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CANADIAN MILITARY LAW OVERSEAS.

In a previous article, 56 C.L.J., p. 41, certain phases of the law applicable to Canadian military forces overseas were discussed. It is desired in this article to set forth as a matter for record the practice adopted with respect to claims against the Crown by reason of negligence or tort on the part of Canadian soldiers. Such cases were numerous. They included a multitude of claims for damages caused by the negligent driving of motor and other transport vehicles on the highways, as well as claims for trespass, damage to property, theft and kindred offences. For reasons set forth in the previous article, the Canadian forces in the earlier years of the war, having formed no definite policy of their own, submitted themselves to the practice of the British military authorities, but in 1917, pursuant to a realization of their true status, which gradually developed, a change of position was taken which will be outlined, together with the reasons for taking it.

In France and other foreign theatres of war the Imperial authorities asserted the immunity of a sovereign state from civil proceedings, as generally recognized under International law. When, therefore, claims were put forward by the inhabitants of a foreign country by reason of tortious or negligent acts on the part of Imperial soldiers, they were brought before British commissioners appointed to investigate and deal with such matters. All claims were submitted through Town Majors and Area or Military Commanders, and if it appeared that a claim had been occasioned by the occupation or movement of Imperial troops, or that there was a moral obligation to indemnify inhabitants who had suffered injury, or loss, at the hands of individual soldiers, the commissioners allowed the claim at an amount which in their judgment was fair and reasonable, and it was paid in due course.

The Americans, on the other hand, on entering the war, submitted to the jurisdiction of the French tribunals, and undertook to pay such damages as should be assessed against them by the French authorities. They subsequently had reason to regret that they had surrendered their rights as a sovereign state, and had assumed the obligations of a private person or corporation, under laws which differed materially from their own.

In England, the British authorities adopted a different course for, although it is British law that the King can do no wrong, and cannot be guilty of laches or negligence and *a fortiori* cannot be liable for the laches or negligence of a servant or agent, civil or military, public opinion was so strongly against the doctrine that the military authorities practically abandoned it. Whenever a British soldier was involved in a claim for damages put forward by a civilian in England, failing settlement, an action was brought against the soldier. The Treasury supplied solicitors and counsel for the defence, and if a verdict were obtained, the amount was paid together with the costs awarded.

This was the practice followed by the Canadian authorities during the early years of the war. It was not found to work satisfactorily and was changed in 1917. When justifying this change to the British authorities it was pointed out that the position of the Canadians in Britain was similar to that of the British in France; that in dealing with the claims of their civilian population at home against their own soldiers the British Government for political reasons was anxious to be generous; that there was a good deal of complacency in respect to verdicts which went into the pockets of their own people; and further that the invocation of the prerogative of the King was not popular in a country which is in some respects more democratic than Canada.

On the other hand: if the Canadian Government voluntarily abandoned its rights as representative of a sovereign state, thereby largely increasing the tax burdens of the people at home in Canada, such action would not be favourably regarded by those who paid the money but received none of it. The utmost economy in the administration of affairs overseas was what they most desired. That there was a great difference between the amounts for which

claims could be fairly but firmly settled by the Canadian authorities, when compared with verdicts which would be given in the British courts. That litigation involved in practically all cases the payment of the costs of both sides, and experience had proved that they generally amounted to more than the claims sued on; that Canadian lawyers, many of whom were officers, were not qualified to appear in British Courts; that Canada as a sovereign state should assert the same immunities from legal liability as were possessed by the United States, Portugal, Belgium or any other foreign state which had troops in England.

The justice of the position was, after some discussion, admitted by the Treasury Counsel, and thereafter the following procedure was adopted, with great saving of time and expense to the Canadian forces: When a claim was put forward by a civilian in the British Isles it was referred to the Canadian legal authorities at headquarters in London. If it appeared that the claim arose from the negligence or tortious action of a Canadian soldier, and was in any way connected with his duty as a servant of the Crown, it was fairly assessed and an offer of settlement made. If the offer were refused, the claimant was informed that he was free to assert his rights against the soldier concerned, by action in the courts, but that if he did so, the Canadian Government would not defend the action, or pay the verdict or costs if judgment should be given against him. This had the effect of putting an end to litigation against Canadian soldiers. The time occupied in attending courts with parties and witnesses was saved for training or fighting, and a considerable staff which would have been necessary to take care of litigation all over the British Isles was rendered unnecessary. Settlements were made as "compassionate grants," legal liability on the part of the Canadian Government being disclaimed, and a "moral obligation" only being recognized.

One exception was made, and that in respect to insurance companies which were concerned with risks arising from vehicular traffic on the highways. It was pointed out to them that, the war having been in progress for more than two years, they were able to estimate the increased risk to their assured by reason of the presence of army transport on the highways, and to adjust their

premiums accordingly; that they were engaged in making a profit out of highway risks, and that there was no "moral" or "compassionate" reason why the Canadian Government should indemnify them against losses which could be anticipated and covered by themselves. Compassionate grants to such companies were therefore refused. This aroused some protest at first, but as time went on the position was accepted. The attitude of the British Government was to pay everybody, whether insurer or not, and to avoid criticism from its own constituents, if possible. The Canadian Government was equally anxious to avoid criticism at home, but this involved a complete reversal of the British policy.

In addition to the reasons given for the practice adopted there was the even stronger reason, dealt with in the previous article, that the time had arrived to assert the right of the Dominion of Canada to full possession of the perogatives of a sovereign state with all the immunities appurtenant to that high position; and to assert that such prerogatives and immunities were not claimed as personal to His Majesty but pertained to the King in right of the Dominion of Canada and were impersonal and national in their plenitude.

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*NEED OF UNIFORMITY IN DIVORCE.**

For a number of years the Ontario Bar Association has advocated the passing by the Parliament of Canada of a general law of marriage and divorce applicable throughout the Dominion, and the establishment of courts of competent jurisdiction with powers similar, on the whole, to those now vested in the Probate, Divorce and Admiralty Division of the High Court of Justice in England.

In the distribution of legislative powers under our Constitution, the subjects of marriage and divorce were assigned exclusively to the jurisdiction of the Parliament of Canada, while the subject of solemnization of marriage was assigned to the several provinces. Since the passing of the Act of 1867, however, Parliament has enacted no general law applicable throughout Canada to marriage

*Address delivered by MR. N. B. GASH, K.C., LL.B., President of the Ontario Bar Association, at the Annual Meeting held at Osgoode Hall, Toronto, March 3-4, 1920.

and divorce, nor has jurisdiction in divorce been specifically conferred on any court. The provinces, however, have all legislated upon that branch of the subject exclusively assigned to them. At the last session of Parliament a bill was introduced looking to the establishment of the right to judicial divorce, and the provision of courts, law and equipment necessary for the purpose. This Act passed its second reading with a substantial majority, but for some reason was dropped before reaching the final stage.

Until recently, it had been supposed that four only of our provinces had jurisdiction in such causes, namely, Nova Scotia, New Brunswick, Prince Edward Island and British Columbia, and these by reason either of this right being specifically reserved to them in the British North America Act of 1867, or by reason of the terms and conditions under which they were admitted to Confederation, whereby certain then existing laws applicable to these provinces were continued. The case of *Watts* v. *Watts*, decided in 1908 by the Privy Council on appeal from the courts of British Columbia, was the first instance in which the right of the courts of that province to grant a decree of divorce was challenged, and in which the validity of such decree was conclusively upheld.

The Province of Prince Edward Island, since its admission to the Union, has been in the enviable and unique position of having power to grant a judicial decree for dissolution of marriage without having, in fact, granted any, as no decree absolute has yet been pronounced in its courts. This may be taken as evidence as well of the high tone of morality prevailing among its people and the felicity of their domestic relations, as also in refutation of the argument that the very existence of such tribunals tends to promote laxity in morals and multiplicity of suits for freedom from the bond of matrimony. Apart from these four provinces, no others were generally supposed to have the right to adjudicate in their courts on the question of divorce and for lesser matrimonial matters.

Two decisions of the Privy Council last year, namely, *Walker* v. *Walker* and *Board* v. *Board*, being appeals from the Superior Courts of Manitoba and Alberta, respectively, finally confirmed the authority of these two provinces and, incidentally, of Saskatchewan,

to grant a decree of divorce *a vinculo matrimonii*, and, *a fortiori*, to deal with other matrimonial offences, such as divorce *a mensa et thoro*, or judicial separation, nullity of marriage, jactitation of marriage, restitution of conjugal rights, etc. In the Manitoba case, the Judicial Committee held that the Superior Courts of the province had been vested with the right to adjudicate in di orce suits since 1888, if not, indeed, since 1864; and in the Alberta case, that such right had existed since at least 1907, if not since 1886, although this right had never been previously invoked by any litigant.

The result now, therefore, is that in seven out of the nine provinces of Canada an absolute divorce or other matrimonial relief may be obtained in the provincial courts already established, and in two, only, Ontario and Quebec, is it still necessary to adhere to the antiquated, protracted, expensive and illogical system of procuring an Act of Parliament.

In Quebec, moreover, the provincial courts appear to have jurisdiction to annul a marriage on various grounds, such as impotency existing at the time of marriage, on application of the aggrieved party where made within three years of marriage, or for insanity, or where marriage is procured by duress, force, or fraud, or for relationship within the prohibited degrees, etc. A separation from bed and board may also be decreed for certain causes.

