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THE PROPOSED HIGH COURT OF NATIONS.

With the first Hague Conference which met in 1899 an International Arbitration Court came into existence. The Permanent Court of Arbitration, as it is technically called, though popularly known as the Hague Court, settled the *Pious Fund* case, the *Venezuela Preferential Payment* case, the *Japanese House-tax* case and the dispute between Great Britain and France over their treaty rights in Muscat, passed upon the Casablanca incident, and adjusted the dispute between Norway and Sweden as to their maritime frontier. It is of special interest to Canadians at the present time for the reason that there is now pending before it our fisheries dispute with the United States.

But besides this court, which is actually in service, are two others, both of them projected by the second Hague Conference, that may also go into operation when certain formalities are complied with or certain necessities arise. One of these is the International Prize Court, which is for the adjudication of cases of capture of neutral merchant ships and cargoes in time of war, a code for which was made at the Naval Conference held in London in 1909, but is not yet ratified by the nations that are parties to it. The other is the Court of Arbitral Justice, also called the Judicial Arbitration Court, which is for the same kind of cases that now go before the Permanent Court of Arbitration. It is the Court of Arbitral Justice, an institution that is known to but comparatively few, and that may easily be confused in the popular mind with the present Hague Court, to which we wish to call attention.

The progress which has been made toward the establishment of this court is due primarily to the efforts of three great American lawyers, ex-Secretary Root, Prof. James Brown Scott and Hon. Joseph H. Choate, especially the two first named. All who attended the opening session of the National Peace Congress

in New York in 1907, which was organized for the purpose of bringing public sentiment to bear on the Hague Conference, will remember the profound impression made by Mr. Root's address. In it occurred these significant passages, which may be taken as the foundation ideas of the proposed court:—

"In the general field of arbitration we are surely justified in hoping for a substantial advance, both as to scope and effectiveness. It has seemed to me that the great obstacle to the universal adoption of arbitration is not the unwillingness of civilized nations to submit their demands to the decision of an impartial tribunal; it is rather, as Lord Salisbury said, an apprehension that the tribunal selected will not be impartial.

"The feeling which Lord Salisbury so well expressed is, I think, the great stumbling-block in the way of arbitration. The essential fact which supports that feeling is, that arbitrators too often act diplomatically rather than judicially; they consider themselves as belonging to diplomacy rather than to jurisprudence; they measure their responsibility and their duty by the traditions, the sentiments, and the sense of honourable obligation which have grown up in centuries of diplomatic intercourse, rather than by the traditions, the sentiments, and the sense of honourable obligation which characterize the judicial departments of civilized nations.

"What we need for the futher development of arbitration," added Mr. Root, "is the substitution of judicial action for diplomatic action, the substitution of judicial sense of responsibility for diplomatic sense of responsibility. We need for arbitration, not distinguished public men concerned in all the international questions of the day, but judges who will be interested only in the question appearing upon the record before them. Plainly this end is to be attained by the establishment of a court of permanent judges who will have no other occupation and no other interest but the exercise of the judicial faculty under the sanction of that high sense of responsibility which has made the court of justice in the civilized nations of the world the exponents of all that is best and noblest in modern civilization."

Professor Scott, whose name will always be associated with historic attempts to make a High Court of Nations, gave much thought and care to the proposed court at the time and has done his utmost ever since to have it made into a living agency of justice. His plan was brought before the Conference by Mr. Choate, who assisted him enthusiastically. It had the joint sponsorship of the United States, England and Germany. No less strenuous a personage than Baron Marschall von Bieberstein, Germany's first delegate, expressed the belief that such a court would automatically attract to itself the disputes of nations for settlement.

The agreement providing for the court contains thirty-five articles. The first article reads as follows:—

"With a view of promoting the cause of arbitration, the contracting powers agree to constitute, without altering the status of the Permanent Court of Arbitration, a Judicial Arbitration Court of free and easy access, composed of judges representing the various juridical sy ems of the world, and capable of ensuring continuity in jurisprudence of arbitration."

The main features of the proposed court correspond with Mr. Root's idea of a court of law. They may be best appreciated by a comparison with the so-called Permanent Court of Arbitration. First of all, the proposed institution is a court, and not a panel. The number of its judges, though not given in the agreement, is expected to be fifteen, with deputies as alternates. Fifteen members would mean nearly twice as large a body as the Supreme Court of the United States, which consists of nine judges, but is small compared with the number allowed to the court of 1899, which may consist of four arbitrators from every one of the forty-six states that are commonly recognized as belonging to the family of nations, though two or more states may choose the same judges and may therefore go outside their own nationality for their appointees.

Furthermore, the members of the court of 1899 are appointed for a term of but six years, though their appointment is renewable. The judges of the proposed court would have a term of twelve years, which is also renewable. The judges of the court of 1899 are

paid only when they are on duty, which is when they have a case to try. The judges of the proposed court would be paid a salary of $2,400 a year from the time of their appointment, and receive about $40 a day, with travelling expenses additional, when they go into session. The draft of the agreement contemplates an annual session beginning the third Wednesday in June, provided public business requires it; besides the election annually of three of the members, with substitutes, as a Permanent Delegation in residence at The Hague and always ready to try minor cases or cases for summary procedure. The Delegation is a unique and promising feature of the proposed court. It makes the court free and easy of access, which is desirable, and is an advantage over the system of the court of 1899, whose tribunals have to be especially summoned, even for a minor case. It is given large power, but cannot perpetuate itself at the expense of the whole court, as it is not only subject to election by the general body, but may at any time, on application of the nations, be superseded by it. The whole court may at any time be summoned in extraordinary session by the Delegation.

The proposed Judicial Arbitration Court, to be sure, if installed to-day, would not be open to all nations, as is the present Hague Court, but only to the nations which accept it by entering into a special contract. These nations, however, acting as a whole and not separately, are to pay the salaries of the judges, a method that is an improvement on the court of 1899, as under its system each litigant pays its own judges, a thing that would not be tolerated in a judicial court in municipal law. The costs of the proposed court, apart from the salaries of the officers, are apportioned among the litigants, who are also required to pay their own charges for counsel, witnesses, etc. No judge will be allowed to sit on a case in the decision of which he has already taken part in its earlier stages in national courts, nor can he appear before the court as counsel or advocate in any case, as men have done before the court of 1899. A judge is not permitted to receive money or hold any office under authority of one of the litigants, or of his own nation, inconsistent with his duties as a judge. In these respects, then, the new court is more

truly judicial than the court of 1899, and, though limited to the contracting powers, is fundamentally more international in its spirit.

The court is supposed to sit at The Hague, but may sit elsewhere if obliged to do so. The Delegation may, of its own accord, hold its sessions elsewhere with the consent of the parties, if circumstances make a change of place necessary. The court may call upon states to help it in serving notices and securing evidence. It determines the language that is to be used in cases coming before it. It discusses its cases and makes decisions upon them in private session under the control of a president or vice-president; but a judge who is appointed by one of the parties may not preside. A judge cannot serve as a member of the Delegation "when the power which appointed him, or of which he is a national, is one of the parties" (Art. 6). The decisions of the court must be made in writing by a majority of the judges present, who must give the reasons for their opinions and disclose their names. The judgment must be signed by the president and registrar. The court is authorized to improve upon its rules of procedure, but must communicate them to the contracting powers for approval.

Such are some of the superior features of the proposed Court of Arbitral Justice. It is not, however, intended to supplant the court of 1899, but to be used instead of it if litigants prefer its services. It is stipulated that its members shall be taken, as far as possible, from the judges of the Permanent Court of Arbitration. In common with that court it follows the procedure laid down in the Convention for the Pacific Settlement of International Disputes, except as it is empowered specifically to make its own rules. Its jurisdiction is as large as possible. It may take cases coming to it by a standing treaty of arbitration or by a special agreement.

This proposed International High Court of Justice should have the hearty support of Canadians and, indeed, of all lovers of peace the world over. We subscribe to the view so well expressed by Professor Kirchwey, Dean of the Law School of Columbia University: "There is an increasing and well-nigh

irresistible pressure upon the nations—from within and from without—for the avoidance of war, and this rising tide needs only one thing to give it effect, and that is an adequate method for the settlement of international differences without the necessity of a resort to arms. This method now presents itself in an international tribunal composed of permanent judges of the highest character for learning and disinterestedness, administering justice according to law. It is the existence of such tribunals which has induced us to abandon private warfare as a means of settling our personal controversies, and it cannot be doubted that the same motives will operate with equal effect in the larger field of international relations. With the institution of such a tribunal of the nations, the reign of law will be at hand. "Force and right rule the world," said Rochefoucauld; "Force till right is ready." The hour prefigured in the maxim of the soldier-philosopher has struck. Right is ready."

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

The Honourable Mr. Justice Riddell delivered an interesting address in September last at a meeting of the Missouri Bar Association, on the subject of the Judicial Committee of the Privy Council. It has been reprinted from the report of the proceedings of the meeting, and while it contains much that is familiar to Canadian readers, it is well worth perusal. Mr. Justice Riddell sketches the history of the origin and development of the appellate jurisdiction of the Privy Council and distinguishes the final court of appeal in England known as the House of Lords, with which the Privy Council is often confused, especially by Americans. After describing the constitution and personnel of the Committee Mr. Justice Riddell adds: "This body is not a court, it is a Committee appointed to consider certain legal questions and report thereon to His Majesty's Privy Council. There is no instance in which all those who are qualified actually sit; I have never seen more than seven—nor less than four; three, exclusive of the Lord President, constitute

a quorum. These Privy Councillors are clothed as ordinary English gentlemen without official garb of any kind, although counsel appearing before them must wear the black gown, silk or stuff according as he is or is not a King's counsel, bands of white lawn and wig of horse hair. In Ontario we wear all these except the wig, but I found that one becomes accustomed to the wig very quickly and very easily. I presume it strikes the Englishman with the same sense of incongruity when he enters our courts and sees judges and counsel with gown and white bands but without wig as it does an Ontarian when he sees certain American judges sitting in court with a gown, but also with a black necktie.

