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CONFEDERATION DAY

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For heathen heart that puts her trust
In reeking tube and iron shard;
All valiant dust that builds on dust,
And guarding calls not Thee to guard:
For frantic boast and foolish word,
Thy mercy on Thy people, Lord.—*Amen.*

—KIPLING.

HONOUR TO WHOM HONOUR.

The *Canadian Gazette*, of July 14, contains the following announcement:—"His Majesty the King has been pleased to approve of the retention of the title of 'Honourable' by Mr. Featherston Osler, a retired Judge of the Appellate Division of the Supreme Court of Ontario." This announcement is, we presume, an official declaration that judges retiring from our Superior Courts do not carry into private life the title "Honourable".

There is one person to whom this announcement will be of little interest, and that is Mr. Osler himself. It adds nothing to the esteem and respect in which the profession and the public hold one of the best and most learned judges that ever graced the Bench of Ontario, and whose personal worth and high character are known to all. It was a subject of comment that Mr. Justice Osler was not one of our Chief Justices, in which case

knighthood would have been a matter of merit as well as of routine.

The lavish bestowal of honours in these days destroys their value, even to those who might be entitled to some public worth of distinction. Colonels are becoming as common in Canada to day as they were said to have been in the United States when Dickens wrote "Martin Chuzzlewit."* Knights Bachelor are now as common as Colonels. Occasionally some one is made a Baronet or even a Lord. The public were prepared to stand the latter when Strathcona, that great friend of Canada, went to live in England, but it might well have stopped with him. Again, no title could have been too great a distinction for Chief Justice Sir John Beverley Robinson and no one objected to his being made a Baronet, but a recent bestowal of that title on some one else has been the subject of some adverse criticism.

If it is necessary to give some one worthy of it a public mark of distinction as having performed signal service Canada, to those holding big positions, governmental or official, the appellation of "Sir" is as good as anything else. But to dub a civilian "Colonel" is an absurdity, and an insult to the army. It would be quite as appropriate to honour him with the title of "Archdeacon" or "Canon" or "Doctor" or "Professor" or "Admiral" or anything else. It was a funny sight once to see one of these Colonels, a fat lubberly civilian, who did not know the goose step from "extension motions," and badly in need of "setting-up" drill, strutting about in uniform; fortunately for him it was not in regulations to wear a sword or an accident might have happened.

The truth is that these titles are not suited to the climate of Canada. They are exotics, and, as the country does not supply hot houses for them, they will in the course of time probably die out. Titles that die with a person are not so objectionable as those

* "Pursuing his enquiries Martin found that there were no less than four Majors present, two Colonels, one General and a Captain, so that he could not help thinking how strongly officered the American Militia must be, and wondering very much whether the officers commanded each other, or if they did not, where on earth the privates came from; there seemed to be no man here without a title."

which are hereditary, such as Baron or Baronet, where the title descends to the son or other male heir of the recipient of the honour. There are many reasons why objections that prevail here are less so in the Motherland. It is obvious that in cases where a son who succeeds to a title may be a misfit, or unworthy, or for some reason be unable to uphold properly the dignity of the title becomes a joke.

TRADING WITH THE ENEMY.

The English Court of Appeal (Lord Cozens-Hardy, M.R. Eady, Bankes, Warrington, and Bray, and Scrutton, L.J., dissenting), have recently come to a decision which appears to us somewhat puzzling, and the grounds stated in the *Law Times Journal's* note of the case do not appear to be particularly convincing. The case we refer to is *Tingley* v. *Muller*, 143 L.T. Jour. 38. The facts appearing by the note were as follows: The defendant was formerly a German resident in England. He was required by the British Government to leave England, and on the 20th day of May, 1915, prior to his departure, he executed a power of attorney whereby he appointed an attorney to sell his house in England. On 26th May, 1915, he left England for Flushing, en route for Germany. On 2nd June, 1915, the attorney offered the house for sale by auction and the plaintiff became the purchaser without notice of the above-mentioned facts. The defendant reached Germany between the 26th May and 11th June, 1915, but there was no evidence as to the exact date of his arrival there. The plaintiff had entered into possession. The action was brought to have the contract declared null and void as being a trading with the enemy, contrary to the common law and the Royal Proclamation of 19th September, 1914. Eve, J., dismissed the action on the ground that he could not infer that defendant had reached Germany by 2nd June, and the plaintiff appealed from his decision. The Court of Appeal held that the defendant must be presumed to have reached Germany by 2nd June, but that great weight must be given to the power of attorney of the 20th May,