In Ontario, it was held in *T.* v. *B.*, 15 O.L.R 224, that a marriage could not be declared null and void upon the ground of impotency at the time of the marriage; in *A.* v. *B.*, 23 O.L.R. 261, Mr. Justice Clute held that even unsoundness of mind of one of the parties at the time of marriage did not warrant a judgment declaring the marriage void *ab initio;* and in *Reed* v. *Aull*, 32 O.L.R. 68, Mr. Justice Middleton held that the Supreme Court of Ontario had no power to declare a marriage ceremony, which had been duly solemnized, void for deceit, fraud, duress, or any other ground, unless brought within sec. 36 of the Marriage Act, R.S.O. 1914, ch. 148, in this dissenting from the dictum expressed by Chancellor Boyd in *Lawless* v. *Chamberlain*, 18 O.R. 296, who had there expressed the opposite view upon the theory that there was a

latent residual jurisdiction in the Court of Chancery in England after the establishment in 1857 of the Court for Divorce and Matrimonial Causes, whereby the Court of Chancery, by virtue of its equity jurisdiction, still retained the powers of the old Ecclesiastical Courts in this respect. In *Petiatt* v. *Petiatt*, reported in 34 O.L.R. and again in 36 O.L.R., the validity of sec. 36 of the Marriage Act, referred to above by Mr. Justice Middleton, was called in question on a reference of the case to the Appellate Division of our Supreme Court, and its provisions held not to be imperative, but merely directory. Sir William Meredith, C.J.O., in delivering the judgment of the court, whilst finding it unnecessary to determine the point, clearly expressed his own view that the section was *ultra vires*.

From these decisions in our courts it will be seen how restricted and anomalous is the position of this province with respect to any judicial rights or remedies arising out of this branch of the law of domestic relations. It is not my purpose to go into the history of the various legislative enactments, Imperial, Federal and Provincial, which have precipitated this confused state of laws in Canada at the present time.

Viscount Haldane, in the Privy Council cases from Manitoba and Alberta, cited above, clearly traces the history of the legislation and authority whereby power was conferred on the provincial courts of these two provinces to exercise these functions. His reasons in the judgment of *Board* v. *Board* apply, *mutatis mutandis*, to Saskatchewan. Upper Canada had no similar law of divorce at the time of Confederation, the laws of England as they stood in 1792 having been adopted as the substantive laws of the then Province of Upper Canada, subject to any legislative changes the province might make thereafter, and none were, in fact, made, following the passing of the English Divorce Act down to the time of Confederation in 1867.

In 1857, England passed the Matrimonial Causes Act, commonly referred to as the Divorce Act, and thereupon established a new civil court, known as the Court for Divorce and Matrimonial Causes, transferring to it the jurisdiction of the old Ecclesiastical Courts and conferring on it power to grant absolute divorce on

proof of adultery, on the part of the wife, or of adultery coupled with cruelty or desertion, or of incest, rape, sodomy or other like flagrant offences, on the part of the husband, an unjust discrimination which still subsists in the English law. The power to grant judicial divorce has, since that time, been continuously exercised in England by the civil Court then erected and its present successor, the Probate, Divorce and Admiralty Division of the High Court of Justice.

The laws of Quebec, or Lower Canada, on the other hand, are an admixture of the Code Napoleon, the Custom of Paris, and the common law of England, with changes suited to local conditions, and much of their Civil Code and Code of Civil Procedure is of French origin. The laws of France as to divorce are much more modern and liberal even than the laws of England. Applications for divorce are entertained in their civil courts and the causes there existing for such a decree are: adultery of either party, cruelty or other serious insults, or if one spouse has been sentenced and imprisoned for serious crime, etc. Judicial separation is also granted on similar grounds, and after three years of continued separation either party is entitled to take out a decree absolute. That our compatriots did not adopt this feature of the jurisprudence of their great prototype was due to the fact that they chose to adhere to the Church dogma of the middle centuries, which treated marriage as a sacrament indissoluble only by death, rather than accept the French theory that it was essentially a civil contract creating a status subject to State regulation and control. From the divergent origin of the laws in force in Ontario and Quebec, it is not surprising, therefore, that differences should exist in the matter of judicial rights and remedies. Divorce by Act of Parliament, abandoned in England, as we have seen, in 1857, is thus the only method by which relief can be obtained from an unfortunate matrimonial alliance by anyone domiciled in Ontario or Quebec, a distinction which we share with Ireland practically alone of all Dominions within the British Empire, where, as here, there is no judicial divorce, and relief has to be obtained by promoting, in the first instance, a bill through the House of Lords.

England and Scotland and the British Dominions overseas, including all of the Australian States, New Zealand, India, South Africa, etc., have courts vested with the power to entertain suits for the dissolution of the marriage tie or other matrimonial offences. It may be added, also, that this applies equally to every State in Europe, except Spain, Italy and Portugal. Even the old Empire of Austria-Hungary granted judicial divorce to its non-Catholic subjects; and in all these four European States their civil courts are vested with power to pronounce a decree for the annulment of marriage upon many grounds not recognized by the Parliament of Canada or any provincial court now exercising jurisdiction in matters matrimonial, and suits for judicial separation and relief in other marital differences are likewise dealt with by their courts.

Under the Federal Constitution of the United States of America, there is no general law of marriage and divorce applicable throughout the Union, the power in such matters being specifically delegated to the constituent States. Every State in the Union has legislated upon the subject, and provided the courts and necessary law for entertaining such causes, with the single exception of South Carolina, whose constitution does not permit of an absolute severance of the bond of matrimony. Among the other States of the Union, there is a wide divergence in the requirements as to domicile, grounds, procedure, etc. New York State, for instance, only recognizes adultery of either party as the sole ground for divorce, but permits annulment when either party has not reached the age of legal consent, or is of unsound mind, or physically incapable of contracting marriage through an incurable disease, or where marriage is procured by fraud, duress, or force, etc., In the majority of the other States, however, a large variety of grounds are available to anyone seeking divorce, with the unfortunate result that parties seeking relief shift their domicile according to circumstances and the particular State laws governing their case.

With due respect to the Constitution of the United States of America, it is conceived that the Fathers of our Confederation were wiser in their day and generation than the founders of the Constitution of the States in the matter of the distribution of legislative powers on this question, as it is manifestly a matter of

prime national importance that uniformity of law on the question of marriage and divorce should obtain throughout the whole State, and not, as we find in the United States, some fifty different systems of law prevailing on the subject, with as many distinct grounds for divorce, requirements as to domicile and procedure, etc. That eminent American authority, Shouler, in his Law of Domestic Relations (Boston, 1905, see p. 219) criticizes the American system and adverts to "The existence of so many independent jurisdictions which enable our citizens travelling from one State to another to find facilities for divorce and remarriage always at hand," and he adds "Uniformity by consent among these jurisdictions, or else a national rule by constitutional amendment, seems desirable."

The distinguished founders of the Australian Constitution fully perceived the weakness of the American method and the strength of the Canadian in this respect, whilst at the same time improving on the latter, by committing legislative powers on the subjects of marriage and divorce to the constituent States forming the Commonwealth and continuing in force their respective laws applying thereto in the meantime, but reserving power in the Federal Parliament to supersede all separate State legislation by a general Act applicable throughout the Commonwealth.

The Swiss Republic, too, as long ago as 1876, recognized the fallacy and mischief of perpetuating a number of diverse and conflicting systems within the Confederacy, by repealing the respective laws on marriage and divorce theretofore operating in the separate Cantons and enacting a Federal law applying uniformly throughout the entire State.

So, also, the German Civil Code of 1900, pronounced by Professor Maitland the most scientific and well considered codification of a nation's laws ever made, treats marriage and divorce as falling within the supreme National or Imperial control and not that of the separate States, and uniform laws and judicial system on these subjects prevail throughout the Empire.

Besides the seven separate and distinct systems of divorce law now in operation in the Provinces of Canada exercising this jurisdiction, Parliament has concurrent jurisdiction in cases arising therein, as well as exclusive jurisdiction in the remaining two

provinces. Parliament may grant such relief upon any ground appearing to it sufficient, but so far has recognized adultery as the sole cause for granting it.

In British Columbia the laws of divorce are those of England as they stood in 1858; in Manitoba, Saskatchewan and Alberta, the laws of England as of 1870, which, of course, included the amendments subsequent to the original Act; and in New Brunswick, Nova Scotia and Prince Edward Island, the respective divorce laws which each of these then, in a measure, self-governing provinces had on entering Confederation, in 1867, in the case of the first two, and in 1873 in the case of the Island Province. Further, the grounds upon which divorce may be granted are not only dissimilar, but in some respects wider than that recognized by Parliamentary practice.

In the four western provinces, at least, adultery alone is not sufficient ground for a decree on the part of the wife, whilst a perfectly valid one for the husband. The wife is required, following the English law, to prove adultery, coupled with cruelty or desertion, or incestuous adultery, rape, beastiality, or other like brutal offence. In Nova Scotia either party may succeed on proof of adultery or gross cruelty, or impotence, or kindred within the prohibited degrees; and in New Brunswick and the Island Province, on proof of adultery, impotence or frigidity, or consanguinity within the prohibited degrees.

In determining the validity of a foreign marriage, the *lex loci contractus*, or *lex loci celebrationis*, as it is otherwise termed, is considered the guiding principle, according to English jurisprudence, regard being also had to the law of the domicile as to the capacity of the respective parties, and this rule has been adopted by the tribunals of most civilized countries and is recognized in Canada.

In determining the validity of a foreign divorce, English courts have long since adopted the rule that the *lex domicilii* governs, and, incidentally, that the domicile of the husband is the domicile of the wife, except in cases where the wife has been deserted by her husband, or where he has given her cause for leaving him and the parties have previously been domiciled in

England and the husband has subsequently acquired a domicile in a foreign country, the wife continuing, in the meantime, to reside in England. In such cases, the English courts will grant a divorce on petition of the wife (see *Armytage* v. *Armytage* (1898), P. 178, 185; *Ogden* v. *Ogden* (1908), P. (C.A.) 46).

Until the passing of the Divorce Act in 1857, and indeed for some time thereafter, the English courts were under the predominant influence of what is known as the "contractual theory" of marriage, and no early decision is to be found in English reports recognizing the validity of any foreign decree purporting to dissolve an English marriage, the obvious reason being that the parties had contracted marriage upon the basis of its indissolubility under English law, and that as no courts in England were constituted with power to dissolve such marriage, no foreign court could have any such power. The Divorce Act, however, with its new substantive law and jurisdiction expressly conferred on civil courts to entertain divorce petitions and other matrimonial causes, displaced the contractual theory by providing legal means for the rescission of the contract, and thenceforth the "status theory" that marriage was essentially a civil contract creating a status subject to State regulation and control gradually became the accepted doctrine of the courts, although some of the judges were apparently at first loth to concede that a marriage performed in England between parties domiciled there could be affected by a decree of any foreign court.

