducing into its administration that element of humanity which demands that the upbringing, environment and mental capacity of criminals shall have some place in determining the quantum and character of their punishment; the revision of the Criminal Code so as to catch up with the modern developments of crime; these will indicate

some of the many problems which can be considered in the way I have indicated.

The other point is one which, perhaps, I should mention with bated breath. I desire to call attention to the change in the position of the Judges of the Superior Courts by recent legislation, the effect of which was not, I am sure, either contemplated or intended by its authors. Heretofore only judicial duties have been imposed on them, and the only place where they touch the stream of political life is in the Election Court, where their duties are wholly judicial.

Now they are obliged to act as Commissioners, and to hold any inquiry which any Government, Federal or Provincial, may designate them for. This is now subject to the consent of the Governor-General in Council. The essential difference is that Judges may be projected into political quarrels, and in such a way that their report, and they themselves, are bound to become factors in the dispute, and this without their consent.

Under our political conditions I do not see how it is possible to hedge the Judge who makes such a report, with the traditional immunity from criticism, because he is not exercising judicial functions, but merely expressing opinions, whose acceptance is bound to depend upon his ordinary reputation for fairness and judgment. Consequently his character, predilections, temperament and affiliations and the Judge himself became part of the res gestae, if I may use that term.

This is not desirable state of affairs, and should be altered. It is a real peril and a derogation from the status which I am sure we all desire that Judges should occupy. I may again point out that this result was not, I am sure, in the minds of those responsible for the passing of the recent Statute.

Even if a Judge does his best, his end will, I fear, be similar to that of the sylph in "The Rape of the Lock," who approached too near to the scissors. "Fate urged the shears, and cut the sylph in twain."

## THE CONCLUSION OF THE TREMBLAY MARRIAGE CASE

In a previous issue we made some observations on this case, and its importance in regard to the marriage law of Canada makes it fitting that we should again refer to it, now that the full text of the authorized report of the Judgment is before us; and more particularly because it not only deals with the validity of the marriage actually in question, but also throws needed light on certain collateral questions about which there has been some difference of opinion, which bid fair to occasion very considerable irritation in one section of our people against another. Canada though perhaps predominantly Protestant, can hardly be correctly described as "a Protestant Country" when so large a proportion of its inhabitants probably 4/10ths is of the Roman Catholic faith.

In the circumstances in which we are placed it is obviously the duty of all, while enjoying religious freedom themselves, not to seek either directly or indirectly to interfere with the religious freedom of others, or to endeavour except by persuasive means, to impose on others beliefs or practices which are obnoxious to them, nor should we cast unnecessary doubt or obloquy on the lawful acts and deed of others with whom we happen to differ, merely because they do not conform to our own particular standard. For instance where the law of the land authorizes certain persons to solemnize marriage, it can hardly be consistent with good citizenship to pretend to cast doubt on the validity of the acts of those acting in accordance with that law, on the ground that they have not complied with some other law with which they were under no liability to comply.

The decision in Despatie v. Tremblay (1921) A.C. 703 is to be welcomed because it tends to remove from the body politic sources of irritation, and at the same times establishes principles which make for union and good fellowship between the Protestant and Roman Catholic elements of our people.

But it is also more particularly to be welcomed by all Roman Catholics who have the stability of the marriage tie sincerely at heart, inasmuch as it gives a salutary quietus to the attempt to dissolve lawfully solemnized marriages on frivolous pretences, for it does appear to us that the pretence for declaring the marriage in question a nullity in the present case could hardly be described as other than frivolous and without substantial merit.

Before proceeding to discuss the judgment of the Judicial Committee it will be well to state the facts of the case. Tremblay the plaintiff in 1904 was married to the defendant Despatie; they were both Roman Catholics, and the marriage was solemnized according to the rites of the R.C. Church. The parties lived together as man and wife until 1910, when after six years of married life Tremblay applied to the Roman Catholic Bishop of the Diocese to have his marriage declared to be void from the beginning. The Bishop granted his application and declared the marriage rite, which, as we have said, was solemnized by a Roman Catholic priest, to be a nullity, on the ground that the parties were related as cousins in the 4th degree, and that marriages of parties related within that degree are prohibited by the rules of the Roman Catholic Church unless a dispensation is first obtained; and no dispensation had been obtained in this case, because neither party had any knowledge that any such relationship existed. To dissolve, or assume to dissolve a marriage lawfully solemnized according to law is certainly a very serious proceeding. It involves not only a slur upon the moral character of the parties, and particularly on that of the woman, whose position is thereby reduced in the estimation of her co-religionists to that of a mere concubine, but a blot is also placed on the issue, if any, of the union.

If the law as interpreted by the Provincial Courts of Quebec had been upheld by the Judicial Committee, we think Roman Catholics of Quebec would have had good ground for alarm; and the R. C. women of Quebec might have found themselves in a perilous position and liable to

be turned out of their homes on grounds which are certainly highly technical and to many sensible people appear as absolutely frivolous. Happily for them, and happily for us all, we have in the Judicial Committee of the Privy Council an assemblage of lawyers of such pre-eminent ability that it can interpret our laws consistently with reason and commonsense, and show by a singularly luminous and convincing method of reasoning that they are not quite as foolish as our own lawyers made them out to be.

Art. 127 of the Code reads as follows:—

"127. The other impediments recognized according to the different religious persuasions as resulting from relationship or affinity or from other causes, remain subject to the rules hitherto followed in the different churches and religious communities," and counsel for Tremblay succeeded in inducing the Quebec courts to hold that the effect of this article of the Code was to incorporate as part of the civil law of Quebec all the various special prohibitions of each particular religious organization in Quebec, and consequently, all the special prohibitions of the Roman Catholic Church; but the Judicial Committee points out that all the article says is, that they are "to remain" etc., subject to the rules, etc., in other words that they are to have the same effect, that they had before the Code; and that, as before the Code they were no part of the civil law of Quebec, so neither does the Code make them any part of it, but merely treats them as matters not dealt with by the Code; and as to the civil law of Quebec before the Code their Lordships say:—

"With regard to the validity of the marriage so far as affected by relationship between the parties there was no legal restriction excepting such as was imposed by the Statute, 32 Hen. 8. c. 38 which enacts 'that no reservation or prohibition, God's law excepted, shall trouble or impeach any marriage without Levitical degrees.'"

It is needless to say 4th cousins are not within Levitical degrees, so that in the opinion of their lordships Roman Catholics of Quebec need no longer be under any appre-

hension that their marriages, duly solemnized can hereafter be validly impeached as regards their legal validity on the ground of relationship in any degree other than those known as the Levitical degree. But as we have said their Lordships make some observations on another collateral matter of interest, viz., the solemnization of marriage in Quebec. They say "The Articles which deal with the formalities relating to the solemnization of marriage show the same absence of any reference to the religious belief of the persons to be married," and so they conclude, "there is therefore a general power of all such competent officers to solemnize marriages of all kinds." By which is clearly meant there is no sort of restriction dependent on the religious belief of the sponsors or of either of them, as to the persons authorized to solemnize marriages; which, we should think, should put an end to any further judgments of Quebec Courts annulling marriages of Roman Catholics duly solemnized by and between competent persons, on the ground that the rules of the Council of Trent, or the Ne temere decree were not complied with.