when the defendant was not an alien enemy, which, it was said, was "irrevocable" and rendered further "intercourse" with the defendant unnecessary—and it is said the position was practically as if the defendant had conveyed the property in trust for sale. Such a transaction it is affirmed is not a trading with the enemy within the meaning of the common law, or the Proclamation, and it is said the power of attorney was not necessarily revoked when the defendant became an alien enemy. But unless it was the fact that the donee of the power was also the person beneficially interested in the proceeds of the sale, or a trustee thereof for persons other than the defendant, who were not alien enemies, it is very difficult to understand how the decision could have been reached. It would seem as if some part of the proceeds of the sale, at all events, was payable to the defendant, because he was willing that any such moneys should be payable to the Public Trustee as custodian.

If the defendant really retained any beneficial interest in the property, the question naturally arises how could he by his attorney enter into a contract with the plaintiff, which he could not himself have entered into, in his own person? The question before the Court appears really to have been this, could the defendant himself, at the time the contract was made, have made the contract with the plaintiff. On the facts found by the Court of Appeal, he was on that date an alien enemy, and therefore incapable of making the contract; but the Court of Appeal have in effect said—though he could not himself have made the contract he could validly do so by his attorney, which it is hard to understand unless the fact be that the defendant after the giving of the power ceased to have any beneficial interest or became a mere *cestui que trust* with others in the proceeds of the sale.

Probably a fuller report may disclose facts and circumstances throwing a somewhat different complexion on the case; at any rate we think it would be quite unsafe to infer from this decision that an alien enemy may in ordinary circumstances make valid contracts through an attorney.

ONTARIO STATUTES FOR 1917.

The volume of Statutes of the Legislature for Ontario have been issued with commendable promptitude. The Government is to be congratulated, not only on that fact, but also on the improvement in the general "get up" of the last two volumes.

There does not appear to have been any legislation of very striking importance during the last session. The Ontario Temperance Act has received considerable amendments chiefly in matters of detail. As also the Workmen's Compensation Act We see that an Act has been passed to regulate the purchase, sale and transfer of goods in bulk (chapter 33). The principal object of the Act appears to be to protect the creditors of the vendor, and to prevent the apparent owner of a stock in trade from selling it in bulk, and pocketing the proceeds, to the prejudice of those to whom he may be indebted. The purchaser in any such transaction is now required before concluding his bargain to obtain from the vendor a statutory declaration as to the names and amounts due to his various creditors, otherwise the transaction will be void as against such creditors. On obtaining such declaration the vendor is to lodge the purchase-money in the hands of a trustee for distribution among creditors unless the latter choose to waive that course.

We have noticed a few slight defects which it may be well to note: c. 4, s. 4 amends sub-section 9, the sub-section intended to be amended would appear to be sub-section 10.

C. 20, s. 15, purports to amend s-s. 5 of s. 10. The section intended to be amended is s-s. 5, of s. 37, as enacted by s. 10.

C. 23, s. 8, repeals sections "2 to 7." Does this include 7? It substitutes ss. "2 to 7" of c. 23. Does this include s. 7? The addition of the word "inclusive" would have prevented any question.

C. 27 amends the Succession Duty Act. This chapter might well have also amended the clerical errors in 5 Geo. V. c. 7, s. 4 (3), where the section purported to be amended is s. 8, whereas s. 7 appears to have been the section really intended.

We notice that 6 Geo V. c. 24, appears in the Statute book

without the usual preliminary enacting clause; this strange omission is now supplied by c. 29 of the recent session.

C. 29, by naming certain new schedules "A" and "B," seems to create an opportunity for confusion, as in the principal Act there are already schedules with the like designations.

We have, on former occasions, pointed out the desirability of arranging all amending statutes in orderly sequence. This method as a rule has been generally observed in the present volume; there are, however, a few instances where it has been departed from, *e.g.*, in c. 34, s. 4 amends s. 12, and s. 5 amends s. 6, of the same Act. In c. 42, s. 12 (1) should have been numbered s. 14,—cc. 56, 57 are both out of order and might, we think, have more appropriately followed c. 48.

NOTES FROM THE ENGLISH INNS OF COURT.

The Inns Themselves.

Many Canadian lawyers are now in England—not, indeed, on legal business, but on their way to, or on furlough from the front. If they have a few hours to spare in London they may seek out the wells of English law. To them a few notes about the Inns of Court may be of interest. Baedeker, it may be supposed, will tell them something; but perhaps he has little knowledge *le plus intimé*.