"Being a Committee and not a court, the decision a report, no dissent is expressed—one of the Committee gives the opinion of the Committee and no one knows in any case how the members of the Committee were divided or if they were divided. While the House of Lords is bound by its own judgments, such is not the case with the Judicial Committee, the Committee may and sometimes does decline to follow the law as laid down in previous cases. Their Lordships consider themselves at liberty and, indeed, bound to examine the reasons upon which a previous decision was arrived at, and if they find themselves forced to dissent from those reasons, to decide upon their own view of the law. I do not know that this has ever actually been done in questions of the law of property, but it has in matters affecting the forms of worship, etc., in the Church of England. For example, in the well-known case, *Read* v. *Bishop of Lincoln* (1892), A.C. 644, the previous decision in *Hebbert* v. *Purchas,* L.R. 3 P.C. 651, 23 years before, was not followed, as their Lordships found themselves unable to concur in the reasoning. It has, however, been said—even in a case involving property—by the Committee (upon a previous case before that Board being cited as an authority absolutely binding upon them) that it would have been their duty had the necessity arisen to consider for themselves whether the decision was one which they ought to follow (1891, A.C., at p. 282).

"The Committee sits in an old building on the north side of Downing Street, Westminster, not far from the Abbey and the Parliament Buildings. The Board is on the floor toward the middle of the room; the counsel upon a raised platform to the east side, communicating with the robing rooms, etc. The platform is accommodated with a small reading desk upon which counsel addressing the Board may rest his books and papers—all the proceedings in the courts below are in printed form as also the points relied upon by each side. Whenever a case cited is not thoroughly well known the report is brought at once from the book cases lining the walls of the room; and each point, as a rule, is thoroughly threshed out at the time by court and counsel, so that even if judgment should be reserved counsel generally know pretty well what the result will be . . .

"There is an advantage that the members of the Board are removed from the scene of the facts upon which litigation arises —they cannot be thought to be influenced by public opinion or public clamour; in questions of great constitutional moment which have awakened party discussion and party feeling, they are away from and above party; in matters of public policy they cannot be conceived of as influenced by any other consideration than justice and the public good. They also are in a position to do much toward making the law uniform in all common law countries."

REVIEW OF CURRENT ENGLISH CASES.

PRACTICE — ACTION — DISCONTINUANCE BEFORE APPEARANCE — COUNTERCLAIM.

The Salybia (1910) P. 25. This, although an admiralty action, it may be useful to note as settling that where an action is discontinued before appearance, it is at an end for all purposes, and it is not thereafter open to the defendant to file a counterclaim. After the action had been discontinued the defendant applied to compel the plaintiff to deliver "a preliminary act," which appears to be the equivalent in admiralty for a statement of claim in an ordinary action, in order that the defendants might be able to deliver a counterclaim, but Bigham, P.P.D., held that the defendant had no such right under the Rules.

ADMIRALTY—COLLISION—NEGLIGENCE OF DEFENDANTS SERVANT CAUSING ORIGINAL DAMAGE — SUBSEQUENT NEGLIGENCE OF PLAINTIFFS' SERVANT CAUSING LOSS—CONTRIBUTORY NEGLIGENCE.

The Egyptian (1910) P. 38. In this case which was an admiralty action to recover damages for a collision, the facts were as follows. The defendants' vessel was so negligently handled by her temporary master in taking up her berth at a dock, as to cause a collision with the plaintiffs' vessel moored at the dock. After the collision, and knowing that it happened, the temporary master of the defendants' vessel went on board the plaintiffs' vessel and resumed his duties there as a watchman, but negligently failed to discover that owing to the collision water was entering the plaintiffs' vessel, and in consequence took no steps to prevent the inflow which he might have done; and owing to this neglect the vessel sank. In these circumstances Deane, J., held that the defendant was liable for all the damage, but the Court of Appeal (Lord Alverstone, C.J., and Buckley and Kennedy, L.JJ.), held that though the defendant was liable for the initial damage caused by the collision, he was not liable for the damage caused by the sinking of the vessel, which was due to the omission of the plaintiffs' servant to take proper steps to prevent the inflow of water.

TRADE MARK—DISTINCTIVE MARK—"PERFECTION"—"ADAPTED TO DISTINGUISH"—USER—EVIDENCE—TRADES MARK ACT, 1905 (5 EDW. VII. c. 15), s. 9(5)—(R.S.C. c. 71, s. 11).

In re Crosfield (1910) 1 Ch. 118. This was an appeal from the registrar of trade marks for refusing to register the word "Perfection" as applied to soap as a trade mark. The applicants gave evidence that up to January, 1907, the applicants had used the word in conjunction with their name and two pyramids, with a caution that the genuine tablet of the soap bore the name and pyramids, and they also shewed that the word "Perfection" alone had come to denote their soap exclusively over a large extent of England and Wales, as distinguished from that of other makers. The registrar refused registration and Eady, J., upheld his decision being of the opinion that there was nothing in the word itself "adapted to distinguish" the applicants' soap, and the fact that its use within large areas of the United Kingdom had rendered it distinctive of the applicants' soap to many persons in those areas, though not so to many others, and scarcely to anyone outside of those areas, was not sufficient to make the mark "distinctive" or "adapted to distinguish" within the meaning of the statute (see R.S.C. c. 71, s. 11), and this conclusion was affirmed by the Court of Appeal: see next case.

TRADE MARK—REGISTRATION—DISTINCTIVE WORD—LAUDATORY EPITHET — GEOGRAPHICAL NAME—PHONETIC SPELLING OF COMMON WORDS—TRADES MARK ACT, 1905 (5 EDW. VII. c. 15), s. 9(5), ss. 11, 14—(R.S.C. c. 71, s. 11).

In re Crosfield (1910) 1 Ch. 130. This is an appeal from the judgment of Eady, J., in the preceding case, and also from the judgment of Warrington, J., *In re California Fig Syrup Co.* (1909) 2 Ch. 99, noted, ante, vol. 45, p. 597, and also from the judgment of Eve, J., *In re Brock.* The facts in the first of these cases are sufficiently stated in the preceding note, and it will suffice to say that the Court of Appeal affirmed the decision. In the second case the application was to register as a trade mark the words "California Syrup of Figs" as applied to an aperient medicine of which registration had been refused by Warrington, J. In this case the Board of Trade had referred the matter to the court. The evidence established a primâ facie case of the words having become identified by long use with the goods of the applicant and the Court of Appeal overruling Warrington, J., held that the application ought to be allowed to proceed.

In the third case the word sought to be registered was "Orl-woola" as applied to woollen goods made by the applicants. Eve, J., had allowed the registration, but the Court of Appeal considered that the word was merely a phonetic spelling of the words "all wool" which could not themselves be registrable, and in the opinion of the Court could not be made registrable by spelling them according to the orthography of "Josh Billings."

MARRIED WOMAN—SETTLEMENT—GENERAL POWER TO APPOINT BY WILL—NON-OCCURRENCE OF EVENT ON WHICH POWER WAS TO ARISE—EXERCISE OF POWER DURING COVERTURE—MARRIED WOMEN'S PROPERTY ACT, 1893 (56 & 57 VICT. C. 63), S. 3—WILLS ACT, 1837, S. 24—(R.S.O. C. 128, S. 26).

In re James, Hole v. *Bethune* (1910) 1 Ch. 157. By a marriage settlement property was settled upon trust for husband and wife for life, and if there should be no children and husband should predecease wife, then after his death in trust for the wife absolutely. If the husband survived the wife, she had a general power to appoint notwithstanding coverture (but subject to her husband's life interest), and in default of appointment the trust funds were to go to the wife's next of kin on her husband's decease. The husband predeceased the wife, but during coverture she made a will appointing the trust fund, and the question was whether such appointment took effect. By the Married Women's Property Act of 1893, a will of a married woman made during coverture does not require to be republished on her becoming discovert (see R.S.O. c. 128, s. 26), and Joyce, J., held that the will must be held to operate on any property the testatrix was entitled to at the time of her death, and as at the time of her death she was absolutely entitled to the fund, the will was an effective disposition of it.

CHARITY—SCHEME—APPLICATION OF INCOME—CHARITY OUT OF JURISDICTION.

In re Mirrlee's Charity, Mitchell v. *Attorney-General* (1910) 1 Ch. 163. A testatrix who was born in Scotland, but who at the time of her death was domiciled in England made her will bequeathing £20,000 to charity. By a scheme settled by the court it was provided that the income of the fund should be applied for the benefit of a particular hospital in England, "or such other medical charity or charities of any kind, school or teaching whatsoever, and partly or exclusively to one or other of such

objects as the trustees may in their uncontrolled discretion from time to time determine." The trustees applied for leave to apply the income to medical charities in Scotland, but Joyce, J., held that the charity must be administered, and the scheme carried into effect, within the jurisdiction of the court, and could not be applied to any charities in Scotland.

WILL—CONSTRUCTION—GIFT TO A., B., C., AND THEIR CHILDREN—GIFT OVER ON DEATH OF A., B., C., LEAVING NO CHILDREN—REALTY—CHATTELS REAL—EXECUTORY BEQUEST OR LIMITATION OVER ON DEATH OF PARENT—RULE IN WILD'S CASE.