Although the judgment in the Tremblay case effectually guards the legal sanctity of marriages duly solemnized from being impeached by a maker of civil law, it does not, of course, hinder Roman Catholic Bishops and their clergy from casting doubt on their religious validity. That is a matter which is obviously left to their good sense and right finding, which it is hoped may be found sufficient to prevent the recurrence of some episodes in the past, which to many seemed to lead to the depravement of the marriage tie, rather than the upholding of its sanctity, which the Roman Catholic Church takes credit to itself for doing.

For any organization of Christian people to pretend and teach that no marriage involving any religious obligation can be solemnized in Canada except by a minister of their own particular organization, and that all marriages not so solemnized involve no religious obligation, merely amounting to legalized fornication, must seem to most right thinking people a very deplorable doctrine.

For many years the people of this country got along without any unpleasantness in regard to matrimonial laws, and we have sufficient confidence in both the good will and the good sense of our Roman Catholic brethren in the Dominion to believe that we should have continued to do so, but unfortunately they conceive themselves to be bound by the dictation of foreigners who have probably a very imperfect knowledge of the conditions of things in Canada, and who have succeeded in creating discord where there ought to be harmony.

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## Canadian Bar Association

PROCEEDINGS AT ANNUAL MEETING.

The Sixth Annual Meeting of The Canadian Bar Association was held at the Chateau Laurier, Ottawa, on September 6, 7, and 8. One of the most encouraging features in connection with the Association is that at each Annual Meeting there has been an increased attendance, a growing interest in the Association and its work, and a greater recognition of its influence, not only in matters pertaining to the profession, but in Canadian affairs generally. We are, therefore, glad to note that the recent meeting, both from the point of view of attendance and interest, was, without question, the most successful in the history of the Association.

Two items of business transacted emphasized the fact that the permanency of the organization is now assured. One of these was the adoption of the report of the Council in which it was pointed out that The Canadian Bar Association had been incorporated by the Dominion Parliament at the last session. The other was the announcement of the munificent gift by the President, Sir James Aikins, who has turned over to the Association the sum of $50,000 as the beginning of the Endowment Fund.

When it is remembered that the American Bar Association, which has done such admirable work, was organized in 1879 and that only recently has the endowment of that Association reached $50,000; it will be realized that Sir James Aikins' princely generosity has placed our Association in a very advantageous position as compared with older and larger organizations of the same character.

Sir James' gift was communicated to the Council in the following letter dated Winnipeg, August 25, 1921:—

"Members of the Council of The Canadian Bar Association:

"One of the statutory objects of the Association is to foster cordial intercourse among the members of the Canadian Bar. Such intercourse will have a double result. Not only will it create confidence but secure co-operation among the members, which is fundamental in accomplishing the other expressed purposes of the Association. But it will also aid in causing greater oneness in the profession throughout Canada, and incidentally increase a spirit of unity among Canadians generally.

"In order to encourage and assist that cordial intercourse, I propose to give to the Association as a trust the following funds and securities." (Then follows an enumeration of securities aggregating $50,000.00.)

"The trust upon which the fund and securities are offered is (1st) to keep as far as possible the principal intact and constantly invested in such income-bearing securities not of a speculative nature but such as are authorized by Canadian Trustee Acts, as the Council may think proper, with right to call in and vary any investments; (2nd) to apply the income toward the expenses of the annual meetings of the Association, such as printing of advertising and notices, programmes, reports and the like, preparatory to the meeting, remuneration for secretaries, stenographers, rent of rooms during such meetings, preparing, printing and distributing annual reports of the meeting, and the travelling and hotel expenses of those guests who come to address the annual gatherings.

"Should all the income not be required for the purposes just mentioned, then towards such other expenses incidental to the annual meeting as the Association may direct.

"In anticipation of the acceptance of this by the Association, I deposited the securities with a temporary Trustee, so

that the income in the meantime might be applied towards the objects indicated.

"Let me express the hope that others by life membership fees or gifts may add to such a fund, so that there will be accumulated a large endowment fund from which there will be a sufficient income with ordinary membership fees and contributions to carry on the work of the Association efficiently and amply.

"Yours truly,
"J. A. M. Aikins."

On behalf of the Council, the following resolution was moved by the Honorary Treasurer, Mr. George F. Henderson, K.C., of Ottawa, and seconded by the Hon. Mr. Justice Orde, who, from the formation of the Association in 1914 until his appointment to the Bench in 1920, served as Honorary Treasurer:

"Resolved: That the munificent offer of Sir James Aikins to donate the sum of Fifty Thousand Dollars to the Association as a foundation of an Endowment Fund be accepted with an earnest expression of the desire of the members of the Council that Sir James will believe that they appreciate to the full the great importance, not only to the members of the Association, but also to the Dominion of Canada, of the fulfilment of the vision indicated in his letter. The work that he has already done in bringing the Association to its present stage is without precedent in the records of similar organizations. The successful formation of the Canadian Bar Association would in any event have stood as a perpetual memorial of Sir James Aikins' devotion to his profession and to his country. The generosity so strikingly exhibited by his present gift only serves the more fully to show to his professional brethren how great and deep that devotion is. On their behalf we can do no more than endeavour to convey to him our sincere and heartfelt thanks and gratitude and to say that we earnestly trust that the Association will prove itself worthy of all that he has done for it."

This resolution was enthusiastically adopted by a standing vote of the first session of the Association's meeting. In connection with the suggestion in the last paragraph of Sir James' letter, it may be mentioned that in the by-laws adopted for the Association provision is made whereby

members may become life members upon payment of the sum of One Hundred Dollars.

The various addresses delivered to the Association were of a very high order of merit. Some of them appear in this issue and others will appear later.

At the Opening Session a short address was made by the Prime Minister of Canada, the Rt. Hon. Arthur Meighen, who in felicitous terms welcomed the leading guests of the Association, and in conclusion paid a high tribute to the work of the Association and its President.

Following the Prime Minister's address, Sir James Aikins delivered the Presidential Address, prefacing it by the humorous remark that he had given so much attention to the Canadian Bar Association that his brains were as free from ideas as Mother Hubbard's cupboard was from bone, and that, if the members did not find anything fresh in the address, it was their own fault for not electing a fresh President.

After the Presidential Address, Mr. E. Lafleur, K.C., Vice-President for Quebec, took the Chair, and certain items of business were disposed of.

At 1 o'clock the visiting members and ladies were entertained at luncheon at the Chateau Laurier by the Council of the Association, Rt. Hon. Sir Robert Borden presiding, and an address was given by Alton B. Parker, of New York, representative of the American Bar Association.

The afternoon session was devoted to an address of welcome from the Mayor of Ottawa, to which the Chairman, Mr. Stuart Jenks, K.C., Vice-President for Nova Scotia, briefly replied. Mr. Clarence Darling, of the Vancouver Bar, presented an interesting paper urging greater co-ordination between the various official law societies. He called attention to the action of the Law Society of British Columbia, in having the "Legal Professions Act" amended to enable the Law Society to pay the expenses of three delegates to the annual meetings of the Association. It is hoped that the Law Societies in the other Provinces may see fit to follow this excellent example.