The only Inns that retain the right to call men to the Bar are the Inner Temple, the Middle Temple, Lincoln's Inn and Grays Inn. Other Inns there are such as Clements Inn and Furnivals Inn; but as corporate bodies they have long since passed away although their names and in some cases the original buildings still survive. Of the Inns of Court a wag once wrote:

The Inner for a rich man,
The Middle for a poor,
Lincolns for a parchmenter
And Grays Inn for a bore.

It is possible that some kindly commentator has changed the word 'boor' into 'bore' in the last line, but the line is no longer true in any sense. Your Grays Inn man is one of the best.

Lincolns Inn.

As a member of this Inn—although not a "parchmenter"—the writer knows rather more about it. It is situated on the north side of the Law Courts and to the east of Lincolns Inn Fields—a large open space—formerly the property of the Inn which was sold to the London County Council for the sum of £12,000. The Fields are now a public recreation ground. It is not to be supposed that all the numerous sets of chambers which are included in Lincolns Inn are the property of the Benchers. The freehold of some of them is in other people. *Mirabile dictu*, in this seminary of real property lawyers, there are some chambers in freehold tenure on the second or third floor of the buildings. Nice legal questions may one day arise when the buildings fall down, in the process of decay, as to the rights of the owners of the different floors.

Possibly the most interesting edifice in the Inn is the Old Hall which, until the building of the Royal Courts of Justice, was used as a Court of Equity. Those who have read "Bleak House" will remember that it was in this Hall that the great case of *Jarndyce* v. *Jarndyce* was fought at such interminable length. Now-a-days it is used for the most part as a lecture room. It was last used as a Court some years ago, when an inquiry was held into the sanity of a certain nobleman.

The Lawyers of Lincolns Inn.

Most of the members of this ancient foundation and practically all those who have chambers within its precincts, are Chancery men. The fusion of law and equity had never brought into being any large number of men who practice both in the King's Bench and Chancery Divisions. A mere common lawyer is not at home in a Court of Chancery: he does not know the practice. An equity draftsman or conveyancer has no experience of juries and will probably never have been in a criminal court in his life. It has been said that the Law is a jealous mistress. Her sister, Equity, has the same proud characteristic.

The Dinners in Hall.

During a certain part of each of the legal terms there are dinners in the hall. The dinner hour which for many years was

6 o'clock has recently been changed to 7 p.m. At the High Table certain of the Benchers dine each night. The junior Bar dines at a table specially set apart, paying for a capital dinner and excellent wine the very modest sum of 2s. 6d. The students, whose numbers alas! have been very much reduced of late, dine in the body of the hall. Every student in order to qualify for the Bar must have eaten 36 dinners spread over a period of 12 terms unless he gets a dispensation which may reduce the number to 24. Some wag once said that the reason a man eats dinners *before* he is called is that he runs a good chance of eating none afterwards! Time was when to eat his dinners was all that was necessary to qualify a man for the Bar but that has long since been changed. Examinations must be passed; which, by a strange anomaly, are not nearly so stiff and difficult as those to which candidates for the other branch of the profession must submit.

The Two Temples.

To the south of the Law Courts the wanderer will find the Inner and Middle Temples—the two Inns where common lawyers have their chambers. To pass from the rushing traffic of the Strand into these quiet courts is to be transferred from the 20th century way back into the middle ages! Each Inn has its own dining hall and library; but they have a common property in the glorious old Temple Church—one of the marvels of London—with its recumbent figures of the Knights Templars and its matchless organ. Although the greater part of the two Temples is given up to practising barristers, there are a number of sets of residential chambers especially on the top floors. Here, too, amongst the common lawyers the practice of dining is observed. At 5.30 every evening during dining term a curious sound may be heard. It is the porter who with a genuine horn—a cow's horn—is reminding members of the Inn that dinner will be ready at 6 o'clock. No one who has a few minutes to spare should miss the opportunity of taking a peep into the hall of the Middle Temple, and on his way thereto or therefrom he must inevitably pass the beautiful Temple Fountain where Tom Pinch and his sister used to spend their idle hours.

Grays Inn

Far away to the north—on the other side of Holborn—lies Gray's Inn. For one reason or another—but partly because of its distance from the Courts, this Inn has ceased to be the home of the practising barrister, although its Benchers still call men to the Bar and observe all the traditions of the other Inns. Gray's Inn Square is to a large extent filled with solicitors' offices. In Gray's Inn Gardens certain rooks paying no heed to their dingy surroundings still build their nests year by year.

Obiter Dicta.