In re Jones, Lewis v. *Lewis* (1910) 1 Ch. 167 may be considered as an illustration of the benefit which sometimes accrues to the profession "from the jolly testator who makes his own will." In this case he succeeded in so framing his testamentary wishes as to raise sundry nice points, and though probably blissfully ignorant of the rule in *Wild's* case, or the intricacies of the law respecting substitutional gifts, or gifts in succession, or executory devises and bequests, yet he nevertheless managed to stumble into them in such an inartificial way that no meaning could be given to his intentions without the assistance of a court of law. By the will in question leasehold and real estate were given to his wife for life and after her death "whatever may be left" after discharge of all claims against the estate, was given to his children in the following proportions 2-5 to his son and 3-5 to his two daughters in two equal shares, "and to the child or children of the three said children. In case of any of my children dying and bearing no legal issue, the share or shares of those dying to be given to the surviving child or children of such as will be dead—my daughters' and granddaughters' shares to be independent and free from all husbands." His wife survived the testator; only one of the grandchildren was born during her life. An application was made by the three children for the determination of their interests. It was contended that under *Wild's* case they took a fee tail in the realty, and as to the personalty that the gift to the children was concurrent, and consequently only the grandchild born in the lifetime of the tenant for life was entitled to share, and those children who had no issue at the death of the tenant for life were consequently entitled absolutely. Joyce, J., however, held that no child was entitled at present to his or her share absolutely, but that each share upon the death of the child was subject to an executory bequest or limitation over to his or her

children, and also subject to the gift over in case of any child dying leaving no issue, the meaning of which would have to be decided when, if ever, the event happened. He also held that the rule in *Wild's* case (1599) 6 Rep. 16b has no application where the gift or devise to the children (here the grandchildren of the testator) would, without reference to the rule, be a gift or devise in succession to, and not concurrently with, their parent.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—DEFAULT IN PAYMENT BY PURCHASER—FORFEITURE OF DEPOSIT—FORM OF JUDGMENT—DEFICIENCY ON RESALE—PRACTICE.

Shuttleworth v. *Clews* (1910) 1 Ch. 176 was an action for specific performance of a contract for sale of lands. The purchaser had paid a deposit of £700 on his purchase money, and the plaintiff prayed that in the event of his making default his deposit should be declared forfeited, and for a resale of the property, and that he should be ordered to pay the deficiency, and a question arose as to what would be the proper form of judgment in such a case, and whether in the event of the resale the purchaser would be entitled to credit for the deposit in estimating the deficiency. Joyce, J., held that the purchaser would in calculating the deficiency be entitled to credit for the deposit, and intimates that in his opinion the order in *Griffiths* v. *Vezey* (1906) 1 Ch. 796 was improperly drawn.

COMPANY—ASSOCIATION NOT FOR PROFIT—ARTICLES OF ASSOCIATION—CONSTRUCTION—ULTRA VIRES — PENSION TO RETIRED SERVANT.

Cyclists' Touring Club v. *Hopkinson* (1910) 1 Ch. 179. The plaintiffs in this case was a company organized under the Companies Act not for profit. By its articles of association it was provided, as a condition of obtaining a license, as follows.

The income and property of club whencesoever derived, shall be applied solely towards the promotion of the objects of the club as set forth in this memorandum of association, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the club. Provided that nothing therein contained shall prevent the payment in good faith of remuneration to any officers or servants of the club, or to any member of the club or other person in return for any services actually rendered to the club. On a vote of a majority of the members a pension

of £150 a year was voted to a retired secretary of the club, by way of gratuity. Before acting on the vote the council desired to be assured that the payment would be intra vires of the club, and hence the present action was instituted, and the point was brought up for adjudication in a summary way by originating summons, a member of the club being made the defendant. Eady, J., determined that the payment would be intra vires.

STOCK EXCHANGE—BROKER AND CLIENT—PURCHASE OF SHARES—CARRYING OVER—ACCOUNT RENDERED BY BROKER TO CLIENT—OMISSION BY BROKER TO GIVE PARTICULARS OF HIS CHARGES—EQUITABLE MORTGAGE—IMPLIED POWER OF SALE—REASONABLE NOTICE TO MORTGAGOR.

Stubbs v. *Slater* (1910) 1 Ch. 195 was an action brought against a stock exchange broker. The plaintiff had employed the defendant to buy shares for him on what in this country is called "margin." The defendant bought the shares, which were from time to time "carried over" on successive settling days. The defendant from time to time rendered to the plaintiff a statement of the charges for carrying over, which were stated to be 8½d. "net." This sum included, besides the jobber's charge, a sum for the broker's own services, but as Neville, J., found the plaintiff did not know what it meant, or that it included the charges from time to time paid to the jobber for carrying the shares over. The plaintiff failed to pay the balance against him in October, 1905, and on the defendant pressing for payment, the plaintiff thereupon deposited with the defendant a certificate for 390 gas shares with a transfer in blank. The fortnightly balances continuing adverse to the plaintiff, in January, 1906, the defendants closed the account with a balance of £69.10s. against the plaintiff and then sold the gas shares for £162.10s. The plaintiff claimed that the charges made by the defendants were excessive and improper in that they included charges for the defendant's services which were not specified or disclosed. Neville, J., found on this point in favour of the plaintiff holding that where an agent seeks to charge his principal for his services the principal must be distinctly informed of the charge, and that the mixing up of his charges with sums paid to another person will not do. He also held that the defendants were justified in selling the whole of the shares for which there was no market, but which could only be sold as an opportunity might arise. He, therefore, held that the plaintiff was not entitled to any relief on that account, but that he was entitled to a refund

of £17.17s. 10d. the broker's charges, or might have a reference if he preferred it to ascertain the amount thereof, subject to the risk of costs.

COMPANY—WINDING-UP—CONTRIBUTORY—TRANSFER OF SHARES TO ESCAPE LIABILITY—BONA FIDES—EQUITIES BETWEEN TRANSFEROR AND TRANSFEREE.

Re Discoverers' Finance Corporation (1910) 1 Ch. 207. This was an application by the liquidators of a company being wound up to rectify the list of contributories by substituting the name of Lindler for that of Schneider in respect of 2,000 shares of £1 each, on which only 7/6 per share had been paid, on the ground that Lindler had transferred the shares in question to Schneider who was a "man of straw" in order to escape liability for calls. It appeared in evidence that in 1904 Lindler, from something he heard, became anxious to get rid of his liability on his shares and tried to find a purchaser in England and failed, and then wrote to a correspondent in Germany to find him a purchaser who brought the matter before one of his employees named Schneider, who agreed to purchase the shares for 100 marks. Lindler on being informed of this filled up a transfer to Schneider stating the consideration to be £5, this transfer was executed by Schneider and returned to Lindler who sent it in for registration, the directors were not bound to register it, but they did so on its being passed by the board of directors in February, 1905. In 1906 the company went into voluntary liquidation. It appeared that the consideration for the transfer had never been paid or asked for. The explanation being that shortly after the transfer Schneider met with an accident which had crippled him for life, but the transfer was an out and out transfer without any undertaking that Schneider should be indemnified by Lindler or anyone else against any loss. In these circumstances Neville, J., held that the transfer was valid, and unimpeachable by the liquidators.

WILL—CONSTRUCTION — ABSOLUTE GIFT FOLLOWED BY CODICIL DIRECTING USE OF LEGACY FOR CHARITABLE PURPOSE—PRECATORY TRUST—"I WISH."

In re Burley, Alexander v. *Burley* (1910) 1 Ch. 215. This was an application for the construction of a will. The testatrix gave a legacy of £2,300 to Colonel Russell. By a codicil dated the same day she declared "I wish Colonel Russell to use £1,000

part of the legacy given to him by my above will for the endowment in his own name of a cot in a named hospital, and to retain the balance . . . for his own use." By a second codicil made two years later the testatrix declared, "I wish Colonel Russell after endowing the cot as provided in the first codicil, to use the balance of the legacy given to him by will for such charitable purposes as he shall in his absolute discretion think fit." Colonel Russell renounced and disclaimed the whole legacy of £2,300. It then became a question whether or not a good charitable trust had been created, and Joyce, J., decided that as to £1,000 there was a good charitable trust for the endowment of the cot in the hospital, and as to £1,300 there was a valid and effectual trust created for charitable purposes, notwithstanding anything that has been said in the later cases regarding precatory trusts.

WILL—CONSTRUCTION—ABSOLUTE GIFT—GIFT ON CONDITION—PRECATORY TRUST FOR CHARITY—"I SPECIALLY DESIRE."

In re Conolly, Conolly v. *Conolly* (1910) 1 Ch. 219 a similar question to that raised in the last case also arose. The testator gave to his sisters Anne and Louisa equally, the rest of his stocks and shares, subject to a legacy to E. R. Conolly of £1,000, and he subsequently stated, "I specially desire that the sums herewith bequeathed shall with the exception of the £1,000 to E. R. Conolly, be specifically left by the legatees to such charitable institutions . . . as my sisters may select, and in such proportions as they may determine." It was argued that this latter clause had the effect of cutting down the previous absolute gift to the sisters to a life estate subject to a trust after their lives for charity. Joyce, J., came to the conclusion that in this case no valid trust was created. He points out in the first place that no "sums" strictly speaking were bequeathed to the sisters, that "sums might mean stocks and shares or only what they take in money which created an uncertainty as to what really was meant. He also points out that a further uncertainty existed owing to the fact that the property was to be left to such charitable institutions, etc., "as my sisters (i.e., the two) may select and in such proportions as they may determine," which, however, he thought might be taken to mean that each solicitor was to determine as to her own particular share only. But apart from these considerations, he held that the words used were not sufficient to create a precatory trust according to the recent cases, which he considered had established that an absolute

gift is not to be cut down to a trust estate, by the mere expression of a wish that the donee shall leave the property to some charitable purpose.

