Canada Law Journal.

VOL. LVII. TORONTO, MARCH, 1921. No. 3.

MARRIAGE LAWS—JURISDICTION OF CIVIL COURTS.

The recent decision of the Judicial Committee of the Privy Council in the Tremblay marriage case ought to go a long way to clear the air in Quebec as to the jurisdiction of the Civil Courts to make decrees of nullity of marriage. The unprofessional classes are apt to confound nullity of marriage and divorce, and to regard them as being the same thing under different names; but to the lawyer they connote different things. A sentence of nullity is a sentence that no lawful marriage ever took place, and is a judicial avoidance *ab initio* of what is held to have been a mere pretended marriage, whereas a divorce is a dissolution of what is conceded to have been a lawful marriage.

It is necessary to bear this distinction in mind when we come to consider the Provincial law of Quebec on the subject of marriage.

According to the Code, a lawful marriage is indissoluble in Quebec during the joint lifetime of the parties. "Marriage can only be dissolved by the natural death of one of the parties; while both live it is undissoluble:" Code art. 185. This is tantamount to saying that in Quebec no Court whatever is competent to decree a divorce. But in arts. 115-117, the Code declares certain causes for nullity, *e.g.*, a male under 14 and a female under 12 are declared incapable of contracting. Want of consent is fatal to the validity of marriage—and impotency existing at the time of marriage is also a ground of nullity; but this latter cause of nullity is not available after the lapse of three years from the marriage. Marriage within prohibited degrees is also a ground of nullity. We are, we think, correct in saying that the Code does not warrant the nullification of any marriage on the ground that some particular religious ceremony has not been observed in the solemnization of the marriage. It expressly provides that all priests, rectors, ministers and other officers

authorized by law to keep registers of acts of civil status are competent to solemnize marriage. But none of these officers can be compelled to solemnize marriage to which any impediment exists according to the doctrine and belief of his religion and the discipline of the church to which he belongs: See Code art. 129. The Code does not prescribe any form of solemnization to be observed in the case of the marriage of Roman Catholics, nor of any other particular class of the community. The prohibited degrees of marriage referred to in the Code are not particularly specified. In the direct line marriage is prohibited between ascendants and descendants whether legitimate or natural; marriage of brother and sister whether legitimate or natural is also prohibited; and also between uncle and niece, and nephew and aunt: Code arts. 124-125. But the Code provides: "The other impediments recognized according to the different religious persuasions, as resulting from relationship or affinity or from any other causes, remain subject to the rules hitherto followed in the different churches and religious communities. The right likewise of granting dispensations from such impediments appertains as heretofore to those who have hitherto enjoyed it: Art 127. This provision might at first blush be thought to give the sanction of temporal law to all the impediments which any religious body in Quebec had prior to the Code seen fit to prescribe, but the words "remains subject to the rules" seem merely to indicate that they are left as they existed at the time of the Code, but that is by no means equivalent to saying that the Code thereby gives them the force of temporal law. Prior to the Code all the matrimonial prohibitions prescribed by any existing religious body in Canada had by the cession of Canada to Great Britain been practically superseded as a matter of temporal law, by the Statute of 32 Hen. 8, ch. 38, which it appears, by reason of the cession, had become applicable to Canada as part of the Dominions of the Crown of Great Britian.

But if Art. 127 was intended to be an adoption as a part of the temporal law, of all prohibitions theretofore prescribed by any religious body in Quebec, then in effect, this would adopt the prohibitions which the Anglican Church conceives itself bound by,

viz., the prohibitions laid down in the Book of Leviticus, and no others; and also the prohibitions which the Roman Catholic Church conceives itself bound by, and which include not only the Levitical decrees, but also numerous prohibitions the observance of which it reserves to itself the right to dispense with; and also all the prohibitions which other religious organizations conceived themselves bound by. But if all these various prohibitions were intended to have legal force, it would be somewhat difficult to give legal effect to them in the case of marriages of Protestants with Roman Catholics, or even between Protestants of different denominations, for one party to the marriage might be bound by one kind of prohibition, from which the other might be wholly free.

We are therefore inclined to think that the effect of Art. 127 is not to give the sanction of temporal law to the various prohibitions prescribed by the various religious organizations theretofore existing in Quebec, but merely to indicate the kind of impediments which would justify any priest or minister in refusing to solemnize a marriage under Art. 129 above quoted. Otherwise there would be no uniform law in the Province of Quebec touching the impediments to marriage on the score of relationship, or otherwise.

It was precisely on a question of this kind that the Tremblay marriage case turned. According to the doctrine and discipline of the Roman Catholic Church, marriage between fourth cousins is prohibited, but the prohibition, on payment of the proper fees to the ecclesiastical authorities, may be dispensed with. The parties to the Tremblay marriage were fourth cousins, their marriage was solemnized by a Roman Catholic priest, but the parties neglected to go through the required formality of first getting a dispensation, and of course the ecclesiastical authorities lost the proper and accustomed fees—and when after some years the husband had got tired of the matrimonial state, and by the help no doubt of some ecclesiastic found the prohibited relationship existed, he applied to the ecclesiastical authorities of the Roman Catholic Church in Quebec to annul his marriage, which had thus been contracted in violation of the ecclesiastical rules; and the Bishop to whom the application was made apparently

found no difficulty in declaring that the marriage was null and void *ab initio:* whereupon an application appears to have been made to a civil tribunal and the Judge thereof appears to have considered that he was bound by the Judgment of the bishop as to the invalidity of the marriage, and thereupon gave judgment annulling the marriage civilly, and his judgment was affirmed by the Quebec Court of Review; and it was from this latter decision that resort was had to the Judicial Committee of the Privy Council who have allowed the appeal and set aside the judgment appealed from.

We have not at present before us the judgment of their Lordships and are therefore unable to state the precise reasons on which their Lordships have based their decisions. But whether their Lordships have proceeded on the ground that Art. 127, of the Code above referred to, does not in fact give legal sanction to the various kinds of prohibitions to which it refers, we venture to think it is fairly open to that objection, and if it does, then that it is *ultra vires* as being an attempt on the part of a Provincial Legislature to override the express provisions of a statute of the Imperial Parliament, whereby the question of prohibited degrees within the British Dominions is regulated. The statute we refer to is 32 Hen. 8, c. 38, which virtually repealed all prohibitions except those within the Levitical degrees, and declared that those only were to be recognized in all Courts not only in England but in all other lands and dominions of the Crown.

In this connection it may be mentioned that when in 1901 a Committee of Judges was appointed to revise and consolidate the Imperial statutes which by Provincial legislation had been made part of the law of the Province of Ontario, this Act of Henry 8th came necessarily under the consideration of the Committee, and it had to consider whether or not it was a part of the law of the Province, and the Committee evidently came to the conclusion that it was, for they recommended the prohibitions referred to in that Act to be indorsed thereafter on the printed forms of affidavit required to be made by an applicant for a marriage licence in Ontario, and that recommendation was adopted by the Legislature: see now R.S.O. ch. 148, sec. 20, Form 5. Their

Lordships, however, evidently regarded the Act not as one incorporated by Provincial law, but having force by virtue of its very terms extending to all the Dominions of the Crown.

It is probably for this reason that the Act is not included in the 3rd volume of the Revised Statutes (1879) prepared under the direction of the Committee, and also because the Act deals with marriage and was therefore a matter within the exclusive control of the Dominion Parliament and therefore not an Act within Provincial jurisdiction which it was competent for the Province to revise or consolidate.

The Committee it may be mentioned was composed of the late Chancellor Boyd, and Chief Justice Falconbridge, and the late Ex-Chief Justice Taylor and the present Chief Justice of Ontario, and the view of these learned Judges as to the applicability of 32 Hen. 8th, ch. 38, to Ontario seems to apply with equal force to its applicability to all other Provinces of the Dominion.

It is possible that when the Quebec Code was enacted this latter fact escaped attention, and that Art. 127 was framed without due consideration of the effect of 32 Hen. 8th, ch. 38, and without any thought or intention of enacting anything contrary to its provisions. Certainly the provisions of that article seem somewhat obscurely framed. The important question it purports to deal with ought not in any Province to be left to be governed by the peculiar views of each religious denomination, but by some universal rule applicable to the whole Dominion, and that rule we believe is to be found in the Statute of 32 Hen. 8, ch. 38.

There have been other marriage cases before the Civil Courts in Quebec in which equally questionable decisions have been given, *e.g.*: There was not long ago the case of a marriage of Roman Catholics by an Anglican priest, which was annulled because the Judge conceived himself bound to give force and effect to the judgment of a Roman Catholic Bishop to the effect that the marriage was null and void because it had not been solemnized by a R.C. priest and in accordance with the rules laid down for the solemnization of marriage by the Council of Trent, whose decrees were never, according to *Pothier*, adopted or made part

of the temporal law of France, and therefore even before the Conquest were never a part of the temporal law of Canada, and no legislation has ever made them so since. See *Pothier*, Part. IV., sec. 5.

