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THE AMERICAN BAR ASSOCIATION.

The meeting of this important Association, held last month in the city of Montreal, was, perhaps, the most notable one in its history

In the first place, it was held outside the borders of the United States, a compliment being paid to the Dominion of Canada of holding it in this country. Mr. Frank B. Kellogg of St. Paul, Minnesota, the President of the Association, referred to this in the following words: "This is the first meeting of the American Bar Association outside of the United States. Though we meet in a foreign country, we do so among a people allied to us by every tie that binds nations in a common brotherhood. We are of the same race, speaking the same language, governed by the same general principles of law, inspired by the same traditions, working out as separate nations the same great destiny. I hope that the peace which has so long existed between these peoples may be further cemented, and mutual and friendly intercourse continue to increase. On behalf of the American Bar Association, I welcome this opportunity to extend to the officials and lawyers of the Dominion of Canada our sincere thanks for the great assistance they have rendered towards making this a memorable meeting of our Association." On behalf of the Bar of the Dominion we recognize and appreciate the compliment thus paid to us.

In the next place this gathering was not merely of members of the Bar, but also of judges, who met in connection with the Bar Association for a conference of their own. In speaking of this, Hon. Thomas W. Shelton, of Virginia, who presided at the Conference of Judges, said: "It is the first Conference of Judges ever held in the history of the United States. The object is to bring about uniformity in judicial procedure amongst the States through fixed interstate judicial relations just as there is now fixed interstate commercial relations."

This Conference of Judges was composed of the forty-eight Chief Justices of the several states, and the nine presiding Circuit Judges of the United States Circuit Courts of Appeals, who were all present with the exception of three or four absentees. It was admittedly one of the most unique and distinguished audiences ever assembled in connection with the legal profession, and the prediction was made that it would mean to interstate judicial relations what the famous Mt. Vernon Conference, held in 1785, between Virginia and Maryland, meant to interstate commerce relations. The speaker expressed the "fervent hope that the Montreal Conference would mark itself in history as the beginning of fixed interstate judicial relations, made so by unselfish patriotism and not by fundamental law." All this gives to us in this Dominion food for thought, which may well mean something for our benefit in years to come.

In the third place, the meeting of the American Bar Association, and the Conference of Judges in connection therewith, was of importance by reason of the number of eminent men who were present and took part in the proceedings. In addition to those who would naturally be there on such an occasion, there were notable representatives of the legal fraternity, both of Great Britain and of France, as well as the Dominion of Canada. Prominent among these was the Lord High Chancellor of Great Britain, Viscount Haldane. The occupant of this high office is said to rank as the second non-royal subject in the Kingdom—is a member of the Privy Council by prescription—the Speaker of the House of Lords—the Keeper of the King's Conscience—the Custodian of the Great Seal of the United Kingdom— the head of the judicial administration of England, responsible for the appointment of the judges of the High Court (with the exception of the Chief Justice, who is appointed by the Prime Minister), and who has also the appointing of County Court Judges—the President of the High Court of Justice and of the Chancery Division of the High Court, and the presiding officer of the Court of Appeals, besides holding other honours and responsibilities for various other duties.

France was well represented by Maitre Labori, Batonnier

de l'ordre des Advocats a la Cour de Paris. M. Labori is of course a man of world-wide fame, a great civil lawyer, and, above all, a patriotic citizen with a high sense of duty. The Dreyfus case, the Zola case, and the trial of Rennes, and other *causes celebres*, brought him prominently before the public some years ago.

The Lord Chancellor gave the address which seemed to attract the greatest interest; at least we have a right to gather that from the remarks made by Mr. Hampton L. Carson, who introduced resolutions of appreciation and acknowledgment thereof, which he did in the following graceful terms:—

"The dignity and authority of the Woolsack and the glories of Westminster Hall are as dear to us as to the benchers of Lincoln's and Gray's Inns and the Inner and Middle Temple. The fame and the labours of Nottingham, Hardwicke, and Eldon are as much a part of our professional renown and professional treasures as those of Marshall, Story and Kent. Inspired by the same traditions, enjoying the same heritage, administering the same principles, and drawing our knowledge from the same sources, we claim the common law as our birthright, and are partakers of the destiny of the Anglo-Saxon to rule an ever expanding empire of civilization and humanity by the light of a liberal jurisprudence. We recognize the same fealty to duty; we are conscious of the same holy mission; we are upheld by the same pride of achievement; we kneel at the same altar and chant the same anthems of liberty. We place beside Magna Charta and the Bill of Rights the Constitution of the United States, and claim our share in building up the bulwarks of popular government."

As our readers will be glad to have Lord Haldane's address *in extenso*, it will be found in these pages at the close of this article.

It would be impossible within our limited space to give all the various papers and debates thereon which formed the material presented on this remarkable occasion. We can only refer to a few.

Mr. Taft, Ex-President of the United States, read a paper

dealing with the selection and tenure of judges, in which, after a full discussion of the mode of appointment in the United States and Canada, he sets forth the defects of the elective system and the advantages of the appointment of judges by the Government of the day on a life tenure, concluding as follows:—

"I have thus taxed your patience with the reasons that convince me that appointment and a life tenure are essential to a satisfactory judicial system. They may seem trite and obvious, but I have thought, in the present disposition to question every principle of popular government that has prevailed for more than a century, that it might be well, at the risk of being commonplace, to review them. In the present attitude of many of the electorate toward the courts it is perhaps hopeless to expect the states, in which judges are elected for short terms, to return to the appointment of judges for life. But it is not in vain to urge its advantages. The federal judges are still appointed for life, and it will be a sad day for our country if a change be made either in their mode of selection or the character of their tenure. These are what enable the federal courts to secure the liber[illegible] of the individual and to preserve just popular judgment."

The address of the President, Mr. Kellogg, of Minnesota, took up the subject of Treaty Making Power, which he dealt with in an exhaustive and masterly manner.

Another matter that was discussed was the struggle which has been going on for some time in the United States for the Simplification of Legal Procedure. One branch of it was dealt with by Hon. William C. Hook, Judge of the United States Circuit Court of Appeals, Eighth Circuit. Another branch took up Legal Procedure and Social Unrest, receiving the attention of Hon. N. Charles Burke, Judge of the Court of Appeals of Maryland. Another branch was dealt with by Hon. William A. Blount, of Pensacola, Florida.

The subject of legal education in various aspects was discussed by Mr. Edson R. Sutherland, of the University of Michigan, who spoke on teaching practice, and by Mr. Clarence A. Lightner, of Michigan, who inquired into and gave his views of the moral character of applicants for admission to the Bar. Mr. Walter

G. Smith, of Philadelphia, President of the Section of Legal Education, also read a paper on the same subject.

The annual address of the Director of the Bureau of Comparative Law was given by Mr. Simeon E. Baldwin, Governor of Connecticut.

Before the business of the Association was commenced, an address of welcome to the members of the Association was delivered by Hon. R. L. Borden, P.C., K.C. Premier of Canada.

In the afternoon Lord Haldane delivered his address at the Princess Theatre. The theatre was packed to the roof and a great many could not obtain admission. The speaker was introduced by Chief Justice White of the Supreme Court of the United States. On the platform were Hon. Mr. Borden, Prime Minister; Hon. Mr. Doherty, Minister of Justice; Hon. J. J. Foy, Attorney-General for Ontario; Hon. George E. Foster; M. H. Ludwig, President of the Ontario Bar Association, and other Canadians.

In the evening the Minister of Justice gave a dinner at the Ritz Carlton in honour of the Lord Chancellor, to which about two hundred distinguished guests attending the meeting were invited. This dinner was probably one of the most brilliant affairs that has ever taken place in Montreal. After the dinner a reception was held in the Royal Art Gallery to Lord Haldane and his sister, when about twenty-five hundred people were presented. Hon. Mr. Borden and Mrs. Borden and the Minister of Justice did the honours on the occasion.

On Wednesday night (Sept. 3rd) the Annual Dinner of the Association took place at the Windsor, which was attended by more than one thousand persons. Hon. Joseph H. Choate presided. The principal speakers were the Chairman, Hon. Mr. Doherty, Minister of Justice; Mr. Taft, Ex-President of the United States, and Maitre Labori.

The officers of the Ontario Bar Association took an active part in bringing the meeting of the American Bar Association to the attention of our profession and in making arrangements in connection therewith. The Ontario Association was represented by the President, M. H. Ludwig, K.C., the three Vice-

Presidents, F. M. Field, K.C., W. J. McWhinney, K.C., and Geo. C. Campbell, with about forty delegates from various parts of the Province.

We conclude by giving our readers, as promised, Lord Haldane's address *in extenso*, which he designated as a paper on "Higher Nationality, A Study of Law and Ethics." It reads as follows:—

"It is with genuine pleasure that I find myself among my fellow-lawyers of the New World. But my satisfaction is tempered by a sense of embarrassment. There is a multitude of topics on which it would be most natural that I should seek to touch. If, however, I am to use to any purpose the opportunity which you have accorded me, I must exclude all but one or two of them. For in an hour like this, as in most other times of endeavour, he who would accomplish anything must limit himself. What I have to say will therefore be confined to the suggestion of little more than a single thought, and to its development and illustration with materials that lie to hand. I wish to lay before you a result at which I have arrived after reflection, and to submit it for your consideration with such capacity as I possess.

For the occasion is as rare as it is important. Around me I see assembled some of the most distinguished figures in the public life of this continent; men who throughout their careers have combined law with statesmanship, and who have exercised a potent influence in the fashioning of opinion and of policy. The law is indeed a calling notable for the individualities it has produced. Their production has counted for much in the past of the three nations that are represented at this meeting, and it means much for them to-day.

What one who finds himself face to face with this assemblage naturally thinks of is the future of these three nations; a future that may depend largely on the influence of men with opportunities such as are ours. The United States and Canada and Great Britain together form a group which is unique; unique because of its common inheritance in traditions, in surroundings, and in ideals. And nowhere is the character of this common inheritance more apparent than in the region of jurisprudence.

The lawyers of the three countries think for the most part alike. At no period has political divergence prevented this fact from being strikingly apparent. Where the letter of their law is different the spirit is yet the same, and it has been so always. As I speak of the historical tradition of our great calling, and of what appears likely to be its record in days to come, it seems to me that we who are here gathered may well proclaim, in the words of the Spartans, "We are what you were; we shall be what you are."