One cannot help wondering why some judges are constantly making *obiter dicta!* It were so easy (to all appearance) to confine oneself to the issues before the court when hearing a cause or pronouncing judgment. Yet *obiter dicta* often find their way into reporter's note book—to be transcribed into the law reports—there to mislead and annoy whole generations of lawyers. An old judge once described an *obiter dictum* as "an individual impertinence which bindeth none, least of all him whose lips have uttered it": but it is not always easy for the busy practitioner to discern for himself or to persuade the court before which he is arguing that a particular passage in a judgment is *obiter*. No judge should lay down any principle which is not absolutely essential for the decision of the case before him. Any departure from this rule only leads to confusion.

Extra-Judicial Utterances.

If the ordinary *obiter dictum* is objectionable to the lawyer, there are certain extra-judicial utterances which are objectionable on much wider grounds. Some judges take advantage of their position to pronounce upon politics (in the wide sense of the term); the policy of a legislature; or some quasi-religious question. Unless the pronouncement is strictly germane to the matters in issue it were better omitted. It is to be regretted that Lord Shaw in the House of Lords has recently taken the opportunity of making what may indeed be described as an extra-judicial utterance. In the case of *Rex* v. *Halliday Ex p. Zadig* the validity of a regu-

lation made by His Majesty in Council pursuant to the Defence of the Realm Act, under which one Zadig had been interned was called in question. Five judges of the King's Bench, three Lords Justices (in the Court of Appeal), the Lord Chancellor and three Law Lords in the House of Lords were unaminous in holding the regulation to be *intra vires*. It remained for Lord Shaw to dissent, and incidentally to deliver himself as follows as to the Defence of the Realm Act: "Under this," he said, "the Government became a Committee of Public Safety. But its powers as such were far more arbitrary than those of the most famous Committee of Public Safety known to history. The analogy was with a practice, more silent, more sinister—with the *lettres de cachet* of Louis Quatorze. No trial: proscription: the victim might be 'regulated' —not in his course of conduct or of action, not as to what he should do or avoid doing. He might be regulated to prison or to the scaffold."

It is difficult to imagine anything more mischievous or less patriotic than such a tirade coming from such a quarter. Let it be said by a member of the House of Lords that the Government have tyrannical powers, and it will not be hard to find a stump orator who will go one step further and say that the powers of tyrants are being used. The passages above quoted appeared in the *Times*, and will, it is presumed, be embalmed in the *Law Reports* later on. Would that the censor had had the presence of mind to run his pen through them at the proper time!

Mixed Courts of Appeal.

Since what are known as the Judicature Acts, appeals from the Chancery and King's Bench Divisions of the High Court of Justice come before the Court of Appeal. That court consists of the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls as *ex officio* members, and five Lords Justices of Appeal. It generally sits in two divisions of three judges and the Master of the Rolls presiding in one court. Appeals from the Chancery Division are heard by a court in which equity judges are in the majority; while two of the three judges who hear from the King's Bench Division are generally common lawyers.

It sometimes happens that a mere common law judge is set to hear an appeal upon a point of equity with which his early training has not specially qualified him to deal. In such circumstances he generally remains silent during the argument, and allows his equity brethren to pull the labouring oars. In the recent case of *re Holt* (reported 116 *Law Times Reports* 270), the Master of the Rolls, Lord Justice Warrington, and Lord Justice Scrutton had to construe a will. The following summary which appears at the head of the report, gives some idea of the question to be discussed: "*Tenant for life or tenant in tail male—Equitable life estate—Subsequent gift to male issue of tenant for life in succession—Legal devise—Rule in Shelley's case.*" What should be the attitude of a mere common lawyer when asked to pronounce upon such a case? After his learned brethren had given judgment Lord Justice Scrutton, one of our leading commercial lawyers, delivered himself as follows:

"After listening attentively to the very interesting arguments with which the Court has been favoured, I have come to one clear conclusion, which is that I cannot usefully add anything to the views which have been expressed by my learned brothers. I therefore concur."

An Artistic Case with a Dramatic Ending.