The decision in the *Tremblay* case ought we think to put an end to any question as to the validity of the marriages of competent persons in Quebec solemnized by persons authorized by the Code to solemnize marriage; and it is to be hoped that the Civil Courts of Quebec will no longer give any effect to ecclesiastical divorces, or sentences of nullity.

While it is true that the decision referred to in terms applies only to the marriage law of Quebec, it is none the less true that the principle it establishes is applicable to every Province of the Dominion, namely, that the validity of marriages in the temporal Courts must be determined by the temporal and not by the ecclesiastical law. No ecclesiastical law is of any civil force or effect in any part of the Dominion except as far as it may have been adopted as part of the temporal law; what is true of ecclesiastical law, is true even of what is regarded by many people as the law of God Himself; and even the Decalogue cannot be enforced by the temporal Courts except only so far as the breaches of it are also breaches of the temporal law.

It has been suggested that the effect of the decision might be neutralized by Provincial legislation in Quebec, but those who take that view must remember that marriage "is a subject within the exclusive jurisdiction of the Dominion Parliament," and that it is only the solemnization of marriage which comes within the jurisdiction of Provincial Legislatures and the Dominion in legalizing marriage with a deceased wife's sister has already shewn that so far as the question of prohibited degrees is concerned it claims to exercise jurisdiction, as being part of the subject of "marriage" which is within its exclusive control.

The judgment above referred to has already borne fruit in the Province of Quebec, and, appropriately so, in a case tried before Justice Bruneau. It appears that a Jewess had been married by a Methodist minister to a Roman Catholic. The lady sought to have the marriage declared illegal because the

ceremony had not been performed by a Rabbi and because she was not of age. The judge held that the marriage was legal under the ruling of the Privy Council in the Tremblay case by which he was bound.

COMPANY LAW—DOMINION AND PROVINCIAL JURISDICTION.

If the Judicial Committee of the Privy Council has no other *raison d'être*, it has at least that of having been able to bring order out of constitutional chaos in the company law of Canada. To the ordinary lawyer and business man, the purpose of the Company Licensing and Registration Acts passed in recent years by most of the Provinces was fully apparent. The Provincial Departments frankly upheld these enactments as compelling companies to come to the Province for corporate authority by way of either a charter or a license. In three of the cases just decided by the Judicial Committee, the judges of the lower courts unanimously declined to regard these Acts in what the Privy Council, agreeing with the practical business man, now holds to be their true character.

The complete history of companies legislation in Canada is of too great magnitude to be given here. Some important phases of it were dealt with at length in the paper read before the late meeting of the Canadian Bar Association, by Mr. Thos. Mulvey, K.C., a recognized authority on company legislation, and whose articles have appeared at different times in this journal. The paper above mentioned will be found in our January number.

Whether the judgment of the Privy Council will give a final quietus to Provincial attempts to discriminate in favour of Provincial companies as against Dominion companies, or whether it will still be open to the Provinces to embarrass a Dominiom Company by way of Mortmain legislation or otherwise, remains to be ascertained by a perusal of the full text of the judgment.

It will be remembered that the case of *John Deere Plow Co.* v. *Wharton*, 18 D.L.R. 353, [1915] A.C. 330, decided that the British

Columbia Companies Act was *ultra vires* in so far as it purported to compel a trading company, incorporated under the Dominion Companies Act, with powers extending throughout the whole of Canada, to take out a Provincial licence as a condition of exercising such corporate powers in British Columbia; and the Privy Council further held that the power of legislating with reference to the incorporation of companies in Canada with other than Provincial objects belongs exclusively to the Parliament of Canada under s. 91 of the B.N.A. Act.

The above decision was supposed to have settled the question, until the Chief Justice of Ontario refused to be bound by it, in *Currie* v. *Harris Lithographing Co.*, 41 D.L.R. 227, on the ground—in effect—that the Ontario legislation was not in the same form as that of British Columbia, and he distinguished the Ontario case therefrom.

There have been several other decisions which directly and indirectly bear on the points in issue, among them *Great West Saddlery Co.* v. *The King*, 48 D.L.R. 386, 59 Can. S.C.R. 19, but it is not necessary here to go into these cases. An appeal was taken in *Currie* v. *Harris Lithographing Co.*, and a number of other cases, to the Privy Council, being, in effect, the result of six combined test cases representing some 75 companies which were doing business in Canada under Dominion charters, and were taxed by the Provinces in which they operated.

The decision of the Privy Council just rendered, and which reverses the Supreme Court of Canada, appears to decide, in short, that the Dominion alone has power to incorporate companies for carrying on business in more than one Province: that Provincial incorporation is for local purposes only, and that a Province cannot exact the payment of an imposition as a condition of permitting a Dominion company to carry on business in the Province, and cannot, for non-payment of a tax, penalize the company by abstracting or sterilizing its powers; and what cannot be done directly cannot be done indirectly.

The effect of the tax was to deter companies from obtaining Dominion charters, with the consequent loss of fees to the Dominion and the gain thereof to the Provinces. It is

probable that as a result of the decision, the aggregate annual loss to the Provinces in incorporation and licensing fees will be more than half a million dollars a year. Whether the amounts already paid to the Provinces can, or will, be recovered we do not now deal with, but however that may be, the decision is a severe blow to the Provincial revenues.

The Provinces, ever since Sir Oliver Mowat's victory for Provincial rights, have been encouraged to claim, whenever the opportunity offered, increased legislative powers. We believe that the statesmanlike view is to strengthen rather than to weaken Federal control. The United States of America had to fight that out in their great war more than half a century ago and that nation has now a solidarity and power it could not have if State rights were in the ascendant.

THE DOMINION OF IRELAND.

We have received from the office of the Chief Secretary for Ireland a copy of the Imperial enactment known as the Government of Ireland Act, 1920, the latest effort of the Parliament of Great Britain to provide Home Rule for Ireland. If this Act is carried out as contemplated, presumably the name "The United Kingdom of Great Britain and Ireland and the British Dominions beyond the Seas," will be replaced by "The British Empire, including the Dominions of Canada, Australia, New Zealand, South Africa, Newfoundland and Ireland." In other words, Ireland ceases to be a member of the original partnership of Great Britain and Ireland, and becomes one of the British Dominions beyond the Seas. Are we soon to welcome the Green Isle into our fraternity? If so, we fondly hope that she may prove to be as peaceful, loyal and helpful as the other Dominions. In this connection it is proposed to give Ireland 46 seats in the British Parliament. If this is done, why should not all Dominions have representatives there? They are surely as loyal and helpful to the Empire as the sister now joining us.

With the Act comes a summary of its main provisions. It is

evidently the laudable desire of the British Government to give to the public the fullest information on a subject of vital moment to the Empire. It is our duty therefore to devote all necessary space to it. The information given is also of great interest in itself, and we, in this country, have only a misty idea of the present position, and what is meant by the oft-quoted expression "Home Rule."

We are told in the introductory portion of this summary that the Act recognises the aspirations of the great bulk of the Irish people, and gives to Ireland, South and North, wider powers than those contained in Mr. Gladstone's Bill of 1893, which was accepted by Mr. Parnell, or in the Government of Ireland Act, 1914, which was accepted by Mr. Redmond. It sets up a Parliament for Northern Ireland (*i.e.*, the counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the cities of Belfast and Londonderry) and another Parliament for Southern Ireland (*i.e.*, the rest of Ireland)—a Government for Northern Ireland, to be administered under Ministers who must be members of the Parliament of Northern Ireland and responsible to it, and a Government for Southern Ireland, to be administered under Ministers who must be members of the Parliament of Southern Ireland and responsible to it.

Although at the beginning there are to be two Parliaments and two Governments in Ireland, the Act contemplates and affords every facility for union between North and South, and empowers the two Parliaments by mutual agreement and joint action to terminate partition and to set up one Parliament and one Government for the whole of Ireland. With a view to the eventual establishment of a single Parliament, and to bringing about harmonious action between the two Parliaments and Governments, there is created a bond of union in the meantime by means of a Council of Ireland which is to consist of twenty representatives elected by each Parliament and a President nominated by the Lord Lieutenant. It will fall to the members of this body to initiate proposals for united action on the part of the two Parliaments and to bring forward these proposals in the respective Parliaments.

The summary then states, shortly, the provisions of the Act, under appropriate heads, as follows:—

How the Parliaments are to be formed.—Each Parliament is to include a House of Commons and a Senate. The members of the House of Commons are to be elected by the people of Ireland (men and women) on the proportional representation system.

The Senate of the Southern Parliament is to consist of the Lord Chancellor of Ireland, the Lord Mayors of Dublin and Cork, and sixty-one other members, including four archbishops or bishops of the Roman Catholic Church, two archbishops or bishops of the Protestant Church of Ireland, seventeen representatives of commerce, labour, and the learned and scientific professions, sixteen Irish peers, eight Irish Privy Councillors and fourteen representatives of the county councils of Southern Ireland.

The Senate of the Northern Parliament is to consist of the Lord Mayor of Belfast, the Mayor of Londonderry and twenty-four other members, who are to be elected by the Northern House of Commons on the proportional representation system.