It is this identity of spirit, largely due to a past which the lawyers of the group have inherited jointly, that not only forms a bond of union, but furnishes them with an influence that can hardly be reproduced in other nations. I take my stand on facts which are beyond controversy, and seek to look ahead. I ask you to consider with me whether we, who have in days gone by moulded their laws, are not called on to try in days that lie in front to mould opinion in yet another form, and so encourage the nations of this group to develop and recognize a reliable character in the obligations they assume towards each other. For it may be that there are relations possible within such a group of nations as is ours that are not possible for nations more isolated from each other and lacking in our identity of history and spirit. Canada and Great Britain on the one hand and the United States on the other, with their common language, their common interests, and their common ends, form something resembling a single society. If there be such a society it may develop within itself a foundation for international faith of a kind that is new in the history of the world. Without interfering with the freedom of action of these great countries, or the independence of their constitutions, it may be possible to establish a true unison between sovereign states. This unison will doubtless, if it ever comes into complete being, have its witnesses in treaties and written agreements. But such documents can never of themselves constitute it. Its substance, if it is to be realized, must be sought for deeper down in an intimate social life. I have never been without hope that the future development of the world may bring all the nations that compose it nearer together,

so that they will progressively cease to desire to hold each other at arm's length. But such an approximation can only come about very gradually, if I read the signs of the times aright. It seems to me to be far less likely of definite realization than in the case of a group united by ties such as those of which I have spoken.

Well, the growth of such a future is at least conceivable. The substance of some of the things I am going to say about its conception, and about the way by which that conception may become real, is as old as Plato. Yet the principles and facts to which I shall have to refer appear to me to be often overlooked by those to whom they might well appear obvious. Perhaps the reason is the deadening effect of that conventional atmosphere out of which few men in public life succeed in completely escaping. We can best assist in the freshening of that atmosphere by omitting no opportunity of trying to think rightly, and thereby to contribute to the fashioning of a more hopeful and resolute kind of public opinion. For, as someone has said, "*L'opinion générale dirige l'autorité, quels qu'en soient les dépositoires.*"

The chance of laying before such an audience as this what was in my mind made the invitation which came from the Bar Association and from the heads of our great profession, both in Canada and in the United States, a highly attractive one. But before I could accept it I had to obtain the permission of my Sovereign: for, as you know, the Lord Chancellor is also *Custos Sigilli*, the Keeper of that Great Seal under which alone supreme executive acts of the British Crown can be done. It is an instrument he must neither quit without special authority, nor carry out of the realm. The head of a predecessor of mine, Cardinal Wolsey, was in peril because he was so daring as to take the Great Seal across the water to Calais, when he ought instead to have asked his Sovereign to put it into commission.

Well, the *Clavis Regni* was on the present occasion put safely into commission before I left, and I am privileged to be here with a comfortable constitutional conscience. But the King has done more than graciously approve of my leaving British shores.

I am the bearer to you of a message from him which I will now read:—

"I have given my Lord Chancellor permission to cross the seas, so that he may address the meeting at Montreal. I have asked him to convey from me to that great meeting of the lawyers of the United States and of Canada my best wishes for its success. I entertain the hope that the deliberations of the distinguished men of both countries who are to assemble at Montreal may add yet further to the esteem and goodwill which the people of the United States and of Canada and the United Kingdom have for each other."

The King's message forms a text for what I have to say, and, having conveyed that message to you, I propose in the first place to turn to the reasons which make me think that the class to which you and I belong has a peculiar and extensive responsibility as regards the future relations of the three countries. But these reasons turn on the position which courts of law hold in Anglo-Saxon constitutions, and before I enter on them I must recall to you the character of the tradition that tends to fashion a common mind in you and me as members of a profession that has exercised a profound influence on Anglo-Saxon society. It is not difficult in an assemblage of lawyers such as we are to realize the process by which our customary habits of thought have come into being and bind us together. The spirit of the jurisprudence which is ours, of the system which we apply to the regulation of human affairs in Canada, in the United States, and in Great Britain alike, is different from that which obtains in other countries. It is its very peculiarity that lends to it its potency, and it is worth while to make explicit what the spirit of our law really means for us.

I read the other day the reflections of a foreign thinker on what seemed to him the barbarism of the entire system of English jurisprudence, in its essence judge-made and not based on the scientific foundation of a code. I do not wonder at such reflections. There is a gulf fixed between the method of a code and such procedure as that of Chief Justice Holt in *Coggs* v. *Bernard*, of Chief Justice Pratt in *Armory* v. *Delmairie*, and of Lord Mans-

field when he defined the count for money had and received. A stranger to the spirit of the law as it was evolved through centuries in England will always find its history a curious one. Looking first at the early English common law its most striking feature is the enormous extent to which its founders concerned themselves with remedies before settling the substantive rules for breach of which the remedies were required. Nowhere else, unless perhaps in the law of ancient Rome, do we see such a spectacle of legal writs making legal rights. Of the system of the common law there is a saying of Mr. Justice Wendell Holmes which is profoundly true: "The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intentions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics." As the distinguished writer whom I have quoted tells us, we cannot, without the closest application of the historical method, comprehend the genesis and evolution of the English common law. Its paradox is that in its beginnings the forms of action came before the substance. It is in the history of English remedies that we have to study the growth of rights. I recall a notable sentence in one of Sir Henry Maine's books. "So great," he declares, "is the ascendancy of the law of actions in the infancy of courts of justice, that substantive law has at first the look of being gradually secreted in the interstices of procedure." I will add to his observation this: That all our reforms notwithstanding, the dead hands of the old forms of action still rest firmly upon us. In logic the substantive conceptions ought of course to have preceded these forms. But the historical sequence has been different, for reasons with which every competent student of early English history is familiar. The phenomenon is no uncommon one. The time spirit and the spirit of logical form do not always, in a world where the contingent is ever obtruding itself, travel hand in hand.

The germs of substantive law were indeed present as potential forces from the beginning, but they did not grow into life until later on. And therefore forms of action have thrust themselves forward with undue prominence. That is why the understanding of our law is, even for the practitioner of to-day, inseparable from knowledge of its history.

As with the common law, so it is with equity. To know the principles of equity is to know the history of the courts in which it has been administered, and especially the history of the office which at present I chance myself to hold. Between law and equity there is no other true line of demarcation. The King was the fountain of justice. But to get justice at his hands it was necessary first of all to obtain the King's writ. As Bracton declared, "*non potest quis sine brevi agere.*" But the King could not personally look after the department where such writs were to be obtained. At the head of this, his chancery, he therefore placed a Chancellor, usually a Bishop, but sometimes an Archbishop, and even a Cardinal, for in those days the Church had a grip which to a Lord Chancellor of the twentieth century is unfamiliar. At first the holder of the office was not a judge. But he was keeper of the King's conscience, and his business was to see that the King's subjects had remedies when he considered that they had suffered wrongs. Consequently he began to invent new writs, and finally to develop remedies which were not confined by the rigid precedents of the common law. Thus he soon became a judge. When he found that he could not grant a common law writ he took to summoning people before him and to searching their consciences. He inquired, for instance, as to trusts which they were said to have undertaken, and as the result of his inquiries rights and obligations unknown to the common law were born in his court of conscience. You see at a glance how susceptible such a practice was of development into a complete system of equity. You would expect, moreover, to find that the ecclesiastical atmosphere in which my official predecessors lived would influence the forms in which they moulded their special system of jurisprudence. This did indeed happen, but even in those days the atmosphere was not merely ecclesias-

tical. For the Lord High Chancellor in the household of an early English monarch was the King's domestic chaplain, and as, unlike his fellow-servants in the household, the Lord High Steward and the Lord Great Chamberlain, he always possessed the by no means common advantage of being able to read and write, he acted as the King's political secretary. He used, it seems, in early days to live in the palace, and he had a regular daily allowance. From one of the records it appears that his wages were five shillings, a simnel cake, two seasoned simnels, one sextary of clear wine, one sextary of household wine, one large wax candle, and forty small pieces of candle. In the time of Henry II. the modern treasury spirit appears to have begun to walk abroad, for in the records the allowance of five shillings appears as if subjected to a reduction. If he dined away from the palace, *si extra domum comederit*, and was thereby forced to provide extras, then indeed he got his five shillings. But if he dined at home, *intra domum*, he was not allowed more than three shillings and sixpence. The advantage of his position was, however, that, living in the palace, he was always at the King's ear. He kept the Great Seal through which all great acts of state were manifested. Indeed it was the custody of the Great Seal that made him Chancellor. Even to-day this is the constitutional usage. When I myself was made Lord Chancellor the appointment was effected, not by letters patent, nor by writing under the sign manual, nor even by words spoken, but by the Sovereign making a simple delivery of the Great Seal into my hands while I knelt before him at Buckingham Palace in the presence of the Privy Council.

The reign of Charles I. saw the last of the ecclesiastical Chancellors. The slight sketch of the earlier period which I have drawn shews that in these times there might well have developed a great divergence of equity from the common law, under the influence of the canon and Roman laws to which ecclesiastical chancellors would naturally turn. In the old courts of equity it was natural that a different atmosphere from that of the common law courts should be breathed. But with the gradual drawing together of the courts of law and equity under law

chancellors the difference of atmosphere disappears, and we see the two systems becoming fused into one.

The moral of the whole story is the hopelessness of attempting to study Anglo-Saxon jurisprudence apart from the history of its growth and of the characters of the judges who created it. It is by no accident that among Anglo-Saxon lawyers the law does not assume the form of codes, but is largely judge-made. We have statutory codes for portions of the field which we have to cover. But these statutory codes come, not at the beginning, but at the end. For the most part the law has already been made by those who practise it before the codes embody it. Such codes with us arrive only with the close of the day, after its heat and burden have been borne, and when the journey is already near its end.