The more serious business of the Courts has recently been interrupted. A judge was employed for 7 days trying whether a picture was or was not a Romney. It had been sold by a well-known London dealer to an American for £20,000. The purchaser brought suit to recover his money alleging a breach of warranty. No fraud was alleged. The views of the experts differed in an extraordinary way. One morning, however, before the case for the defendant had been fully developed, his learned counsel threw up the sponge. He said that after much diligent search his clients had discovered that the picture was not a Romney; that it was in fact a picture by Ozias Humphrey of the Ladies Horatia and Maria Waldegrave. A sketch was discovered in the library of the Royal Academy which was unquestionably the sketch for the disputed work. It had been sold as a portrait

by Romney of Mrs. Siddon's and her sister, although when the defendant bought it it was said to have been by Sir Joshua Reynolds. The defendant, however, backed his own opinion and gave the warranty. When at length the truth was revealed he acted like a man—consenting to return the money paid and to pay the costs. He also offered the picture, which is an artistic work of no small merit, to the British nation. The learned Judge took occasion to express the opinion which he had formed, namely, that the picture was not a Romney.

When Experts Differ.

The feelings of the experts whose judgment was at fault can be more easily imagined than described. One of the most distinguished had gone so far as to say that the Almighty himself would not convince him the picture was other than a Romney! As the *Times* pointed out in a leading article on May 24: "They (the experts) have erred, but there is balm in Gilead. They have only to recall the history of the bust by Richard Lucas with two square yards of British quilting material in its inside that Dr. Bode bought as a Leonardo da Vinci for the Kaiser Frederich Museum in 1908. The Prussian House of Lords, it will be remembered, afterwards affirmed by vote, in the teeth of evidence that the English artist's work—stuffing presumably and all—is and remains a Leonardo." But it is always a difficult matter to convince a Prussian of anything, as the British nation is at present finding to its cost.

Anonymous Libels.

The writer being minded to spend a very brief holiday in a West country village, was advised before he went to read a certain novel which could tell him a deal about the place. Having procured a copy of the novel from Mudies he read it. The novelist drew a very accurate picture of the village—under a different name; but he did more. He chose, as the puppets in his imaginary show, many of the local celebrities, "holding them up"—in the language of the law of libel—"to hatred, ridicule and contempt." The names, of course, were carefully concealed. In some cases,

too, the occupations of these victims were artfully changed; but there was no hiding their identity, even from one who, like the present writer, had only a brief knowledge of this country hamlet and its inhabitants. It appears that one of the persons thus pilloried went so far as to consult his lawyer, but from lack of means or for some other reason he never brought an action. It would have been an interesting suit, and—strange as it may seem—by no means hopeless from the plaintiff's point of view. Actions for libel have been prosecuted to a successful conclusion although the plaintiff was not mentioned by name—nay, even where he was given a new name in a mere work of fiction.

THE QUESTION IS NOT WHO IS MEANT? BUT WHO IS HIT?

In his *Law of Libel and Slander* (4th ed., p. 13), Sir Hugh Fraser writes: "Where the plaintiff alleges that he is the person referred to as the villain in a book or a story which purports to be a work of fiction, it seems that he must prove (1) that the author meant to refer to him, and (2) that the work was so written that those knowing the plaintiff would reasonably infer that he was intended." He cites in illustration *Pinnock* v. *Chapman & Hall Ltd.* (Times Newsp., Dec. 9 & 10, 1891) and says that the law was laid down in similar terms by Kennedy, J., in *Godfrey* v. *Bedford & Richards*, Winchester Summer Assizes, 1901.

In the first of the cases above referred to, the plaintiff, who had been for many years on the West Coast of Africa, came to live in England. The defendants published a novel in which the leading and most disreputable character was shown, to the satisfaction of the jury, to be the plaintiff under another name. They awarded a substantial sum in damages. The practitioner who is asked to advise as to the prospect of success in an action for libel should remember the celebrated *dictum* of Lord Loreburn, in *Jones* v. *Halton* (1910) A.C. 20: "The question is not who is meant? but who is hit?" A novelist may say, on oath, "I meant to pillory no one" but if 10 good men and true come forward and say "We know he hit the plaintiff" and the jury are of the same opinion, a legal injury has been committed for which the novelist must pay damages. Although no remedy by action was sought

by any inhabitant of the village above mentioned, it is gratifying to know that when the novelist concerned endeavoured to obtain accommodation in the village after his book was published, all the lodging houses were closed to him

1 Brick Court, Temple. W. VALENTINE BALL.

WAR AND THE DISCHARGE OF CONTRACTS.

The law of contract will—as one of the minor results of the war—become greatly developed through decisions on the effect of the war on the contractual relationships of parties to a contract. A great number of the reported cases nowadays deal with matters of temporary importance only. Thus we find case after case determined on the construction of emergency statutes. These decisions may be of importance at the present time. But they will never furnish much additional material to the Judge-made law of contract. Their effect is transitory. Not only will these statutes cease to have any operation after the lapse of a few months of peace, but even in wartime their existence on the statute-book is essentially precarious, for statute follows statute with considerable rapidity, and what is now the emergency statute law of to-day may be entirely altered by some amending Act in the course of a month or two.