Powers of the Parliaments.—Each Parliament will have power to make laws for the peace, order and good government of Southern or Northern Ireland in all matters relating exclusively to Southern or Northern Ireland, as the case may be. Certain matters are definitely excluded from the powers of the Parliaments, but, with these exceptions, the whole field of legislation will be open to them.

It would, we are told, be impossible to give a complete list of the subjects with which the Parliaments can deal, for everything seems to be included that the Government of a State could be called upon to provide for, or provide against, except that the police are not to be interfered with until after an interval not exceeding three years, and certain taxation is to be reserved.

Powers of the Governments.—All matters within the jurisdiction of the Parliaments of Southern Ireland and Northern Ireland will be administered by the Governments of Southern Ireland and Northern Ireland respectively. There will be separate Departments in Southern and Northern Ireland. It will rest finally with each of the new Governments and Parliaments to decide what their Government Departments are to be; but for

each part of Ireland there will be a Treasury, and, in all probability, Departments with functions corresponding to those of the present Local Government Board, Insurance Commissioners, Department of Agriculture and Technical Instruction, Commissioners of National Education, Intermediate Education Board, Board of Works, and Commissioners of Charitable Donations and Bequests. Each new department, or group of departments, in South or North will have at its head a Minister of the Southern or Northern Government who will be responsible to the Southern Parliament or the Northern Parliament, as the case may be, for the work of his departments. Irish administration will thus be placed, for the first time, under Irish control. Before the Act of Union, even in the time of Grattan's Parliament, there were no Irish Ministers. Irish administration was conducted by Ministers and officials who were appointed and removed by the British Government. They were not responsible to the Irish Parliament.

Powers of the Council of Ireland.—In order to secure necessary uniform administration throughout the whole of Ireland three matters are placed within the exclusive jurisdiction of the Council of Ireland, viz., railways, fisheries, and contagious diseases of animals. Regarding these the Council will act as a central legislative and administrative body for the whole of Ireland, and if the two Parliaments agree that there are any other matters affecting the whole country which ought properly to be administered uniformly throughout Ireland by such a body, they can transfer those matters to the Council.

In addition the Council will have power to pass private Bill legislation with respect to matters affecting interests both in Southern and Northern Ireland.

Finance.—Only three descriptions of taxes are excluded from the powers of the two Parliaments, viz., Customs and excise, income tax (including super tax), and any other taxes on profits. They are also precluded from imposing a general levy on capital. Apart from these exceptions, each Parliament will have power to impose whatever taxes it thinks proper, to be collected by it and paid into its own Exchequer. It will also have power to grant relief in reduction of the rate of income tax or super tax. The descriptions

of taxes mentioned above are reserved to the United Kingdom Government and Parliament, and will continue to be imposed and levied by them, and the proceeds will be paid into the United Kingdom Exchequer. But the Act applies Irish taxes to Irish purposes, and so, after deducting the Irish contribution to Imperial liabilities and expenditure, and the cost of any services which may be still administered in Ireland by the United Kingdom Government (see below), the whole balance will be paid over to the Southern and Northern Exchequers.

The annuities payable by tenants who have bought their holdings under the Land Purchase Acts are to be collected by the Southern and Northern Governments. Instead of having to pay over the sums so collected, the Governments will retain them, thus acquiring a free surplus revenue (estimated to amount to something over three and a quarter millions) for their own use. They will, however, be accountable to the United Kingdom Government for any new purchase annuities.

It is not possible to forecast accurately the amount of revenue that will be at the disposal of the two Parliaments to meet the requirements of their respective Governments, but it is estimated that on the existing basis of Revenue and Expenditure they will have between them a surplus of over seven and a half millions in hand, after paying the contribution to Imperial liabilities and expenditure, and meeting the cost of the reserved services still administered by the United Kingdom Government and the cost of their own services. In addition, each Government is to receive from the Imperial Exchequer the initial cost of providing the necessary buildings and equipment for the accommodation of the new Parliament and public departments.

For the purposes of the financial provisions of the Act a joint Exchequer Board is established, whose duty it will be to determine various questions affecting the financial relations of Great Britain and Ireland and of Southern Ireland and Northern Ireland. The Board is to consist of two members to be appointed by the Treasury of the United Kingdom, one member to be appointed by the Treasury of Southern Ireland, one member to be appointed by the

Treasury of Northern Ireland and a Chairman to be appointed by his Majesty.

Irish contribution to Imperial liabilities and expenditure.—Ireland is to make an annual contribution to Imperial liabilities and expenditure. For each of the first two years the contribution is fixed *provisionally* at £18,000,000, of which 56 per cent. is to be borne by Southern Ireland and 44 per cent. by Northern Ireland. After the end of the second year the contributions are to be revised by the joint Exchequer Board and to be fixed according to the relative taxable capacities of Southern Ireland and Northern Ireland and the United Kingdom, and, should the Board be of opinion that the £18,000,000 contributed in each of the first two years was excessive, or that the amount of the contribution in those years ought to have been apportioned between South and North in some other manner, the excess payments are to be credited to Ireland or to South or North, as the case may be, and the accounts adjusted accordingly.

Judicature.—The present Supreme Court for the whole of Ireland is to be abolished, and in its place there is to be a Supreme Court for Southern Ireland, a Supreme Court for Northern Ireland and a High Court of Appeal for all Ireland to which appeals will lie from each of the new Supreme Courts. Decisions of the new High Court of Appeal for Ireland will be subject to an appeal to the House of Lords. The office of Lord Chancellor of Ireland is to cease to be a political or executive office, and the Lord Chancellor is to be President of the High Court of Appeal for Ireland.

Matters excluded from the jurisdiction of the Parliaments and Governments.—Certain subjects are excluded expressly from the powers of the two Parliaments and Governments. They fall into two broad groups: first, matters of Imperial concern; and, secondly, matters affecting external trade and commerce, as regards which it is important to maintain a uniform system throughout the United Kingdom.

Within the first group come the Crown, the making of peace and war, treaties and foreign relations, and naval, military and air force matters.

Within the second group come trade with places outside the

area of the Parliament, marine navigation, merchant shipping, etc., also Customs and excise; but, on Irish union, the joint Exchequer Board is to take into consideration the transfer to the United Parliament and Government of the powers of imposing Customs duties and excise duties, and to report thereon to the Parliament of the United Kingdom and the Parliament of Ireland.

Certain other subjects are temporarily reserved to the United Kingdom Parliament and Government, viz., the postal service, post office and trustee savings banks, designs for stamps, the registration of deeds and the Public Record Office of Ireland. All these subjects can, however, if the two Parliaments so desire, be transferred at any time to the Council of Ireland, and when a single Parliament and Government is established for the whole of Ireland these subjects must be transferred to the United Parliament and Government, unless the Southern or Northern Parliament prefer that they should continue under United Kingdom control.

Land purchase is also reserved to the United Kingdom Parliament and Government, the completion of land purchase being a matter which requires the assistance of Imperial credit. This reservation does not, however, include the general functions of the Congested Districts Board.

Removal of religious disabilities and prevention of religious discrimination.—The Act provides that no subject of His Majesty is to be disqualified to hold the office of Lord Lieutenant of Ireland on account of his religious belief, thus repealing any statutory disqualification of Roman Catholics for this office. It also repeals any existing enactments imposing penalties, disadvantages or disabilities on account of religious belief, or upon members of religious orders, as such.

The Parliaments are precluded from making laws directly or indirectly prohibiting or restricting the free exercise of any religion, or giving any preference or imposing any disability on account of religious belief or religious or ecclesiastical status, and, similarly, the executive is precluded from conferring any preference or advantage or imposing any disability or disadvantage upon any person on account of religious belief.

Representation of Ireland in the United Kingdom House of

Commons.—The present representation of Ireland in the United Kingdom House of Commons is to be reduced from 105 members to 46, but this reduction is not to be effected before the next dissolution of the United Kingdom Parliament. This gives Irishmen the power to take part in legislation affecting the United Kingdom as well as managing their own affairs under the new Act.

Civil servants and members of the police forces.—The Civil Servants who are employed in the existing public departments will be transferred to the Governments of Southern and Northern Ireland when the work of the existing departments is taken over by those Governments, and the Act contains provisions for securing to these transferred Civil Servants the continuance of their present salaries and terms of employment, and for protecting them against arbitrary dismissal or unjust treatment and enabling them to retire voluntarily on pension if they so desire. A Civil Service Committee is to be established to carry out these provisions and to determine any questions that may arise as to the rights and claims of Civil Servants and as to the manner in which they are to be allocated between the Governments of Southern and Northern Ireland.

The Act contains provisions of a similar character with reference to the members of the Royal Irish Constabulary and the Dublin Metropolitan Police on the transfer of those forces to he new Governments.

Refusal to "work the Act."—The members of each Parliament before they sit as members will be required to take an oath in the following form, but a solemn affirmation or declaration to the same effect may be substituted in certain csaes, viz:—

"I——do swear that I will be faithful and bear true allegiance to His Majesty King George, his heirs and successors according to law, so help me God."

This is the oath of allegiance which must be taken not only by the members of the Parliament of the United Kingdom but also by the members of the Parliaments of the self-governing Dominions, Australia, South Africa and Newfoundland. A similar oath is taken by the members of the Parliaments of Canada and New Zealand.