I have spoken of a spirit and of traditions which have been apparent in English law. But they have made their influence felt elsewhere. My judicial colleagues in the Province of Quebec administer a system which is partly embodied in a great modern code, and partly depends on old French law of the period of Louis XIV. They apply, moreover, a good deal of the public and commercial law of England. The relation of the code to these systems has given rise to some controversies. What I have gathered, however, when sitting in the Judicial Committee of the Privy Council, is that a spirit not very different from that of the English lawyers has prevailed in Quebec. The influence of the judges in moulding the law, and of legal opinion in fashioning the shape which it should take, seem to me to have been hardly less apparent in Quebec than elsewhere in Canada. Indeed, the several systems of our group of nations, however these systems have originated, everywhere shew a similar spirit, and disclose the power of our lawyers in creating and developing the law as well as in changing it; a power which has been more exercised outside the legislature than within it. It is surely because the lawyers of the New World have an influence so potent and so easily wielded that they have been able to use it copiously in a wider field of public affairs than that of mere jurisprudence. It is very striking to the observer to see how many of the names of those

who have controlled the currents of public opinion in the United States and Canada alike have been the names of famous lawyers. I think this has been so partly because the tradition and spirit of the law were always what I have described and different from that on the Continent of Europe. But it has also been so because, in consequence of that tradition and spirit, the vocation of the lawyers has not, as on the Continent of Europe, been that of a segregated profession of interpreters; but a vocation which has placed him at the very heart of affairs. In the United Kingdom this has happened in the same fashion, yet hardly to so great an extent, because there has been competition of other and powerful classes whose tradition has been to devote their lives to a parliamentary career. But in the case of all three nations it is profoundly true that, as was said by the present President of the United States in 1910, in an address delivered to this very Association, "the country must find lawyers of the right sort and the old spirit to advise it, or it must stumble through a very chaos of blind experiment. It never," he went on to add, "needed lawyers who are also statesmen more than it needs them now; needs them in its courts, in its legislatures, in its seats of executive authority; lawyers who can think in the terms of society itself."

This at least is evident, that if you and I belong to a great calling it is a calling in which we have a great responsibility. We can do much to influence opinion, and the history of our law and the character of our tradition render it easy for us to attain to that unity in habit of thought and sentiment which is the first condition of combined action. That is why I do not hesitate to speak to you as I am doing.

And having said so much I now submit to you my second point. The law has grown by development through the influence of the opinion of society guided by its skilled advisers. But the law forms only a small part of the system of rules by which the conduct of the citizens of a state is regulated. Law, properly so called, whether civil or criminal, means essentially those rules of conduct which are expressly and publicly laid down by the sovereign will of the state and are enforced by the sanction of compulsion. Law, however, imports something more than this.

As I have already remarked its full significance cannot be understood apart from the history and spirit of the nation whose law it is. Moreover, it has a real relation to the obligations even of conscience, as well as to something else which I shall presently refer to as the general will of society. In short, if its full significance is to be appreciated, larger conceptions than those of the mere lawyer are essential; conceptions which come to us from the moralist and the sociologist, and without which we cannot see fully how the genesis of law has come about. That is where writers like Bentham and Austin are deficient. One cannot read a great book like the "Esprit des Lois" without seeing that Montesquieu had a deeper insight than Bentham or Austin, and that he had already grasped a truth which, in Great Britain at all events, was to be forgotten for a time.

Besides the rules and sanctions which belong to law and legality, there are other rules with a different kind of sanction which also influence conduct. I have spoken of conscience, and conscience, in the strict sense of the word, has its own court. But the tribunal of conscience is a private one and its jurisdiction is limited to the individual whose conscience it is. The moral rules enjoined by the private conscience may be the very highest of all. But they are enforced only by an inward and private tribunal. Their sanction is subjective and not binding in the same way on all men. The very loftiness of the motive which makes a man love his neighbour more than himself, or sell all his goods in order that he may obey a great and inward call, renders that motive in the highest cases incapable of being made a rule of universal application in any positive form. And so it was that the foundation on which one of the greatest of modern moralists, Immanuel Kant, sought to base his ethical system, had to be revised by his successors. For it was found to reduce itself to little more than a negative and therefore barren obligation to act at all times from maxims fit for law universal; maxims which, because merely negative, turned out to be inadequate as guides through the field of daily conduct. In point of fact, that field is covered in the case of the citizen only to a small extent by law and legality on the one hand, and by the dictates of the

individual conscience on the other. There is a more extensive system of guidance which regulates conduct and which differs from both in its character and sanction. It applies, like law, to all the members of a society alike without distinction of persons. It resembles the morality of conscience in that it is enforced by no legal compulsion. In the English language we have no name for it, and this is unfortunate, for the lack of a distinctive name has occasioned confusion both of thought and of expression. German writers have, however, marked out the system to which I refer and have given it the name of "*Sittlichkeit.*" In his book "*Der Zweck im Recht*" Rudolph von Jhering, a famous professor at Göttingen, with whose figure I was familiar when I was a student there nearly forty years ago, pointed out, in the part which he devoted to the subject of "*Sittlichkeit,*" that it was the merit of the German language to have been the only one to find a really distinctive and scientific expression for it. "*Sittlichkeit*" is the system of habitual or customary conduct, ethical rather than legal, which embraces all those obligations of the citizen which it is "bad form" or "not the thing" to disregard. Indeed, regard for these obligations is frequently enjoined merely by the social penalty of being "cut" or looked on askance. And yet the system is so generally accepted and is held in so high regard that no one can venture to disregard it without in some way suffering at the hands of his neighbours for so doing. If a man maltreats his wife and children, or habitually jostles his fellow-citizen in the street, or does things flagrantly selfish or in bad taste, he is pretty sure to find himself in a minority and the worse off in the end. But not only does it not pay to do these things, but the decent man does not wish to do them. A feeling analogous to what arises from the dictates of his more private and individual conscience restrains him. He finds himself so restrained in the ordinary affairs of daily life. But he is guided in his conduct by no mere inward feeling, as in the case of conscience. Conscience and, for that matter, law, overlap parts of the sphere of social obligation about which I am speaking. A rule of conduct may, indeed appear in more than one sphere, and may consequently have a twofold sanction. But the guide to

which the citizen mostly looks is just the standard recognized by the community; a community made up mainly of those fellow-citizens whose good opinion he respects and desires to have. He has everywhere round him an object lesson in the conduct of decent people towards each other and towards the community to which they belong. Without such conduct and the restraints which it imposes there could be no tolerable social life, and real freedom from interference would not be enjoyed. It is the instinctive sense of what to do and what not to do in daily life and behaviour that is the source of liberty and ease. And it is this instinctive sense of obligation that is the chief foundation of society. Its reality takes objective shape and displays itself in family life and in our other civic and social institutions. It is not limited to any one form, and it is capable of manifesting itself in new forms and of developing and changing old forms. Indeed, the civic community is more than a political fabric. It includes all the social institutions in and by which the individual life is influenced, such as are the family, the school, the church, the legislature and the executive. None of these can subsist in isolation from the rest; together they and other institutions of the kind form a single organic whole; the whole which is known as the nation. The spirit and habit of life which this organic entirety inspires and compels are what, for my present purpose, I mean by "*Sittlichkeit.*" "*Sitte*" is the German for custom, and "*Sittlichkeit*" implies custom and a habit of mind and action. It also implies a little more. Fichte defines it in words which are worth quoting and which I will put into English: "What, to begin with," he says, "does '*Sitte*' signify, and in what sense do we use the word? It means for us, and means in every accurate reference we make to it, those principles of conduct which regulate people in their relations to each other, and which have become matter of habit and second nature at the stage of culture reached, and of which therefore we are not explicitly conscious. Principles, we call them, because we do not refer to the sort of conduct that is casual or is determined on casual grounds, but to the hidden and uniform ground of action which we assume to be present in the man whose action is not deflected and from which we can pretty

certainly predict what he will do. Principles, we say, which have become a second nature and of which we are not explicitly conscious. We thus exclude all impulses and motives based on free individual choice, the inward aspect of '*Sittlichkeit*,' that is to say morality, and also the outward side, or law, alike. For what a man has first to reflect over and then freely to resolve is not for him a habit in conduct, and in so far as habit in conduct is associated with a particular age it is regarded as the unconscious instrument of the time spirit."

The system of ethical habit in a community is of a dominating character, for the decision and influence of the whole community is embodied in that social habit. Because such conduct is systematic and covers the whole of the field of society the individual will is closely related by it to the will and spirit of the community. And out of this relation arises the power of adequately controlling the conduct of the individual. If this power fails or becomes weak the community degenerates and may fall to pieces. Different nations excel in their "*Sittlichkeit*" in different fashions. The spirit of the community and its ideals may vary greatly. There may be a low level of "*Sittlichkeit*," and we have the spectacle of nations which have even degenerated in this respect. It may possibly conflict with law and morality, as in the case of the duel. But when its level is high in a nation we admire the system, for we see it not only guiding a people and binding them together for national effort, but affording the most real freedom of thought and action for those who in daily life habitually act in harmony with the general will.

Thus we have in the case of a community, be it the city or be it the state, an illustration of a sanction which is sufficient to compel observance of a rule without any question of the application of force. This kind of sanction may be of a highly compelling quality, and it often extends so far as to make the individual prefer the good of the community to his own. The development of many of our social institutions, of our hospitals, of our universities, and of other establishments of the kind, shews the extent to which it reaches and is powerful. But it has yet higher forms in which it approaches very nearly to the level of the obligation of con-

science, although it is distinct from that form of obligation. I will try to make clear what I mean by illustrations. A man may be impelled to action of a high order by his sense of unity with the society to which he belongs; action of which, from the civil standpoint, all approve. What he does in such a case is natural to him, and is done without thought of reward or punishment, but it has reference to standards of conduct set up by society and accepted just because society has set them up. There is a poem by the late Sir Alfred Lyall which exemplifies the high level that may be reached in such conduct. The poem is called "Theology in Extremis," and it describes the feelings of an Englishman who had been taken prisoner by Mahometan rebels in the Indian mutiny. He is face to face with a cruel death. They offer him his life if he will repeat something from the Koran. If he complies no one is likely ever to hear of it, and he will be free to return to England and to the woman he loves. Moreover, and here is the real point, he is not a believer in Christianity, so that it is no question of denying his Saviour. What ought he to do? Deliverance is easy and the relief and advantage would be unspeakably great. But he does not really hesitate, and every shadow of doubt disappears when he hears his fellow-prisoner, a half-caste, pattering eagerly the words demanded. He himself has no hope of heaven and he loves life:

"Yet for the honour of English race
May I not live and endure disgrace.
Ay, but the word if I could have said it,
I by no terrors of hell perplext.
Hard to be silent and have no credit
From man in this world, or reward in the next,
None to bear witness and reckon the cost
Of the name that is saved by the life that is lost.
I must begone to the crowd untold
Of men by the cause which they served unknown,
Who moulder in myriad graves of old,
Never a story and never a stone
Tells of the martyrs who die like me
Just for the pride of the old countree."