But the war decisions are by no means all of this type. There are cases being decided at this present time that will probably be quoted years hence as authorities which have developed the law. This is particularly the case as regards the law of contract. The effect of the war on contracts is a highly important matter at the present day. The effect of the war *quâ* war is, however, one thing. The effect of the war on contracts, in the sense of developing a general principle of law, resulting, no doubt, from the present abnormal circumstances, but nevertheless illustrating or developing a standing permanent principle of law, is quite another matter. It is to this latter type of case that we propose to address our attention. We propose to call the read-

er's attention to some of the very recent cases resulting from the war, but nevertheless developing a permanent principle of law. We propose to deal with such of these cases as treat of the effect of impossibility of performance on the rights of parties to contracts. Such cases are both of temporary and of permanent importance.

It is, of course, within common experience that the performance of contracts is being frequently interfered with in one way or another. The chief source—and, indeed, an increasingly frequent source—of interference is by Government departments and similar authorities under statutory powers. This interference may have any one of three results on a subsisting contract. It may disturb the parties in their dealings while leaving the contract on foot and their legal rights unaffected. Secondly, it may put an abrupt end to the contract. Thirdly, it may suspend the performance of the contract. With the first of these results we need not deal. Contractual relationships remain intact. Only a practical inconvenience is caused. It is to the second and third we propose that we shall call the reader's attention. We must review as briefly as possible the former authorities on this matter—the effect of unforeseen circumstances rendering performance impossible.

The root principle would appear to be this—that every contract must be performed. If a contract cannot be performed for some unforeseen reason, then the contract fails and the parties are discharged. Observe the inconsistency between these two statements. Yet these two statements seem fully justified by the authorities. They must be harmonized, and to bridge that difficulty the Courts have from time to time had recourse to divers doctrines. In support of the first principle—the root principle as we have called it—we may refer the reader to the well-known statement that a man must either perform his contract or pay damages for not performing it. "There seems to be no doubt," said Lord Blackburn in *Taylor* v. *Caldwell* ((1863), 3 B. & S. 826, at p. 833), "that where there is a positive

contract to do a thing, not in itself unlawful, the contractor must perform it or pay damages for not doing it, although in consequence of unforeseen accidents the performance of his contract has become unexpectedly burdensome or even impossible."

That a contract should be held to be discharged because one party, as subsequent events prove, has made a bad bargain, could, of course, never be sustained as a proposition of law based on logic or convenience. But again and again the Courts have held a contract to be at an end when circumstances have supervened before the performance which render performance impossible. Logically, therefore, it would seem that the true position is this: If a man undertakes to perform a contract in clear, unconditional terms, he in effect undertakes to perform it, come what may. His contract is, indeed, to do or to procure the doing of the thing in question, and to pay damages if the thing for some foreseen or unforeseen circumstance is not done as agreed. That seems to be the true explanation. It is qualified only by this, that the thing to be done must be lawful. If a man purports to contract to do an unlawful act there is no contract. If the act would be lawful when the contract is made and becomes unlawful before performance, we have a refinement with which we need not deal.

The old case of *Paradine* v. *Jane* (1647), Aleyn, 26, and, indeed, all the covenant cases for repairing houses where lessees have been held bound to rebuild after fire, may be cited as illustrating the general principle that mere burdensomeness is not a ground for relieving a man from his contract. In *Paradine* v. *Jane* a lessee was sued for rent. He had been put out of possession by rebels, who kept him out so that he could not take the fruits of the demise or enjoy the property. Yet he was held bound to pay rent. It is obvious that a covenant to pay could be in fact discharged notwithstanding that the covenantor was out of possession.

The Courts have always been ready to find some ground on which to qualify the application of the general root principle

that a man must perform his contract or pay damages where unforeseen circumstances render performance impossible. There seem to me two main grounds for escaping the consequences of the root principle. It may, however, be doubted whether logically there is not, indeed, one ground only. However, in the present state of the development of the law of contract it is better to recognize the two grounds for exception. The first is that there is some tacit condition for the continuance of circumstances rendering performance possible. The second is that the whole contract falls to the ground and is gone, in so far as any future performance is concerned.