INSURANCE, MARINE—DEVIATION CLAUSE—AGREEMENT THAT VESSEL SHALL BE INSURED AT A PREMIUM TO BE ARRANGED—SUBJECT TO "DUE NOTICE" OF DEVIATION—NOTICE OF DEVIATION GIVEN AFTER LOSS.

Mentz v. *Maritime Ins. Co.* (1910) 1 K.B. 132. This was an action on a policy of marine insurance which contained a clause providing that in the event of the vessel making any deviation such deviation shall be held covered at a premium to be arranged "provided due notice be given by the assured on receipt of advice of such deviation." The vessel made two deviations and in the course of the second deviation was stranded in February, 1908, and became a total loss. The plaintiff had no notice of either deviation until April, 1908, when they were informed of the second deviation and at once gave notice of it to the defendants. They were not informed of the first deviation until May, 1908, and not thinking a notice of it to be of any importance in the circumstances they did not give any notice of it to the defendants till many months later. The question, therefore, was whether a notice given after loss was a sufficient compliance with the condition. The defendants contended it was not "due notice" because it was impossible for them when it was given to protect themselves by reinsurance. But Hamilton, J., declined to give effect to that argument, and on the contrary held that the notice given was a sufficient compliance with the condition.

CRIMINAL LAW—FALSE PRETENCES—EVIDENCE OF OTHER FRAUDS—ADMISSIBILITY.

The King v. *Fisher* (1910) 1 K.B. 149. In this case the defendant was indicted for obtaining a pony and cart under false pretences on June 4, 1909. Evidence was admitted that on May 14, 1909, and on July 3, 1909, the prisoner had obtained provender from other persons by false pretences, different from those alleged in the indictment. The prisoner was convicted, but on a case stated by the justices, it was held by the Court of Criminal Appeal (Lord Alverstone, C.J., and Channell and Coleridge, JJ.), that such evidence ought not to have been received. Channell, J., who delivered the judgment of the court, admits that the question how far evidence is admissible of other criminal acts on the

part of an accused, is not always easy to decide. He, however, considers the principle is clear that the prosecutor is not allowed to prove that the prisoner is guilty of the offence charged by giving evidence that he is a person of bad character and in the habit of committing crimes, because that is equivalent to asking the jury to convict the prisoner of the offence charged because he has committed other offences. But if the evidence of other offences does go to prove that he did commit the particular offence charged then it is admissible. For example, on a charge of embezzlement, if the defence is that the failure to account is due to a mistake of the prisoner, evidence would be admissible to prove other instances of the same kind, because that would tend to shew that the prisoner's default was not due to mistake; so, also, where a prisoner obtains goods by paying for them with a worthless cheque, proof of his having obtained other goods by means of worthless cheques would be admissible—such evidence being permissible as negativing the fact of the accused having acted under a mistake.

CRIMINAL LAW—PLEADING—RECEIVING STOLEN GOODS—OMISSION OF WORD "FELONIOUSLY"—COMMON LAW MISDEMEANOUR.

The King v. *Garland* (1910) 1 K.B. 154. This was a prosecution in which the indictment alleged that the prisoner unlawfully received certain goods knowing them to have been feloniously stolen. It was objected on the part of the prisoner that the omission of the word "feloniously" after the word unlawfully rendered the indictment void in law. But the Court of Criminal Appeal (Lord Alverstone, C.J., and Channell and Coleridge, JJ.), held that the indictment was good as charging the commission of the common law misdemeanour of receiving stolen goods, and that though the evidence disclosed a felonious stealing within the Larceny Act, 1861, a conviction based on that evidence is by reason s. 12 of the Criminal Procedure Act, 1857, a good conviction for the common law misdemeanour, although by s. 91 of the Larceny Act, 1861, the receiving of goods feloniously stolen, is itself made a felony.

NEGLIGENCE—PUBLIC SCHOOL—DANGEROUS DOOR SPRING—INJURY TO SCHOLAR—LIABILITY OF SCHOOL AUTHORITIES.

In *Morris* v. *Carnarvon County Council* (1910) 1 K.B. 159, the plaintiff was a child of seven years and attended as a scholar a public school maintained and carried on under the authority of

the defendants. Being ordered by the teacher to leave the class room, the plaintiff passed through the door, which was a heavy swing door with a powerful spring, and which shut upon her fingers, causing her serious injury. The action was tried in a County Court, and judgment was given for the plaintiff, and on appeal to a Divisional Court (Darling and Phillimore, JJ.), the judgment was affirmed, the court holding that as the door was dangerous if used by young children, the defendants having invited the plaintiff to use it were liable at common law for the injury that resulted.

TRESPASS—JUSTIFICATION—ACT DONE TO STAY PROGRESS OF FIRE—PRESERVATION OF SPORTING RIGHTS.

In *Cope* v. *Sharpe* (1910) 1 K.B. 168, the defendant was gamekeeper of the owner of sporting rights over the land of the plaintiff. A fire occurred on the land in question which was covered with heather, and in order to extinguish the fire and prevent it from spreading so as to destroy the game on the land, the defendant burnt certain strips of heather in order that the fire might be checked when it reached such burnt strips. For so doing the plaintiff sued the defendant for trespass. The County Court judge held that the act was a trespass and gave judgment for the plaintiff, but the Divisional Court (Darling and Pickford, JJ.), were of the opinion that if the act in question was necessary for the preservation of the sporting rights of the defendant's master, it would be justified, and, as that fact was not found, a new trial was ordered.

NEGLIGENCE—SAVAGE ANIMAL—LIABILITY OF OWNER TO TRESPASSERS.

In *Lowery* v. *Walker* (1910) 1 K.B. 173 the Court of Appeal (Williams, Buckley, and Kennedy, L.JJ.) have affirmed, but not unanimously, the judgment of the Divisional Court in this case (1909) 2 K.B. 433 (noted, ante, vol. 45, p. 645), to the effect that the owner of a savage animal, which is kept in his field, which is traversed by strangers without license or leave is not liable to such strangers while so trespassing for injury caused to them by such animal. Buckley, L.J., dissented because he was of the opinion that the plaintiff was not a trespasser, but was in fact using the premises without objection of the defendant, and the defendant knew that persons so traversing the field were exposed to the risk of an attack from the animal in question.

SOLICITOR—LUNACY OF CLIENT—DETERMINATION OF SOLICITOR'S AUTHORITY—STEPS IN ACTION TAKEN BY SOLICITOR IN IGNORANCE OF DETERMINATION OF AUTHORITY—IMPLIED WARRANT OF AUTHORITY—LIABILITY OF SOLICITOR ACTING FOR DEFENDANT WITHOUT AUTHORITY FOR PLAINTIFF'S COSTS.

Yonge v. *Toynbee* (1910) 1 K.B. 215 deals with a question of great importance to solicitors. The plaintiff had sued the defendant for slander in December, 1908, and a firm of solicitors whom the defendant had in the previous August retained in anticipation of the action, had undertaken to appear for him, which they did, and subsequently delivered a defence setting up privilege. It subsequently came to the solicitor's knowledge in April, 1909, that in October, 1908, the defendant had been certified as of unsound mind and ordered to be detained. The solicitors then gave notice to the plaintiff's solicitors of the fact of the defendant's lunacy. The plaintiffs, thereupon, applied to strike out the appearance and defence as having been entered without authority, and for an order that the solicitors who had entered the same should pay all costs of the abortive proceedings. Sutton, J., made the order striking out the appearance and defence, but refused the order for costs against the solicitors, but the Court of Appeal (Williams and Buckley, L.JJ., and Eady, J.), held that on the authority of *Collen* v. *Wright* (1857), 8 E. & B. 647, the solicitors must be taken to have warranted their authority to act for the defendant, and the fact that they had acted bonâ fide and in ignorance that their authority had determined did not relieve them from liability to the plaintiffs for the costs occasioned to them by replying on each warranty.

PRACTICE — DISCOVERY — PRODUCTION OF DOCUMENTS — TRADE UNION—CORRESPONDENCE BETWEEN PLAINTIFF AND TRADE UNION—PRIVILEGE BETWEEN SOLICITOR AND CLIENT.

Jones v. *Great Central Ry.* (1910) A.C. 4. It is not often that a mere point of practice is carried to the House of Lords, and it is a pity where one is thought to be of sufficient importance to carry to that august tribunal that the case is not reported in such a way that the decision can be clearly understood. We confess that we find difficulty in understanding exactly what was decided in the present case. The plaintiff was a former employee of the defendant company, he was dismissed and considered himself aggrieved thereby. He was a member of a trade union, and, as such, he was entitled to have the assist-

ance of the solicitor of the union in bringing an action for wrongful dismissal, provided he could satisfy the officials of the union that he had a reasonable ground of complaint. For the purpose of satisfying them on that point certain letters passed between the plaintiff and the officials of the union in order to furnish information by which the solicitor of the union should be enabled to conduct the action which the plaintiff desired should be brought. It would seem that the officials were satisfied and the solicitor of the union brought the action at the union's expense. So far as appears the union was not in any way a party on the record. On a motion for discovery the defendants claimed that the letters which had passed between the plaintiff and the union officials must be produced, but whether he was called on to produce both those which the plaintiff received as well as those he had written does not very clearly appear. The plaintiff claimed that they were privileged as being communications between solicitor and client, but the House of Lords (Lord Loreburn, L.C., and Lords Macnaghten, James and Shaw), held that they were not privileged. One could understand that the plaintiff should be required to produce the letters he had received, but on what principle he could be called on to produce documents in the hands of a third party we are unable to see. If those documents had come to the hands of his solicitor while acting as solicitor for the plaintiff they would no doubt be producible, but if as would appear to be the case they came to the hands of the solicitor while acting for a third party (in this case the trade union), how can the plaintiff be required to produce them? We give it up. If the documents were in the hands of the solicitor as solicitor for the union we would imagine that the union might say "we object to your producing our documents."