I will take another example, this time from the literature of ancient Greece.

In one of the shortest but not least impressive of his dialogues, the "Crito," Plato tells us of the character of Socrates, not as a philosopher, but as a good citizen. He has been unjustly condemned by the Athenians as an enemy to the good of the state. Crito comes to him in prison to persuade him to escape. He urges on him many arguments, his duty to his children included. But Socrates refuses. He chooses to follow, not what anyone in the crowd might do, but the example which the ideal citizen should set. It would be a breach of his duty to fly from the judgment duly passed in the Athens to which he belongs, even though he thinks the decree should have been different. For it is the decree of the established justice of his city state. He will not "play truant." He hears the words, "Listen, Socrates, to us who have brought you up," and in reply he refuses to go away in these final sentences: "This is the voice which I seem to hear murmuring in my ears, like the sound of the flute in the ears of the mystic; that voice, I say, is murmuring in my ears, and prevents me from hearing any other. And I know that anything more which you may say will be vain."

Why do men of this stamp act so, it may be when leading the battle line, it may be at critical moments of quite other kinds? It is, I think, because thay are more than mere individuals. Individual they are, but completely real, even as individual, only in their relation to organic and social wholes in which they are members, such as the family, the city, the state. There is in every truly organized community a common will which is willed by those who compose that community, and who in so willing are more than isolated men and women. It is not, indeed, as unrelated atoms that they have lived. They have grown, from the receptive days of childhood up to maturity, in an atmosphere of example and general custom, and their lives have widened out from one little world to other and higher worlds, so that, through occupying successive stations in life, they more and more come to make their own the life of the social whole in which they move and have their being. They cannot mark off or define

their own individualities without reference to the individualities of others. And so they unconsciously find themselves as in truth pulse-beats of the whole system, and themselves the whole system. It is real in them and they in it. They are real only because they are social. The notion that the individual is the highest form of reality, and that the relationship of individuals is one of mere contract, the notion of Hobbes and of Bentham and of Austin, turns out to be quite inadequate. Even of an everyday contract, that of marriage, it has been well said that it is a contract to pass out of the sphere of contract, and that it is possible only because the contracting parties are already beyond and above that sphere. As a modern writer, F. H. Bradley of Oxford, to whose investigations in these regions we owe much, has finely said: "The moral organism is not a mere animal organism. In the latter the member is not aware of itself as such, while in the former it knows itself and therefore knows the whole in itself. The narrow external function of the man is not the whole man. He has a life which we cannot see with our eyes, and there is no duty so mean that it is not the realization of this, and knowable as such. What counts is not the visible outer work so much as the spirit in which it is done. The breadth of my life is not measured by the multitude of my pursuits, nor the space I take up amongst other men; but by the fulness of the whole life which I know as mine. It is true that less now depends on each of us as this or that man; it is not true that our individuality is therefore lessened, that therefore we have less in us."

There is, according to this view, a general will with which the will of the good citizen is in accord. He feels that he would despise himself were his private will not in harmony with it. The notion of the reality of such a will is no new one. It is as old as the Greeks, for whom the moral order and the city state were closely related, and we find it in modern books in which we do not look for it. Jean Jacques Rousseau is probably best known to the world by the famous words in which he begins the first chapter of the "Social Contract": "Man is born free, and everywhere he is in chains. Those who think themselves to be the masters of others cease not to be greater slaves than the

people they govern." He goes on in the next paragraph to tell us that if he were only to consider force and the effects of it, he would say that if a nation was constrained to obey and did obey it did well, but that whenever it could throw off its yoke and did throw it off it acted better. His words, written in 1762, became a text for the pioneers of the French Revolution. But they would have done well to read further into the book. As Rousseau goes on we find a different conception. He passes from considering the fiction of a social contract to a discussion of the power over the individual of the general will, by virtue of which a people becomes a people. This general will, the *Volonté générale*, he distinguishes from the *Volonté de tous*, which is a mere numerical sum of individual wills. These particular wills do not rise above themselves. The general will, on the other hand, represents what is greater than the individual volition of those who compose the society of which it is the will. On occasions this higher will is more apparent than at other times. But it may, if there is social slackness, be difficult to distinguish from a mere aggregate of voices, from the will of a mob. What is interesting is that Rousseau, so often associated with doctrine of quite another kind, should finally recognize the bond of a general will as what really holds the community together. For him, as for those who have had a yet clearer grasp of the principle, in willing the general will we not only realize our true selves, but we may rise above our ordinary habit of mind. We may reach heights which we could not reach, or which at all events most of us could not reach, in isolation. There are few observers who have not been impressed with the wonderful unity and concentration of purpose which an entire nation may display—above all in a period of crisis. We see it in time of war, when a nation is fighting for its life or for a great cause. We have seen it in Japan and we have seen it still more recently among the people of the Balkan Peninsula. We have marvelled at the illustrations with which history abounds of the general will rising to heights of which but few of the individual citizens in whom it is embodied have ever before been conscious even in their dreams.

In his life of Themistocles Plutarch tells us how even in time

of peace the leader of the Athenian people could fashion them into an undivided community and inspire them to rise above themselves. It was before the Persians had actually threatened to invade Attica that Themistocles foresaw what would come. Greece could not raise armies comparable in numbers to those of the Persian Kings. But he told his people that the oracle had spoken thus: "When all things else are taken within the boundary of Cecrops and the covert of divine Cithaeron, Zeus grants to Athena that the wall of wood alone shall remain uncaptured, which shall help thee and thy children." The Athenian citizens were accustomed in each year to divide among themselves the revenue of their silver mines at Laurium. Themistocles had the daring, so Plutarch tells us, to come forward and boldly propose that the usual distribution should cease, and that they should let him spend the money for them in building a hundred ships. The citizens rose to his lead, the ships were built, and with them the Greeks were able at a later date to win against Xerxes the great sea-fight at Salamis, and to defeat an invasion by the hosts of Persia which, had it succeeded, might have changed the course of modern as well as ancient history.

By such leadership it is that a common ideal can be made to penetrate the soul of a people and to take complete possession of it. The ideal may be very high, or it may be of so ordinary a kind that we are not conscious of it without the effort of reflection. But when it is there it influences and guides daily conduct. Such idealism passes beyond the sphere of law, which provides only what is necessary for mutual protection and liberty of just action. It falls short, on the other hand, in quality of the dictates of what Kant called the categorical imperative that rules the private and individual conscience, but that alone; an imperative which therefore gives insufficient guidance for ordinary and daily social life. Yet the ideal of which I speak is not the less binding, and it is recognized as so binding that the conduct of all good men conforms to it.

Thus we find within the single state the evidence of a sanction which is less than legal but more than merely moral, and which is sufficient, in the vast majority of the events of daily life, to

secure observance of general standards of conduct without any question of resort to force. If this is so within a nation, can it be so as between nations? This brings me at once to my third point. Can nations form a group of community among themselves within which a habit of looking to common ideals may grow up sufficiently strong to develop a general will, and to make the binding power of these ideals a reliable sanction for their obligations to each other?

There is, I think, nothing in the real nature of nationality that precludes such a possibility. A famous student of history has bequeathed to us a definition of nationality which is worth attention. I refer to Ernest Renan, of whom George Meredith once said to me, while the great French critic was still living, that there was more in his head than in any other head in Europe. Renan tells us that: "Man is enslaved neither by his race, nor by his language, nor by his religion, nor by the course of rivers, nor by the direction of mountain ranges. A great aggregation of men, sane of mind and warm of heart, creates a moral consciousness which is called a nation." Another acute critic of life, Matthew Arnold, citing one still greater than himself, draws what is in effect a deduction from the same proposition. "Let us," he says, "conceive of the whole group of civilized nations as being, for intellectual and spiritual purposes, one great confederation, bound to a joint action and working towards a common result; a confederation whose members have a due knowledge both of the past, out of which they all proceed, and of each other. This was the ideal of Goethe, and it is an ideal which will impose itself upon the thoughts of our modern societies more and more."

But while I admire the faith of Renan and Arnold and Goethe in what they all three believed to be the future of humanity, there is a long road yet to be travelled before what they hoped for can be fully accomplished. Grotius concludes his great book on War and Peace with a noble prayer: "May God write," he said, "these lessons—He who alone can—on the hearts of all those who have the affairs of Christendom in their hands. And may He give to those persons a mind fitted to understand and to respect rights, human and divine, and lead them to recollect

always that the ministration committed to them is no less than this, that they are the governors of man, a creature most dear to God."

The prayer of Grotius has not yet been fulfilled, nor do recent events point to the fulfilment as being near. The world is probably a long way off from the abolition of armaments and the peril of war. For habits of mind which can be sufficiently strong with a single people can hardly be as strong between nations. There does not exist the same extent of common interest, of common purpose, and of common tradition. And yet the tendency, even as between nations that stand in no special relation to each other, to develop such a habit of mind is in our time becoming recognizable. There are signs that the best people in the best nations are ceasing to wish to live in a world of mere claims, and to proclaim on every occasion "Our country, right or wrong." There is growing up a disposition to believe that it is good, not only for all men but for all nations, to consider their neighbours' point of view as well as their own. There is apparent at least a tendency to seek for a higher standard of ideals in international relations. The barbarism which once looked to conquest and the waging of successful war as the main object of statesmanship seems as though it were passing away. There have been established rules of international law which already govern the conduct of war itself, and are generally observed as binding by all civilized people, with the result that the cruelties of war have been lessened. If practice falls short of theory, at least there is to-day little effective challenge of the broad principle that a nation has as regards its neighbours duties as wells as rights. It is this spirit that may develop as time goes on into a full international "*Sittlichkeit.*" But such development is certainly still easier and more hopeful in the case of nations with some special relation than it is within a mere aggregate of nations. At times a common interest among nations with special relations of the kind I am thinking of gives birth to a social habit of thought and action which in the end crystallizes into a treaty; a treaty which in its turn stimulates the process that gave it birth. We see this in the case of Germany and

Austria, and in that of France and Russia. Sometimes a friendly relationship grows up without crystallizing into a general treaty. Such has been the case between my own country and France. We have no convention excepting one confined to the settlement of old controversies over specific subjects; a convention which has nothing to do with war. None the less, since in that convention there was embodied the testimony of willingness to give as well as to take, and to be mutually understanding and helpful, there has arisen between France and England a new kind of feeling which forms a real tie. It is still young and it may stand still or diminish. But equally well it may advance and grow, and it is earnestly to be hoped that it will do so.