A report on Membership was presented by Mr. Daniel Urquhart, of Toronto, on behalf of the Membership Committee. The following table indicates the growth of the Association:

| | 1921 | 1920 | 1919 |
|---|---|---|---|
| Judges (all Provinces) | 140 | 123 | 83 |
| Alberta | 177 | 155 | 123 |
| British Columbia | 158 | 71 | 36 |
| Manitoba | 361 | 314 | 189 |
| New Brunswick | 72 | 54 | 41 |
| Nova Scotia | 77 | 69 | 52 |
| Ontario | 471 | 366 | 277 |
| Prince Edward Island | 21 | 21 | 19 |
| Quebec | 241 | 226 | 173 |
| Saskatchewan | 194 | 167 | 101 |
| Yukon | 3 | 3 | 8 |
| | 1915 | 1569 | 1102 |

Mr. Angus McMurchy, K.C., Convener of the Committee of Legal Ethics, presented his report, shewing that excellent progress had been made in securing acceptance by the members of the profession of the Canons of Ethics approved by the Association at the 1920 meeting. In the four Western Provinces, British Columbia, Alberta, Saskatchewan, and Manitoba, the Canons have been officially adopted by the Law Societies, while in Ontario they have been approved by the Ontario Bar Association.

Mr. John D. Falconbridge, Secretary of the Conference of Commissioners on Uniformity of Legislation in Canada, gave an interesting address outlining the work which has been accomplished by the Conference and the important matters which are now engaging its attention. We expect to publish shortly a resume of the proceedings of the Conference, and are glad to note that at the Ottawa meeting there were present official representatives of the Governments of seven of the nine Provinces, viz., British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, and Nova Scotia.

On the morning of the 7th, Mr. Eugene Lafleur, K.C., Convener of the Committee on Administration of Justice, presented the report of the Committee. After a short discussion, the report was received and on motion referred back to the Committee for recommendations to be discussed at the next meeting.

The Association then had the pleasure of hearing a delightful address from Sir Malcolm Macnaughten, K.C., a Bencher of Lincoln's Inn and a member of the General Council of the English Bar. Hon. R. B. Bennett, K.C., Vice-President for Alberta, in introducing Sir Malcolm Macnaughten, took occasion to pay a high tribute to Sir Malcolm's father, the late Lord Macnaughten, who had been described by a former Lord Chancellor as the greatest jurist of the Victorian era.

At the afternoon session, the first address was by Dr. R. Masujima, of Tokyo, who made an eloquent plea for interest in the International Bar Association which was recently organized at a meeting in Tokyo.

At 3 o'clock the order of business was adjourned in order to hear an address from the Hon. William Howard Taft, Chief Justice of the United States. At its conclusion, the Hon. Mr. Justice Riddell moved a resolution expressing the congratulations of the Association to Mr. Taft on his appointment as Chief Justice of the Supreme Court of the United States, to which the Chief Justice made a graceful and characteristic reply.

Mr. Pierre Beullac, K.C., of Montreal, who was introduced by the Chairman as "one of the defenders of Verdun," read a scholarly and valuable paper on "The Execution of Foreign Judgments." This paper was referred, on motion of the President, to the Committee on Uniform Legislation and Law Reform.

Dr. McRae, the Dean of the Faculty of Law of Dalhousie University and Convener of the Legal Education Committee, presented his Committee's report, which provoked considerable discussion. Further reference to this later.

In the evening a public meeting was held, when Rt. Hon.

Sir John Simon, K.C.V.O., K.C., delivered the Annual Address of the Association, taking as his subject "The Vocation of an Advocate." The Rt. Hon. Mr. Justice Duff occupied the chair, and, at the conclusion of Sir John's address, Mr. Aime Geoffrion, K.C., of Montreal, moved a vote of thanks and also proposed that Sir John should be made an honorary member of the Association, which was adopted by a standing vote.

At the morning session on the 8th, the Association was honoured by a visit from His Excellency the Governor-General of Canada, Lord Byng of Vimy.

Eloquent addresses of welcome to his Excellency were made, on behalf of the Association, by two distinguished members of the Bar who had served under him in France, Major F. G. Taylor, K.C., D.S.O., M.L.A., of Portage la Prairie, Manitoba, and Captain Adolphe Mailhiot, K.C., of Montreal. Major Taylor alluded to the fact that more than 70% of the membership of the Law Society in his Province had served with the colours during the War, and he had no doubt the records of the other Provinces were equally good. Captain Mailhiot, who spoke in French, related some amusing incidents of service at the Front. Both speakers made enthusiastic reference to the service of the new Governor-General. His Excellency in reply expressed the hope that, since he had been "sized up" favourably by the splendid citizens of Canada who served under him in France, he trusted he would be equally fortunate when "sized up" by the people at home. He expressed his regret that engagements that had been made for him had prevented his earlier visiting the Association. He said that the meetings of the Association, attended by distinguished representatives from the Mother Country and from the United States as well as from all the Provinces of Canada, were of the greatest benefit in bringing about the better understanding and more cordial relationship between the branches of the English speaking family, which all peace loving citizens must earnestly desire.

Mr. O. M. Biggar, K.C., read an excellent paper on "The

Law Relating to the Air," which we hope to publish hereafter, and Hon. N. W. Rowell, K.C., spoke on "The Permanent Court of International Justice."

At the Annual Dinner delightful speeches were made by Rt. Hon. Sir John Simon, Hon. Hampton L. Carson, of Philadelphia, Hon. Chief Justice Sir Francois Lemieux, of Quebec, Hon. W. L. Mackenzie King, M.P., and Hon. Mr. Justice Hodgins, of the Supreme Court of Ontario. His Excellency the Governor-General, Lord Byng, honoured the Association by his presence at the Dinner.

Reference must be made to the excellent programme of entertainment provided for the visitors, who were most hospitably entertained by the Officers and Council, as well as by the Ladies' Committee of the Ottawa Bar, who were indefatigable in their attention to the visiting ladies.

The next meeting will be held in British Columbia about the middle of August, 1922.

# REVIEW OF CURRENT ENGLISH CASES.



**Illegitimacy—Corroboration of evidence against alleged father of illegitimate child—Support of illegitimate child—Bastardy Laws Amendment Act, 1873 (35-36 Vict. c. 65), s. 4—R.S.O. c. 154, s. 2 (2).**

Thomas v. Jones (1921), 1 K.B. 22. This was an appeal from a Divisional Court (1920), 2 K.B. 399 (noted ante p. 36). The application was made by the mother of an illegitimate child against the pretative father for support of the child, and the question was whether the mother's evidence as to the paternity of the child had been corroborated. The Divisional Court thought it had, but the Court of Appeal (Bankes and Atkin, L.JJ., Scrutton, L.J., dissenting) came to the conclusion that it had not. The Court below inclined to the opinion that the cumulative effect of facts, none of which in themselves would be sufficient corroboration, might amount to corroboration, but the Court of Appeal reject this idea.