In the case of *Wilson* v. *Wilson* (1872), L.R. 2 P. & D. 435, Lord Penzance in his judgment lays down the principle of jurisdiction in these words: "It is both just and reasonable, therefore, that the differences of married people should be adjusted in accordance with the laws of the community to which they belong, and dealt with by the tribunals which alone can administer those laws. An honest adherence to this principle, moreover, will preclude the scandal which arises when a man and woman are held to be man and wife in one country, and strangers in another."

The Privy Council, on an appeal from the courts of Ceylon, in *Le Mesurier* v. *Le Mesurier* (1895), A.C. 517, after exhaustively reviewing the authorities on the question of domicile, stated their

decision as follows: "Their Lordships have in these circumstances, and upon these considerations, come to the conclusion that, according to international law, the domicile for the time being of the married pair affords the only true test of jurisdiction to dissolve their marriage. They concur, without reservation, in the views expressed by Lord Penzance in *Wilson* v. *Wilson*, which were obviously meant to refer not to questions arising in regard to the mutual right of married persons, but to jurisdiction in the matter of divorce." The Court of Appeal in England, also, in *Bater* v. *Bater* (1906), P. (C.A.) 209, 235, cited with approval the above judgment of the Privy Council.

Domicile is, therefore, according to the present state of the English Law, firmly established as the foundation for jurisdiction in actions for divorce, and this is the generally accepted rule according to International law. In the United States the rule has generally been adopted that the wife may, where she has been given cause for divorce, acquire a domicile distinct from that of her husband and institute proceedings therein, and domicile in the States appears to be on the whole tantamount to mere *bonâ fide* residence of a more or less limited duration, and a decree of divorce validly obtained in one State is by the comity of nations accepted as of binding force in all other States.

In Canada our courts have been swayed largely by the history of English law in this matter, and, as our position is very similar to that of England down to 1857, and as the Matrimonial Causes Act (Divorce Act) was not brought into operation in Canada, except in the provinces previously adverted to, the contractual theory of marriage appeared to be the accepted doctrine of our courts to a much later date than was the case in England. Our courts were, however, brought gradually to accept the later English doctrine that domicile alone gave jurisdiction to a foreign tribunal to pronounce a decree of divorce which would have any extra-territorial effect, and they adhere strictly to the rule that domicile must be an actual and permanent domicile or matrimonial home, and not mere residence acquired for the purpose of obtaining a divorce, and also that the domicile of the wife is that of the husband. It remains to be seen whether our courts will relax the

rigidity of the rule as to a wife's domicile, following the English precedents above cited, and even go to the length of following the decision of the Probate Division of the High Court of Justice in England in *Armitage* v. *Att'y-Gen.*, *Gillig* v. *Gillig* (1906), P. 135, where the court recognized the validity of a decree of divorce obtained by the wife in South Dakota upon a three months' residence, her husband being an American citizen, domiciled in New York State, upon the ground that the union was validly dissolved in one State and recognized as dissolved in the other State, and must, therefore, be recognized as dissolved the world over.

From the above, with other reasons which might be advanced, it is obvious how pressing is the need for uniformity in divorce. The judicial systems of civilized countries throughout the world are much too varied and conflicting to permit of the dream that many eminent jurists entertain of an international and uniform system of divorce laws. It is high time, however, that Canada should start by placing her own house in order, and for this purpose our Parliament should bring into force a general law superseding all provincial laws, as well as Parliamentary practice, on the subject, and transferring to courts constituted for the purpose the disposition of all such cases. In framing such an Act due regard should be had to similar laws and practices in force in other civilized countries, and the general principles of law recognized internationally should be adopted into our system. Only in this way will we put an end for all time to the uncertainty, confusion and conflict of laws that have been cropping up and are bound in view of the existing conditions to increase as time goes by.

WAR AND SEDITION.

By F. M. Field, K.C.

Great Britain's declaration of war against Germany on August 4th, 1914, found the statutes of the realm affecting the crime of sedition unable adequately to contend with this hydra-headed monster in the various forms in which it thrust itself upon us in Great Britain and Ireland and the British Dominions Beyond

the Seas. Many years had elapsed in Canada, for instance, since an information charging sedition had been laid or a true bill found by a grand jury against a prisoner accused of the crime. Such had been our freedom from those unhappy conditions which breed sedition that we had almost forgotten the existence of such a crime in the calendar. Not since the notable trial, conviction and execution in 1885 of Louis Riel for high treason had Canada to cope with this crime. In England the most notable case of modern times was the prosecution of Arthur Alfred Lynch, an Australian, who on the 18th of January, 1900, took the oath of allegiance to the South African Republic (then at war with Great Britain) and became a colonel in command of an Irish Brigade and fought against the Empire in the South African War. After the war, Lynch was arrested, charged with treason, resulting in a trial at bar before Lord Chief Justice Alverstone and Justices Wills and Channe'. at London, England, on January 21st to 23rd, 1903. In the Treason Act of 1351 was found statutory law supporting the indictment, and, during the attacks upon the indictment, there was much discussion by counsel of the views of learned law writers of antiquity, references being made to Comyn's Digest, Hawkins' Pleas of the Crown, East's Pleas of the Crown, and Coke's Institutes. The case went to the jury, a verdict of "guilty" was found, and sentence of death pronounced. This was subsequently commuted to penal servitude for life. It is interesting to note that "Colonel" Lynch was, while a felon under sentence of death, elected, by an Irish constituency, to the British House of Commons as a Home Ruler. He was subsequently pardoned, and served with distinction in His Majesty's armies in the Great War.

Rex v. *Lynch** was the leading case cited upon the trial of Roger Casement†, who had rendered notable service to the British Empire, for which he was knighted, but believing that the Empire

*72 L.J.K.B. 167 (1903), 1 K.B. 444, 88 L.T. 26, 51 W.R. 619, 67 J.P. 41 20 Cox C.C. 468, 19 T.L.R. 163.

†86 L.J.K.B. 467, (1917) 1 K.B. 98, 115 L.T. 277, 25 Cox C.C. 480, 60 S.J. 656, 32 T.L.R. 667, C.C.A.

was tottering to its fall, he deserted it, sought asylum in Germany and there began a little rebellion of his own. He came to his melancholy end upon the gallows in London after his capture in Ireland, whither he had come from Germany.

The exigencies of the situation throughout the Empire were such, however, that hastily summoned Parliaments and legislatures failed to provide sufficient law to enable Attorneys General and county crown attorneys to stamp out sedition, and resort was made to orders-in-council, whereby eventually those seditiously inclined were more or less effectually curbed. Notwithstanding all these efforts resort was had to the common law in one of the first—if not the first—of the sedition indictments in Ontario after we were at war. The pages of Archbold's Criminal Pleading and other less used volumes relating to criminal law were ransacked when one Michael Chesney, an Austrian, said at Oshawa, "Damn King George." This seditious utterance being duly reported to His Majesty's most venerable County Crown Attorney in Ontario, Lt.-Col. J. E. Farewell, K.C., of Whitby, an information was laid and a warrant issued. The seditious Austrian was arrested, committed for trial, in due course indicted at Whitby Assizes on March 17th, 1915, found guilty, and sentenced to a term of imprisonment by Chief Justice Sir William Mulock, upon an indictment worded as follows:—

"In the Supreme Court of Ontario.

"The Jurors for our Sovereign Lord The King Present:—That Michael Chesney being a wicked, malicious, seditious and evil-disposed person, and wickedly, maliciously and seditiously contriving and intending the peace of our Lord the King and of this realm to disquiet and disturb, and the liege subjects of our said Lord the King to incite and move to hatred and dislike of the person of our said Lord the King, and of the Government established by law within this realm, and to incite, move and persuade numbers of the liege subjects of our said Lord the King to tumults and breaches of the peace and to prevent the preservation of the public peace, on or about the sixteenth day of February in the year of our Lord one thousand nine hundred and fifteen, at the town of

Oshawa, in the County of Ontario, and within the jurisdiction of the said court, in the presence and hearing of divers liege subjects of our said Lord the King then assembled together, did unlawfully, seditiously and maliciously publish, utter and declare of and concerning the Government established by law within this realm, and of and concerning our said lord the King and the Crown of this realm, and of and concerning the liege subjects of our said Lord the King, amongst other words, and matter, the wicked, seditious and inflammatory words and matter following, that is to say:—'Damn King George; I don't care for King George; I am a German.' and lifting up both hands did further then declare, 'Canada is good for Germany; Germany will soon take it,' in contempt of our said Lord the King, in open violation of the laws of this realm, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his Crown and dignity.

"F. M. Field,
"Counsel for the Crown."

SHORTER OPINIONS.

We entirely agree with the recommendation of the Committee on Law Reporting of the American Law Association in favour of Judges writing shorter judgments. This is said, by *Law Notes*, to have borne fruit as appears by the case of *Lemmery* v. *Farmers, etc., Bank*, 247 Fed. 667, wherein it was said: "It is due to counsel, litigants, and this court to here add that the many cases, English and American, bearing on the double proof of claims in bankruptcy, which were cited and discussed at the hearing, have all had due consideration in the preparation of this opinion. Such consideration opens two courses: One, the tempting field of judicial discussion, covering pages and involving long lists of cases, copious extracts of what is now in the reports, and restatements of what has already been said or decided. The other course is to condense in a few lines a syllabus of these authorities. This latter course we have followed in saying that these cases eventually crystallized in the American courts holding that, where there was a double

contract obligation in a security, there could be a corresponding double proof. We may add that, in abstaining from a protracted discussion of cases and confining ourselves to a statement of our deductions from them, we respond to that insistent and increasing demand that, in view of the startling growth of judicial reports in these latter days, courts should rigidly limit their opinions to those matters of fact and law which are absolutely necessary to a decision of the case in hand."