If a majority of the total number of members of the House of Commons of Southern Ireland or Northern Ireland fail to take this oath within fourteen days after the date fixed for the first meeting of the Parliament of Southern Ireland or Northern Ireland as the case may be, then it will be assumed that Southern Ireland or Northern Ireland is not willing to accept the system of Parliamentary Government proposed by the Act, and thereupon the Parliament of Southern Ireland or Northern Ireland as the case may be will be dissolved and its place will be taken by a Legislative Assembly appointed by His Majesty and the Government of Southern Ireland or Northern Ireland as the case may be will be administered by the Lord-Lieutenant with the assistance of a Committee of members of the Privy Council of Ireland appointed for the purpose by His Majesty.

Dates on which the Act is to come into force.—The Act is to come into force normally on the 2nd August, 1921, but His Majesty in Council may fix an earlier date as the date when the Act as a whole or any particular provision is to come into force or may fix a later date, not being later than the 2nd March, 1922, provided that the two Parliaments must be summoned to meet on or before the 2nd December, 1921.

The failure of one part of Ireland will not affect the operation of the Act in the other part of Ireland except in so far as it will postpone the possibility of the establishment of a united Parliament and Government for the whole of Ireland. It will therefore be for Irishmen themselves to decide in the near future whether they will themselves take up the reins of Government in their own country, or be ruled by the Government of the United Kingdom under a system analogous to Crown Colony Government.

APPEAL TO THE PRIVY COUNCIL.

There are those in this Dominion who, either from want of thought or for reasons which to them seem sufficient from a Provincial point of view, or from not being able to see its value from a legal or Dominion or Empire point of view, or it may be perhaps from personal prejudice, would seek to deprive Canadians of their right of appeal to the Judicial Committee of the Privy Council. That this right is a very valuable asset to this or any other of our Dominions, is clearly shewn by the result of the appeal to the foot of the Throne in the *Tremblay* case, which we refer to in another place. It comes as an eye-opener to some, a rebuke and warningto others, but as a satisfaction to those who are patriotically desirous of seeing greater uniformity, not only in our inter-Provincial laws as well as in the wider sphere of the great Empire of which we form a part.

The advantages of a Court of final appeal being far removed and free from all racial or sectarian influences, are as great when we go to that august forum with disputes bringing up questions as to Dominion and Provincial jurisdiction. Such a case is referred to in another place, where a recent decision on company law is discussed.

WOMAN AS JUDGE.

Nothing absolute can ever be said about the mental difference between men and women. The exceptions to all rules which can be laid down on the subject are numerous and obvious. There are certainly women with the minds of men, and there are perhaps men with the minds of women. In the same sense there are Southern Europeans with the "mentality" of Scandinavians, and Scandinavians who might perhaps be Spaniards. Allowing for exceptions, however, it is possible to talk reasonably of obvious differences without perpetually stopping to take account of occasional identity. Just at present it is not very easy to describe the outline of the feminine mind. The spirit of woman is in flight. In the cage her soul was more easily seen, but in bondage or in freedom it is

the same soul. The place of women in the world is changing so rapidly that men cannot help asking in some trepidation where they will next find them. They have flown from the fireside to the factory and from the factory to the public service and the House of Commons; they have entered the laboratory, the operating theatre, and the Courts of law, and are heading straight for the Pulpit and the Bench.

To a very great extent they have already made good. They have had a certain success in all their experiments. Will they succeed as Judges? Will they do indifferent justice as men do it?—by which of course we only mean will they come as near to doing it as men come? The question is important. Recent events and the summoning of women to serve upon juries press it before our eyes. Is the instinctive partisanship of women innate and incorrigible? The reply of most men to the question will be, we feel sure, a fervent "I hope so." That hope comes, we believe, from the bottom of the human heart and is, we think, independent of sex. Women want to be partisans and men want their partisanship. How often does a woman use the expression "I want to think," or "I cannot bear to think?" Certainly twice as often as a man uses it. Does any man really love his wife or any boy his mother who does not in his heart of hearts know that she is a partisan? Most women are aware of this, and know that if they were called to be Judges they would be as untrustworthy as they would be incorruptible. Partisans do not take bribes.

Of course we shall be told that a tendency to partisanship is to be found in all persons of strong feeling irrespective of sex. That is true. Without it loyalty, and we had almost said love, could not exist. How far it influences people in conviction and action is largely a matter of self-control; and women, who have in so many ways more self-control than men, have, we cannot help believing, in this particular rather less. It is, we admit, quite arguable that they are better judges of character than man. It is probable, seeing that in their children they watch character in the making more closely than men watch it; but the intuition necessary for the clear discernment of the human heart does not presuppose the cool reasoning power necessary for the weigh-

ing of evidence. The interest of women in character is passionate. In some instances this passion has given birth to genius. The dramatic faculty, so far, at any rate, as it concerns the study of the human heart, is as great in women as in men. Here alone women are their intellectual rivals, and here alone it is at present thinkable that they may, with the infinitely improved opportunities of the hour, finally outstrip them. But really to understand character it is essential to go deeper than action to plumb depths with which the law has very little to do.

The simplest and most convincing illustration of our meaning is to be found in the parable of the Pharisee and the Publican. The Pharisee was perfectly satisfied with his own conduct, and it is certainly suggested by the story that, legally speaking, he had a perfect right to be. The Founder of our Faith, however, did not justify him, and did justify the dissatisfied man about whom we are told nothing as to conduct whatever. Obviously, the object of the story is to demonstrate what is in man, not to give an object-lesson in the weighing of evidence. No one, however little he acknowledges the authority of the Teller of the Tale, has ever failed to be convinced by it; but has it any bearing upon the procedure of a Court of law? It has to do with far more fundamental questions than those to be there discussed—and so has a woman's sense of justice. The law exists for the safety of civilisation, not for the salvation of souls. A just Judge must always have this fact in mind. If a man has a bad heart, a vulgar mind, and a cruel tongue but is far too timid to break the law, he is from a legal point of view innocent, and must go free to do what harm he will; but if a good-hearted, high-spirited, devil-may-care fellow breaks the law, he is guilty, and must go to prison, though in a very true sense he may be better fitted for paradise. All fairly sensible women will, we think, be willing to say this in a parrot-like way (as the present writer is saying it), because they have all been brought up to hear it, but whether they will act on it is another matter. Face a woman with a Pharisee and a Publican, and there is not much doubt as to which will go scot-free. She does not care for civilisation; she cares for humanity.

There are still to be found some old-fashioned cynics who

will say, "Change the two actors in the dramatic parable from men to women, and you will change the whole point of view of the feminine critic." We think that in view of the present feminist movement such a criticism is hardly worth answering. Women have shewn an "esprit de corps" and a determination to stand by each other which, while it may have led them into many of the follies of trades unionism on a huge scale, should exempt them from such a charge as this.

The present writer is well aware that in this pleading for and against her sex she lays herself open to the shafts of masculine reason. "First," she will be told, "you call women partisans, and then say that as critics of character they are too profound to be practical." To this charge it is hard to find an answer, but at least it does not disprove the contention that in circumstances where logic alone is required women are no judges. "But much more than logic is wanted both in Judge and jury," continues the counsel for the other side, and the unfortunate witness is left with nothing but a sincere conviction to stand upon, which, being a woman, she cannot doubt is the best standing-ground in the world.—*Spectator.*

THE "HABENDUM" IN A CONVEYANCE OF FREEHOLD LAND.

A small point which sometimes perplexes practitioners, or some practitioners, in framing the "habendum" in a conveyance of land which is made subject to various incumbrances, or quasi incumbrances, is the order in which they should be referred to. The precedent books do not seem to throw much light on the subject—perhaps because it must depend to some extent upon circumstances. No doubt the precise order is not important; but it seems desirable to observe a natural sequence, or to be guided by some rule. Thus suppose that the property is to be sold subject to the following matters: (1) a mortgage debt, (2) restrictive covenants imposed by a previous deed, (3) a right of way or other easement granted over the property by a previous deed, and (4) a lease, in what order should such matters be referred to in the "habendum?" It is

submitted that the order before appearing is a convenient one, as being in accordance with the importance of the respective qualifications imposed on the property by the respective incumbrances, or quasi incumbrances, though some practitioners might prefer to place the lease, or tenancy, first. In a conveyance to uses, other than a simple conveyance in fee simple, as pointed out in Key and Elphinstone's Precedents in Conveyancing, 10th ed., vol. 1, p. 513, the technically correct practice is to insert the incumbrances, etc., subject to which the conveyance is made, between the limitation to the grantee to uses and the uses.

—*Law Times.*

REVIEW OF CURRENT ENGLISH CASES.

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CONTRACT—BREACH IN ANOTHER COUNTRY—ASSESSMENT OF DAMAGES—RATE OF EXCHANGE APPLICABLE.

De Fernando v. *Simon* (1920) 2 K.B. 704. This was an action for damages for breach of a contract to carry goods from England and deliver them in Italy on February 10, 1919. The damages claimed were the value of the goods in Italy on February 10, 1919, viz.: 190 lire per 100 lbs.; and in determining the proper equivalent in English money, Roche, J., held that the rate of exchange prevailing between the two countries on February 10, 1919, was applicable, and not that prevailing at the date of judgment.