**Sale of goods—Express terms as to mode of packing—Breach as to part of goods—Right to reject all.**

Moore v. Landauer (1921), 1 K.B. 73. This was a special case stated by an umpire. The plaintiffs sold certain canned fruit to the defendants on the express terms that they were to be packed in cases containing each 30 tins. The plaintiffs tendered the whole quantity, but about one-half was packed in cases containing only 24 tins. The umpire found that the market value was not affected by the variation in the mode of packing. The question for the Court was whether or not the defendants were entitled to reject the whole consignment or only that part not packed according to the contract. Rowlatt, J., held that the breach in the mode of packing of part of the goods entitled the defendants to reject the whole consignment.

**Company—Bill of exchange—Articles authorizing directors to empower one of their body to draw bills on company's behalf—Bill drawn by director—Implied authority—Liability of company.**

Dey v. Pulinger Engineering Co. (1921), 1 K.B. 77. This was an action against a limited company on a bill of exchange drawn by the managing director in the following circumstances: The articles of association empowered the directors to authorize one of their number to draw bills on behalf of the company. The managing director drew the bill in question without having in fact received any authority so to do. A Master who tried the action held that the defendants were not liable and dismissed the action; but a Divisional Court (Bray and Sankey, JJ.) held that he was wrong, and that the plaintiff taking the bill in due course was entitled to assume that the managing director had authority in fact to draw the bill, and therefore they gave judgment in favour of the plaintiff, and in so doing dissented from Premier Industrial Bank v. Carlton Manufacturing Co. (1909), 1 K.B. 106, noted ante vol. 45, p. 161.

**Ship—Charterparty—Steamship requisitioned by Admiralty—"Sea risk"—Sailing under convoy—"Consequences of hostilities or war-like operations."**

Harrisons v. Shipping Controller (1921), 1 K.B. 122. In this case the plaintiffs' vessel had been requisitioned by the Admiralty on the terms of a charterparty whereby it was provided that the Admiralty was not to be liable for loss occasioned by a sea risk, but the Admiralty took the risk of "all consequences of hostilities or warlike operations." The vessel was sailing without lights under convoy, and when it came near the port of its destination it was ordered to follow a pilot escort, which it did for upwards of an hour, when it suddenly lost sight of the pilot escort's light, and the master seeing a red light on the port bow immediately put the helm hard aport and almost immediately afterwards ran ashore and sustained damage. There was no negligence on the part of the master. In these circumstances McCardie, J., held that the loss was a sea risk and not due to hostilities or warlike operations. The plaintiff therefore failed.

**Prize Court—Enemy merchant ship in British port at outbreak of war—Seizure—Detention—Days of grace—Hague Convention No. VI. of 1907—Absence of reciprocity—Condemnation.**

The Marie Leonhardt (1921), P. 1. This was an application for the condemnation of a German merchant ship which was seized in a British port on the outbreak of the late war. It was contended on behalf of the owners that under the Hague Convention No. VI. of 1907 the vessel was entitled under international law to a certain number of days of grace in which to leave after the outbreak of war; but Duke, P.P.D., held that this was a mere act of grace and dependent on whether the enemy State allowed reciprocal privileges to British ships in its ports, and as in this case Germany had refused to accord similar privileges to British ships, the vessel in question must be condemned as a prize, and he so decided.

**Trade union—Trade dispute—Conspiracy—Compelling workman to join shop union—Threat to strike on refusal—Coercion of employers—Dismissal without notice—Breach of contract.**

White v. Riley (1921), 1 Ch. 1. This was an action by a non-union workman against members of a trade union to restrain them from using threats and coercion of the plaintiff's employer to dismiss him from his employment. It appeared that in order to induce the plaintiff to become a member of the union the defendants, who were fellow-employees of a firm, had threatened that if the plaintiff were retained in his employment the defendants would strike. Astbury, J., who tried the action, held that the defendants had conspired to injure the plaintiff by obtaining his dismissal, and gave judgment in his favour for £75. The Court of Appeal (Lord Sterndale, M.R., and Warrington and Younger, L.JJ.) held, following the decision of Lords Watson, Herschell and Macnaghten in Allen v. Flood (1908), A.C. 1, 96, 98, 129, 147, 148, that the acts of the defendants did not constitute an unlawful threat, and were not therefore actionable.

**General power of appointment—Power exercisable by deed with consent of trustees—Donee person of unsound mind—Exercise of power in favour of such persons as donee should by will or codicil appoint.**

In re Dilke, Verey v. Dilke (1921), 1 Ch. 34. In this case the question was whether a power of appointment had been well executed. By the settlement in question power was given to one Dilke, then of unsound mind, not so found, with the consent and concurrence of the said trustees or trustee (not being less than three) or a majority of three of four trustees, by deed to appoint a sum of £48,000, and so far as such appointment shall not extend—then as to £15,000 and the duty thereon—the trustees were to hold the same as the said Dilke by any existing or future will should appoint. Dilke having recovered in April, 1918, made a deed which was concurred in by three of the four trustees of settlement. He appointed the whole of the trust funds in trust for "such person or persons and purposes" as he, Dilke, should by will or codicil appoint. He died in Dec., 1918, having by a codicil made in May, 1918, appointed one-third of the fund to his wife absolutely, and the remaining two-thirds as therein mentioned. Two questions: First, was the power a general or special power? It was contended that it was special, limited to the persons whom the trustees should approve, but the Court of Appeal (Lord Sterndale, M.R., and Warrington, L.J.) held that the power was general and that the concurrence of the trustees was only necessary to the execution of the deed, but that they were not required to exercise any discretion or concurrence as to the persons in whose favour the appointment was made. The next question was whether the power was well executed—and this depended largely on the answer to the first question—as the principal ground of objection was that the appointees were not ascertained and named in the deed. The Court held that, it being a general power, the donee might exercise it in his own favour, and therefore that the deed was in the circumstances a valid execution of the power.

**Will—Charity—General charitable intention—Gift to charity to be selected by W. within specified period—Death of W. before testatrix—Discretion and its exercise, whether of the essence of gift.**

In re Willis, Shaw v. Willis (1921), 1 Ch. 44. In this case the question was as to the validity of a charitable gift made by a testatrix by her will. By the will in question the testatrix gave her residuary personal estate in England "to such charitable institution or society in England, Russia or elsewhere as may be selected by my friend, Mary Whitehead," within three calendar months from the time of the decease of the testatrix's sister. Both the sister and Mary Whitehead predeceased the testatrix. Astbury, J., decided that no paramount general charitable intention was manifested by the will and that the discretion conferred on Mary Whitehead was of the essence of the gift, and that therefore the gift failed. On appeal by the Attorney-General, however, the Court of Appeal (Lord Sterndale, M.R., and Warrington and Younger, L.JJ.) came to the opposite conclusion and reversed his decision, and held that the general charitable intention was not affected by the fact that Mary Whitehead was neither a trustee nor executor.

**Vendor and purchaser—Contract by correspondence—Construction—Offer to purchase "subject to formal contract"—Acceptance—Specific performance.**

Rossdale v. Denny (1921), 1 Ch. 57. This was an action for specific performance of an alleged contract for the purchase of a leasehold. The offer on which the plaintiff relied concluded with the words: "This offer is subject to a formal contract to embody such reasonable provisions as my solicitors may approve, and to the lease containing no unusual provisions or covenants." The plaintiff accepted the offer, but no formal contract having been executed, the defendant repudiated the agreement. Russell, J., who tried the action, held that the offer was conditional upon a formal contract being executed, and none having in fact been executed, there was no binding contract between the parties, and with this conclusion the Court of Appeal (Lord Sterndale, M.R., and Warrington and Younger, L.JJ.) agreed.