Recent events in Europe and the way in which the great Powers have worked together to preserve the peace of Europe, as if forming one community, point to the ethical possibilities of the group system as deserving of close study by both statesmen and students. The "*Sittlichkeit*" which can develop itself between the peoples of even a loosely-connected group seems to promise a sanction for international obligation which has not hitherto, so far as I know, attracted attention in connection with international law. But if the group system deserves attention in the cases referred to, how much more does it call for attention in another and far more striking case!

In the year which is approaching a century will have passed since the United States and the people of Canada and Great Britain terminated a great war by the Peace of Ghent. On both sides the combatants felt that war to be unnatural and one that should never have commenced. And now we have lived for nearly a hundred years, not only in peace, but also, I think, in process of coming to a deepening and yet more complete understanding of each other, and to the possession of common ends and ideals; ends and ideals which are natural to the Anglo-Saxon group and to that group alone. It seems to me that within our community there is growing an ethical feeling which has something approaching to the binding quality of which I have been speaking. Men may violate the obligations which that feeling suggests, but by a vast number of our respective citizens

it would not be accounted decent to do so. For the nations in such a group as ours to violate these obligations would be as if respectable neighbours should fall to blows because of a difference of opinion. We may disagree on specific points and we probably shall, but the differences should be settled in the spirit and in the manner in which citizens usually settle their differences. The new attitude which is growing up has changed many things and made much that once happened no longer likely to recur. I am concerned when I come across things that were written about America by British novelists only fifty years ago, and I doubt not that there are some things in the American literature of days gone past which many here would wish to have been without. But now that sort of writing is happily over, and we are realizing more and more the significance of our joint tradition and of the common interests which are ours. It is a splendid example to the world that Canada and the United States should have nearly four thousand miles of frontier practically unfortified. As an ex-war minister, who knows what a saving in unproductive expenditure this means, I fervently hope that it may never be otherwise.

But it is not merely in external results that the pursuit of a growing common ideal shews itself when such an ideal is really in men's minds. It transforms the spirit in which we regard each other, and it gives us faith in each other:—

> "Why, what but faith, do we abhor
> And idolize each other for—
> Faith in our evil or our good,
> Which is or is not understood
> Aright by those we love or those
> We hate, thence called our friends or foes."

I think that for the future of the relations between the United States on the one hand, and Canada and Great Britain on the other, those who are assembled in this great meeting have their own special responsibility. We who are the lawyers of the New World and of the old mother-country possess, as I have said to you, a tradition which is distinctive and peculiarly our own. We have been taught to look on our system of justice not as

something that waits to be embodied in abstract codes before it can be said to exist, but as what we ourselves are progressively and co-operatively evolving. And our power of influence is not confined to the securing of municipal justice. We play a large part in public affairs, and we influence our fellow-men in questions which go far beyond the province of the law, and which extend in the relations of society to that "*Sittlichkeit*" of which I have spoken. In this region we exert much control. If, then, there is to grow up among the nations of our group, and between that group and the rest of civilization, a yet further development of "*Sittlichkeit*," has not our profession special opportunities of influencing opinion which are coupled with a deep responsibility? To me, when I look to the history of our calling in the three countries, it seems that the answer to this question requires no argument and admits of no controversy. It is our very habit of regarding the law and the wider rules of conduct which lie beyond the law as something to be moulded afresh as society develops, and to be moulded best if we co-operate steadily, that gives us an influence perhaps greater than is strictly ours; an influence which may in affairs of the state be potently exercised for good or for evil.

This, then, is why, as a lawyer speaking to lawyers, I have a strong sense of responsibility in being present here to-day, and why I believe that many of you share my feeling. A movement is in progress which we, by the character of our calling as judges and as advocates, have special opportunities to further. The sphere of our action has its limits, but at least it is given to us as a body to be the counsellors of our fellow-citizens in public and in private life alike. I have before my mind the words which I have already quoted of the present President of the United States, when he spoke of "lawyers who can think in the terms of society itself." And I believe that if, in the language of yet another President, in the famous words of Lincoln, we as a body in our minds and hearts "highly resolve" to work for the general recognition by society of the binding character of international duties and rights as they arise within the Anglo-Saxon group, we shall not resolve in vain. A mere common

desire may seem an intangible instrument, and yet, intangible as it is, it may be enough to form the beginning of what in the end can make the whole difference. Ideas have hands and feet, and the ideas of a congress such as this may affect public opinion deeply. It is easy to fail to realize how much an occasion like the assemblage in Montreal of the American Bar Association, on the eve of a great international centenary, can be made to mean, and it is easy to let such an occasion pass with a too timid modesty. Should we let it pass now I think a real opportunity for doing good will just thereby have been missed by you and me. We need say nothing; we need pass no cut and dried resolution. It is the spirit and not the letter that is the one thing needful.

I do not apologize for having trespassed on the time and attention of this remarkable meeting for so long, or for urging what may seem to belong more to ethics than to law. We are bound to search after fresh principles if we desire to find firm foundations for a progressive practical life. It is the absence of a clear conception of principle that occasions some at least of the obscurities and perplexities that beset us in the giving of counsel and in following it. On the other hand, it is futile to delay action until reflection has cleared up all our difficulties. If we would learn to swim we must first enter the water. We must not refuse to begin our journey until the whole of the road we may have to travel lies mapped out before us. A great thinker declared that it is not philosophy which first gives us the truth that lies to hand around us, and that mankind has not to wait for philosophy in order to be conscious of this truth. Plain John Locke put the same thing in more homely words when he said that "God has not been so sparing to men to make them two-legged creatures, and left it to Aristotle to make them rational." Yet the reflective spirit does help, not by furnishing us with dogmas or final conclusions, or even with lines of action that are always definite, but by the insight which it gives; an insight that develops in us what Plato called the "synoptic mind"; the mind that enables us to see things steadily as well as to see them whole.

And now I have expressed what I had in my mind. Your

welcome to me has been indeed a generous one and I shall carry the memory of it back over the Atlantic. But the occasion has seemed to me significant of something beyond even its splendid hospitality. I have interpreted it, and I think not wrongly, as the symbol of a desire that extends beyond the limits of this assemblage. I mean the desire that we should steadily direct our thoughts to how we can draw into closest harmony the nations of a race in which all of us have a common pride. If that be now a far-spread inclination, then indeed may the people of three great countries say to Jerusalem "Thou shalt be built," and to the temple "Thy foundation shall be laid."

We notice that the successful career of usefulness of the American Bar Association has incited among some members of the profession in England a desire for something similar in Great Britain, and the visit of Lord Haldane to this country and the part he has taken in the recent conference in Montreal has emphasized the suggestion. It certainly does seem strange that nothing of the character of the American Bar Association has grown up in the motherland. The reason is probably that the Inns of Court there do some of the work which a general Association would take up; but this is only partial, and does not get the profession together as a whole. The Law Societies there and the Law Societies in this country have their own work to do, and have not attempted to do that which the Bar Association aim at doing. Whether they might have done so but have failed in so doing may be a question. Probably there is plenty of work for all.

THE TINKERS' ACT.

Among the statutes which we now look for as a matter of course in the annual volume of statutes is "the Statute Law Amendment Act." This Act is now well known in the profession as "the Tinkers' Act," and includes the amendments to a variety of statutes of the most diverse character. Considering the

multiplicity of amendments which are thus made from time to time in the statute law, one would imagine that a benevolent government would so arrange the Act in question that the task of keeping track of amendments would be made as easy as possible. One very simple method of arranging the Tinkers' Act would be to place the various sections in the chronological order of the statutes amended. For example, all amendments to the R.S.O. should come first and in the order of the statutes amended; and all amendments of statutes subsequent to the Revised Statutes should be arranged in the chronological order of such statutes. This arrangement would facilitate the noting of the amendments. Unfortunately the precedent was set of making no such arrangement, and the Tinkers' Act has always been without order or arrangement, and might also be called "the Higgledy Piggledy Act." The latest edition deals with the statutes in the following fashion. It begins, s. 1, with 7 Edw.; ss. 2, 3, 4, with 10 Edw.; s. 5, back to 7 Edw.; ss. 6 and 7, back to 10 Edw., ss. 8 and 9, 9 Edw.; s. 10, 8 Edw.; ss. 13-15, back to 10 Edw.; ss. 16-17, back to 9 Edw.; s. 18-19, back to 10 Edw.; s. 20, 1 Geo. V.; s. 10, back to 10 Edw.; ss. 22 and 23, 1 Geo. V.; s. 10, back to 10 Edw.; s. 25, back to 1 Geo. V.; s. 26, back to 10 Edw.; s. 27, back to 1 Geo. V.; s. 28, back to 10 Edw.; ss. 29-32, back to 1 Geo. V.; ss. 33-37, 2 Geo. V.; s. 38, back to 9 Edw.; s. 39, back to 2 Geo. V.; s. 40, back to 1 Geo. V.; ss. 41-43, back to 2 Geo. V.; then s. 44, back to 1 Geo. V.; s. 45, 63 Viet.; s. 49, R.S.O.; s. 50, back to 1 Geo. V. and 2 Geo. V. Could any arrangement of this statute be more ridiculous? It has absolutely no method either as to subject matter or dates. We note by s. 20, another sub-section 3 is added to s. 25 of the former Act, there being already one sub-section 3 to that section. This section also furnishes a good illustration of the legislative method. It amends the Act by adding s. 11a and adding a sub-section to s. 25. Any ordinary person would place the addition of s. 11a first, but the framers of the statute, with a perverse regard for the order of hings, places the addition to s. 25 first. It is much to be wished that a person with an orderly mind had the arrangement of the statutes.