Barry v. *Van den Hurk* (1920), 2 K.B. 709, is a decision of Bailhache, J., to the same effect.

CONTRACT—BREACH—FAILURE OF SUBJECT MATTER—FORCE MAJEURE—DAMAGES—RATE OF EXCHANGE.

Lebeaupin v. *Crispin* (1920) 2 K.B. 714. This was a case stated by an arbitrator. The matters in dispute arose out of a contract whereby the defendant contracted, in May, 1917, to sell to the plaintiff 2,500 cases of British Columbia salmon. "The salmon to be the first 2,500 cases of ½-lb. pinks packed by the St. Mungo Cannery, Fraser River, during the season of 1917." A

second contract was for 2,500 cases in like terms from the Acme Cannery. The contracts provided: "In the event of the destruction, or partial destruction, of the cannery, plant, or material, or the packing being interfered with, or stopped, or falling short through short-run of fish, or through strikes, or lock-out of fishermen or workmen, or from any cause not under the control of the canners or shippers . . . causing non-arrival at destination, the contract to be cancelled in respect of such non-delivery or part non-delivery as the case may be." Also the words in large letters "Subject to force majeure." In 1917 there was an excellent run of salmon in the Fraser River. The St. Mungo Cannery commenced to pack in ½-lb. tins, but finding the tins were defective, they ceased packing, and before a fresh supply of tins arrived, the run of salmon ceased. If they had possessed a sufficient supply of good tins they could have supplied the 2,500 cases of ½-lb. pinks. The Acme Cannery had a full supply of ½-lb. tins, but as they had a large supply of 1-lb. tins which were getting rusty, when the fish began to run they filled them first, and before they could proceed to fill the ½-lb. tins the run had ceased. The cessation was in no way abnormal. No deliveries having been made under the contract. Several questions were submitted: Was there, in the circumstances, a failure of the subject matter of the contracts? McCardie, J., held there was not; (2) were the sellers protected by the general words of the exception? and he held that they were not; (3) were they excused on the ground of *force majeure*? and he held that they were not; (4) having regard to the difference of exchange what rate was applicable? and, in accordance with the preceding cases, he held that the rate prevailing at the date of the breach of the contract, on September 30, 1917, and not that prevailing at the date of the award, was the rate applicable.

ADMIRALTY—COLLISION—LIMITATION OF TIME FOR BRINGING ACTION—ACTION TO LIMIT LIABILITY—RIGHT OF CLAIMANTS TO CONTEST CLAIMS OF OTHER CLAIMANTS—MERCHANT SHIPPING ACT, 1904 (57-58 VICT. C. 60), SECS. 503, 504—MARITIME CONVENTIONS ACT, 1911 (1-2 GEO. V. C. 57), SEC. 8.

The Disperser (1920) P. 228. This was an Admiralty action arising out of a collision which took place in 1916 between a steamship "Caledonia," and a lighter, the "Marshalls," then in tow of the steamship "Disperser. An action was commenced by the

"Caledonia" against the "Disperser" in which the latter was found to be solely to blame; and the damage to the "Caledonia" exceeding the amount of the statutory liability the "Disperser," the owners of the latter vessel commenced an action under the Merchant Shipping Act, 1904, sec. 503, to limit their liability, and by the decree made in that action the liability was limited to £1,122 2s.; and by sec. 504 it is provided that after decree no action is to be brought except in those proceedings. Under the decree it was ordered that all claims against the fund were to be brought in within three months; the owners of the "Marshalls" brought in a claim for damages to that vessel. The owners of the "Caledonia" thereupon objected that the claim of the "Marshalls" was barred, because no action had been brought within two years of the collision as required by the Maritime Conventions Act, 1911 (1-2 Geo. V. ch. 57), sec. 8. The Registrar gave effect to the objection, but on appeal the owners of the "Marshalls" applied to extend the time for commencing proceedings, which Hill, ., granted, on the ground that before the expiration of the two years, the intention of the "Disperser" to bring the action to limit its liability was known, and pending that the "Marshalls" was justified in not instituting an action, and in relying on being able to have their claim brought in in that action, he, therefore, under the authority conferred by sec. 504, extended the time. See, however, the following case. He, however, held that the "Caledonia" had the right to take the objection.

ADMIRALTY—COLLISION—LIMITATION OF ACTION—ARREST OF WRONG-DOING VESSEL AFTER TWO YEARS—MARITIME CONVENTIONS ACT, 1911 (1-2 GEO. V., c. 57), s. 8.

The P.L.M. 8 (1920) P. 236. This was also a case arising out of a collision in which, also, the limitation imposed by the Maritime Conventions Act, 1911, sec. 8, was set up as a defence, and in this case allowed. The collision occurred September 15, 1916, between the steamship "Port Hacking" and the "Clermiston." In an action by the owners of the "Port Hacking" against the "Clermiston" the defendants pleaded that the collision was due to the fault of the steamship "P.L.M. 8," (then called the "Virginia"); and in a separate action the owners of the "Clermiston" sued the owners of the "Virginia"; and in both actions the Court decided that the "Virginia" was to blame. Thereupon the owners of the "Port Hacking" issued a writ against the owners of the "P.L.M. 8," who thereupon moved to set aside the writ on the ground of its having

been issued more than two years after the collision. Hill, J., was of the opinion that as the owners of the "Port Hacking" were aware that the owners of the "Clermiston" blamed the "P.I.M. 8," and there had been ample time, within the two years, for arresting her and joining her as a defendant, the Court ought not, in the exercise of its discretion under sec. 504, to extend the time for commencing proceedings.

WILL—SOLDIER'S WILL—CODICIL DEALING WITH BOTH REALTY AND PERSONALTY—LETTER CONTAINING INSTRUCTIONS TO ALTER WILL.

Godman v. *Godman* (1920) P. 261. This was an appeal from the judgment of Horridge, J. (1919) P. 229. A testator in 1915 executed a will and codicil prepared by a solicitor in the ordinary way. He subsequently went to the war and was made a prisoner and died in captivity. While a prisoner he wrote a letter giving instructions for an alteration of his will—this letter related to the disposition of both his real and personal estate, and the dispositions were interdependent. It was held by Horridge, J., that the letter as a soldier's will could only affect personalty, but inasmuch as the dispositions therein referred to were intermixed with dispositions of his realty, it could not be admitted to probate at all: and the Court of Appeal (Lord Sterndale, M.R., and Warrington, and Scrutton, L.JJ.) affirmed his decision; Scrutton, L.J., dissenting.

SHIPPING — RE-INSURANCE ON CARGO — NON-DISCLOSURE OF MATERIAL FACTS—CONTRACT OF RE-INSURANCE AFTER LOSS—SUBJECT INSURED "LOST OR NOT LOST."

London General Insurance Co. v. *General Marine Underwriters Association* (1920) 3 K.B. 23. This was an action on a policy of re-insurance on a cargo. At the time the re-insurance was effected the re-insured had received information that the ship had put into port with her cargo on fire—but they omitted to read the slip containing the information, and through a broker effected the re-insurance. Bailhache, J., in these circumstances, held the policy void. By the Marine Insurance Act, 1906, an insured is bound to disclose to the insurer all material facts; and he is deemed to know every circumstance, which in the ordinary course of business, ought to be known by him; and it may be that this Act, in these respects, is merely declaratory of the common law and that this decision is authority here though we have no such Act.

CONTRACT—SALE BY AUCTION OF GOVERNMENT STORES—AGREEMENT BY INTENDING PURCHASERS NOT TO BID AGAINST EACH OTHER—CONSPIRACY.

Rawlings v. *General Trading Co.* (1920) 3 K.B. 30. The facts on which this action was based were as follows. The plaintiff attended an auction sale of public stores at which he desired to purchase a quantity of tires. The manager of the defendant company was also present, and the plaintiff finding that he also was desirous of purchasing the tires arranged with him that he alone should bid and that then they should divide the profits which might be made of them. Accordingly, the defendants' manager alone bid, and they were knocked down to him for £342. Two days afterwards the plaintiff wrote to the defendant offering to sell his share of the profits for £150. The defendant company's manager replied repudiating the alleged agreement, and claiming that he had purchased the goods only for the defendants. Sherman, J., who tried the action, found that the transaction was as the plaintiff represented it. The action was brought to recover half the tires purchased, or £150, the value of the half, over and above the price paid. Sherman, J., however, held that as the property sold, was Government property, the agreement between the plaintiff and defendant was contrary to public policy and could not be enforced. The learned Judge points out that on the general question of agreements of this kind the Courts of law and equity had differed, strange to say, the latter taking the laxer view, Gurney, B., having held that such agreements amount to an indictable conspiracy, whereas Courts of Equity had enforced them. This case, however, has been since reversed in appeal: see 151 L. T. Jour. 5.