The case of *Taylor* v. *Caldwell, supra,* is an instance of the application of and an authority for the proposition that where the Court finds that there is some implied or tacit condition that some state of circumstances rendering performance possible should continue to exist, then, if for same unforeseen reason that state of circumstances ceases to exist, the parties are absolved from the contract. Thus in *Appleby* v. *Myers,* 16 L.T. Rep. 69; L. Rep. 2 C.P. 651, the plaintiffs contracted to erect certain machinery in the defendant's building and to keep the machinery in repair for two years. When some of the work had been done the premises were destroyed by fire, so that the plaintiffs were not able to perform their contract. It was held that both parties were excused from any further performance of the contract. Again, in *Baily* v. *De Crespigny,* 19 L.T. Rep. 681; L. Rep. 4 Q.B. 180, a man covenanted not to build on certain land, and bound himself and his assigns (with notice) accordingly. The land was taken by a railway company under statutory powers and they built on the land, but the Court held that the covenantor was discharged from his contract. Again, in *Robinson* v. *Davison,* L. Rep. 6 Ex. 1, a lady was engaged to perform on the piano at a concert to be given by the plaintiff. Unfortunately when the day arrived she was ill and unable to perform, and this fact was held to discharge the contract on the ground that her ability to perform was a tacit condition.

These contracts for personal service illustrate the general principle, although no doubt they are *à fortiori* cases. "It must be conceded," said Chief Baron Pollock in *Hall* v. *Wright*, E.B. & E. 746, at p. 793, "that there are contracts to which the law implies exceptions and conditions which are not expressed. All contracts for personal services which can be performed only during the lifetime of the party contracting are subject to the implied condition that he shall be alive to perform them. So a contract by an author to write a book, or by a painter to paint a picture within a reasonable time, would, in my judgment, be deemed subject to the condition that, if the author became insane, or the painter paralytic, and so incapable of performing the contract by the act of God, he would not be liable personally in damages any more than his executors would be if he had been prevented by death." It is only a step further than this clear-cut principle which would reach this proposition, that every contract entered into between reasonable men contemplates the continuance of a state of circumstances in which performance is still possible; and if performance subsequently becomes impossible through no fault of the parties, then the circumstances have ceased to exist, and it is by the contract that the contract becomes discharged. We would repeat our warning that so far the Courts have not quite countenanced this view, preferring rather to put it on failure of the contract altogether. Apparently the ground for shrinking from this step—a logical step, it seems to us—is that it would be too risky to embark on constructing hypothetical terms to a contract. There are indications of this in the two cases of *Blakeley* v. *Muller and Co.* and *Hobson* v. *Pattenden and Co.*, 88 L.T. Rep. 90; (1903), 2 K.B. 760n., which were heard together on appeal. Those cases concerned the hiring of seats for King Edward's coronation procession on a certain day. The procession did not take place, and the Court held that the contracts were discharged, but not void *ab initio*, and that the loss must remain where it was at the time of abandonment. The Court would not find a term that was not

expressed as to how the parties were to stand if the procession did not take place. The matter was dealt with as if a pair of scissors had cut the whole thing in two and left the parties to their respective ends.

The judgments in the recent case of *F. A. Tamplin Steamship Company Limited* v. *Anglo-Mexican Petroleum Products Company Limited,* 115 L.T. Rep. 315; (1916), 2 A.C. 397, and in the even more recent case of *Metropolitan Water Board* v. *Dick, Kerr and Co.,* 142 L.T. Jour. 385; (1917), W.N. 98, go to shew that the theory respectfully put forward above will in due course be recognized as the true ground for holding contracts discharged by reason of subsequent impossibility of performance. These judgments certainly seem to imply that a tacit condition that there shall be a continuance of the possibility of performance is the real ground for holding a contract discharged when performance has become impossible through unforeseen circumstances. The first of these two recent cases is a House of Lords case. A tank steamer was chartered for sixty months at a fixed sum per month. On the outbreak of the war the ship was requisitioned by the Admiralty, and certain alterations were made in her for her new purpose. There were then nearly three years of the charter term to run. The owners claimed the charter-party had been determined by the requisition. The charterers were prepared to continue to pay the agreed freight, and they contended that the charter-party was still subsisting. The House of Lords took the latter view.