**Bankruptcy—Administration—Loan by wife to husband—Subsequent acceptance by wife of bond for payment of annuity in satisfaction of loan—Right to prove in competition with other creditors—Bankruptcy Act, 1914 (4-5 Geo. V., c. 59), s. 36 (2)—(Dominion Bankruptcy Act, s. 48 (2).)**

Crewkerne United Breweries v. Slade (1921) 1 Ch. 160. In this case the wife of a deceased insolvent debtor had lent him £1000. She subsequently accepted from him in satisfaction of the loan a bond security—the payment to her of an annuity of £40 during her life. The question was whether the claim under this bond could be proved in competition with the claim of other creditors of the deceased husband, his estate being insolvent, or whether it was postponed to the claims of the general creditors by virtue of the Bankruptcy Act 1914 S. 36 (2). (See Dominion Bankruptcy Act S. 48 (2) ). The Master held that the claim was postponed, but Sargant J. on appeal from his decision held that it was a different claim to the loan and was entitled to rank pari passu with ordinary creditors' claims.

**Insurance (Fire)—Warranty free of damages by fire caused by explosion — Explosion caused by fire — Statutory condition—Variation of statutory condition proposed by insured—Quebec Insurance Act (R.S.Q. 1909), arts. 7034-6—(R.S.O. c. 183, ss. 194, 195, 196.)**

Curtis v. North British and Mercantile Insurance Co. (1921) A.C. 303. This was an appeal from the Quebec Court of King's Bench. The action was brought on a policy of fire insurance. One of the statutory conditions under the Quebec Insurance Act is that the insurers are to be liable for all "loss caused by any explosion causing a fire." The premises insured formed part of a manufactory of tri-nitrotoluol (T.N.T.) a material liable to explode when subjected to fire. The policy contained the following warranty: "Warranted free of claim of loss or damage caused by explosion of any of the materials used on the premises." These words appeared upon the slip by which the appellants proposed the insurance, but were not printed on the policy in the manner prescribed by the Act (see R.S.O. 183 ss 194-196). A fire broke out upon the insured premises and ten minutes thereafter there was an explosion of T.N.T.,

the building in which it occurred being wrecked, and the burning material thereof was blown about. Further fires occurred, followed by more explosions, and in the end the whole premises were destroyed by fire or explosion. The Judicial Committee of the Privy Council (Lords Haldane, Cave, Dunedin, and Atkinson and Duff J.) held that the statutory condition as to the warranty free from explosions had not been effectively varied by the slip attached to the policy as this mode of variation did not comply with the terms of the statute; but that the statutory condition only protected the insured from explosions causing a fire, whereas in the present case the fire had caused the explosions; they therefore held that the plaintiffs were entitled to recover for the loss caused by the fire and they affirmed the judgment of the Court below directing an inquiry as to the loss due respectively to fire and explosion.

**Contract—Sale of goods—Goods to be carried by sea—Declaration of ship—Appropriation of goods to contract—Loss of vessel and goods—Declaration after knowledge of loss.**

Clark v. McEwen (1921) 1 K.B. 139. This was an action for breach of contract for sale of goods. By the contract in question made December 11, 1917, the defendant sold goods to the plaintiff to be shipped during December to February 1918, per steamer from the East to Liverpool where they were to be delivered. The name of the vessel, marks and full particulars to be declared to the buyer in writing with due despatch. The contract also provided—Should the vessel which may apply to the contract be lost before declaration this contract to be cancelled so far as regards such lost vessel on the production of the bills of lading or other satisfactory proof of shipment by sellers so soon as fairly practicable after the loss has been ascertained; (2) . . . Should the vessel and the goods or any portion thereof be lost the contract to be cancelled for the whole or any of such portion, but should the vessel be lost or the goods or any portion thereof transhipped to some other vessel or vessels and arrive on account of the original importer, the contract to stand good for the whole or such portion. On March 27, 1918, the defendants declared in fulfilment of the contract goods shipped on a named steamer

lost at sea by enemy action about February 26, 1918. At the time both the plaintiff and the defendants knew that the ship and cargo had been lost, and the question to be determined was whether or not the declaration could be validly made after the defendants had knowledge that the vessel and cargo had been lost. Bailhache J. held that it could and the Court of Appeal (Lord Herndate M.R. and Atkin and Youngson L.JJ.) affirmed his decision.

**Sale of goods—Unascertained goods—Breach—Frustration or cancellation of contract—Implied term—Sale of "200 tons, 5 per cent. more or less"—Extent of seller's liability.**

In Re Thornett & Fehr (1921) I K.B. 219. This was a case stated by an arbitrator. By a contract in writing Fehr sold to Thornett 200 tons of tallow "5 per cent. more or less," and the contract provided that if the shipment was delayed by strikes or other case of force majeure the time of shipment should be extended by one month; and should the delay exceed one month, the buyers should have the option of cancelling the contract forthwith, or of accepting the goods for shipment as soon as possible; but should shipment not be possible within twelve months from the date stipulated in the contract, the contract should be void. Owing to strikes the sellers were within the time stipulated able to deliver only 161 tons which they offered to deliver. The buyers claimed damages for non-delivery of 39 tons, being the difference between 161 and 200 tons. A Divisional Court (Lord Reading C.J. and Darling, and Acton, JJ.) held that although the reason of the sellers' inability to fulfil their contract was due to their inability to procure the goods from the firm who manufactured them and for whom they were acting as agents; no implied term could be read into the contract exonerating the sellers from liability on that account, because the contract was not one for the sale of specific, but ascertained goods; but they held as the contract would have been fulfilled by a delivery of 190 tons, being 5 per cent. less than the 200 tons, the sellers could only be held liable for non-delivery of 29 tons.

**Automobile—Driving—Manner dangerous to the public—Excessive speed—Evidence—Motor Car Act, 1903 (3 Edw. VII., c. 36), s. 1—(R.S.O., c. 207, s. 11 (2).)**

Beresford v. Richardson (1921) 1 K.B. 243. This was a case stated by justices. The defendants were charged that they did on April 5, 1920 unlawfully drive a motor car on a public highway in a manner dangerous to the public having regard to the circumstances of the case including the nature condition and use of the highway and the amount of traffic which actually was at the time or which might reasonably be expected on the highway contrary to the Motor Car Act, 1903 S. 1. The evidence showed that the defendants had driven their cars at an excessive rate of speed on an Easter Monday when there were a large number of foot passengers, bicycles and vehicles of different descriptions proceeding in both directions on the highway which moreover was intersected by fifteen other roads. On behalf of the defendants it was contended than on this evidence although it might have justified a convition for driving at an excessive speed it did not warrant a conviction for driving in a dangerous manner; but a Divisional Court (Lord Reading C.J. and Darling, and Sankey, JJ.) held that the evidence justified a conviction for either offence, or both offences.