HUSBAND AND WIFE.

The care which must be taken in suing on contracts for necessaries furnished to a wife is well illustrated by the recent case of *Moore* v. *Flanagan*, 149 L.T. Jour. 104.

It is laid down in the case of *Morel* v. *Westmorland* (1904), A.C. 11, that when a wife, living with her husband, enters into a contract for necessaries, she is to be presumed to do so as agent for her husband, and he alone is liable. It was subsequently held in *French* v. *House* (1906), 97 L.T. 274, that where a debt so contracted is one and indivisible, and the husband alone is liable, if the creditor takes judgment against the wife for part of the debt by default, the plaintiff is thereby precluded from proceeding to recover the balance of the debt from the husband. In the case of *Moore* v. *Flanagan*, above referred to, the Court of Appeal (Bankes Scrutton and Atkin, L.JJ.) have decided that where, in such circumstances, the creditor claims to recover jointly from husband and wife, if on motion for speedy judgment or a specially endorsed writ, he recovers judgment against both, and the husband alone appeals and obtains leave to defend, if the plaintiff suffer the judgment against the wife to remain, he will be thereby precluded from recovering against the husband, if it is found that he was solely liable on the contract.

We confess that the principle on which these decisions is based does not appear to be very conclusive. There may be some reason in saying that if a creditor chooses to take judgment against one of two joint debtors he thereby discharges the

other, but there seems to be very little reason for saying that because a creditor has obtained a judgment against a person who is not liable, he has thereby precluded himself from recovering from the person who actually is liable. But then we know, although the law is supposed to be founded in reason, it is nevertheless not always logical.

PRIVILEGED COMMUNICATIONS.

The question of privileged communications is once more brought into view in connection with the Public Health Regulations of Great Britain, referring to venereal diseases. Mr. Justice McCardie has ruled that no privilege is possessed by a medical man as to knowledge which he has acquired in a professional capacity. Where his evidence is material to an issue before the law is clearly summarised by *The Law Times*, in its issue of January 17th:—

"Despite popular impressions to the contrary, medical men and clergymen are bound to disclose any information which, acting in their professional character, they have confidentially acquired. It is clear beyond doubt that confidential communications between persons are not privileged from disclosure, except those passing between a client and his legal advisers. Professional communications of a confidential character made by the client to his legal adviser with a view to advice or assistance, even although not made with reference to pending or threatened legal proceedings, are privileged from disclosure. This privilege does not rest on the ground of confidence, but rather on a regard to the interests of justice, and to expediency. In such a case the privilege is that of the client and not of the legal adviser, and may be waived by the client."

SEDITION AND TREASON.

By JAMES CRANKSHAW, K.C., of the Montreal Bar.

(ANNOTATION FROM 51 D.L.R.)

In rendering their judgment upholding, in favour of the Crown, the rulings of the trial Judge and maintaining the jury's verdict of guilty against Russell, one of the men indicted for seditious conspiracy, the Judges of the Manitoba Court of Appeal go very fully over the law of Sedition and Treason as well as our law relative to trade unions and labour strikes, it having been argued in the *Russell* case, for the defence, that all the trade unions had united for one common trade union purpose, and that this was a trade combination engaged in a legitimate strike; but the Court of Appeal say that, so far from being a legitimate strike, the combination did and caused to be done *acts punishable by statute* and not protected by sec. 590 of the Cr. Code, which provides that, "No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, *unless such act is an offence punishable by statute*," and that it was, in fact, as the jury found, a seditious conspiracy, its real object not being to aid a brother trade union in its strike for higher wages or to obtain higher wages for all, but to attain the much more drastic aims of the accused and his associate "Reds" whose ultimate purpose, as declared in their public speeches, was revolution, the overthrow of the existing form of government in Canada, and the introduction of a form of Socialistic or Soviet rule in its place, to be accomplished by general strikes, force and terror, and, if necessary, by bloodshed.

SEDITION.—Section 132 of the Cr. Code provides that "*seditious words* are words expressive of a seditious intention," that "a *seditious libel* is a libel expressive of a seditious intention," and that "a *seditious conspiracy* is an agreement between two or more persons to carry into execution a seditious intention." And sec. 134 of the Cr. Code (which was amended at the last session of the Dominion Parliament, 9-10 Geo. V. 1919, ch. 46, s. 5), makes it an indictable offence for any person to speak any *seditious words*, or to publish any *seditious libel* or to be a party to any *seditious conspiracy*, punishable (before the said amendment), by two years' imprisonment, and punishable, now, by twenty years' imprisonment.

In sec. 102 of the English Draft Code there is a clause defining a seditious intention as "An intention" (among other things) "to promote feelings of ill-will and hostility between different classes of subjects."

The prosecution's evidence adduced in the *Russell* case and commented upon by the Manitoba Court of Appeal seems to go further than proof of a seditious conspiracy. It is evidence of or approaching to proof of the crime of treason.

TREASON.—The ingredients of treason (as defined by sec. 74 of the Cr. Code), are, in effect, the same as those which constitute the offence of high treason, according to sec. 75 of the English Draft Code, as revised by the Royal Commissioners, who, in their remarks thereon, say that their definition

exactly follows (with one or two exceptions of little or no importance), the existing law which depends upon the old Act of 25 Ed. III. 1350 (Stat. 5), ch. 2, and on the judicial construction put upon that Act—a construction well explained, in the opinion of the late Willes, J., in the case of *Mulcahy* v. *The Queen* (1868), L.R. 3 H.L. 306.

The essence of the offence of treason lies in the violation of the duty of allegiance owing to the State. The duty of allegiance is a duty which is due not only by the State's own subjects, but also by an alien residing within its territory and receiving the protection of its laws; and this is so whether the State to which the alien belongs be at peace with the Sovereign of the State where he resides or not. (See Broom's Common Law, 1875, 5th ed., pages 877, 878, and 9 Hal's., page 450.)

The principal heads of high treason, as contained in the Act of 25 Ed. III. 1350 (Stat. 5), ch. 2, are (*a*) imagining or compassing the King's death, (*b*) levying war against the King, and (*c*) adhering to the King's enemies, there being no *express* provision for any act of violence against the King's person which did not display an intention to kill him, and nothing about attempting to imprison or depose the King, *conspiracies* or *attempts* to levy war, or disturbances, however violent, which did not reach the point of levying war, although there was a proviso (afterwards repealed by I Henry IV. 1399, ch. 10), that Parliament, in its judicial capacity, might, upon the conviction of any person for a political offence, hold that it amounted to high treason, though not specified in the Act. (See 2 Stephens' History of Criminal Law, pages 243, 249, 250, 253.)

After the Act of Edward III., many Acts were, from time to time, passed for the purpose of adding new treasons, but nearly all of these Acts were either *temporary* or have, in one way or another, long since expired, and they exercised little or no *permanent* influence on the law of treason as contained in the old statute with the wide constructions upon its provisions by learned Judges and commentators, whose interpretations have received, in later Imperial legislation (30 Geo. III. 1790, ch. 6, and 11-12 Vict. 1848, ch. 12), full statutory recognition and authority.

The Statute of Treasons of Edward III., taken literally, was too narrow to afford complete protection to the King's person, power and authority; but the Judges in their decisions, and various writers, in their comments upon the subject, held "that to imagine the King's death means to intend anything whatever which, under any circumstances, may possibly have a tendency, however remote, to expose the King to personal danger, or to the forcible deprivation of any part of the authority incidental to his office (2 Stephens' History of the Criminal Law, pages 263, 268).

The mere intention of compassing the King's death seems to have constituted the substantive offence or *corpus delicti* in this kind of treason; thus shewing an apparent exception to the general doctrine that a person's bare intention is not punishable. But, although an overt act was not essential to the abstract crime, it was always held essential to the offender's conviction. The compassing or imagining the death was considered as the treason, and the overt acts were looked upon as the means employed for executing the

offender's traitorous purpose. In other words, it was the intention itself that was looked upon as the crime; but, in order to warrant a conviction, it was necessary to make proof of the manifestation of the intention by some overt act tending towards the accomplishment of the criminal object. And so it was held that where conspirators met and consulted together how to kill the King, it was an overt act of compassing his death, even although they did not then resolve upon any scheme for that purpose. And all means made use of, either by persuasion or command, to incite or encourage others to commit the act, or join in the attempt to commit it, were held to be overt acts of compassing the King's death; and any person, who but assented to any overtures for that purpose, was involved in the same guilt. (See Broom's Common Law, 1875, 5th ed., pages 880, 881.)

Mere words of themselves were not regarded as an overt act of treason; for, in *Pine's* case, it was held that his having spoken of Charles I. *as unwise* and as *not fit to be King*, was not treason, although very wicked, and that, unless it were by some particular statute, no words alone would be treason. (2 Stephens' History of Criminal Law, page 308.)

But words were sometimes relied on to shew the meaning of an Act. As, where C., being abroad, said: "I will kill the King of England if I can come at him," and the indictment, after setting forth these words, charged that C. went into England for the purpose indicated by the words, it was held that C. might, on proof of these facts, be convicted of treason, for the traitorous intention, evinced by words uttered, converted an action, innocent in itself, into an overt act of treason. The deliberate act of writing treasonable words was also considered an overt act, if the writing were published; for *scribere est agere*. (3 Coke's Ins. 14.) But, even in that case, it was not the *bare* words themselves that were considered the treason, and the preponderance of authority favoured the rule that writings not published did not constitute an act of treason. (*Algernon Sidney's* case (1683), 9 How. St. Tr., 817; Broom's Common Law, 5th ed., page 883.)