DEFAMATION—LIBEL IN NEWSPAPER—PUBLICATION—ABSENCE OF INTENTION TO DEFAME PLAINTIFF.

Hulton v. *Jones* (1910) A.C. 20 is our old friend *Jones* v. *Hulton* (1909) 2 K.B. 444, which was noted, ante, vol. 45, p. 645, and which shews how dangerous it is for a newspaper writer with an exuberant fancy, to use the name of "Jones" when he wishes to invent some spicy and imaginary story concerning a fictitious person. For if a member of that numerous family were to arise and say he was thereby defamed the publisher might have to smart handsomely for his pains though wholly ignorant of even the existence of the plaintiff, and innocent of all intention to injure him. In this case the plaintiff was a bar-

rister, his Christian name was "Thomas," but he assumed the name of "Artemus," and he was known among his friends as "Artemus Jones." In the defendants' newspaper an article was published purporting to describe the doings of a Mr. Artemus Jones at Dieppe, in a manner very derogatory to his moral character. The writer of the story disclaimed all knowledge of the plaintiff's existence and intended to relate a purely fictitious story of a fictitious and non-existent person. The plaintiff, however, proved that his friends and acquaintances thought that the article referred to him, and he recovered a verdict of £1,750, which was upheld by the Court of Appeal, and has now been also upheld by the House of Lords (Lord Loreburn, L.C., and Lords Atkinson, Gorrell, and Shaw). The Lord Chancellor is careful to say that if the article had clearly indicated that it related to a fictitious person it would not have been libellous. The trouble with the writer of the article in question was that he lied too much like truth.

ESTATE DUTY—FOREIGN BONDS PAYABLE TO BEARER—BONDS ACTUALLY WITHIN JURISDICTION.

In *Winans* v. *Attorney-General* (1910) A.C. 27 the House of Lords (Lord Loreburn, L.C., and Lords Atkinson, Gorrell and Shaw), have decided that foreign bonds and certificates payable to bearer, and passing by delivery, and marketable on the London Stock Exchange, when physically situate within the United Kingdom at the death of the owner within the jurisdiction, are subject to estate duty under the Finance Act, 1894, although the owner was an American citizen domiciled in America. The appellant contended that the same principles which apply to legacy and succession duty, applied to the estate duty under the Finance Act, 1894 (57-58 Vict. c. 30), ss. 1, 2(2), but their Lordships held that they were not applicable, but that the principle on which probate duty was payable governed the case, and as Lord Shaw puts it, the estate duty has now absorbed probate duty, in other words what was formerly payable as probate duty is now payable as estate duty.

INCOME TAX—RETURN OF INCOME—NEGLECT TO DELIVER A TRUE AND CORRECT STATEMENT—INCOME TAX ACT, 1842 (5-6 VICT. C. 35), SS. 52, 55—(ASSESSMENT ACT, 4 EDW. VII. C. 23. S. 21 (ONT.)).

Attorney-General v. *Till* (1910) A.C. 50. In this case the respondent being required under s. 52 of the Income Tax Act of

1842 (see 4 Edw. VII. c. 23, s. 21 (Ont.)) to deliver a true and correct statement in writing of his gains and profits under schedule D, delivered an incorrect statement, not fraudulently (as the jury found) but negligently, that is to say, not to the best of his judgment and belief according to the rules. Lord Alverstone, C.J., who tried the action held that he was nevertheless liable to the penalty imposed by the Act, but the Court of Appeal (1909) 1 K.B. 694 reversed his decision. The decision of the Court of Appeal has now been reversed by the House of Lords (Lord Loreburn, L.C., and Lords Atkinson, Gorrell and Shaw), and the judgment of Lord Alverstone, C.J., restored.

MASTER AND SERVANT—NEGLIGENCE—NEGLECT OF STATUTORY DUTY—EVIDENCE—BURDEN OF PROOF.

Britannic Merthyr Coal Co. v. *David* (1910) A.C. 74. This was an appeal from a decision of the Court of Appeal granting a new trial, (1909) 2 K.B. 146 (noted, ante, vol. 45, p. 473). The plaintiff's husband was killed by an explosion caused by blasting operations conducted in breach of certain statutory rules. The point in issue was simply a question of procedure concerning the burden of proof. It was proved by the plaintiff that the operation which had resulted in the explosion had been conducted contrary to the statutory rules. Channel, J., who tried the action nevertheless directed the jury that it was also incumbent on the plaintiff to prove that the defendants had not done their duty in taking proper care of the miners. The House of Lords (Lords Halsbury, Ashbourne, Atkinson, Gorrell, and Shaw), while affirming the decision of the Court of Appeal that there should be a new trial, expressed dissent from some of the reasons which that court had given; but what particular reasons they refer to, are not specified.

MASTER AND SERVANT—COMMON EMPLOYMENT—RISK INCIDENTAL TO EMPLOYMENT—NEGLIGENCE OF FELLOW SERVANT—IMPLIED TERM OF CONTRACT OF SERVICE.

Coldrick v. *Partridge* (1910) A.C. 77 is the case in which the representative of a deceased employee claimed to recover damages from his employers, the death of the deceased having been occasioned owing to the negligence of the defendants' servants, who managed a private railway of the defendants which the deceased and other servants used in coming and going from their work. The defence of common employment was set up,

and held by the Court of Appeal to be an answer to the action, (1909) 1 K.B. 530 (noted, ante, vol. 45, p. 320); and this conclusion is now affirmed by the House of Lords (Lord Loreburn, L.C. and Lords Atkinson, Gorrell and Shaw). Their Lordships being of the opinion that it was an implied term of the contract between the deceased and the defendants, that he was to be at liberty to use the railway, and that the servants managing that railway were fellow servants of the deceased, notwithstanding they were engaged in a different department of the business carried on by the defendants, from that in which the deceased was employed.

MINES AND "OTHER MINERALS"—DEPOSIT OF CHINA CLAY—EXPROPRIATION BY RAILWAY.

In *Great Western Railway Co.* v. *Carpalla U.C. Co.* (1910) A.C. 83 the House of Lords (Lords Macnaghten, Atkinson, Collins, Shaw, and Loreburn, L.C.) have affirmed the judgment of the Court of Appeal (1909) 1 Ch. 218 (noted, ante, vol. 45, pp. 197, 747), to the effect that a deposit of china clay comes within the terms "mines and other minerals," and as such excepted from lands conveyed to the defendant railway company, in pursuance of expropriation proceedings, china clay being in their Lordships' opinion clearly a "mineral," and not a part of the ordinary composition of the soil in the district. See infra *North British Railway* v. *Budhill Coal & S. Co.*, where it is held that a sandstone though having a special commercial value, yet being part of the ordinary rock of the district is not a mineral. It may be noted that judgment was given in that case on the 15th Nov., 1909, whereas the judgment in this case was not delivered till a month later.

TRADE UNION—APPROPRIATION OF FUNDS OF TRADE UNION FOR SUPPORT OF PARLIAMENTARY REPRESENTATIVE—ULTRA VIRES—PUBLIC POLICY.

Amalgamated Society of Railway Servants v. *Osborne* (1910) A.C. 87. This is the decision that has caused some adverse comment amongst trade unionists. It was decided by the Court of Appeal (1909) 1 Ch. 163 (noted, ante, vol. 45, p. 197), that it is ultra vires of a trade union to devote any part of its funds towards payment for the services of a member of parliament. The House of Lords (Lords Halsbury, Macnaghten, Hereford, Atkinson, and Shaw) have affirmed that decision, (1) because

there is nothing in the Trade Union Acts to indicate that parliament intended to confer power on such associations to collect and administer funds for political purposes, (2) because a rule of any such association purporting to give it power to raise money for the purpose of securing parliamentary representation is ultra vires. Lord James was of the opinion that a rule compelling the member of parliament to answer the whip of the labour party was ultra vires, as not being within the powers of a trade union. Lord Shaw considers it not only to be ultra vires, but also unconstitutional as interfering, or endeavouring to interfere, with the freedom of judgment of a member of parliament. As his Lordship puts it, although such a bargain would be void at law, and the member entering into it would be free to act as he saw fit, yet where a court of law is appealed to, to lend its authority to the recognition and enforcement of a bargain of that kind, it would be contrary to sound public policy so to do. The rest of their Lordships, however, refrain from discussing the constitutional aspect of the case.

RAILWAY—EXPROPRIATION—EXCEPTION OF MINES OF COAL, IRONSTONE, SLATE OR OTHER MINERALS.