**Carrier—Railway company—Perishable goods—Damaged condition—Sale by carrier without notice to consignor—Agent of necessity.**

Springer v. Great Western Ry. Co. (1921) 1 K.B. 257. The plaintiff in this case delivered to the defendants at St. Helier, Jersey, for carriage to London a quantity of tomatoes on September 20. Owing to bad weather the ship did not reach England until 24th at 12.45 p.m., and on the morning of that day a strike of defendants' men took place. The vessel could not be unloaded until the 26th. The defendants caused the goods to be examined on the 24th and found the top tiers in a bad condition. Without communicating with the plaintiff, the defendants having concluded that in consequence of the strike the goods could not be carried to London decided to sell and did sell the whole cargo, which included consignments of tomatoes from others besides the plaintiff. The action was brought for

breach of contract to deliver the tomatoes and was tried by Salter J. who held that the defendants were not justified in selling them without notice to the plaintiff and his judgment was affirmed by the Court of Appeal (Bankes, Warrington and Scrutton L.JJ.).

**Adultery by wife—Forgiveness by letter—Condonation.**

Crocker v. Crocker (1921) P. 25. This was a divorce case on the ground of the wife's adultery, and the question was whether there had been condonation on the husband's part. A letter had been written by him containing a conditional forgiveness and the wife wrote and accepted without qualifications his offer of forgiveness. On receiving the husband's letter the wife refused an offer of employment which she had intended to accept. The husband subsequently withdrew his offer and filed his petition for divorce. Duke P.P.D held that what had taken place not being accompanied by any reinstatement of the wife did not amount to condonation and the Court of Appeal (Lord Sterndale M.R. and Warrington and Scrutton L.JJ.) affirmed his decision.

**County Court—Jurisdiction—Action for declaration and injunction —Damages not claimed—Application to amend by claiming damages—Refusal of leave to amend—Damage "claimed"—(R.S.O., c. 59, s. 22 (1), (a), (i).)**

The King v. Cheshire C.C. Judge (1921) 1 K.B. 301. This was an application for a mandamus to a Judge of a County Court to hear a case. The case in question was brought by a member of a trade union to obtain a declaration that a resolution of the trade union purporting to expel the plaintiff from membership was void and for an injunction. No claim was made for damages, but at the trial an application to amend by adding a claim for damages for an amount within the jurisdiction of the County Court was made by the plaintiff and refused by the Judge, he being of opinion that no damages were recoverable, and the Judge declined to entertain the action on the ground of want of jurisdiction. It was contented that the Judge was right in declining to hear the action, because the claim for a declaration and injunction simpliciter was not within the jurisdiction of the County Court, but that the Court had only

jurisdiction to grant such relief in respect of an action where the damages claimed were within the jurisdiction—and as the action as instituted was beyond the jurisdiction it could not by the proposed amendment be brought within the jurisdiction. But this argument found no favour with the Divisional Court (Lord Reading C.J. and Darling and Avory, JJ.). Their Lordships being of the opinion that the proposed amendment should be allowed and being allowed the case would be clearly within the jurisdiction of the Judge: see R.S.O. c 59 v 22 (1) (a) (i) notwithstanding that the damages claimed might not be recoverable since the decision in Kelly v. National Society of Operative Printers 84 L.J.K.B. 2236.

**Money had and received—Cheque obtained by fraud—Transfer without consideration—Title of transferred—Banker and customer—Right of owner to follow proceeds of fraud.**

Banque Belge v. Hambrouck (1921) 1 K.B. 321. This was an action to recover from the defendant the proceeds of cheques obtained by fraud from the plaintiff. The facts were that a clerk obtained by fraud from the plaintiff Bank a number of cheques which he paid into a bank which collected the amounts thereof and placed them to the clerk's credit. Against the account the clerk drew cheques and handed them without consideration to a woman with whom he was living. She paid these cheques into her account at her bankers and there stood at her credit £315 proceeds of the clerk's fraud. This sum the plaintiff claimed to be entitled to as against the woman and her bankers. The Bankers having paid the money into Court judgment was given by Salter J. for payment thereof to the plaintiff, and his decision was affirmed by the Court of Appeal (Bankes, Scrutton and Atkin L.JJ.).

**Arbitration—Power of arbitrator to correct award—"Error arising from any accidental slip or omission"—Arbitration Act, 1889 (52-53 Vict., c. 49), s. 7 (c)—(R.S.O., c. 65, s. 10 (c).)**

Sutherland v. Haunevig (1921) 1 K.B. 336. In this case an arbitrator made an award whereby he awarded certain costs to one of the parties. The successful party being uncertain whether this included the whole or only part of the

cost referred to, wrote to the arbitrator. The arbitrator stated "he had certainly made an error in writing his award, and had amended it so as to read as he originally intended to state it," and issued another award in which he made it clear by the addition of several words that the larger amount of costs was included in the award. On motion to set aside this amended award a Divisional Court (Rowlatt and McCardie JJ.) held that the arbitrator had not made an error "arising from any accidental slip or omission" within the Arbitration Act 1889 s. 7 (e), (R.S.O. c 65 v 10 (c/) and that the correction he had made could not be made under that section, the Court being of the opinion that what he had done was to assume jurisdiction to expound his award. This seems to be a somewhat technical construction of the Act. It is clear from the facts that the award as framed originally, did not fully express the arbitrator's intentions regarding the costs, and that it did not do so, was due not to intention, but to accident.

**Contract—Hire of goods—Refusal to accept—Measure of damages.**

British Stamp & Ticket Co. v. Haynes (1921) 1 K.B. 377. This was an action to recover damages for breach of contract to accept for hire two automatic stamp delivery machines. The defendant had agreed to hire two of the machines for three years but subsequently refused to accept them and the plaintiffs kept the machines on hand at the defendant's disposal and made no attempt to relet them. They claimed to recover three years' rental, but Salter J. who tried the action held it was the plaintiffs' duty to mitigate the loss, and as on the evidence it appeared that it would take probably four weeks to relet the machines, he allowed the plaintiffs only four weeks' rental for their damages for breach of the contract.

**Bailment—Wrongful pledge by bailee—Right of owner to recover goods from pledgee.**

Blundell-Leigh v. Attenborough (1921) 1 K.B. 382. This was an action against the defendant a pawnbroker to recover certain jewellery which had been pledged with him in the following circumstances. The plaintiff was in need of money to pay a debt due to one Barton, and a man named

Miller who was interested in Barton's business wrote to the plaintiff to ask if he could assist her. At a subsequent interview he asked whether she had jewellery which she could deposit with him as security, and it was arranged that she should hand him the jewellery in question that he might examine and value it, or have it valued to enable him to decide whether he could make any offer to assist her. Having thus obtained possession of the jewellery on 1 November he promised the plaintiff to take good care of it and place it in the custody of his bankers. Instead of doing this he on the same day took it to the defendant for the purpose of pawning it for £1000. The transaction was completed on November 3. The defendant acted in good faith and had no notice of Miller's fraud, and it was not claimed that he was negligent or put upon inquiry. On November 4 Miller sent the plaintiff a receipt for the jewellery and on the following day it was arranged that Miller should advance £400 to the plaintiff and should retain the jewellery as security for the payment of a note she gave him for £600. This note and the pawn ticket of the defendant, Miller subsequently transferred to one Berners, from whom he borrowed £300. Berners notified the plaintiff that he was the holder of the note and she had paid him £400 on account thereof. She made no tender to the defendant but claimed the return of her goods. Salter J. who tried the action held that the plaintiff was entitled to recover. He held that Miller was merely a gratuitous bailee that his wrongful pledging of the property with the defendant determined the bailment, and the plaintiff subsequently dealing with Miller in ignorance of what he had done, in no way made good the claim of the defendant to hold the goods even in respect of the money actually advanced by Miller to the plaintiff.