ACTION—COSTS—RETAINER OF SOLICITOR BY TRADE UNION ON BEHALF OF PLAINTIFF—COSTS OF SOLICITOR PAYABLE OUT OF TRADE UNION'S FUNDS TO WHICH PLAINTIFF A CONTRIBUTOR—RIGHT OF PLAINTIFF TO RECOVER COSTS AGAINST DEFENDANT.

Adams v. *London Improved Motor Coach Builders* (1920) 3 K.B. 82. This was an action brought by a member of a trade union, to the funds of which the plaintiff was a contributor. The union retained a solicitor to act for the plaintiff and was responsible to him for his costs. The plaintiff succeeded in the action, and the question was raised by the defendants whether, in the circumstances, the plaintiff, being under no personal liability for costs to

his solicitor, was entitled to recover costs against the defendant Sankey, J., who tried the action, held that, as the costs of the plaintiff's solicitor were payable out of a fund to which the plaintiff contributed, there was no ground for refusing the plaintiff costs as against the defendant.

PRACTICE—JUDGMENT AT TRIAL, BY DEFAULT—SETTING ASIDE JUDGMENT—TIME—ENLARGEMENT—RULES 457, 967—(ONT. RULES 499, 176).

Schafer v. *Blyth* (1920) 3 K.B. 140. By the English Rule 457 the time for moving to set aside a judgment obtained at a trial against a non-appearing party is limited to six days from the date of the judgment. It may be remarked that the Ontario Rule 499 contains no such limitation. In this case it was held that the time for moving to set aside such a judgment may, for cause, be extended under Rule 967 (Ont. Rule 176); and an extension was granted to enable the motion to be heard by the Judge who pronounced the judgment sought to be set aside.

PRIZE COURT—CONTRABAND CARGOES—KNOWLEDGE OF THE CHARTERERS AND MASTERS—CONDEMNATION OF SHIPS.

"The Kim" (1920) P. 319. In this case the action was brought for the condemnation of a vessel as prize. It was a Norwegian ship chartered in 1912 for a period of five years to an American company called the Gaus Line. After the commencement of the late war with Germany, the charterers loaded the vessel with a cargo of foodstuffs consigned to Copenhagen, and destined for an enemy base of supply; and the evidence shewed that the Gaus Line organized the sailing to Copenhagen as a means of furnishing the German Government with supplies. A large proportion of the cargo had been condemned as conditional contraband. The master was paid by the owners and knew that the vessel was engaged in a contraband transaction; and the owners knew that the vessel was bound for Copenhagen, a port to which it had not previously gone. It was held, by Duke, P.P.D., that, having regard to the whole facts and the knowledge of both the charterers and master, the vessel was subject to condemnation.

LUNACY—PAUPER—SUMMARY ORDER FOR RECEPTION INTO ASYLUM —CHAIRMAN—MEDICAL PRACTITIONER—LIABILITY FOR NEGLIGENCE.

Everett v. *Griffiths* (1920) 3 K.B. 163. This was an action by a person who had on the authority of the chairman of a Board of

Guardians acting on the certificate of a medical practitioner, been confined in a lunatic asylum, against both the chairman and the medical practitioner on the ground of negligence in the granting of the certificate and the making of the order. The Lord Chief Justice who tried the action dismissed it as against both defendants, because he held that the chairman was acting in a judicial capacity and the certificate of the medical practitioner was not the immediate cause of the plaintiff's detention. The jury were unable to agree on the question whether the defendants had acted with reasonable care. In the Court of Appeal (Bankes, Scrutton, and Atkin, L.JJ.) some difference of opinion was manifested, Bankes and Scrutton, L.JJ., without expressing any opinion as to whether or not the chairman was acting judicially, held that as he was *bonâ fide* "satisfied" that the plaintiff was lunatic when he made the order, he was entitled to judgment: from this view Atkin, L.J., dissented. As regards the medical practitioner, Bankes, L.J., thought that as he had acted *bonâ fide* and there was no evidence of want of reasonable care, he also was entitled to judgment; Scrutton, L.J., agreed with this and also was of opinion that the giving of the certificate was not so directly connected with the alleged damage as to be its cause. Atkin, L.J., disagreed and thought there should be a new trial, but in the result the appeal was dismissed.

CRIMINAL LAW—MISTRIAL—PRISONERS SEPARATELY INDICTED—JOINT TRIAL—VENIRE DE NOVO.

The King v. *Crane* (1920) 3 K.B. 236. This case was an appeal from a conviction in the following circumstances: Two prisoners were separately indicted, the one for stealing, and the other for receiving certain skins; they were tried together and convicted, the one of stealing, and the other of receiving. The Court of Criminal Appeal (Lord Reading, C.J., and Avory and Roche, JJ.), held there had been a mistrial and a *venire de novo* was awarded.

SOLICITOR—COSTS OF MORTGAGEE'S SOLICITOR—RECITAL OF AMOUNT OF COSTS IN MORTGAGE—RIGHT OF MORTGAGEE TO DELIVERY OF BILL OF COSTS—PAYMENT OF COSTS BY SOLICITOR OUT OF FUNDS OF CLIENT IN HIS CONTROL.

In re Foster, *Barnato* v. *Foster* (1920) 3 K.B. 306. This was an appeal from an order of a Divisional Court in the following circumstances: The applicant and his brother had agreed to pay the debts of their mother and to take from her a mortgage of

life policies as security. Foster was employed as a solicitor by the mother, but in the negotiations between her and her sons she was represented by another solicitor, and Foster acted for the sons. Among the liabilities was a sum for costs due by her to Foster and also his costs of and incidental to the negotiations resulting in the mortgage. These costs were recited in the mortgage deed to have been agreed at £914, but no bill was ever delivered. Foster paid himself the amount out of the funds of the applicant which were under his control. The applicant, who was one of the mortgagees, applied for an order for the delivery of a bill of costs by Foster. The Master granted the order and Roche, J., affirmed it, but the Divisional Court set it aside. On behalf of the solicitor it was contended that the applicant was a stranger to the bill of costs, that the client had agreed on the amount, and the mortgagee had no right to question the amount. The Court of Appeal (Scrutton, Bankes and Atkin, L.JJ.) allowed the appeal and reaffirmed the order of the Master for delivery of the bill, but without expressing any opinion on the question whether when delivered it could be ordered to be taxed or any other order could be made.

WILL—GIFT TO CHARITABLE AND OTHER OBJECTS TO BE SELECTED BY THREE NAMED PERSONS—EFFECT OF DEATH OF ONE SELECTOR WITHOUT ANY SELECTION HAVING BEEN MADE—GENERAL CHARITABLE INTENTION.

In re Eades, Eades v. *Eades* (1920) 2 Ch. 353. By the will in question in this case the testator directed that the trustees of the will should out of specified moneys pay 10 per cent. to "such religious charitable and philanthropic objects" as three named persons should jointly appoint. These three all survived the testator, but one of them died before any selection of objects had been made. Sargant, J., held that the death of one of the appointors would not prevent a selection of charitable objects being made, but he held that the word "and" must be read as "or" and that as, upon this construction, the objects would include objects which might be merely philanthropic and not necessarily also charitable, no general charitable intention was shewn and the gift in favour of charity therefore failed for uncertainty.

WILL—CHARITY—GENERAL CHARITABLE INTENTION—GIFT TO CHARITY TO BE SELECTED BY A. WITHIN SPECIFIED PERIOD—DEATH OF H. BEFORE TESTATRIX—DISCRETION AND ITS EXERCISE OF ESSENCE OF GIFT—INTESTACY.

In re Willis, Shaw v. *Willis* (1920), 2 Ch. 358. This case has

some points of resemblance to the preceding case. In this case, by the will in question, the testatrix gave the residue of her estate "to such charitable institution or society in England, Russia, or elsewhere as may be selected by my friend Mary Whitehead within a specified time." Mary Whitehead predeceased the testatrix. Astbury, J., held that the testatrix had not by her residuary gift shewn any general charitable intention, and that the discretion conferred on Mary Whitehead was of the essence of the gift and consequently the gift of residue failed and it passed as upon an intestacy. So that in this, as in the preceding case, the absence of any general charitable intention prevented the Court from giving any effect to the bequest. But it appears the Court of Appeal have held that a general charitable intent was manifested, which the Court will carry into effect, and have reversed the decision of Astbury, J. See 150 L. T. Jour. 278.

TRADE UNION—EXECUTIVE COMMITTEE—SUSPENSION OF OFFICER —AUDI ALTERAM PARTEM—ULTRA VIRES RESOLUTION— NATURAL JUSTICE.

Burn v. *National Amalgamated Labourers* (1920) 2 Ch. 364. In this case Lawrence, J., indicates that principle of natural justice *audi alteram partem*, and declared a resolution by the executive committee suspending an officer of a trade union from the office held by him and from holding any delegation on behalf of the union for a period of five years for alleged breach of the rules of the union, to be *ultra vires* and void, on the ground that the committee had refused to allow the suspended officer to be heard in his defence. After the resolution of suspension had been passed at a general meeting of the union the plaintiff was present and gave his explanation and the meeting passed by an overwhelming majority a resolution that the plaintiff was a fit and proper person to be a full and free member with right to hold office in the union, but they made it a condition that he should pay a sum of £25 cash, and if he failed to pay that sum the resolution of the executive committee was confirmed. The plaintiff refused to pay the £25, but Lawrence, J., held that these facts did not in any way disentitle the plaintiff to the relief he claimed, viz., an injunction to restrain the union from acting on the resolution of the executive committee, and he considered that the action of the general meeting was self condemnatory, for if the plaintiff was a fit and proper person, as is affirmed, then he ought not to have been condemned.