North British Railway Co. v. *Budhill Coal & S. Co.* (1910) A.C. 116. The question discussed in this case is very similar to that in *Great Western Railway Co.* v. *Carpall C.C. Co.*, supra. In this case the question arises on the Scotch Railway Act which excepts from land which can be expropriated, "mines of coal, ironstone, slate or other minerals" unless the same be specially paid for; here the particular substance claimed to be excepted as a "mineral" was a bed of sandstone of a peculiar commercial value. It appeared that this formation was the ordinary rock of the district, and the House of Lords (Lord Loreburn, L.C., and Lords Atkinson, Gorrell and Shaw), on appeal from a Scotch Court, held, reversing the court below, that the sandstone was not a "mineral" and, therefore, not excepted. The various conflicting decisions of the courts on the question what substances are and what are not included in the term "mineral," referred to in the judgment of Lord Loreburn, L.C., seem to shew that the courts have been unable to arrive at any satisfactory decision as to what does constitute a "mineral," and their Lordships by the two decisions above referred to, seem to have contributed to make the confusion a little worse confounded. If they mean to lay down the rule that where a substance is part of the ordinary soil of a district it is not a "mineral," but where

it is exceptional it is not; this does not seem to be a workable rule. Lord Gorrell, on page 130, cites no less than six definitions of the word "mineral," all of which are more or less contradictory. He bases his conclusion on the ground that in ordinary parlance sandstone is not considered to be a mineral. But if we are to be governed by ordinary parlance then gas or oil are not usually considered to be "minerals," and yet they have been judicially held to be minerals: See *Re Ontario Natural Gas* v. *Smart*, 18 Ont. App. 626.

LIABILITY OF BANKERS FOR ACT OF AGENT IN EXCESS OF HIS AUTHORITY—PRINCIPAL AND AGENT—NOTICE OF LIMITED AUTHORITY OF AGENT.

Russo-Chinese Bank v. *Li Yau Sam* (1910) A.C. 174. This was an appeal from the Supreme Court of Hong Kong and involved a very simple point. The plaintiff in the action sought to recover from the defendants, a banking company, a certain sum which he had placed in the hands of the defendants' agent for the purpose of telegraph transfer through the defendants' bank, the agent had no authority to receive money without the express approval of the defendants, his business was simply to arrange the details of the proposed transaction, and the plaintiff had notice of this limitation of his authority. The mony was misappropriated by the agent, and the plaintiff sought to make the defendants liable for the loss. The Colonial Court gave judgment for the plaintiff, but the Judicial Committee of the Privy Council (Lords Macnaghten, Atkinson and Collins), it is almost needless to say reversed that decision.

PILOTAGE DUES—R.S.C. 1886, c. 80, s. 2(B), ss. 58, 59, (R.S.C. (1906) c. 113, ss. 475, 477)—CONSTRUCTION.

The St. John Pilot Commissioners v. *Cumberland Ry.* (1910) A.C. 208. This was an appeal from the Supreme Court of Canada in which the principal point was whether a vessel having sails, but principally dependent for locomotion on being towed by a tug, was a "vessel propelled by steam," and as such exempt from pilotage dues, within R.S.C. 1886, c. 80, ss. 58, 59 (now R.S.C. (1906), c. 113, ss. 475, 477). The Judicial Committee (Lord Loreburn, L.C., and Lords Ashbourne, Collins and Gorrell, and Sir A. Wilson), differing from the courts below, held that the vessel was not propelled by steam, and was, therefore, not exempt as claimed.

REPORTS AND NOTES OF CASES.

Province of Ontario.

HIGH COURT OF JUSTICE.

Teetzel, J.] ROSS *v.* TOWNSEND. [Feb. 17.

Costs—Scale of—Amount recovered—Investigation of accounts involving large sums—Jurisdiction of County Court—Con. Rule 1132—*Set-off.*

Motion by the plaintiff for judgment on further directions and as to costs.

The plaintiff sued for $505.30 for balance of salary and travelling expenses. Upon a reference directed at the trial, the master reported that the plaintiff was entitled to recover only $152.85, of which the defendant had paid into court $107.95, with a plea of tender before action.

TEETZEL, J.:—While the total accounts investigated by the master were large, the result of the report is that the plaintiff should have sued for a balance of $152.85 only. The County Courts having jurisdiction to entertain and investigate accounts and claims of suitors, however large, provided the amount sought to be recovered does not exceed the sum prescribed by the Act, this claim could have been sued for in a County Court: *Bennett* v. *White*, 13 P.R. 149. In the result, the case as to costs is governed by Con. Rule 1132.

The order will, therefore, be, that the plaintiff is entitled to judgment against the defendant for $152.85, including the amount paid into court, and costs on the County Court scale, subject to the set-off to which the defendant is entitled under Con. Rule 1132.

J. M. Telford, for the plaintiff. *A. O'Heir*, for the defendant.

Divisional Court.] [Feb. 24.

TORONTO FURNACE CREMATORY CO. *v.* EWING.

Sale of goods—Conditional Sales Act, s. 1—*Name and address of manufacturer to be stamped upon manufactured article—Incomplete address—Insufficiency.*

Appeal by the plaintiffs from the judgment of Denton, junior judge of the County Court of York, dismissing an action in

that court, brought to recover a balance of $165 alleged to be due to the plaintiffs from the defendant Ewing for furnace and fittings, and, in the alternative, for an order to remove the furnace.

The appeal was heard by CLUTE, LATCHFORD and SUTHERLAND, JJ.

CLUTE, J.:—The main question argued was as to whether there was a sufficient compliance with the statute (the Conditional Sales Act, R.S.O. 1897, c. 149), which provides (s. 1) that "the manufactured article shall have the name and address of the manufacturer . . . painted, printed, stamped or engraved thereon or otherwise plainly attached thereto."

In the present case the plaintiffs' name as incorporated is, "Toronto Furnace and Crematory Company, Limited." They carry on business at 70 and 72 King Street East, Toronto. The words upon the plate attached to the furnace are as follows: "From Toronto Furnace and Crematory Co., Limited, 70 and 72 King Street East."

It will be seen that, while the company's name appears upon the plate, the company's address is not given, unless it be implied from the name and the number and street where their business is carried on.

The defendants contend that the address should be given, notwithstanding that the word "Toronto" appears as part of the name of the company as incorporated . . .

I am of opinion that the Act has not been complied with, and that the judgment of the court below is right and must be affirmed. *Mason* v. *Lindsay*, 4 O.L.R. 365, followed.

A. C. Macdonnell, K.C., for the plaintiffs. *J. T. Loftus*, for the defendant Pearcy. *W. A. Proudfoot*, for the defendants the Northern Life Assurance Co.

Master in Chambers.] [Feb. 28.

JACKSON v. HUGHES.

Foreign commission—Time for return—Practice—Application to suppress Commission evidence—Solicitor a partner of commissioner—Con. Rules 512, 522.

Motion by the defendants, the Hughes Company, to set aside an ex parte order extending for two days the time for the return of the commission sent to take evidence at Dundee, Scotland, and to suppress the same.

THE MASTER:—The first branch of the motion was made under a misapprehension, as the time for the return is the date on or before which it must be executed and despatched by the commissioner. It does not mean the date at which it must reach the central office: see *Darling* v. *Darling*, 9 P.R. 560, a decision of the present Chancellor on appeal from the contrary opinion of the Master in Ordinary (Taylor): see Con. Rule 512.

As to the other branch, it is, so far as I know, or can ascertain from inquiries of the oldest inhabitants of Osgoode Hall, the first application of the kind in this province.

The ground taken is that the commissioner was a solicitor, and that his partner appeared on behalf of the plaintiffs on the execution of the commission.

It was contended that, as the commissioner had to administer the oath to the witnesses, our Con. Rule 522 should be applied. The cases on this rule are given in Holmestead & Langton's Judicature Act, at p. 727. That of *Wilde* v. *Crow*, 10 C.P. 406, seems adverse to the motion.

The following cases were also cited and relied on: *Fricker* v. *Moore* (1730), Bunbury 289, where the court suppressed the depositions because taken before the plaintiff's solicitor, who was one of the commissioners; *Re G. M. Selwyn* (1779), 2 Dick. 563, for similar reasons; *Sayer* v. *Wagstaff* (1842), 5 Beav. 462, where it was said by Lord Langdale, M. R., that a commissioner should not act as solicitor for either party after his appointment.

The practice in England at these dates, as at present, is set out in Odgers on Pleading, 5th ed., c. 17, p. 268 et seq. It is so entirely different from ours that the English cases have little, if any, application on the present motion. If it was known beforehand what questions were going to be put up to the witnesses, who would then have their answers settled beforehand by their solicitors and counsel, it would be clearly improper for the partner of a commissioner to act for either party or for such a commissioner to be named by the examining party. At p. 279 Odgers says: "The answers (to interrogatories) must be carefully drawn." So, too, objections may be taken to the interrogatories, and apparently they too are prepared in the same careful way. It would seem to follow from this radical difference in the English practice that objections which would be fatal there would have little or no weight here.

Mr. Arnoldi has been cross-examined on his affidavit, and I have seen the depositions. He states that he does not know if any member of the commissioner's firm had been acting as

the plaintiffs' solicitor in this matter or in any other, nor does he think it likely, but, as he has not a copy of the evidence, and the commission has not been opened, he cannot say what, if anything, they did.

I think, in these circumstances, the motion must be dismissed with costs to the plaintiffs in the cause, leaving the defendants to avail themselves of their right to make all valid objections at the trial.

J. T. White, for the applicants. *Williams* (Montgomery & Co.), for the defendant Percy Hughes, supported the motion. *H. S. White*, for the other defendants stood neutral. *F. Arnoldi*, K.C., for the plaintiff, shewed cause.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] THOMSON *v.* WISHART. [Feb. 21.