THE EXECUTION OF DEEDS.

The Court of Appeal in the recent case of *Re Seymour, Fielding* v. *Seymour*, 108 L.T. Rep. 549, (1913) 1 Ch. 475, decided an important point on the law of deeds, holding that the acknowledgment by a lady of a deed purporting to have been executed under a power of attorney given by her amounted to a re-delivery of the instrument as her deed. It is proposed in this article to investigate the meaning of the formalities in vogue for executing deeds and to inquire into the law touching this subject so that the significance of the recent case may be the better appreciated.

When a person after signing a deed goes through the apparently empty formality of placing his finger on the seal (generally a small circular piece of red paper stuck on to the document) and repeats the words dictated to him, "I deliver this as my act and deed," he little appreciates the significance of the words he uses. Very often, indeed, in practice, this small formality is dispensed with, the signing both by the person executing and the witness to his signature being deemed the important part of the execution ceremony. Yet the cabalistic words mentioned above have their meaning—a fact which will be fully appreciated upon a perusal of the judgments of the Lords Justices in the recent case.

Questions concerning the valid execution of deeds necessarily involve further questions of the essential characteristics of a valid deed. A deed is a legal institution of ancient origin, and definitions of deeds abound in ancient legal text-books. Thus, various definitions are to be found in such books as Sheppard's Touchstone, Termes De La Ley, and the old Digests. But these definitions are anything but satisfactory. This is due, no doubt, largely to the fact that circumstances have altered. Thus, at one time few of the parties to a deed could write their names, and signing and even attestation was consequently little in vogue; sealing by the executing party being better fitted to the habits and capabilities of the public in general: see *per* Chief Justice Holt in *R.* v. *Goddard*, 3 Salk. 171; *Cherry* v. *Heming*, 4 Ex. 631, at p. 636. Again, the transmutation of property was anciently more frequently evidenced by the giving of physical possession than it is now. Paper has largely taken the place of parchment—

a fact due to improved methods of manufacture rendering the article more durable than was formerly the case.

The ancient definitions of deeds lay much weight upon the necessity of parchment as a ground for a valid deed. It is said that an eccentric person who had perused an ancient text-book and had there learnt that two of the essentials of a valid deed were, first, that there should be writing, and, secondly, that the writing should be on parchment, conceived the idea of having the terms of the document inscribed on the skin of his back—an operation which was subsequently successfully carried out. Whether he submitted to the painful process of having hot sealing wax placed upon him is not known. But his legal advisers were able to persuade him to abandon his scheme by impressing on him the necessity for delivery to validate the document (a matter which he had overlooked) and to adopt the less sensational course of having the document drawn up in the usual way. Thus an interesting point in the law of evidence remains undecided—*viz.*, whether, in the circumstances, the court would have required production of the original or would have allowed secondary evidence of its contents to have been given in its place.

Lord Coke enumerates no less than ten essentials to a valid deed: Co. Litt. 35*b*. But some of his essentials concern the subject-matter of the transaction rather than the requirements of a valid deed or of its due and proper execution. He mentions, however, the necessity for writing on parchment or paper, and the necessities of sealing and delivery, and in another passage (Co. Litt. 171*b*) he says that a deed "signifieth in the common law an instrument consisting of three things, *viz.*, writing, sealing, and delivery, comprehending a bargaine or contract between party and party, man or woman."

A striking feature of the old definitions of deeds is the weight placed on their feature as evidence of a contract. Little or nothing is said of their aspects as grants of interests in property. "A deed," said Chief Justice Bovill, referring to these definitions in *Reg.* v. *Morton*, 28 L.T. Rep. 452, L. Rep. 2 C.C.R. 22, at p. 27, "is described as being something in the nature of a contract. But the term is clearly not confined to contracts. A charter of feoffment, for instance, is a deed; so is a gift or grant, a power

of attorney, a release, or a disclaimer. I would go further and say that any instrument delivered as a deed, and which either itself passes an interest, or property, or is in affirmance or confirmation of something whereby an interest or property passes, is a deed."

A document is not a deed merely because it is sealed. Many kinds of documents are made under seal and yet are not deeds. As instances of such, probates of wills, certificates of magistrates, and awards may be mentioned: see *Reg.* v. *Morton, sup.; Chanter* v. *Johnson*, 14 M. & W. 408, at p. 411, *per* Baron Parke. Yet sealing is one of the essential attributes of a deed. It is more essential to a valid deed from one point of view than signature. Signature by the executing party is in theory of law unnecessary: *R.* v. *Goddard, sup.; Cromwell* v. *Grunsden*, 2 Salk. 462.

Here we may notice a controversy which has from time to time been raised whether a deed duly sealed and delivered, but not signed, is valid in cases where the Statute of Frauds requires a transaction to be evidenced by a document signed by the person to be charged. The view expressed by Barons Parke, Alderson, and Rolfe in *Cherry* v. *Heming*, 4 Ex. 631, at p. 636, is no doubt the correct one—namely, that the statute only struck at parol agreements and transactions, and not at agreements and transactions evidenced by the most solemn form of document known to the law. Consequently where a deed has been executed by sealing and delivery the Statute of Frauds does not apply.

Attestation by witnesses stands in much the same position as regards the validity of a deed, *quâ* deed, as does signature by the executing party. In other words, attestation is in theory unnecessary: see *Garrett* v. *Lister*, 1661, 1 Lev. 25. But both are desirable as working for efficacy. Just as the efficacy of a legal document is secured by the fullness and clearness of its terms, so also is the efficacy of a deed, as an item of evidence—as a proving medium, to use an unconventional term—secured by the readiness with which its authenticity can be established. In practice, signing by the executing party and attestation by a witness or witnesses is almost universally adopted as a custom

of expediency. There are, of course, numerous occasions where such formalities are made necessary by statute; and other occasions will occur to the reader where signing and attestation are necessary, such, *e.g.*, where the document exercises a power, formalities for the exercise of which have been prescribed by the donor of the power.

There can be no doubt but that delivery is by far the most important part of the formalities observed in executing a deed. Yet it is the one part upon which least stress is usually made in practice. In the words of Mr. Justice Keating in *Tupper* v. *Foulkes*, 9 C.B.N.S. 797, at p. 803, the operative part of the ceremony is the delivery. "Where a contract," said Baron Martin in *Xenos* v. *Wickham*, 14 C.B.N.S. 435, at p. 473, "is to be by deed, there must be delivery to perfect it. This is a positive absolute rule of the common law, which nothing but an Act of Parliament can alter, and which, in my judgment, ought not to be frittered away." The reason why delivery holds in law such an important place in the formalities attending the execution of a deed is no doubt due to the fact that it is the overt act which most unequivocally evidences the intention of the party delivering it to adopt the document as of binding force. The whole significance of the act of executing a deed is that the person executing it deliberately adopts it as binding upon him. By the outward act of delivery all question of intention to the contrary is placed beyond doubt. Intention, of course, is the foundation of the whole matter.

There are some interesting authorities upon the question what amounts to the delivery of a deed. "No particular technical form of words or acts is necessary to render an instrument the deed of the party sealing it," said Mr. Justice Blackburn in *Xenos* v. *Wickham*, 16 L.T. Rep. 800, L. Rep. 2 H.L. 296, at p. 312 "The mere affixing the seal does not render it a deed; but as soon as there are acts or words sufficient to shew that it is intended by the party to execute it as his deed presently binding on him, it is sufficient. The most apt and expressive mode of indicating such an intention is to hand it over saying, 'I deliver this as my deed' but any other words or acts that sufficiently shew that it was intended to be finally executed will do as well."

In *Stanton* v. *Chamberlain*, Owen 95, an action of debt was brought on a bond, and the defendant raised the plea *non est factum*—in other words, that he had not executed it. The jury found that the defendant sealed the bond and cast it on the table, and the plaintiff came and took it up and carried it away without saying anything. The question raised was whether this amounted to a delivery of the bond. The judges resolved that if the jury had found that the defendant had sealed the bond and cast it on the table towards the plaintiff, to the intent that the plaintiff should take it as his deed, and the plaintiff had taken the bond and went away, that would have been a good delivery. And the same would have been the case had the plaintiff, after sealing and casting it on the table, taken it up and gone away with it at the command or with the consent of the defendant. But inasmuch as the jury found that the defendant had only sealed it and cast it on the table, and the plaintiff took it and went away with it, the court held that there had not been a sufficient delivery because it might have been that the defendant sealed the document intending to reserve it to himself until other things had been agreed. The report continues: "But it was said that it might be accounted to be defendant's deed because it is found that he sealed it, and cast it on the table, and the plaintiff took it, etc., and it is not found that the defendant said anything, and therefore, because he did not say anything, it will amount to his consent *nam qui tacet consentire videtur*." This presumably was counsel's argument. The report concludes: "But to this it was answered, that it is not found that the defendant was present when the plaintiff took it, and if the defendant had sealed, and went away, and then the plaintiff came and took it away, then clearly it is not the deed of the defendant."

The last-mentioned case admirably illustrates the whole principle underlying the law's necessity for delivery. Notwithstanding the fact that it was decided so long ago as the year 1587, it may be said to be the leading case on the law of delivery of deeds. There are other cases much to the same effect. They go to shew that some act of consent on the part of the person setting up a plea of *non est factum* suffices to make a delivery

valid. In *R.* v. *Longnor* (1883), 4 B. & Ad. 647, an indenture had been prepared for binding a boy apprentice. The apprentice and his father, both being unable to write, procured a third person to write their names opposite two of the seals. The document was not read over to them, but the boy immediately afterwards took it to the master and left it with him, afterwards stating that when he did so he considered himself bound. The boy entered the master's service under the indenture. The court held that the indenture was sufficiently executed and delivered.

In passing, it may be observed that it is well established that the mere fact that a deed is retained by the executing party does not of itself prevent the court holding the execution of the deed to have been perfected by the delivery by that party: see *Xenos* v. *Wickham*, 16 L.T. Rep. 800, L. Rep. 2 H.L. 296.