The wide construction placed upon the language of the Statute of Treasons (25 Edward III., Stat. 5, ch. 2), is shewn by the words of Coke, who, in referring to the cases of Lord Cobham and the Earl of Essex, says: "He that declareth by overt act to depose the King, is a sufficient overt act to prove, that he compasseth and imagineth the death of the King." (3 Coke's Ins. 6.) Hale adds that "to levy war against the King directly is an overt act of compassing the King's death. (Hale, Pleas of the Crown, page 110.) And Foster says "a treasonable correspondence with the enemy is an act of compassing the King's death," and, in support of this, he refers to *Lord Preston's* case, in which it was held that taking a boat at Surrey Stairs, in Middlesex, to go on board a ship in Kent for the purpose of conveying to Louis XIV. a number of papers informing him of the naval and military condition of England and to so help him to invade England and depose William and Mary was an overt act of treason by compassing and imagining the death of William and Mary. (*Lord Preston's* case, (1691), 12 How. State Trials, page 645; Foster's Crown Cases, pages 195, 197.)

CONTEMPT OF COURT.

By JAMES CRANKSHAW, K.C., of the Montreal Bar.

(ANNOTATION FROM 51 D.L.R.)

At the Fall Assize, which commenced at Winnipeg on November 4, 1919, the Grand Jury found a true bill against William Ivens, Robert B. Russell and 6 other men, for seditious conspiracy. The accused persons, on being arraigned on November 26 last, pleaded "not guilty," and the Crown, having elected to first proceed with the trial of the accused Russell, alone, his trial commenced on that day before Metcalfe, J., and a jury. the trial of the other 7 persons accused to come up after the conclusion of the Russell trial. On December 24 last, Russell was found guilty on all counts of the indictment; and, on December 27 last, he was, by Metcalfe, J., sentenced to 2 years in the penitentiary on each of the first 6 counts, and 1 year on the seventh count, the sentences to run concurrently. On that day, the Assize was adjourned until January 7, last, and later was further adjourned until January 20 last, when the trial of the remaining accused persons was proceeded with before the same Judge and a jury, and was, on February 10 last, still pending.

On the evening of December 29 last, at a meeting of what is called the Labour Church in the Columbia Theatre, Winnipeg, William Ivens made to an audience of about 1,000 people a speech, in which (among other things), he stated that he was not guilty of seditious conspiracy, but that, in view of the verdict in the Russell trial, there seemed to be little hope that he himself should escape a prison sentence, adding that "Bob Russell was tried by a *poisoned* jury, by a *poisoned* Judge, and is in gaol because of a *poisoned* sentence," and, further, that "to arrest men who are doing their best lawfully and peacefully to carry on a strike and charge them with seditious conspiracy is a farce and a travesty."

On February 10 last, the Court, on motion of the Deputy-Attorney-General, granted a rule *nisi* calling upon Ivens to answer for a contempt of Court committed by him in the above mentioned speech. Ivens admitted the use by him of the language complained of, but with no wish or intent of being in contempt of Court, adding that if the Court should be of the opinion that, in speaking in the manner complained of, he had placed himself in contempt of Court he regretted having done so and respectfully requested the Court to accept his full apology therefor; and the Court, on motion to make absolute the rule *nisi*, entertains no doubt that Ivens' speech constituted that species of comment upon a pending criminal trial which the law forbids, because he imputed unjustness and unfairness to the Judge and jury by whom Russell was tried, and he went on to tell his audience that those who were still to be tried were not guilty but their trial was a farce and a travesty. In view, however, of Ivens' offer of apology the Court found it sufficient to order him to enter into a recognizance in the sum of $1,000, and one or more sureties to a like amount, to be of good behaviour and not to be guilty of contempt of Court for the space of three months from the present time.

CONTEMPT of COURT.—The essence of Contempt of Court is action or inaction amounting to interference with or obstruction to, or having a tendency to interfere with or to obstruct the due administration of justice. (See *Re Dunn*, [1906] Vict., L.R. 493, cited at p. 1157 of Archbold's Crim. Pleadings, Practice & Evidence, 25th ed.)

REVIEW OF CURRENT ENGLISH CASES.

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

Young v. *Ladies' Imperial Club* (1920) 1 K.B. 81. This was an action contesting the validity of the expulsion of the plaintiff as a member from the defendant club. The club was a proprietary club and one of its rules provided that if the conduct of any member should in the opinion of the executive committee be injurious to the character and interests of the club, the committee should have power to suspend the member from the use of the club, and recommend her to resign, and if the member did not resign within a certain time the committee should erase her name from the list of members: provided that no member could be so suspended or recommended to resign unless a resolution to that effect should be passed by a certain majority of the members of the committee actually present at a meeting specially convened for the purpose. The plaintiff having made certain charges against a Mrs. L., another member of the club, a meeting of the committee was convened of which all the members were notified except one member who had intimated some time previously her inability to attend meetings of the committee, and in the notice of the meeting it was stated that the object of the meeting was "to report and discuss the matter concerning [the plaintiff] and Mrs. L." The plaintiff was notified of the meeting and was given two opportunities to attend and be heard but failed to attend, and the committee thereupon by the required majority passed a resolution suspending the plaintiff as a member and recommending her to resign; and not having resigned her name had been erased as a member. Two objections were made: (1) the omission to notify one of the members of the committee; (2) that the object of the meeting was insufficiently stated in the notice of the meeting. Roche, J., who tried the action, overruled both objections, holding that the member to whom notice was not sent was, in view of her intimation of her inability to attend meetings, not a summonable member, and therefore the omission to notify her did not invalidate the proceedings, and that the object of the meeting was in the circumstances sufficiently stated. This case has been since reversed by the Court of Appeal: see 149 L. T. Jour, 195.

INCOME TAX—ASSESSMENT—SHAREHOLDER IN COMPANY—ALLOTMENT OF PAID-UP SHARES IN SATISFACTION OF BONUS—INCOME OR CAPITAL.

Commissioners of Inland Revenue v. *Blott* (1920), 1 K.B. 114. In this case a question arose under the Finance Act which imposes an income tax, and for the purposes of the tax states that the total income "from all sources for the previous year" is to be the basis, —whether certain shares allotted to the respondent were to be regarded for the purpose of the Act as income. The respondent was a shareholder in a limited company which had declared a bonus out of its undivided profits and in payment of the bonus had allotted to the respondent and other shareholders certain fully paid shares in the company. Rowlatt, J., held that the shares so allotted to the respondent could not be treated as income but were an addition to his capital.

PRACTICE—DISCOVERY—ACTION FOR LIBEL AGAINST NEWSPAPER —DEFENCE OF FAIR COMMENT—NAMES OF INFORMANTS—SPECIAL CIRCUMSTANCES.

Lyle-Samuel v. *Odhams* (1920) 1 K.B. 135. This was an action for libel against a newspaper in reference to his candidature as a member of Parliament. The defence was fair comment. On an examination for discovery the plaintiff claimed to examine as to the information on which the libel was based and the names of the informants. The libel complained of was a personal attack on the plaintiff's private character. Roche, J., refused to allow the interrogatory as to the name of the defendants' informants and the Court of Appeal (Bankes and Scrutton, L.JJ.) affirmed the order, and held that the fact that the libel was an attack on the private character was not a "special circumstance" so as to take the case out of the general rule laid down in *Plymouth M.C.I. Society* v. *Traders P. Ass.* (1906) 1 K.B. 403.

MANDAMUS—RETURN TO WRIT—REPLY—BREACH OF STATUTORY DUTY—CONTINUING DAMAGE.

The King v. *Marshland Smeeth Commissioners* (1920) 1 K.B. 155. By an Act of Parliament the defendants were empowered to drain a certain district and levy the necessary rates to pay the expenses of so doing. The prosecutor, a landowner in the district, complained that the defendants had omitted to drain the district and on the application of the Attorney-General a mandamus was granted. In their return to the writ the defendants alleged that they had carried out the order of the Court to the best of their

ability. The prosecutor by his reply joined issue thereon and claimed damages for the injury he had sustained owing to the defendants' neglect to drain the district. The issue was tried by McCardie, J., who held that the defendants were entitled to contend that the writ of mandamus should not have been issued; but as the Act in question imposed an imperative duty on the defendants to drain the district, which duty they had failed to perform, the writ had been rightly issued, and that the prosecutor was entitled to recover in these proceedings the damages he had sustained and that as the damages were continuing the damages were not to be limited to the six months prior to the proceedings (see R.S.O. c. 86, sec. 13).

RESTRAINT OF TRADE—CONTRACT OF EMPLOYMENT—VALIDITY—FILM ACTOR—STAGE NAME OF ACTOR—STAGE NAME TO BE PROPERTY OF EMPLOYER—STAGE NAME NOT TO BE USED AFTER LEAVING EMPLOYMENT—ACTORS' PROFESSIONAL REPUTATION AND IDENTITY MERGED IN STAGE NAME.

Hepworth Manufacturing Co. v. *Ryott* (1920) 1 Ch. 1. The plaintiffs in this case were film producers and employed the defendant as a film actor. By the terms of the contract the defendant was to act under the name of Stewart Rome and the name was to be the property of the plaintiffs, and the defendant agreed not to use the name after leaving the plaintiffs' employment. The defendant acted under the name of Stewart Rome and by his skilful acting, and partly by the plaintiffs' advertising the defendant under that name acquired a considerable reputation in which his professional identity became so merged that his market value as an actor without the name would be diminished more than fifty per cent. until his identity and reputation as an actor were re-established *de novo*. The defendant had left the plaintiffs' employment and had entered the service of rival film producers for whom he acted under his stage name of Stewart Rome. The action was brought for the enforcement of the contract. There was no dispute as to the facts and the only question was whether the contract was enforceable. Astbury, J., who tried the action, came to the conclusion that the contract was tyrannous, oppressive and unreasonable and whether it was in restraint of trade or not the Court ought not to enforce it: but he also held that it was in fact in partial restraint of trade and not reasonably required for the protection of the employers and for this reason also it could not be enforced, and his judgment was affirmed on the latter ground by the Court of Appeal (Warrington and Atkin, L.JJ., and Eve, J.).

ORIGINATING SUMMONS—SERVICE OUT OF THE JURISDICTION.