**Arbitration—Award—Omission of umpire to deal with costs of reference—Remitting award to umpire—Arbitration Act, 1889 (52-53 Vict., c. 49), ss. 2, 10, First Sch. (1)—(R.S.O., c. 65, ss. 12, Sch. A (1).)**

Re Becker & Barry (1921) 1 K.B. 391. This was a motion to remit an award on the ground that the umpire had omitted to make any award as to the costs of the

reference, pursuant to an implied term of the submission mentioned in the Arbitration Act 1889, s. 2, First Sch. (c), (R.S.O. c 65, s. 5 Sch. A·(l) ). The Court held that it could not be presumed that the umpire had dealt with them, merely from his silence, and therefore under s. 10, (R.S.O. c 65 s. 12) made the order remitting the award as asked.

**Company—Director—"Salary" — Apportionment — Implied term of contract of service—Apportionment Act, 1870 (33-34 Vict., c. 35), s. 2—(R.S.O., c. 156, s. 2.)**

Moriarty v. Regents Garage Co. (1921) 1 K.B. 423. In this case the plaintiff agreed to sell his business to the defendant Company, the price to be paid partly in cash and partly in debenture stock of the Company. The agreement contained a clause that the plaintiff should be and act as one of the directors and that his fees for so acting should be £150 per annum. The plaintiff received the debentures which were made subject to a condition that the defendant might pay them off at the expiration of one month. In December 1919 the plaintiff was duly appointed a director and subsequently the plaintiff agreed to accept payment of all money due him on his debentures and in May 1920 he was paid off and ceased to be a director. This action was brought to recover the proportion of his fees as for the period he acted as director from December to May. The County Court judge thought that the fees were not subject to apportionment, but a Divisional Court (Lush and McCardie JJ.) held that the stipulated payment was a salary and therefore within the Apportionment Act 1870, s. 2 (R.S.O. c 156, v 2) and that even if it were not, it was an implied term of the contract that if the plaintiff's services terminated before a year, he would be paid a proportionate part for the time he actually served.

**International law—Jurisdiction—Status of Russian Soviet Government—Confiscatory Decree.**

Aksionairnoye &c. v. Sagor (1921) 1 K.B. 456. This action arises out of an act of the Soviet Government of Russia. The plaintiff carried on a mill and factory in Russia. The mill and goods of the plaintiff were confiscated

by the Soviet Government and declared to be its property, and its agent took possession thereof and sold some of the plaintiff's goods to the defendants which the defendants imported to England. The plaintiffs claimed to recover the goods from the defendants, and as it appeared that His Majesty's Government had not recognised the Soviet Government it was held by Roche J. that the Courts could not recognise the Government or hold it had Sovereignty or was able by its decree to deprive the plaintiff of his goods, the judgment was accordingly given in favour of the plaintiff.

**Lease for special purpose—Licence to lessee to carry on business—Subsequent grant by lessor imperilling licence — Derogation from grant.**

Harmer v. Jumbil (1921) 1 Ch. 200. In this case the plaintiff was a lessee of part of a freehold estate for 21 years, to the knowledge of the lessor, for the purpose of an explosives magazine. The lease contained a covenant by the lessor for quiet enjoyment. In order that the lessee might carry on his business a licence was necessary, and this licence was liable to be revoked if buildings were erected on the adjoining land within a certain distance. Subsequently to the granting of the lease the lessor made a lease to the defendants for the purpose of working minerals, but in such a manner as not to interfere with the explosives magazine of the plaintiff. The defendants for the purpose of their business erected three buildings or sheds within distances prohibited by the plaintiffs' licences. This action was brought to restrain the defendants from allowing these buildings to remain on the ground within the area prohibited by the plaintiffs' licence. Eve J. who tried the action held that the plaintiff was not entitled to relief and dismissed the action, but the Court of Appeal (Lord Sterndale M.R. and Warrington and Younger L.JJ.) held that the acts complained of amounted to a derogation from the grant of the lessor to the plaintiff and that he was entitled to an injunction limited to the duration of the existing licence.

**Settlement on second marriage of wife—Issue by first marriage—No issue of second marriage—Ultimate trust for next of kin, as if settlor had died "without having been married."**

In re Ellis, Wasbrough v. Boyce (1921) 1 Ch. 230. This was an appeal from the judgment of Sargant J. (1920) 2 Ch. 432. The case turns on the construction of a settlement made on the second marriage of a lady who had divorced her first husband by whom she had one son who survived her. The settlement was in trust after the death of herself and her then intended husband for the issue of the marriage, and in default of issue and in case of her predeceasing her husband in trust for such persons as would be entitled at her death "had she died possessed thereof intestate and without ever having been married." There was no issue of the second marriage and the settlor predeceased her second husband intestate. It was argued that the words "without ever having been married" were to be construed as referring only to the second marriage then in contemplation and that the son of the first marriage was therefore entitled under the ultimate trust, and Younger LJ. so held but Sargant J. held that the words must have their literal meaning and consequently excluded issue of the wife, and with this view the majority of the Court of Appeal (Lord Sterndale M.R. and Warrington L.J.) concurred.

# REPORTS AND NOTES OF CASES.

## England.

### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

[Lord Chancellor & Lords Haldane, Cave, Dunedin & Moulton]
[Law Times May 28.]

DESPATIE v. TREMBLAY.

**Canada (Quebec)—Marriage—Impediments—Cousins in the fourth degree—Power of ecclesiastical authority to annul—Civil Code of Canada, art. 127.**

This was an appeal from the Supreme Court of Quebec, in Review.

The appellant and the respondent, who were both Roman Catholics, were married in 1904 at a Roman Catholic Church in Quebec by their own cure. They were unaware at that time that they were cousins in the fourth degree through common ancestors who married one another in 1781. The Roman Catholic Church prohibited the marriage of Catholics so related unless with a dispensation. Six years afterwards at the instance of the husband, the ecclesiastical authorities pronounced the marriage null and void on the ground of relationship. Legal proceedings were taken by the husband for confirmation of this decree by the courts, which resulted in the Court of Review, by a majority, affirming the decision of Bruneau, J., that the marriage was null and void under art. 127 of the Civil Code of Canada.