Sometimes delivery is merely confirmatory. That is to say the act of delivery, or the conduct which is taken to amount to delivery, is not intimately associated with the other parts of the ceremony of execution but follows perhaps at some distance of time. This is sometimes called redelivery. It occurs where there has been some defect in the original execution so that a party is not bound by the provisions of the document. By his subsequent act of redelivery he adopts the document as his deed and thereby becomes bound by it. Redelivery may therefore be defined as an acknowledgment made subsequently to the purported execution of a document purporting to be the deed of the person making such acknowledgment that the document is a deed of that person, and binds him according to its tenor: see *Tupper* v. *Foulkes*, 9 C.B.N.S. 797; *Hudson* v. *Revett*, 5 Bing. 368. Like the question of delivery, the question of redelivery is an overt act from which intention is presumed. But in both cases the question of intention is a question of fact.

In the recent case, mentioned in the opening lines of this article, the material facts were as follows: A lady desired to make a gift of certain chattels to her daughter who resided with her, and she gave instructions that a deed should be prepared. This was done, and the document was executed for her by her attorney. Subsequently, in 1898, the document was brought by her legal

adviser and read over to her, and it was arranged that she should send him the original inventory of the chattels and that he should keep it with the document. The inventory was accordingly afterwards sent by her to him inside a wrapper on which she had written some words to the effect that the chattels were then the property of the daughter. The power of attorney was not in the possession of her legal adviser, nor had it been prepared by him. Subsequently the house where the mother and daughter resided was sold, and most of the chattels were taken to another residence and some of them to other houses belonging to the mother. Some of the chattels were from time to time disposed of by the mother. The daughter was subsequently placed under medical care, and ceased to reside with her mother, who in certain proceedings swore an affidavit as to the kindred and property of the daughter, but did not mention the chattels comprised in the deed of gift. On the death of the mother it transpired that the power of attorney was not sufficiently wide to authorise the execution of the deed. Her trustees applied to the court to have the ownership of the chattels determined. It was claimed on behalf of the daughter that there had been a redelivery of the document by the mother so as to make it a valid deed.

The Court of Appeal, affirming the decision of Mr. Justice Joyce, held that the mother had redelivered the document so as to make it a valid deed passing the property in the chattels to the daughter. This notional redelivery was held to have taken place at the interview in 1898, when, as the evidence shewed, the mother was put in full possession of the provisions of the deed. In the words of Lord Justice Buckley, 108 L.T. Rep. 549, (1913) 1 Ch., at p. 489, at that interview she had in substance said: "I acknowledge that as my deed; take it and keep it as such."

The case is a clear modern authority upon the question of redelivery of deeds and is peculiar in this, that heretofore the authorities on this question have dealt with deeds made for valuable consideration, whereas in this case the redelivered deed was a voluntary deed of gift.—*Law Times.*

REVIEW OF CURRENT ENGLISH CASES.

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SALE OF GOODS—CONTRACT FOR GOODS TO BE MADE—BREACH OF CONTRACT BY PURCHASER—MEASURE OF DAMAGES.

In re Vic Mill (1913), 1 Ch. 465. The Court of Appeal (Cozens-Hardy, M.R., and Buckley, and Hamilton, L.JJ.), have affirmed the judgment of Neville, J. (1913), 1 Ch. 183 (noted ante, p. 185).

SALE OF GOODS—WARRANTY—BREACH OF WARRANTY—SALE OF DISEASED MEAT TO BUTCHER FOR RE-SALE—LOSS OF TRADE—MEASURE OF DAMAGES.

Cointal v. *Myhave* (1913), 2 K.B. 220. This was an action by a retail butcher to recover damages for breach of warranty. The defendants sold to the plaintiff a diseased pig, which was seized as being unfit for human food by an inspector and ordered by a magistrate to be destroyed, and the plaintiff was fined. At the trial, the jury awarded damages in respect of the fine and costs, and also for loss of trade. The question was raised whether these damages were not too remote. Coleridge, J., who tried the action held that they were not.

INFANT—CONTRACT—GOODS SOLD AND DELIVERED — NECESSARIES —FRAUDULENT MISREPRESENTATION AS TO AGE—EQUITABLE RELIEF.

Stocks v. *Wilson* (1913), 2 K.B. 235. In this case the defendant being about twenty years of age represented himself as of full age and agreed to buy of the plaintiff a quantity of goods, which included a lot of curios and works of art. The goods were transferred to him by bill of sale which contained a promise by the defendant to pay the purchase money at a future date, and a license to the plaintiff to resume possession in default of payment. After the purchase the defendant sold some of the goods for £30 and with the knowledge and assent of the plaintiff granted a chattel mortgage of the residue as security for a loan of £100. He failed to pay the purchase money

on the day named. After he came of age judgment was recovered against him by default and a receiving order in bankruptcy was made against him. On an appeal, the receiving order was set aside without prejudice to any action the plaintiff might take for the purpose of enforcing any equitable liability the defendant might have incurred for obtaining the goods by false pretences. The present action was therefore instituted, in which the plaintiff claimed that the defendant should be ordered to pay her the reasonable value of the goods. Lush, J., who tried the action held that, in the circumstances, the defendant was liable to pay the plaintiff the £30 and £100 he had actually received for the goods and gave judgment for those sums, less a set-off to which the defendant was found entitled.

The following passage from his judgment appears to contain a convenient summary of the law:—

That an infant who appears to be of full age, and who has made an express representation that he is of full age fraudulently, and to deceive some other person, incurs an equitable liability under some circumstances is clear enough. He cannot be sued for damages, although he is, generally speaking, liable for a tort; the reason being that a temptation would be offered both to the infant himself, and to other persons to enter into contracts if the other party were able, by obtaining a representation of majority by the infant to make the contract practically effective. For the more complete protection of the infant, the law prevents the other contracting party, not only from suing on the contract, but also from suing for damages, if the fraud is connected with and forms the inducement to the contract. Nor is the infant estopped from proving the true facts; which again, if such an estoppel were permitted, would deprive the infant of the protection necessary for his security. What the Court of equity has done in cases of this kind is to prevent the infant from retaining the benefit of what he has obtained by reason of his fraud. It has done no more than this, and this is a very different thing from making him liable to pay damages or compensation for the loss of the other party's bargain. If the infant has obtained property by fraud he can be compelled to restore it; if he has obtained money he can be compelled to refund it. If he has not obtained either, but has only purported to bind himself by an obligation to transfer property or pay money, neither in a court of law nor in a court of equity can he be compelled to make good his promise or to make satisfaction for the breach."

PRACTICE— DISOBEDIENCE OF ORDER OF COURT—ABSENCE OF PERSONAL SERVICE—PARTY IN CONTEMPT LEAVING JURISDICTION—WRIT OF SEQUESTRATION.

The King v. *Wigand* (1913) 2 K.B. 419. In this case habeas corpus proceedings had been instituted in regard to the custody of a child, owing to the disputes between her father and mother, and an order was made by Bailhache, J., ordering the father to deliver the child to her mother, with liberty to him to have access to the child at certain specified times, both parents undertaking not to remove the child out of the jurisdiction. The father having taken the child out for a walk omitted to return her to her mother, whereupon the Divisional Court made an order nisi for his attachment, for contempt of the order of Bailhache, J. It then appeared that the father had gone to Germany, and taken the child with him, and consequently could not be personally served with the order nisi. On behalf of the wife, an application was made to make the order nisi for an attachment absolute, and also for a writ of sequestration; the husband was unrepresented on the application. The Divisional Court (Ridley, and Avory, JJ.) made the order asked, dispensing with personal service of notice of the application.

LARCENY—TAXICAB DRIVER—FAILURE TO ACCOUNT TO CAB OWNER FOR HIS SHARE OF TAKINGS—RECEIPT FOR, OR ON ACCOUNT OF, OWNER—LARCENY ACT, 1901 (1 EDW. 7, C. 10), S. 1 (1) *b*—(CR. CODE, S. 347).

The King v. *Messer* (1913) 2 K.B. 421. This was a prosecution for larceny, in the following circumstances. The defendant was the driver of a taxicab, which the owner permitted him to use for the purpose of plying with it for hire, upon the terms that he was to hand over to the owner, a certain percentage of the day's takings, retaining the balance for himself. The defendant did not duly account to the owner for his share of the takings. The defendant was convicted of larceny of the amount of the owner's share of takings, which he had not accounted for; and appealed. The Court of Criminal Appeal (Darling, Hamilton, and Bankes, JJ.), affirmed the conviction, holding that the offence charged was larceny within the meaning of the Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1 (1) *b*—SEE CR. CODE, S. 347.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

BOARD OF RAILWAY COMMISSIONERS.

RE APPLICATION TO CLOSE HIGHWAYS.

Drayton, Ch. Com.] [12 D.L.R. 389.

Highways—Closing—Power of Railway Commission.

The jurisdiction of the Board of Railway Commissioners as to the closing of a highway is limited to the extinguishment of the public right to cross the railway; and this power is ordinarily exercised by first granting permission to divert the highway and afterwards making the order to close the road allowance within the limits of the company's right-of-way after the construction of the new grade crossing on the diverted highway.

Drayton, Ch. Com.] [12 D.L.R. 475.

GRAND TRUNK RY. CO. *v.* CANADIAN PACIFIC RY. CO.

Railways—Crossing by other railway—Overhead bridge—Contract to maintain—Change in traffic conditions.

On it becoming necessary to repair or replace an overhead bridge carrying the tracks of a railway company over the road of another railway company, the latter is bound to provide a structure sufficient for the conditions of modern traffic, although the bridge displaced was ample for the needs at the time it was built, where, by contract, it was required at its own expense to maintain such bridge in a good and safe state, so as not to endanger the property fixed or moveable, of the other company, and to save it from damage due to the construction or non-maintenance of the bridge.

Province of Ontario.

SUPREME COURT—APPELLATE DIVISION.

Meredith, C.J., Magee and Hodgins, JJ.A., Sutherland, J.] [12 D.L.R. 512.

COCKBURN *v.* KETTLE.

Malicious prosecution—Termination of proceedings—Rebutting primâ facie case—Compromise.