In re Campbell (1920) 1 Ch. 35. Under the English Rules of practice it is held by Eve, J., that an originating service cannot be served out of the jurisdiction. Under the Ontario Rules, however, the contrary is the case. See Ontario Rules 3 (*j*), 25.

TENANT FOR LIFE AND REMAINDERMAN—WILL—CONVERSION—POSTPONEMENT OF CONVERSION—UNAUTHORIZED INVESTMENTS—RATE OF INTEREST TO WHICH TENANT FOR LIFE ENTITLED IN RESPECT OF UNAUTHORIZED INVESTMENTS.

In re Beech, Saint v. *Beech* (1920) 1 Ch. 40, deals with a point which is deserving of the attention of trustees. By the will in question the testator left his estate to trustees upon trust to sell, but with full power to postpone sale. Part of the estate was invested in securities not authorized for trustees to take, and conversion had not taken place. These investments were yielding 5 per cent., and the question submitted to the Court was what rate of interest as between the tenant for life and a remainderman should be paid to the tenant for life in respect of such investments. Eve, J., thought that although on the authorities the rate should be only 3 per cent. yet in view of the present altered condition of the money market, he decided that the rate should now be 4 per cent.

COMPANY—REDEMPTION OF DEBENTURE STOCK UNDER PAR—PROFIT ON TRANSACTION—CAPITAL OR INCOME.

Wall v. *London Provincial Trust* (1920) 1 Ch. 45. This was an action by a preferred shareholder of the defendant company to restrain it from paying a dividend, in the following circumstances: The objects of the company were defined to be: (a) to acquire and hold stocks, shares and securities of the classes therein specified and from time to time to change them for others of a like nature, and (b) to borrow on debenture stock and to redeem and pay off any moneys so borrowed. In pursuance of clause (b) the company issued debenture stock. In 1918, owing to the general fall in the value of securities, the directors were enabled to redeem £29,312 of this debenture stock at a discount of 22 per cent., and now claimed the right to carry the whole amount of this stock to revenue account and out of which they proposed to declare the dividend in question. It was admitted that the securities held by the company had fallen to an extent approximately equivalent to the discount at which the debenture stock had been redeemed. The plaintiffs moved for an injunction

and Younger, J., by whom the motion was heard, decided that clause (b) of the memorandum of association did not authorize a separate and independent business, but was merely subsidiary to the main purpose in clause (a) and that the amount of the discount at which the stock had been redeemed was not net profit of the company, nor net profit arising from its business, and that no part thereof could be distributed as dividends. In short, the learned Judge holds that it is inadmissible to carry a gain on capital account to the credit of the revenue account.

CAUSE OF ACTION—LEASE—CLAIM FOR RECOVERY OF POSSESSION COMBINED WITH CLAIM FOR BREACH OF COVENANT IN LEASE—INTERLOCUTORY INJUNCTION.

Wheeler v. *Keeble* (1920) 1 Ch. 57. In this case the action was by lessors against their tenant in which the plaintiffs claimed to recover possession of the demised premises and an injunction to restrain an alleged breach of covenant in the lease. Younger, J., on a motion for an interim injunction on the latter branch of the case, held that the claim for possession was an unequivocal termination of the lease on the part of the plaintiffs, and it was therefore not open to them to move for an injunction on the footing that the lease was still subsisting. The motion was therefore refused with costs. Counsel for the plaintiff endeavoured to support the plaintiff's claim for an injunction on the ground that it was claimed in respect of an injury which was complete before action. But in answer to that contention the learned Judge says the breach complained of was or was not a continuing breach. If it was a continuing breach it ceased to be so by the destruction of the covenant; and if it were not a continuing breach there was no case for an injunction.

COMPANY—DISCRETION OF DIRECTORS TO ISSUE SHARES—FIDUCIARY POSITION OF DIRECTORS—SHARES ISSUED BY DIRECTORS IN ORDER TO RETAIN CONTROL OF COMPANY—BREACH OF TRUST.

Piercy v. *Mills & Co.* (1920) 1 Ch. 77. This was an action claiming a declaration that the allotments of certain preference shares made by the directors of the defendant company to themselves and their friends were made in breach of the fiduciary powers of the directors and were void, and for the cancellation of such allotments. It appeared by the evidence that the company was in no financial need of the further issue of shares for the purpose of its business, and that the allotment of the shares

in question had been made for the purpose of enabling the defendant directors to keep control of the company. Peterson, J., who tried the action, held that the discretionary power of directors to issue shares is of a fiduciary character, and can only be exercised in the bona fide interest of the company; and that in the circumstances the allotments in question were not made in the bona fide interest of the company and were therefore null and void, and he so declared.

SETTLEMENT—SPECIAL POWER OF APPOINTMENT—LEGACY UPON TRUSTS OF SETTLEMENT — ACCRETION OR INDEPENDENT SETTLEMENT—GIFT OVER TO A CLASS—DATE WHEN CLASS TO BE ASCERTAINED—WILLS ACT, 1837 (1 VICT., C. 26), SS. 1, 24—(R.S.O. c. 120, s. 30.)

In re Paul, Paul v. *Nelson* (1920) 1 Ch. 99. By a deed of settlement made by one Paul in August, 1910, certain funds were settled on usual trusts for his daughter Bridget with a gift over in default of her issue (which happened) for the children of his three other children on attaining twenty-one or marriage. The settlement empowered Bridget (then a widow) to appoint one-half of the trust funds in favour of any husband who might survive her during his widowhood. On the same day Paul made his will whereby he bequeathed £20,000 to the persons who at his death should be the trustees of the settlement "to be held upon the trusts, etc," in such settlement declared concerning the property thereby settled and so that such trusts, etc., should "take effect in relation to the said sum of £20,000 in the same manner in all respects as if such sum had formed part of the property originally settled by such indenture." Paul's three other children were married and at the time of his death in 1917 he had several grandchildren, Bridget having married one Nelson died in 1918 and by her will, after reciting the settlement, appointed one-half of the income "of the trust fund thereby settled" to her husband during widowhood. Her surviving husband claimed one-half of the income of the whole trust fund including the £20,000; and there were two grandchildren who had attained 21 who claimed immediate payment of their shares. Upon an originating summons obtained for the purpose of obtaining an adjudication on these questions, Lawrence, J., held that the effect of Paul's will was to make the £20,000 an accretion to the funds of the settlement and not to create a new independent settlement and that therefore the husband was entitled to the income of the whole trust fund including the £20,000. He also held that the class of grandchildren to take

under the gift over did not close when the eldest attained twenty-one, but remained open until the death of the husband—consequently that the two grandchildren who had attained twenty-one were not entitled to immediate payment of any part of the capital.

SETTLEMENT—SPECIAL POWER—POWER EXERCISED—FRAUD ON POWER—EVIDENCE—ADMISSIBILITY.

In re Wright, Hegan v. *Bloor* (1920) 1 Ch. 108. The validity of the exercise of a power of appointment was in question in this case. The power in question authorized an appointment, in favour of the blood relatives of the donee, of the power by deed or will. By her will the donee made a bequest describing it as "the only part of my money which I can leave to other than blood relations," and she then gave certain legacies to several persons some of whom were blood relations, and directed the residue of her "money" to be divided between her sister and two nephews, children of a deceased brother. Two points were raised: (1) Whether or not the will was an execution of the power. Lawrence, J., who heard the motion, held that it was. (2) Was the execution as regarded the appointment in favour of the two nephews a fraud on the power. In support of this contention there was produced a letter written by the donee of the power in which she admitted that she had made a bargain with the father of the nephews whereby he was to pay her £80 a year and she agreed to appoint £2,000 of the fund in question in favour of himself or members of his family, and that she intended to carry out the bargain. The letter was written in 1911 and the will was not executed until shortly before the death of the donee of the power in 1917. Objection was taken to its admissibility; but Lawrence, J., held it to be admissible as shewing the motive animating the donee in regard to her execution of the power; and in the absence of any evidence to shew that she had abandoned that motive, the execution of the power in favour of the nephews must be regarded as a fraud on the power.

WILL—BEQUEST TO MARRIED WOMAN LIVING APART FROM HER HUSBAND—PROVISO BY WAY OF LIMITATION OR UPON CONDITION—PUBLIC POLICY.

In re Lovell, Sparks v. *Southall* (1920) 1 Ch. 122. In this case a testator who was living apart from his own wife and who was living with one Mabel Southall the wife of another man by whom she had been deserted, bequeathed to Mabel Southall, provided she was living with him at the time of his death, an

annuity of £750 "provided and so long as she shall not return to live with her husband and provided and so long as she shall not remarry and subject to her leading a clean, moral and respectable life in the opinion of my executors." In the event of Mabel Soutnall remarrying or returning to live with her husband the testator reduced the annuity to £250. It was contended that the bequest was void as being against public policy, because it was made contingent on the legatee continuing to live separate from her husband. Lawrence, J., who heard the motion, came to the conclusion that a provision for the maintenance of a married woman while living separate from her husband is not in any way opposed to public policy unless it was made with the object and intention of inducing the wife not to return to her husband; but he concluded that there was no such object or intention in regard to the bequest in question in this case, which he declared to be valid.

LIBEL—INNUENDO—NEWSPAPER—TRADE PUBLICATION—LIST OF JUDGMENTS — ERRONEOUS ENTRY — IMPUTATION AFFECTING CREDIT.