Attorney and client—Agreement to share in amount to be recovered by suit—Law Society Act, R.S.M. 1902, *c.* 95, *s.* 65 *—Maintenance and champerty—What criminal laws of England introduced into Manitoba by s.* 12 *of the Criminal Code.*

Maintenance and champerty had become obsolete as crimes in England in 1870, and s. 12 of the Criminal Code, declaring that the criminal law of England as it existed on 15th July, 1870, in so far as it is applicable to the Province of Manitoba . . . shall be the criminal law of the Province of Manitoba, did not introduce the law of maintenance and champerty considered as crimes into that province. Consequently s. 65 of the Law Society Act, R.S.M. 1902, c. 95, allowing an attorney or solicitor to make an agreement with a client to be paid for his services by receiving a share of what might be recovered in an action is not ultra vires of the Provincial Legislature as trenching upon or intended as a repeal of any provision of the criminal law. Such an agreement, therefore, may be enforced in our courts.

Dennistoun, K.C., and *Young*, for plaintiff. *F. M. Burbidge*, for defendant.

Full Court.] HOLLINGSWORTH *v.* LACHARITE. [Feb. 21.

Contract—Consideration—Failure to complete contract—Thresher's Lien Act, R.S.M. 1902, *c.* 167.

The plaintiff was employed to thresh the defendant's crops of wheat, oats and barley at prices agreed upon. He threshed all the wheat (over 2,500 bushels), but left 458 bushels of barley and 10 to 15 acres of oats unthreshed.

Held, that the promise of each party was the consideration for the promise of the other and that payment by the defendant was not intended to be conditional upon the threshing of all the crops, so that plaintiff had not, by leaving some of the work undone, forfeited his right to be paid for what he had done, or lost his right to seize under the Thresher's Lien Act, R.S.M. 1902, c. 167, a sufficient quantity of the grain he had threshed from which to realize the amount of his claim.

Bettini v. *Gye,* 1 Q.B.D. 187, followed.

Hudson, for plaintiff. *Coulter,* for defendant.

Full Court.] ROSS *v.* MATHESON. [Feb. 21.

Principal and agent—Commission on sale of land—Necessity to get purchaser bound in writing.

When the agent has found a purchaser ready, willing and able to carry out the purchase for the price and on the terms stipulated for by his principal, he will be entitled to his commission, although he has not secured a deposit or got the purchaser bound by any writing, in a case when the principal, after being informed of the willingness of the purchaser to buy, simply ignored the agent and dealt directly with the purchaser by selling the land to him at the stipulated price less the commission.

Howell, for plaintiff. *Mackenzie,* for defendant.

Full Court.] JACK *v.* STEVENSON. [Feb. 21.

Animals running at large—Fences—Damages—Municipal Act, R.S.M. 1902, *c.* 116, *ss.* 643(*b*), 644(*d*).

The power of a municipal council under sub-s. (d) of s. 644 of the Municipal Act, R.S.M. 1902, c. 116, to pass a by-law limiting the right of a land owner to recover damages for any injury

done by trespassing animals to cases in which the land is enclosed by a fence of the nature, kind and height required by the by-law should be held to be restricted to cases in which the animals go upon the land from some adjoining land where they have a right to be, and such by-law is no protection to the owner of animals trespassing from a highway, if the council has not passed a by-law, under sub-s. (b) of s. 643, for allowing and regulating the running at large of animals in the municipality. Am. & Eng. Enc., vol. 12, p. 1044, and Enc. of Law & P., vol. 2, p. 401, followed.

F. M. Burbidge, for plaintiff. *Hudson*, for defendant.

Full Court.] DALZIEL v. ZASTRE. [Feb. 21.

Animals running at large—Fences—Damages—Municipal Act, R.S.M. 1902, c. 116, ss. 643(b) and 644(d).

Action for damages caused to plaintiff by defendant's cattle trespassing on his lands which were not fenced. Defendant relied on a by-law of the municipality, presumably passed under the powers conferred by sub-s. (b) of s. 643 and sub-s. (d) of s 644 of the Municipal Act, R.S.M. 1902, c. 116, and declaring that "it shall be lawful for any person to permit his horses or cattle . . . to run at large in any season of the year . . . and no one shall be at liberty to claim damages against the owner of such horses or cattle running at large or doing damage unless he shall have surrounded his lands and premises with a lawful fence as defined by by-law of this municipality."

At the trial there was no by-law proved which showed what should constitute a lawful fence in the municipality, except one which related only to barbed wire fences.

Held, that the defence failed and the plaintiff was entitled to recover.

Phillips, for plaintiff. *Deloraine*, for defendant.

Full Court.] HAMILTON v. MACDONALD. [Feb. 21.

Vendor and purchaser—Pleading—Specific performance—Refund of money paid on purchase of land—Prayer for further and other relief.

The plaintiff's statement of claim set forth a case for specific performance of an agreement of sale of land to the plaintiff's

assignor and the payment of two instalments of the purchase money. The relief claimed was specific performance of the contract and "such further and other relief as the nature of the case might require." No amendment of the pleadings was asked for or made.

Held, that, on the failure of the case for specific performance, the trial judge could not, under the prayer for general relief, properly make an order for repayment by the defendant of the money he had received on account of his sale, and that the action should be dismissed with costs, without prejudice, however, to the right of the plaintiff to claim such repayment in another action.

Cargill v. *Bower*, 10 Ch.D. 502, followed; *Labelle* v. *O'Connor*, 15 O.L.R. 519, distinguished.

Haffner, for plaintiff. *Macneil*, for defendant.

KING'S BENCH.

Macdonald, J.] [Feb. 7.

GREAT WEST PERMANENT *v.* ARBUTHNOT.

Mistake—Erection of house on wrong lot.

The plaintiffs advanced money to A. to build a house on lot X. A., by mistake, built the house on lot Y with material bought on credit from B. B. then acquired the title to lot Y.

On discovering this, the plaintiffs stealthily removed the building to lot X, but B. moved it back again.

The former owner of lot Y knew nothing about the placing of the building upon it.

Held, that the building had become part of the realty in the hands of such former owner and that the plaintiffs were not entitled to an order requiring B. to return or remove the building to lot X, or permitting them to remove it themselves, or to any damages or other relief against B.

Taylor, K.C., for plaintiffs. *H. A. Burbidge* and *Hughes*, for defendants.

Macdonald, J.] MCPHERSON *v.* EDWARDS. [Feb. 16.

Practice—Amendment—Delay in applying for.

An application by the defendant made in good faith in Chambers before the trial for leave to amend the statement of

defence should not be refused although there has been great delay in making it, only partially accounted for by negotiations for settlement, where no injury can be caused to the plaintiff by the amendment that cannot be compensated for in costs.

Johnson v. *Land Corporation*, 6 M.R. 527, and *Tildesley* v. *Harper*, 10 Ch. D. 393, followed.

McLaws, for plaintiff. *Caird*, for defendant.

United States Decisions.

ACCIDENT INSURANCE.—Failure to Follow Physician's Directions: No indemnity should be allowed for an insured under an accident policy on account of an extension of the injury occasioned by his negligence to follow directions of his physician. *Maryland Casualty Co.* v. *Chew*, Ark. 122 S.W. 642.

ACCORD AND SATISFACTION.—CHECKS: A debtor paying by check containing a condition held authorized to withdraw the condition prior to the acceptance of the check by certification. *Drewry-Hughes Co.* v. *Davis*, N.C. 66 S.E. 139.—Payment by Check: The retention of a check which was shewn by a letter and voucher which accompanied it to be in full payment of the account sued on, without any explanation, held a payment in full of the account. *Goodloe* v. *Empson Packing Co.*, Mo. 122 S.W. 771.

AUTOMOBILES—LOOK AND LISTEN DOCTRINE IN REFERENCE TO STREET CROSSING BY PEDESTRIANS.—The New York Supreme Court, in Appellate Division, has held that it is not contributory negligence as a matter of law for one not to look in both directions as he steps from the sidewalk to cross a street, because vehicles must keep on their proper side: *Brantley* v. *Jaeckel*, 119 N.Y. Supp. 107. The injury to the pedestrian was by an automobile proceeding at a rapid speed on the wrong side of the street. The rule as to looking both ways is distinguished from the case of one going on a railroad track, though one would not have to look but one way, it would seem, if the railroad was double-tracked. The court said: "It is no hardship upon owners of automobiles, which are travelling silently and without any signal of warning, as in this case, and on the wrong side of the street and close to the curb, to hold that the person in control of the car must be observant not only of what is directly in front

of it, but of pedestrians who are travelling on the sidewalk and who may step into the street in front of the car."

The automobile "honk" seems as much in judicial cognizance as the engine bell or the street car gong, and the public have the right for one to sound as much as the other. The plane upon which the three are, as dangerous machines, seems about the same, with rigidity of rule rather against the automobile. We know where a train or a street car has to be, and the New York court says we know where the automobile ought to be, and we can assume the existence of one fact as well as the other.

BILLS AND NOTES.—Insertion of Date: A bonâ fide holder without notice of a note held entitled to enforce it notwithstanding the fact that the payee inserted an improper date therein. *Bank of Houston* v. *Day,* Mo. 122 S.W. 756.—Sufficiency of Evidence: In an action on a note shewn to have its inception in fraud by an alleged holder in due course, the burden is upon plaintiff to affirmatively establish his good faith in the transaction. *Arnd* v. *Aylesworth,* Iowa 123 N.W. 1,000.

BROKERS.—Duty to Disclose Facts: Broker sending customer to his principal to negotiate directly, without communicating to the principal his knowledge that the customer was resolved to pay the price asked, held to forfeit any right to commission. *Carter* v. *Owens,* Fla. 50 So. 641.

CARRIERS OF PASSENGERS.—Injury to Passengers: A passenger cannot recover for mental suffering incident to an injury in the absence of a shewing of wanton or wilful disregard of his rights. *Caldwell* v. *Northern Pac. Ry. Co.,* Wash. 105 Pac. 625. —Wrong Date of Ticket: A passenger presenting a ticket with an erroneous date cannot enhance his damages by resisting the conductor's order to leave the train, nor because of force used in ejecting him. *Arnold* v. *Atchison, T. & S.F. Ry. Co.,* Kan. 105 Pac. 541.