Held, that the provisions in art. 127 of the Civil Code did not determine the question, since the effect of that article was to leave the law with regard to impediments to which it referred unchanged. Before the passing of the Code, so far as concerned the persons to be married, relationship other than such as fell within the Levitical degrees created no inherent impossibility of marriage. The object and effect of art. 127 of the Code were to leave the law as it stood, and it was impossible to give it the effect of prohibiting marriage between any two persons who were, according to English law, free to marry. By deliberately omitting

any provision for contesting marriages to which objection might be taken under art. 127, it was intended that such marriages once solemnised should remain valid. Therefore, as the marriage in question did not come within the articles of the Civil Code dealing with nullity or relationship, the marriage of the parties was valid.

Decisions of the courts below reported Queb. Rep. 43 S.C. 59 reversed.—From Law Times, May 28.

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GREAT WEST SADDLERY COMPANY v. THE KING.

[Lords Haldane, Cave, Sumner, and Parmoor.]
[Law Times. July 30.]

**Canada—Legislative power of Province—Trading companies—Dominion company—British North America Act 1867 (30 & 31 Vict. c. 3), ss. 91, 92.**

Four companies trading under the authority of the Companies Acts of the Dominion of Canada were alleged to have infringed the statutes of the Provincial Legislature of Ontario, Saskatchewan and Manitoba by carrying on transactions in those provinces without being registered or licensed according to Provincial requirements. In proceedings to raise this question the Canadian courts decided that the provisions of the Provincial Legislature were intra vires.

Held, reversing those decisions, that the provisions of the Provincial statutes, whereby Dominion companies were required to be licensed by the Provincial Governments as a condition of the exercise in those provinces of the powers conferred on them by the Dominion, trenched upon the legislative power of the Dominion and were, therefore, ultra vires, and the companies were not precluded from carrying on their business in the provinces by not having been registered or licensed therein; but, on the subsidiary question, held, that it is within the competence of a Provincial Legislature to enact a general Mortmain Act precluding a Dominion company from acquiring and holding land in a province without a licence under the Provincial Mortmain Act.

Decision in John Deere Plow Company v. Wharton (112 L.T. Rep. 183; (1915) A.C. 330) considered and explained.

Decision of the Supreme Court (reported 59 Can. S.C. Rep. 19, 45), reversed.—From Law Times, July 30.

## Bench and Bar.

### SIR EDWARD CARSON.

Sir Edward Carson, K.C., has been appointed Lord Justice of Appeal in Ordinary to take the place of the late Lord Moulton. He was called to the Irish Bar in 1877, and entered the Middle Temple in 1893, taking silk in 1894. Though Sir Edward has been more prominent in the political arena of late years than at the Bar, it may safely be expected that he will make good on the Bench. A man of strong views and sterling worth, we venture to predict a career of usefulness in his new position.

### APPOINTMENTS TO OFFICE.

Right Hon. Sir Louis Davies, K.C.M.G., Chief Justice of Canada; Right Hon. Sir Robert Borden, G.C.M.G.,; Hon. Sir William Ralph Meredith, Knight, Chief Justice of Ontario, and the Hon. Jean Baptiste Gustave Lamothe, Chief Justice of Quebec, to be a national group within the meaning of the Statute for the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations, for the purpose of nominating on behalf of Canada, a list of persons from which the members of the Court representing Canada may be elected under the provisions of Articles 4 to 12 inclusive of the said statute. (June 13.)

Arthur R. Slipp, of the City of Fredericton, in the Province of New Brunswick, Esquire, K.C., to be Judge of the County Court of the Counties of Queen's, Sunbury and York in the Province of New Brunswick vice of His Honour Judge Wilson, retired. (June 13.)

Donald McLean, of the City of Saskatoon, in the Province of Saskatchewan, Esquire, Barrister-at-Law, to be a Judge of the Court of King's Bench, for Saskatchewan.

Alfred H. Clarke, of the City of Calgary, K.C., a Judge of the Supreme Court of the Province of Alberta to be a member of the Appellate Division of that Court and an ex-officio Judge of the Trial Division.

Hon. Horace Harvey, formerly Chief Justice of Alberta, to be Chief Justice of the Trial Division of the Supreme Court of that Province and an ex-officio Judge of the Appellate Division.

Hon. David Lynch Scott, heretofore a Judge of the Supreme Court of Alberta, to be Chief Justice of the Supreme Court of that Province, and a member of the Appellate Division and ex-officio Judge of the Trial Division.

Hon. Wm. L. Walsh, Hon. Maitland S. McCarthy, Hon. Wm. C. Simmons, and Hon. Wm. Carlos Ives, Judges of the Supreme Court of the Province of Alberta, to be Judges of the Trial Division of that Court, and ex-officio Judges of the Appellate Division.

Hon. Charles A. Stewart, Hon. Nicholas D. Beck, and Hon. James D. Hyndman to be members of the Appellate Division of the Supreme Court of Alberta and ex-officio Judges of the Trial Division. (September 16.)

Andrew Knox Dysart, of the City of Winnipeg, Manitoba, Barrister-at-Law, to be a Judge of the Court of King's Bench for Manitoba.

Hon. Thomas Llewellyn Metcalfe, Judge of the King's Bench, Manitoba, to be a Judge of Appeal of the Court of Appeal, Manitoba. (October 3.)

His Hon. Sir James Albert Manning Aikins, of the City of Winnipeg, Knight Bachelor, to be Lieutenant-Governor of the Province of Manitoba from August 7th, 1921. (October 12.)

Philip Edward Mackenzie, of the City of Saskatoon, K.C., to be a Judge of the Court of King's Bench for the Province of Saskatchewan.

John Charles McIntosh, of Esquimalt, British Columbia, Barrister, to be Junior Judge of the County Court of Nanaimo. (October 17.)

Henry Colin Pope, of Moose Jaw, Saskatchewan, Barrister-at-Law, to be Judge of the District Court of the District of Melfort, Province of Saskatchewan. (October 31.)

# Flotsam and Jetsam.

## THE LEIPSIC TRIALS.

We do not suppose that any lawyer will feel surprised at the outcome of the trials of Germans accused of crimes against British nationals which have now concluded. So far as the court itself is concerned, it seems to have acted with impartiality, although the actual results seem counter to all British ideas of punishment. But the court was administering German law, and the municipal law of that country, in its view of the law and customs of civilised warfare, is pernicious enough. Under the Treaty of Peace signed more than seven months after the armistice, and after innumerable reports and deliberations of commissions and committees, military tribunals were to be set up by the Allies to try persons accused of acts of violation of the laws and customs of war, and the German Government was to hand over all persons so accused. Had this been done, we might have been spared the legal application of the law of "frightfulness." But the interminable delay made it impossible to give effect to the clauses relating to the trial of war criminals, and, although their suspension until after the trials at Leipsic has been "without prejudice," lawyers will have little doubt that the enforcement of the laws and customs of civilised warfare against the German war criminals will be incapable of attainment. The time for the imposition of the original demands and for their execution was 1918. —The Law Times (Eng.).

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The story told by Lord Herschell, who, while at the Bar, belonged to the Northern Circuit, turned on the parsimony of a former Bishop of Carlisle. His Grace was, it seems, famous for his bad and scanty dinners, food and drink. One day, while entertaining the Bar, the junior members, disguested with their scanty food and wine, became rather noisy at their end of the table. The bishop remarked on this to Mr. Justice Maule, who quietly said: "Yes, my lord, it is apt to happen when men take a little wine on an empty stomach."