CHARTERPARTY—CONSTRUCTION—PROVISION FOR CESSER OF HIRE —EJUSDEM GENERIS RULE.

S.S. "Magnhild" v. *McIntyre* (1920) 3 K.B. 321. In this case the construction of a provision in a charterparty for cesser of hire was in question, and whether or not the *ejusdem generis* rule was applicable. The clause provided that "in the event of loss of time from deficiency of men or owners' stores, breakdown of machinery, or damage to hull, *or other accident* preventing the working of the steamer and lasting more than twenty-four consecutive hours, the hire shall cease from the commencing of such loss of time until she shall be again in an efficient state to resume her service; but should the steamer be driven into port, or to anchorage by stress of weather, or from any accident to the cargo, or in the event of the steamer trading to shallow harbours, rivers or ports where there are bars causing detention to the steamer through grounding or otherwise, time so lost and expenses incurred (other than repairs) shall be for charterers' account." While on its way up a river to a port to discharge the vessel got and remained aground on soft clay from Oct. 16 to Oct. 24, and was damaged by the occurrence. Repairs commenced on Nov. 8 and occupied a substantial time. The port to which she was going was a safe port, there was no bar in the harbour river or part which caused the detention through grounding or otherwise. In an arbitration between the owners and charterers the arbitrator awarded that the hire ceased between Oct. 16 and 24, and also during the time occupied in the repairs. On an appeal from the award, the owners contended that the words "or other accident" must be construed according to the *ejusdem generis* rule and therefore that the provision for cesser of hire did not apply in the circumstances. McCardie, J., however, held that the rule did not apply and that the words covered any accidental occurrence to the vessel which prevented her working more than twenty-four consecutive hours, except of course those expressly excepted.

COMPANY—UNDERWRITING CONTRACT—SUBUNDERWRITING CONTRACT—AUTHORITY TO APPLY FOR SHARES—AUTHORITY COUPLED WITH INTEREST—IRREVOCABLE AUTHORITY—WITHDRAWAL OF AUTHORITY TO SUBSCRIBE FOR SHARES BEFORE NOTICE OF ALLOTMENT—RECTIFICATION OF REGISTER OF SHAREHOLDERS.

In re Olympic Fire & General Re-insurance Co. (1920) 2 Ch. 341. This was an appeal from a decision of Lawrence, J., refusing

an application to rectify the register of shareholders of a limited company by striking out the names of the applicants as the holders of 6,334 shares, in the following circumstances· The Olympic Fire & General Re-insurance Co. were issuing 350,000 shares. The Angel Court Trust underwrote and bound themselves to take 150,000 of these shares unless the public took up a certain number of the shares. The Angel Trust then made a subunderwriting agreement with one Pole, whereby Pole agreed to subscribe at par or procure responsible subscribers to the satisfaction of the Angel Trust for 10,000 of the shares and it stated: "We now hand you application for the shares now underwritten by us." There was also a provision for the reduction of their subscription if the public should take a certain number of shares. The agreement also stated: "This contract and our said application shall be irrevocable," and it provided that notwithstanding any withdrawal of authority or repudiation of the contract by Pole, it should be sufficient authority to the directors to allot the shares in question and to enter the name of Pole in the register of members in respect thereof. In the result Pole became liable to take 6,334 shares, which, at the instance of the Angel Trust and under the subunderwriting contract, were allotted to Pole notwithstanding that before the actual allotment Pole notified the Angel Trust that he withdrew his authority. Lawrence, J., held that in the circumstances the authority was coupled with an interest in the Angel Trust and was irrevocable and therefore that the allotment had been properly made notwithstanding the attempted withdrawal of the authority to apply for the shares, and his decision was affirmed by the Court of Appeal (Lord Sterndale, M.R., and Warrington and Younger, L.JJ.).

CLUB—EXPULSION OF MEMBER—OMISSION TO NOTIFY MEMBER OF COMMITTEE — RESOLUTION — INVALIDITY — CONSTITUTION OF COMMITTEE.

Young v. *Ladies' Imperial Club* (1920) 2 K.B. 523. This was an appeal from the judgment of Roche, J. (1920) 1 K.B. 81 (noted *ante* p. 144), upholding the expulsion of the plaintiff from membership in the defendant club. The notice to the members of the committee of the club authorised to deal with such questions had been sent to all of the members except one who had previously intimated to the chairman that she would be unable to attend the meetings of the committee. Roche, J., held that the omission to notify this member did not invalidate the resolution of expulsion,

but the Court of Appeal (Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ.) were unanimously of the opinion that it did. The Court of Appeal were also of the opinion that the notice calling the meeting was not sufficiently explicit, being merely "to report on, and discuss the matter concerning (the plaintiff) and Mrs. Laurence."

LANDLORD AND TENANT—IMPLIED CONDITION THAT HOUSE IS REASONABLY FIT FOR HUMAN HABITATION—HOUSE OVERRUN WITH RATS.

Stanton v. *Southwick* (1920) 2 K.B. 642. This was an action by a tenant against his landlord for breach of an implied statutory condition that the demised premises were reasonably fit for human habitation. Upon the evidence it appeared that the rats were sewer rats and came from an old drain which ran under the premises. The County Court Judge who tried the case gave judgment for the plaintiff, but the Divisional Court (Salter and Roche, JJ.) reversed his decision on the ground that the rats came from outside and it was not shewn that they were breeding on the premises.

INCOME TAX—SHAREHOLDER IN COMPANY—BONUS SHARES.

Commissioners of Inland Revenue v. *Blott* (1920) 2 K.B. 657. In this case the Court of Appeal (Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ.), affirming Rowlatt, J., held that where fully paid bonus shares are allotted to a shareholder, such shares are not income, but an accession to capital, and therefore not subject to income tax.

TRADE OR BUSINESS—COMMISSION AGENT.

Robbins v. *Commissioners of Inland Revenue* (1920) 2 K.B. 677. The plaintiff was under contract to a foreign company to employ his whole time in selling their goods, in England, on commission. It was held by Rowlatt, J., and the Court of Appeal (Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ.) that the plaintiff's occupation was not a "trade or business" owned or carried on by him within the meaning of the Finance Act. Their Lordships held he was a whole time servant of the foreign company and was not carrying on a business of his own at all, and that he was therefore not liable to pay the excess profits tax.

LAWYERS' LYRICS.

Street v. *Craig* (48 O.L.R. 324).

(BY MR. BRIEFLESS.)

A dame was in her garden neat,
Upon a summer day,
When rushing wildly through the street
A cow came by that way.

Perhaps this cow foreboding had
Of its impending fate
And thought pretending to be mad
Might help its woeful state.

For to a railway yard they strove
To guide her on the way
To that fell place—no leafy grove—
Where butchers wait to slay.

The fatal pen she realized
Was not the place for her,
If she would keep the life she prized
Far from the city's stir.

So briskly turned she tail about,
And from the yard did run,
Followed by many a yell and shout
From men who thought it fun.

And when she spied the garden neat,
And saw the dame was there,
She hurt her stomach, with her feet,
And badly her did scare.

The luckless dame in this sad plight,
Whom thus the cow did maim,
Did naturally seek for light
On whom to lay the blame.

The chances that the cow could pay
Were surely very vague,
And so it seemed as clear as day
She must sue Mr. Craig.

For he, you know, did own the cow
Which caused the dame such harm,
And he, the dame did straight avow,
Must give the needed balm.

But Middleton, the learned Judge,
Who sat upon the case,
For pity's sake would never budge
His good law to abase.

"This cow, 'tis known, was meek and mild,
And harmless as a lamb,
And though through fright she got so wild
Poor Craig we cannot damn.

"For who could ever think that she
To reason would be blind?
And Craig we can't expect to be
More wise than all mankind.

"For trespass to your garden neat,
Your loss is too remote,
The trespass from the public street
Was 'gainst Craig's will, I note.

"Though Craig 's the owner, yet I vow
The beast which did you ill
Was but a kind domestic cow
Free from a vicious will."

But when he saw the dame look'd blue,
It touched the Judge's heart,
And so he thought what he could do
Some comfort to impart.

And thus he closed his monologue:
"Craig wont get off so cheap
If you be worried by his dog
And you should be a sheep."

Bench and Bar.

ONTARIO BAR ASSOCIATION.

Annual Meeting.

The annual meeting of the Ontario Bar Association was held at Osgoode Hall, Toronto, on February 9th and 10th, 1921, with the President, Mr. J. H. Rodd, of Windsor, in the chair.

The proceedings commenced with the President's annual address. This was followed by reports from the various standing Committees, of these the two most important were concerned with Law Reform and Legal Education.

Law Reform.