Stubbs v. *Mazure* (1920, A.C. 66. This was an appeal from the Scotch Court of Session. The action was for libel published in the following circumstances: The defendants were publishers of a commercial newspaper containing information as to the credit of traders, and the plaintiffs alleged that in a certain issue of their paper, the plaintiff's name had erroneously appeared in a list of traders against whom judgment had been obtained in absence. The list was preceded by a statement to the effect that in no case did the publication of the judgment imply inability to pay on the part of any one named, or anything more than the fact that the entry published appeared in the Court books. The plaintiff was a trader and claimed by way of innuendo that the entry falsely and caluminously represented that the plaintiff was given to or had begun to refuse to pay his debts and that he was not a person to whom credit should be given. The Court of first instance had awarded the plaintiff £50 damages and the judgment had been affirmed by the Court of Session. The principal and only question argued on this appeal was whether or not the innuendo was warranted; and the House of Lords (Lords Finlay, Cave, Dunedin and Shaw) held that it was, but Lord Wrenbury dissented thinking that the prefatory note precluded the innuendo and being of the opinion that the case was governed by the decision of the House of Lords in *Stubbs* v. *Russell*, 1913, A.C. 386; but the majority

of their Lordships held that that case was distinguishable as there the innuendo was that the plaintiff "was unable to pay his debts," and here the innuendo is that "he was given to, or had begun to refuse to pay his debts."

SHIP—CHARTERPARTY—DEMURRAGE—FIXED RATE OF DISCHARGE, PROVIDED STEAMER CAN DISCHARGE AT THAT RATE—DELAY OCCASIONED BY SHORTAGE OF LABOUR.

Alexander v. *Aktieselskabet, etc.* (1920) A.C. 88. This also was an appeal from the Scotch Court of Session. The action was for demurrage by shipowners against the charterers of a vessel. The charterparty provided that the ship should be loaded and discharged at a specified rate per day "provided steamer can load and discharge at that rate." The vessel arrived at the port of discharge and the owners and the charterers employed the same stevedore to discharge the vessel, but by reason of the shortage of labour it took seven days more than it ought to have taken to discharge the vessel and the plaintiff claimed for seven days demurrage. The majority of the House of Lords (Lords Finlay, Cave, Dunedin and Shaw) affirmed the Court of Session in holding that the charterers were liable for the demurrage claimed, and that the proviso as to the steamer being able to discharge at the specified rate merely applied to its physical capacity, and did not extend to any inability to discharge owing to a want of labour. Lord Wrenbury dissented and considered that the proviso extended not merely to the physical capacity and mechanical sufficiency of the ship's appliances, but also included such labour as was reasonably necessary to operate such appliances, and inasmuch as by reason of the shortage of labour the ship's appliances for unloading could not be effectively operated, the proviso cast upon the ship the responsibility for the delay so occasioned.

AGREEMENT OF BANK TO SUPERVISE BUSINESS OF CUSTOMER DURING HIS ABSENCE ABROAD—BANKRUPTCY OF CUSTOMER OWING TO NEGLIGENCE OF BANK—ACTION BY BANKRUPT AND HIS TRUSTEE FOR BREACH OF AGREEMENT—INJURY TO CREDIT AND REPUTATION—PERSONAL RIGHT OF BANKRUPT TO DAMAGES—POINT OF LAW NOT TAKEN AT TRIAL—NEW TRIAL.

Wilson v. *United Counties Bank* (1920) A.C. 102. This was an appeal from a judgment of the Court of Appeal. The action was brought by a bankrupt and his trustee to recover damages for breach of an agreement made by the bankrupt before his bankruptcy with the defendants, whereby the latter agreed to supervise

the financial side of the bankrupt's business during his absence abroad, the bankrupt being at that time a customer of the defendants; the negligence of the defendants under this agreement caused the bankruptcy of the customer, and on the trial of the action the jury awarded the plaintiffs £45,000 as damages for the loss occasioned the bankrupt's estate by reason of the negligence of the defendants, and £7,500 for the injury caused by that negligence to the bankrupt's credit and reputation. In the Court of Appeal it was contended on the part of the defendants that the jury in estimating the damages had not taken into account the assets still remaining in the hands of the trustee in bankruptcy and on that ground granted a new trial. On the appeal to the House of Lords, their Lordships, with the consent of both parties referred the question whether any assets remained to the Judge who tried the action and he reported that there were no assets, and in these circumstances the majority of their Lordships (Lord Birkenhead, L.C., Atkinson and Parmoor) held that the verdict of the jury must stand but their Lordships expressed the opinion that the right to the £7,500 was in the bankrupt solely and did not pass to his trustee; they also held that, even assuming the other damages had been assessed on a wrong basis, the bank was precluded by what had taken place at the trial from demanding a new trial on that point: Lords Finlay and Wrenbury, however, dissented on the latter point.

PRACTICE—SERVICE OF WRIT OUT OF JURISDICTION—CONTRACT TO BE PERFORMED WITHIN THE JURISDICTION—SALE OF GOODS—C. I. F. CONTRACT—FAILURE TO SHIP—FAILURE TO TENDER DOCUMENTS—RULE—ORD. XI R. 1 (E)—(ONT. RULE 25 (E)).

Johnson v. *Taylor* (1920) A.C. 144. This was an appeal to the House of Lords (Lords Birkenhead, L.C., and Lords Haldane, Dunedin, Atkinson, and Buckmaster), from the decision of the Court of Appeal on a simple question of practice. The plaintiff sought to sue the defendants who were resident out of the jurisdiction on a contract for the sale of goods by the defendants to the plaintiff on a c.i.f. contract; on the ground that it was partly to be performed in England. Leave was granted to issue the writ and the defendants were served and thereupon moved to set aside the order and the writ and service. It appeared that the goods had never been shipped, but the plaintiff relied on the breach within the jurisdiction of that part of the contract which related to the tender of shipping documents. Coleridge, J.,

refused the application, and the Court of Appeal affirmed his order. Their Lordships in the House of Lords unanimously reversed the Court of Appeal and held that the action was really founded on the breach of the contract which had taken place out of the jurisdiction, viz., the failure to ship the goods and that the non-tender of documents was merely ancillary to the part to be performed out of the jurisdiction, and was not such a breach as would justify the Court in authorizing the service of the writ out of the jurisdiction. The Lord Chancellor points out that the Rule in question is discretionary, "service may be allowed, etc.;" the same remark is applicable to Ont. Rule 25.

INSURANCE (MARINE)—HIRE OF DRY DOCK—AGREEMENT TO INSURE AGAINST MARINE RISKS—SINKING OF DOCK—ABSENCE OF MARINE RISK—OMISSION TO INSURE—MEASURE OF DAMAGES.

Grant v. *Seattle Construction Co.* (1920) A.C. 162. This was an appeal and cross-appeal from the Court of Appeal of British Columbia. The plaintiffs in the action had let to the defendants a dry dock and by the agreement it was admitted by the defendants that the dry dock was seaworthy and fit for the work for which it was intended to be used, and the defendants agreed to keep it insured for $75,000 for the benefit of the plaintiffs, and to redeliver it in equally good condition save for wear and tear. While the dock was being used by the defendants, owing to its inherent unfitness for the work, it capsized and sank and became a total loss—the accident was not due to any marine risk. The defendants had failed to insure the dock as agreed and its actual value was only $34,500. The plaintiffs recovered judgment for this amount and $10,000 for the hire. The defendants appealed on the ground that they were induced to enter into the contract by fraud and consequently were not liable for anything, and further that the dock was of no value and could not honestly be insured as agreed. The plaintiffs appealed on the ground that in lieu of $34,500 they were entitled to recover $75,000. But the Judicial Committee of the Privy Council (Lords Buckmaster, Parmoor, and Wrenbury) dismissed both appeals, as to the plaintiff's appeal on the ground that as the dock had not been lost by any marine risk the measure of damages for the omission to insure was purely nominal; and as to the defendants' appeal on the ground that the fact of fraud having been negatived at the trial, and also by the Court of Appeal, it would be contrary to the established practice of the Board to reinvestigate the evidence on that point. The judgment appealed from was therefore affirmed.

Bench and Bar.

CANADIAN BAR ASSOCIATION

Minutes of Meeting of the Council of the Canadian Bar Association held at the Chateau Laurier, Ottawa, on Saturday, March 6th, 1920, at 9.30 a.m. Present the following members of Council: Sir James Aikins, K.C., President: Mr. E. Lafleur, K.C., Vice-President for Quebec: Mr. M. H. Ludwig, K.C., Vice-President for Ontario: Mr. A. B. Warburton, K.C., Vice-President for Prince Edward Island: Hon. E. Fabre Surveyor, Honorary Secretary: Hon. Mr. Justice Martin, Hon. Mr. Justice Howard, Mr. F. E. Meredith, K.C., Mr. R. G. deLorimier, K.C., Mr. H. J. Elliott, K.C., Montreal: Mr. L. S. St. Laurent, K.C., Quebec: Mr. F. H. Chrysler, K.C., Mr. George F. Henderson, K.C., Ottawa: Mr. Angus MacMurchy, K.C., Mr. R. J. Maclennan, Toronto: Mr. W. T. Henderson, K.C., Brantford: Mr. Nicol Jeffrey, Guelph: Mr. William R. White, K.C., Pembroke: Mr. W. F. Kerr, Mr. Frank M. Field, K.C., Cobourg: Mr. Hector McInnes, K.C., Halifax: Hon. J. B. M. Baxter, K.C., Mr. M. G. Teed, K.C., Mr. Fred R. Taylor, K.C., Saint John: Mr. R. B. Hanson, K.C.,Fredericton: Mr. J. A. M. Patrick, K.C., Yorkton. At the request of the Council the following attended the sessions and took part in the deliberations: Hon. Chief Justice Sir William Meredith and Hon. Mr. Justice Ferguson, Toronto: Hon. Chief Justice Harvey, Edmonton: Hon. Chief Justice Mathers, Winnipeg: Hon. Chief Justice Brown, Regina: Hon. Mr. Justice Morrison, Vancouver: Hon. Mr. Justice Lafontaine, Montreal: Hon. Mr. Justice Flynn, Hon. Mr. Justice Gibsone, Quebec: Dr. F. W. Lee, Montreal: Hon. William Proudfoot, K.C., Mr. Robert McKay, K.C., Mr. N. B. Gash, K.C., Toronto: Mr. H. A. Mackie, M.P., Edmonton: Mr. D. L. Redman, M.P., Calgary: Mr. F. J. Fulton, K.C., M.P., Kamloops: Mr. W. G. McQuarrie, K.C., M.P., New Westminster: Mr. W. J. Tupper, K.C., Winnipeg:

On motion of Mr. White, seconded by Mr. McInnes, the minutes of the last meeting of Council were taken as read. The Acting Secretary-Treasurer presented the following report in regard to Membership.