It may be shewn in defence of an action for malicious prosecution that the termination of a criminal proceeding in the

plaintiff's favour was in fact the result of compromise or agreement, notwithstanding the records shew that the dismissal was based on the prosecutor's statement that he did not have any evidence to offer.

Baxter v. *Gordon Ironsides & Fares Co.*, 13 O.L.R. 598, applied.

A favourable termination of a criminal prosecution for obtaining chattels with intent to defraud, so as to permit the recovery of damages for malicious prosecution, is not shewn where the prosecution was dismissed only upon terms of the prisoner giving security to pay for the property.

In an action for abuse of criminal process by causing an arrest in order to coerce payment of a debt, it is necessary to shew that the proceeding terminated in the plaintiff's favour.

McClermont, for plaintiff. *Washington*, K.C., for defendant.

Clute, Riddell, Sutherland and Leitch, JJ.] [12 D.L.R. 549.

DIXON *v.* DUNMORE.

1. *Parties—Cases as to real estate—Specific performance—Person agreeing with vendor to convey to latter's vendee.*

A landowner who contracted to sell land to a purchaser, who, in turn, agreed to sell it to the plaintiff, is a proper party to an action for specific performance of the latter agreement, where, with full knowledge of such contract, he had agreed with his vendee to convey the land to the plaintiff in furtherance of the contract of re-sale.

2. *Contracts—Mutuality—Contract for sale of land.*

Where the defendant, who had contracted to sell land to a purchaser, agreed with him to convey it directly to the plaintiff, to whom the defendant's vendee had re-sold it, upon the remainder of the purchase money due being paid him, there is sufficient mutuality between the plaintiff and the defendant to permit the specific performance of the agreement to convey to the plaintiff.

J. J. Gray, for plaintiff. *Bradford*, K.C., for defendant.

Mulock, C.J.Ex., Riddell, Sutherland and Leitch, JJ.] [12 D.L.R. 390.

TOWN OF WATERLOO *v.* CITY OF BERLIN.

Courts—Jurisdiction—Matters under jurisdiction of Railway and Municipal Board.

The courts will not entertain a suit for an accounting of profits from the operation of a railway by two municipalities under a formal agreement executed not voluntarily but in conformity to an order of the Ontario Railway and Municipal Board, since the matter was one exclusively within the jurisdiction of the Board.

Town of Waterloo v. City of Berlin, 7 D.L.R. 241, affirmed.

M. K. Cowan, K.C., for plaintiffs. *Du Vernet*, K.C., and *Sims*, for defendants.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] [12 D.L.R. 402.

GREENLAW *v.* CANADIAN NORTHERN RY. CO.

Railways—Liability for damages—Killing animals—Defective fence—Animals at large under by-law.

Cattle turned out to graze on the highways as authorized by a municipal by-law are not "at large through the negligence or wilful act or omission of the owner" so as to relieve a railway company, under sec. 294(4) of the Railway Act, R.S.C. 1906, ch. 37, as amended by 10 Edw. VII. ch. 50, sec. 8, from liability for running down animals that came upon its right-of-way at a place other than a highway crossing, by reason of defects in the fencing which the railway company was under a statutory obligation to maintain.

G. H. Clark, K.C., for defendants. *C. L. St. John*, for plaintiff.

Full Court.] [12 D.L.R. 556.

Box v. Bird's Hill Sand Co.

1. *Assignment for creditors—Unscheduled security—Proof of claim in assignment proceedings—Loss of security.*

A company that proves a claim against an estate assigned for the benefit of creditors does not lose the benefit of security it holds because it was not valued in the assignment proceedings.

Box v. *Bird's Hill Sand Co.*, 8 D.L.R. 768, affirmed.

2. *Estoppel—By silence—Failure of company to claim lien on shares—Effect of purchase acquiring notice before passing of legal title.*

A company is not estopped from claiming a lien on shares of its stock for an indebtedness from the holder to the company, as against a purchaser from the latter, on the ground that the representative of the company consented to the sale without claiming its lien, of which the purchaser did not have notice at the time of sale, but of which he was informed before receiving an assignment of the stock certificate, and paying over the purchase money.

Box v. *Bird's Hill Sand Co.*, 8 D.L.R. 768, affirmed.

3. *Corporations and companies—By-law creating lien on shares for debt due company—Power to make.*

Power to adopt a by-law creating a lien in favour of a company upon the shares of a stockholder in respect to his indebtedness to it is conferred by the Joint Stock Companies Act, R.S.M. 1902, ch. 30.

Montgomery v. *Mitchell*, 18 Man. L.R. 37, followed.

4. *Corporations and companies—Lien on shares for holder's debt to company—Purchaser without notice—Duty to inquire.*

A by-law of a company creating a lien in its favour on shares of a stockholder in respect to his indebtedness to it, is not binding on a purchaser of shares for value without notice of such by-law; nor need the purchaser make inquiry as to its existence. (Dictum *per* Cameron, J.)

5. *Corporations and companies—Lien on shares for holder's debt to company—Purchaser with notice.*

The purchaser of company shares takes them subject to a lien of the company for an indebtedness due it from the seller, where the purchaser had notice of the lien before he acquired the legal title to the shares. (Dictum *per* Cameron, J.)

Symington, for plaintiff. *Dennistoun*, K.C., for defendant.

Province of Saskatchewan.

SUPREME COURT.

Full Court.] BOOKER *v.* O'BRIEN. [12 D.L.R. 509.

Real estate broker—Commissions under option contract—Default of principal.

Where as part of an agency agreement with a real estate agent, an option contract was given to him stipulating for the payment out of the purchase money of a sum as "commission" in the event of the sale of the property before the expiry of the option, the optionee is entitled to such commission where the owner refused to sell to a person produced by the optionee within the stipulated time, who was able and willing to buy on the terms of the option.

Booker v. *O'Brien*, 9 D.L.R. 801, affirmed; *Kelly* v. *Enderton*, 9 D.L.R. 472, referred to. As to real estate agents' commissions generally, see Annotation, 4 D.L.R. 531.

Blair, for appellant. *Willoughby*, for respondent.

Book Reviews.

Irish Law Reports. Annotated Reprint. Volume 1. Containing (1894) 1 and 2 I.R.; (1895) 1 I.R. Edinburgh and London: William Green & Sons. Agents for America: The Cromarty Law Book Co., Philadelphia; The Canada Law Book Co., Ltd., Toronto.

Enterprising law publishers certainly add to the expense of a lawyer's equipment, but their productions and reproductions, or at least many of them, are a necessity in these strenuous days.

One of the most important of recent reproductions is a complete verbatim re-issue of all the decisions of the Irish courts from 1766 to 1912. These will appear in one uniform set of about 55 vols. to be issued at the rate of 12 volumes a year, and published at the very low rate of $7.50 per volume, noted with references to later decisions and quotable as the originals.

The profession does not know much nor appreciate the value of these reports, for the simple reason that they are practically unattainable in this country. But as has been truly said "for

rare insight into legal principles for cogent reasoning the Irish Bench has, during the last century been unsurpassed, and yet, because of the scarcity of the reports; and the heavy costs, this rich field of the law has been barred to the profession." The undertaking is a large one, but it will commend itself to the legal profession in all parts of the Anglo-Saxon world.

The number of volumes in the existing reports is 286. These have been reduced by larger paging, slightly smaller type and thin paper, to 55, so that this reproduction will be not only cheaper than the originals, but will occupy much less space and be in every way handier and more valuable by reason of the annotations.

The original paging is retained in the reprint, so that there is no difficulty as to references to the existing volumes.

The publishers have thought well (and properly so) to begin with the later volumes, as being the most useful; intending to work back, and so to complete the issue in the course of four or five years. The first of the six series into which these reports are divided will, therefore, be the Irish Law Reports, Current Series, 1894-1912, and the 38 original volumes will appear in 12 of the reprint.

This is a great undertaking, but will, we doubt not, receive a generous support from the profession.

Cases and Opinions on International Law and Various Points of English Law connected therewith. Collected and digested from English and foreign reports, official documents, and other sources, with notes containing the views of the text-writers on the topics referred to, supplementary cases, treaties, and statutes. By PITT COBBETT, M.A., D.C.L. (Oxon.), of the University of Sydney, New South Wales. London: Stevens & Haynes, 13 Bell Yard, 1913.

A very interesting volume, even to the general reader, and more so, of course, to lawyers interested in International Law.

The book before us is composed of Parts II. and III., War and Neutrality. The previous one dealt with Peace, and the two volumes should be read together. The plan of the book is to give the leading cases on the subjects dealt with, consisting of headnotes, a summary of the facts, and the judgment, with explanatory notes. This is followed by exhaustive notes consisting of the opinions of learned writers, and discussion by the editor.

The cases are not given in the order of date, but by a grouping of the subjects in order. For example, the first article in part II. is the Commencement of War. This is followed by the Effect of War, The Enemy as to Nations, Persons and Goods, Capture and its Incidents, Prize Courts, Termination of War, Indemnity, etc. Part III. commences with the Relation of Neutrality, followed by cases on the Commencement of Neutrality, Neutral Territory, Treatment of Neutrals, Blockade, Contraband of War, Visit and Search, etc.

According to this arrangement we find naturally enough that, under the Commencement of War, the first matter discussed is the controversy between Russia and Japan in 1904, followed by the old case of the "Eliza Ann" in 1813, when that vessel, flying an American flag, was seized by a British ship. Amongst the last cases appears our old friend the Trent affair of 1862, which very nearly brought on a war between Great Britain and the United States. This will be well remembered by those of the profession who in that day put themselves in the hands of drill sargeants, in the expectation of something which happily never happened.

As the best authority on the subject of war says that "wars and rumours of wars" will continue to the end, Peace Conventions to the contrary notwithstanding, the book before us is likely to be of interest for some time to come.

The commendable efforts of the would-be peace makers will find in the appendix a relation to the proceedings of the Hague Convention and subjects there discussed.

Trade Union Law. By HERMAN COHEN, of the Inner Temple, Barrister-at-law. Third edition. London: Stevens & Haynes, Bell Yard; 1913.

The reason for this edition is the recent legislation in England on this subject. The contents of this edition are much the same as the previous one, with some necessary changes and corrections.