CONTRACTS.—Consideration: Where a widow repudiated a contract to permit defendants to use certain land so long as they should support her, defendants, having had the use of the land prior to the repudiation, could not claim the value of their services. *Glass* v. *Hampton,* Ky. 122 S.W. 803.—Destruction of Subject Matter: A contract calling for the rendition of personal service by one is subject to the implied condition that, in the event of his death, further performance on both sides will be excused. *Levy* v. *Caledonian Ins. Co.,* Cal. 105 Pac. 598.—

Validity: A contract for the sale of pianos for resale to the public by the buyer under a word contest held not invalid as contrary to public policy. *D. H. Baldwin & Co.* v. *Moser,* Iowa 123 N.W. 989.

CRIMINAL LAW.—Opinion Evidence: One may be qualified by study without practice, or by practice without study, to give an opinion on a medical question. *Copeland* v. *State,* Fla. 50 So. 621.

CRIMINAL TRIAL.—Discharge of Jury: The discharge of the jury in a capital case for illness of the judge held a discharge from necessity, so that accused was not placed in jeopardy. *State* v. *Vernado,* La. 50 So. 661.—Misconduct of Jury: Jurors speak through their verdict, and cannot violate secrets of the jury room and tell of partiality or misconduct that transpired there, nor speak of methods which induced to produce the verdict. *State* v. *Linn,* Mo. 122 S.W. 679.—Witnesses: Where accused was a witness in his own behalf, the court erred in charging that in general a witness who is interested will not be an honest, candid and fair as one who is not. *Holmes* v. *State,* Neb. 123 N.W. 1043.

CROPS.—Contracts: Party furnishing seed wheat for a fourth of the crop held to have a right thereto superior to a mortgage given by the other party on the entire crop. *Dobson* v. *Covey,* Kan. 105 Pac. 519.

DAMAGES.—Warning Against Sympathy: In an action for personal injuries to plaintiff, and for the death of his wife and three children from an explosion of illuminating oil, held that the jury should have been cautioned not to allow questions of sympathy or sentiment to enter into their deliberations. *Chapman* v. *Pfarr,* Iowa 123 N.W. 992.

EASEMENTS.—Ways of Necessity: Where there was no outlet to the public highway from land sold, the law implied a grant of a reasonable right of way from the remainder of the vendor's land to the vendee, and subsequent grantees of the vendor took subject to such right of way. *Roland* v. *O'Neal,* Ky. 122 S.W. 827.

FIXTURES.—Intent in Making Annexation: In ascertaining the intention to make machinery or other articles permanently a part of a factory building, adaptability to the work or business is important, and if necessary thereto, or to the purpose for which the building was designed and used, or a convenient ac-

cessory, or commonly employed, intention to annex permanently may be inferred. *Banner Iron Works* v. *Aetna Iron Works*, Mo. 122 S.W. 762.

MASTER AND SERVANT.—Negligence: The general rule against the recovery for injuries sustained by persons while attempting to get on or off a moving train held not to apply with absolute strictness to "train hands," brakemen, and the like. *Reeves* v. *North Carolina Ry. Co.*, N.C. 66 S.E. 133.—Safe Place to Work: A servant held authorized to assume that his master or servants employed to do repair work had protected a hole in the floor made by the servants while doing the repair work. *Shives* v. *Eno Cotton Mills*, N.C. 66 S.E. 133.—Assumption of Risk: Where two employees are working together in the performance of a common task, and the inferior servant is injured by the negligence of the superior in the performance of an act incident to the common employment, the master is not liable as the risk ordinarily incident to the employment was assumed. *English* v. *Roberts, Johnson & Rand Shoe Co.*, Mo. 122 S.W. 747.

Book Reviews.

A Treatise on American Advocacy. By ALEXANDER H. ROBBINS. St. Louis, Mo.: Central Law Journal Company.

This interesting book is a great improvement on Harris' "Hints on Advocacy" on which it is founded. Mr. Harris' work, as the title implies, was discursive and unsystematic; and it contained on the one hand, much that had no bearing on American practice, while on the other, it omitted much that the practitioner desired to know. Mr. Robbins, in correcting these defects, has exhibited the cardinal requisite of every expository treatise, namely, a logical arrangement and division of the subject matter.

Step by step the author conducts us in orderly progression through the various operations with which the advocate has to deal, preparation for trial, opening the plaintiff's case, examining in chief, cross-examination, re-examination, summing-up the defendant's case, and the plaintiff's reply. Then follow some

very instructive chapters on the conduct of a criminal prosecution and defence, on the various classes of untruthful witnesses, on tact and tactics, legal ethics, etc. The author deals throughout with fundamental principles and with rules based upon the practise and precept of the most eminent advocates. Thus the rules followed by the late Sir Charles Russell are given in his own words as follows: "If you ask me to reduce the common habit of my life to formula, I will tell you that I have only four rules to guide me in preparing my work—first, to do one thing at a time, whether it is reading or eating oysters, concentrating such faculties as I am endowed with upon what I am doing at the moment; second, when dealing with complicated facts, to arrange the narrative of events in the order of time. My third rule is never to trouble myself about authorities supposed to bear on a particular question until I have accurately and definitely ascertained the precise facts; and, lastly, I try to apply the judicial faculty to the case before me, in order to determine what are its strong and weak points, and to settle in my own mind on what the issue depends."

Success in advocacy, as in every other art that deals with men, depends upon a knowledge of human nature and upon tact, a sort of refined common sense, a certain delicacy of perception and feeling which the advocate brings to the complex problems with which he has ever to deal. An advocate may by practice alone and without instruction, learn the principles and rules of the art; but he will make many mistakes and waste a great deal of time which might have been avoided if he had the opportunity to read a work such as this of Mr. Robbins', which is indeed a condensed summary of the experience of the best advocates.

We can heartily commend this admirable work to the notice of students as well as to practitioners of wider experience. It cannot but have a good influence in upholding the best traditions of the profession; in avoiding prolixity and waste of time in the conduct of trials which are crying evils in our courts; and on the whole it will do much to make better advocates, and thus more thoroughly secure and safeguard the rights of those who invoke the intervention of the law.

Bench and Bar.

JUDICIAL APPOINTMENTS.

The Honourable James Thompson Garrow, of the city of Toronto, in the Province of Ontario, a justice of appeal of the Supreme Court of Judicature for Ontario, to be a local judge in Admiralty of the Exchequer Court in and for the Toronto Admiralty District. (March 1.)

His Honour Hugh O'Leary, judge of the District Court of the Provincial Judicial District of Thunder Bay, in the Province of Ontario, to be a Surrogate judge in Admiralty of the Exchequer Court for that portion of the Toronto Admiralty District comprised in the Territorial Districts of Thunder Bay and Rainy River in the said Province of Ontario. (March 7.)

Flotsam and Jetsam.

THE LAW OF THE AIR.

The recent successful attempts at aviation open up a new and interesting field of legal inquiry. In the not distant future the aeroplane is likely to become a common means of transportation. This will necessitate the enactment of laws defining the relative rights of those who, Ariel-like, traverse the viewless pathway of the air, and of those terrestrial dwellers whose rights of person and property are likely to be infringed.

The St. Joseph (Mo.) *Press* states that Governor Hughes, of New York, believes that legislation will soon be necessary to control airships, and favours the prompt enactment of laws defining the right of aeroplanes to fly over others' property, and restricting or regulating the carrying of passengers.

Chief Justice Baldwin, of the Connecticut Supreme Court, recently lectured on this subject before the Yale Law School, holding that the common-law ownership theory would have to be modified to meet the conditions of modern progress. The theory of the common law has been that owners of the soil own all that is directly above and directly beneath their property, to an indefinite extent. On this theory, if a man owns all the

atmosphere above him, no other man has a right to cross it with aeroplane or dirigible balloon without his consent. It would be trespass. Such machines are now very few in number, and are quite welcome to go where their owners will, but in time they may become numerous and develop unsuspected dangers. One a year flying over a man's house might be a negligible menace, but forty or fifty a day, with ropes dangling, ballast falling, anchors hanging, motors in danger of exploding, and the whole machine liable to drop and set fire to or smash crops or dwellings,—would be an entirely different matter.

Justice Baldwin thinks that a landowner's control of the air above his property must be limited to the exclusion only of that which may be a danger to him or an injury to his property. In a word, he cannot stop the flying machines, but if they should damage his trees, inconvenience or sicken his family by the smoke or smell, imperil his safety, or injure him, he would have cause for action and would be able to get redress. Existing laws would probably uphold claims for injuries thus inflicted, but the conditions of aero-navigation are so unstable and uncertain that very carefully prepared laws will be needed to define the rights and privileges of all parties.—*Case and Comment.*

HUMOUR OF THE LAW.

The late Judge Hamlin, former Attorney-General of Illinois, was once engaged in the trial of a cause before a judge who was not inclined to tolerate tardiness on the part of attorneys. When he adjourned court at noon, he took occasion to impress upon the lawyers that court would reconvene at 1.30 o'clock exactly. He was almost speechless with rage when Mr. Hamlin walked into the court room shortly after 2 o'clock, apparently oblivious of any offence.

"Judge Hamlin," exploded the indignant and outraged court, "your violation of the instructions of this court is most reprehensible. Orders issued from this bench must be obeyed. What do you suppose the people elected me for?"

"Well, judge," drawled Hamlin, his eyes twinkling with merriment, "that matter always has been a mystery to me."