	August 19 1919	February 28 1920	Increase
Judges	83	101	18
Alberta	123	148	25
British Columbia	36	55	19
Manitoba	189	308	119
New Brunswick	41	54	13
Nova Scotia	52	61	9
Ontario	277	335	58
Prince Edward Island	19	19	...
Quebec	173	213	40
Saskatchewan	101	147	46
Yukon	8	2	Decrease 6
	1102	1443	Net Increase 341

It was reported that between 300 and 400 members were in arrears for 1919, and, on motion of Mr. Elliott, seconded by Mr. White, the acting Secretary-Treasurer was instructed to notify the members in arrears and, at the expiration of sixty days, was authorized to draw at sight on those who had not responded to the notice.

The Acting Secretary-Treasurer submitted the following statement in regard to Finance:

February 28, 1920.

Receipts.

Oct. 9, 1919—Cheque—R. J. Maclennan, bal. funds in his hands	$3,444.74
Grant. Province Manitoba, 1919	1,000.00
Membership fees	1,098.00
Confce. Commissioners, printing	55.00
Manitoba Commissioners, stationery	16.65
Bank Interest and Exchange	16.25
	$5,630.64

Expenditures.

Convention Committee, covering printing reports, advertising, postage and other items properly a charge on the Assn's general funds	$ 558.80
Secretarial Allowance—5 months	500.00
Official stenographer—reporting Annual Meeting	66.45
Printing, stationery and similar expense	446.95
Telegrams	16.22
Postage	105.00
Legal Education Committee	98.50
Miscellaneous	148.69
	$1,940.61
Balance in Bank at February 28, 1920	$3,690.03
Cash on hand	20.00
	$3,710.03

On motion of Mr. Patrick, seconded by Mr. Hanson, Messrs. R. D. Guy and Gerald F. de C. O'Grady were appointed Auditors of the Association.

The President announced that the Minister of Justice had intimated that members of the Cabinet would be prepared to meet at 10.30 the special Committee of the Association appointed to take up with the Government the question of increased compensation for the Judges, and the following sub-committee was appointed to arrange for the manner in which the representations of the Association should be urged upon the Government: Messrs. Lafleur (Convener) McInnes, Teed, Baxter, Meredith, Warburton, Proudfoot, Ludwig and Patrick. At the suggestion and on the advice of the Committee, the Judges who were present were requested to express their views at a private interview with members of the Government, and the President was asked to introduce the Judges and to explain that it was at the instance of the Canadian Bar Association that they were present to meet the Government. At 10.30 an adjournment took place in order to enable the members of the Bar present to proceed to the office of the Minister of Justice as the Special Committee on the question of Judicial salaries. The deputation, which was received by the Rt. Hon. C. J. Doherty, Rt. Hon. A. L. Sifton and Hon. N. W. Rowell, was introduced by the President of the Association. Mr. Robert McKay, K.C., of Toronto, expressed the views of the Committee and brief addresses in support of his representations were made by Mr. F. E. Meredith, K.C., Montreal: Mr. L. S. St. Laurent, K.C., Quebec: Mr. Hector McInnes, K.C., Halifax:

Mr. A. B. Warburton, K.C., Charlottetown: Mr. M. G. Teed, K.C., St. John: Mr. F. J. Fulton, K.C., M.P., Kamloops: Mr. H. A. Mackie, M.P., Edmonton: Mr. J. A. M. Patrick, K.C., Yorkton: Mr. W. J. Tupper, K.C., Winnipeg: The Minister of Justice, Hon. Mr. Doherty, and the President of the Council, Hon. Mr. Rowell, in replying assured the deputation that the question of increasing the salaries of the Judges would have the earnest consideration of the Government.

At 1 p.m. the members and guests mentioned with, in addition, the Honorary President, Rt. Hon. C. J. Doherty, Hon. Mr. Justice Mignault, Hon. Mr. Justice Chauvin, Hon. Mr. Justice McDougall, were entertained at luncheon at the Chateau Laurier, following which the discussion of business was resumed.

A design prepared by Henry Birks & Sons, of Montreal, for the Shield to be presented to Lord Finlay a. a souvenir of his visit to the Fourth Annual Meeting of the Association was submitted and on motion of Mr. Elliott, seconded by Mr. deLorimier, approved.

A discussion took place as to the most suitable dates for the next Annual Meeting, which is to be held at Ottawa, and, on motion of Mr. George F. Henderson, K.C., Ottawa, seconded by Mr. J. A. M. Patrick, K.C. (Yorkton), it was decided that the meeting should be held on Wednesday, Thursday and Friday, September 1st, 2nd and 3rd, the Conference of Commissioners on Uniform Legislation in Canada meeting on August 30th and 31st. In accordance with custom it was decided that the Committee on Arrangements shoul' be composed of the members of the Council for Ontario (the Province in which the meeting is to be held), and the Vice-Presidents for the other Provinces, Mr. M. H. Ludwig, K.C., Vice-President for Ontario, convener.

On motion of Mr. McInnes, seconded by Mr. Taylor, the President was authorized to [illegible]te the Rt. Hon. Viscount Cave, a member of the Judicial Committee of the Privy Council and former Home Secretary, to deliver the Annual Address. Should Lord Cave find it impossible to accept the invitation, the President was empowered to invite any other Judge or barrister whom he might think suitable. It was also decided, on motion of Mr. Justice Mignault, seconded by Mr. Baxter, to request His Excellency the Governor-General to speak at the opening session, and the Committee on Arrangements were also requested to invite the Hon. Sir Frederick Haultain, Chief Justice of Saskatchewan, to deliver an address on "The Development of Law in the North West Territories." On motion of Mr. George F. Henderson, seconded by Mr. Ludwig, Hon. J. B. M. Baxter was asked to prepare a paper on the question of the incorporation of the Association.

It was decided that representatives of the American Bar Association and of the New York State Bar Association should be invited to attend the Annual Meeting.

A communication from Hon. John F. Orde was reported in which he asked to be relieved of his duties as Honorary Treasurer on account of his appointment to the Bench and consequent removal from Ottawa. On motion of Mr. White, seconded by Mr. Elliott, the resignation of Mr. Justice Orde was accepted and Mr. George F. Henderson, K.C., of Ottawa, was elected Honorary Treasurer. On motion of Mr. Maclennan, seconded by Mr. Elliott, the Hon Mr. Justice Orde was elected a member of the Council from Ontario, as the appointment of Mr. Henderson as Honorary Treasurer created a vacancy in the elected representation of Ontario.

Dr. Lee, Convener of the Committee on Legal Education, stated that a draft report on a standard curriculum had been prepared, and it was decided, on motion of Mr. Kerr, seconded by Mr. Teed, that this report should be printed and circulated to members of the Bar interested in this subject, to the Law Societies, Universities, etc.

Chief Justice Mathers, Convener of the Special Committee on the preparation of a statement of the principles of legal ethics, reported that a draft statement had been prepared and would be sent, without delay, to the members of the Committee for an expression of views.

Mr. Patrick, Convener of the Special Committee on Reporting, reported certain correspondence on the subject.

A communication from the Vancouver Board of Trade urging Dominion legislation on the subject of duplication of names by incorporated companies was read, and, on motion of Mr. Teed, seconded by Mr. George F. Henderson, referred to the Committee on Uniform Legislation.

The President read a telegram received from his office at Winnipeg which purported to give the summary of a letter which contained a suggestion from the Honourable the Attorney-General of Alberta that the Council might adopt some resolution urging amendment to the British North America Act in regard to distribution of powers. In the absence of more detailed information, it was decided, on motion of Mr. Baxter, seconded by Mr. Kerr to leave the matter over until the Annual Meeting.

At the President's request, the Chief Justice of Ontario, Hon. Sir William Meredith, spoke briefly, expressing his pleasure in attending the meeting of the Council and his approval of the work of the Association.

On motion of Mr. H. A. Mackie, a vote of thanks was tendered to the President for his hospitality, following which, on motion of Mr. Ludwig, Council adjourned.

E. H. COLEMAN,
Acting Secretary-Treasurer.

Flotsam and Jetsam.

The "Soviet" Principle in Government.

From Russia has been imported the word "soviet," which has an historical meaning quite apart from its popular meaning in America. The soviet is as important to Russia as the old "town meeting" in New England. It is one of the most ancient forms of social organization in Russia, and much of the success of the Bolsheviki is due to their adoption and adaptation of this term to their present political purposes.

But the term "soviet" is used in common parlance, not in an historical sense, but with a practical signification to describe the character of Bolshevist control of industry in Russia to-day. Under the "soviet" plan the workers control the industry in which they work, and for that purpose meet together and decide all questions by *viva voce* vote. Committees are appointed to handle various departments, who, however, must report to the central body. The so-called "Plumb" plan for the quasi-political and industrial control of railroads practically embodies the soviet principle.

The soviet idea is fascinating to "parlour sociologists, and we understand that this class of dilettantists are having a delightful time discussing and enlarging upon this principle. It has caught the imagination of some workers who believe that the soviet principle will avoid strikes and other interference with business; for, they argue, if the workers themselves fix the wages and hours of labour, there could be no ground for complaint. We understand that in a large eastern manufacturing plant this argument was actually presented to the management by a committee of the workers.

The "soviet" principle totally ignores the personal equation in business. All workers are not equally intelligent or equally honest or equally industrious, yet under the soviet scheme are each to receive the same compensation. But the dead level of mediocrity is not the most serious danger. That element in the scheme that is defeating it in Russia and has already defeated it in Hungary is its disorganizing factor. The workers, being their own bosses, work or not as they see fit or as many hours as they wish. There is no head, no system, no responsibility.—*Central Law Journal.*