The report on this subject was presented by Mr. R. J. Maclennan, in the absence of Mr. W. D. Gregory, convener, and dealt with the following, amongst other matters:—

1. Revision of the method of election of Benchers with a view to making the same more democratic and representative.

2. That in respect to future appointments of King's Counsel, the Benchers or the Bar Association, or both, might be asked to make nominations for the guidance of the Committee appointed by the Attorney-General to make recommendations to him, and that future appointments should not be limited to those members of the Bar who have become skilled as counsel before the Courts.

[Although at present no action was taken on this recommendation, strong views were expressed in favour of the principle above enunciated, and as far as could be judged from the discussion which took place the feeling of the meeting was strong that if the future appointees on whom this honour is conferred are to be more meritoriously deserving than ir some cases of the past a broader policy such as outlined is requisite.]

3. The amendment of the law relating to corporations, so as to give more adequate protection to minority shareholders.

4. The conferring of statutory authority upon the Courts to amend or annul inequitable or unreasonable building restrictions, and in proper cases to relieve from the same.

Legal Education.

This subject has of late years tended more and more to become a battle-ground of controversy amongst the ranks of the Association. The feeling has continued to grow and ripen into conviction

that the present system of Legal Education in Ontario is inadequate and far behind the systems prevailing in other countries and particularly in many of the United States. A very enthusiastic interest in this matter was shewn by men of different shades of opinion on the subject in the course of a somewhat lengthy discussion which took place. One of the recommendations contained in the report of the Legal Education Committee presented by Mr. Maclennan, convener, was that the time has come when the teaching in the Law School should be done by Professors who will give their main attention to the Law Lectures and the examinations of students, and who shall not engage in general practice. In the discussion of this proposition the financial question naturally became involved and it was pointed out on the one hand that for the year 1920 the receipts from the Law School, according to a financial report which is on record, were something in excess of $136,000, while the expenditures upon the Law School were something less than $34,000, shewing an apparent surplus for one year of $84,000. It was also pointed out on the other hand that the School had for many years before the War been carried on at a loss, but at the outbreak of the War an accumulated fund from the Law School of $110,000 was available on which to draw for the purposes of re-organizing the School on a more up-to-date basis, and while it was the feeling of the Association that the financial aspect was one which would require careful investigation and consideration, the principle enunciated in the above recommendation of the Committee was, on motion duly seconded, approved by the Association.

Other matters discussed under the heading of Legal Education were the revision of the curriculum and the adoption of a uniform curriculum to be used by all the Common-Law Provinces, and provision for post-graduate courses. This recommendation was also approved. Another phase was the question of the attendance at the Law School and service in an office, and a good deal of discussion took place as to whether it was not preferable that the period of attendance at lectures should precede instead of follow, as it now does, the period of service in a law office.

The attendance of the members of the profession at these meetings was not all that could have been desired. The lack in this respect was but a fresh instance of the difficulties which those who seek to serve the interests of the Association in office have ever experienced in inspiring that degree of interest and response on the part of the members as a whole which, even on a selfish, if not any higher basis, might reasonably be expected.

The Council of the Association, in the nature of things, up to the present at any rate, has only had one opportunity in each year to hear the united voice of members of the Association on matters within its jurisdiction and that once is at the annual meeting. Throughout the year, however, correspondence from individual members and local Associations is invited and solicited from time to time on all matters that arise in the course of events which are of interest and concern to the profession and also those matters of interest to the public in which lawyers are peculiarly qualified to render valuable service.

Only passing reference can here be paid to the more social features of the annual meeting, which included a reception, very graciously extended by his Hon. the Lieutenant-Governor and Mrs. Clark at Government House, a reception and dance at Osgoode Hall, which was attended by members of the Association and their wives and lady friends, and the annual banquet of the Association held at the King Edward Hotel, Toronto, all of which were enjoyed by those who were present.

The honoured guests of the Association at its annual meeting and banquet were:—Mr. J. C. Lamothe, K.C., D.C.L., of Montreal; Mr. J. A. Sullivan, K.C., of Montreal; Hon. Henry W. Taft, of New York; Mr. Arthur Lord and Mr. W. V. Kellen, of Boston, Mass.; Mr. Donald McKinnon and Mr. C. Gavan Duffy, of Charlottetown, P.E.I.; Hon. Henry C. Walters, of the Michigan State Bar Association; Hon. W. E. Raney, K.C., Attorney-General for Ontario, Hon. Rev. H. J. Cody, D.D., all of whom delivered addresses on matters of interest to the Association both at the sessions held at Osgoode Hall and at the annual dinner.

The following are the officers and members of Council elected for the ensuing year:—Hon. President, Hon. Mr. Justice Riddell; President, R. J. Maclennan; Vice-Presidents, Francis King, F. D. Kerr, A. J. Russell Snow, K.C.; Recording Secretary, A. A. Macdonald; Corresponding Secretary, W. K. Murphy; Treasurer, H. F. Parkinson; Archivist, W. S. Herrington, K.C.; Auditors, W. J. Beaton, J. M. Bullen.

Toronto Members of Council:—His Hon. Judge Denton, J. H. Spence, Daniel Urquhart, H. S. White, T. A. Rowan, W. D. Gregory, Daniel O'Connell, J. M. Clark, K.C., E. Percival Brown, W. J. Elliott, T. H. Barton.

Members outside Toronto:—W. S. Ormiston, Uxbridge; W. F. Kerr, Cobourg; O. L. Lewis, K.C., Chatham; Nicol Jeffrey, Guelph; J. S. Davis, Smithville; W. S. MacBrayne, Hamilton; W. T. Henderson, K.C., Brantford; V. A. Sinclair, Tillsonburg;

J. B. McKillop, London; Harold Fisher, Ottawa; His Hon. Judge Huycke, Peterboro; W. N. Ponton, K.C., Belleville; George McGaughey, North Bay; F. P. Betts, K.C., London; W. A. J. Bell, K.C., Barrie; W. H. Wright, Owen Sound; W. R. White, K.C., Pembroke; F. H. Thompson, K.C., Stratford; A. C. Kingstone, St. Catharines; Charles Garrow, Goderich; T. D. Cowper, Welland; R. T. Towers, Sarnia; W. F. Brewster, K.C., Brantford.

Flotsam and Jetsam.

The Small Boy's Right to Climb.

Judges Hough, Ward and Manton, of the Circuit Court of Appeals, were once boys, like other men, but unlike so many of them, they have not forgotten their juvenile propensities. They recall the exasperation with which the average boy contemplates the spikes in the telephone poles, ending abruptly some ten feet above the ground, the fire escape ladders just out of reach, the barbed wire and spikes that a conspiring civilisation employs to keep boys from climbing where they should not.

This is clearly reflected in a decision just handed down, upholding the small boy's right to climb, recognising the impulse as normal and reproving the placing of temptations in his way, without taking every precaution to guard the climber who might otherwise endanger himself. The case was that of little David Fruchter, eight years old, against the New Haven Railroad. The road built a bridge over its tracks in the Bronx, with latticed supports which would tempt a boy to climb, and left them without any safeguards. David climbed to the top girder in pursuit of a pigeon in a nest. In doing so he came into touch with a live wire, which burned his arm so badly it had to be amputated. His father sued the company and an award has just been upheld by the Circuit Court.

How far railroads and others should go in trying to save venturesome children from their own daring is a mooted question. Clearly the Court believes that in this case, at least, the company should have made the structure safer by some kind of obstruction. There is no question, however, that the climbing instinct should be fostered. It leads to many accidents, and some of them serious, but it also leads to caution. The climbing impulse is one of the most valuable of our heritages from the prehistoric days when

we lived in the trees. In the more recent history of the race it has been translated into various forms, most of which are commendable. The rationalists fail to convince, largely because they leave out of their reckoning the indomitable spirit of daring and the love of venture which is manifest in the climbing child.

—Brooklyn *Eagle*.

Prohibition Legislation

It is not within the province of the *Law Times* to discuss the merits or otherwise of what is known as prohibition, but the effects of the legislation in its general influence upon the community in their attitude towards law and order is a matter which certainly deserves the attention of lawyers. The Canadian correspondent of the *Times* described the operation of the law in the Dominion in a dispatch published on the 20th Jan., while on the following day Mr. Maurice Low began in the *Morning Post* the first of a series of articles describing the twelve months' experience of the laws in the United States. Both accounts shew that there is a general demoralisation of public opinion and a general defiance of law. Information from other sources supports these journalistic investigations. Law officers are seriously concerned at the way in which the normally law-abiding members of the community are being drawn into a volcano of disturbing elements completely antagonistic to ordered government. Moreover, it is not easy to see any remedy; since the bulk of the community have no regard for law, what power has law to enforce peace and maintain order? In this prohibition legislation a new chapter is being added to the philosophy of law and the power of Parliamentary government. The subject, owing to the strong feeling about it, has brought out clearly dormant forces which are also operating, though not to the same extent, in other matters. Before any attempt is made to pass any such legislation in this country a competent body of lawyers might be appointed to examine the effects upon the community, where it is in operation, on the point of the maintenance of respect for the law. This is the kind of matter upon which a Bar Association and, still better, an Imperial Bar Association would give valuable assistance and guidance to the legislative bodies.—*Law Times*.