Lord Haldane, who, with Lord Atkinson, dissented, expressed the view that the contract was gone as the use of the ship and the fulfilment of the purposes of the charter had been swept away by a *vis major* for a period to which no limit could be assigned. It would seem to be, at any rate, partly upon the authority of this view that the second of these two recent cases was decided. In this second case (*Metropolitan Water Board* v. *Dick, Kerr and Co.*) the defendants had agreed to construct a large reservoir for a certain sum within six years, and under the

contract all tools, etc., brought by them on to the works were for the time being to be the property of the plaintiffs. When the work had been started and tools, etc., to a considerable value had been brought on to the works, the Minister of Munitions, acting under statutory powers, ordered the defendants to cease and to hold their plant and labour at the disposal of the Minister. The tools, plants, etc., or a considerable part of them, were removed by the direction of the Minister and sold to munition factory owners. The men were nearly all taken away from the works. The plaintiffs claimed that in these circumstances the contract was only suspended. Under the contract the engineer had power to allow an extension of time for completing the contract because of any difficulties or impediments. The Court held, however, that it was discharged, on the ground that there was more than a temporary prohibition—the continuance of a state of war being too uncertain to be regarded as temporary.—*Law Times.*

JUDGMENTS, UNANIMOUS AND OTHERWISE.

Incidentally the *Zadig Case* shews very forcibly the advantages of the procedure of the House of Lords as contrasted with that of the Judicial Committee of the Privy Council. The Judicial Committee in form merely advises the Crown, and it delivers a single judgment from which all dissent has by the nature of things to be eliminated. Whether, having regard to the nature of its jurisdiction, this is under the special circumstances the most convenient course we need not express an opinion. It may be that a judgment which is to settle a dispute in a remote part of the world ought to carry the appearance of a unanimous sentence, however much disagreement there may have been in arriving at it. But there can be no question that, for appeals in this country to the House of Lords, the rule of separate judgments best accords with the spirit and traditions of our law.—*Solicitors' Journal.*

REVIEW OF CURRENT ENGLISH CASES.

NEGLIGENCE — UNBROKEN COLT LOOSE ON HIGHWAY AT NIGHT — INJURY TO PERSON USING HIGHWAY.

Turner v. *Coates* (1917) 1 K.B. 670. This was an action to recover damages for injuries sustained by the plaintiff on a public highway in the following circumstances. The plaintiff was travelling on the highway at night on a bicycle on which she carried a light, and she was on the proper side of the road. The defendant's unbroken colt was loose on the highway and ran against the plaintiff so that she fell off her wheel and was injured. The defendant intended that the colt should follow a boy who was walking in front leading a mare, but the colt not being under any control did not carry out his intention. The County Court Judge who tried the action held that the defendant was guilty of negligence and liable in damages for the injury in question, and the Divisional Court (Lush, and Bailhache, JJ.), affirmed his decision.

CONTRACT—SALE OF GOODS—SOLD NOTE — CONDITION — ASSENT OF BUYER—CONDITION, WHEN NOT BINDING.

Roe v. *Naylor* (1917) 1 K.B. 712. This was an action for breach of a contract for the sale of timber. The sale had been made by an agent and a sold note delivered to the plaintiffs, the buyers, which contained on the left hand side the following words: "Goods are sold subject to their being on hand, and at liberty, when the order reaches the head office." When this particular order reached the head office it was found that the timber had been previously sold, and was consequently not on hand, and the defendants relied on the condition as exonerating them from the performance of the contract. The County Court Judge who tried the action gave judgment for the plaintiff, but the Divisional Court (Bailhache, and Atkin, JJ.), ordered a new trial, being of the opinion that it was a question of fact whether or not the clause in question was so printed that an ordinary careful business man reading the document with reasonable care might miss it, and that unless that was so, the condition would be binding; and that the County Court Judge had not directed his mind to the proper question, he being of opinion that it was

necessary for the defendants to draw the plaintiff's attention to the condition, and because they had not done so, therefore, it was not binding.

SALE OF GOODS — CONTRACT — REMAINDER OF CARGO "MORE OR LESS, ABOUT," SPECIFIED QUANTITY.

In re Harrison and Micks (1917) 1 K.B. 755. This was a case stated by arbitrators. The question was as to the meaning of a contract for the sale of the remainder of a cargo of wheat "more or less about 5,400 quarters." The buyer accepted delivery of about 5,400 quarters. The seller had in fact made a miscalculation and "the remainder" amounted to 574 quarters more than the 5,400 quarters. One of the rules indorsed on the written contract provided "the word 'about' when used in reference to a quantity shall mean within five per cent. over or under the quantity stated." The buyer claimed that, by virtue of this rule, he was not bound to accept more than 270 quarters in addition to the 5,400 quarters, but the Divisional Court (Bailhache, and Atkin, JJ.), held that the contract was controlled by the word "remainder" and that the buyers were bound to accept "the remainder" whatever it might amount to, irrespective of the rule relied on.

LANDLORD AND TENANT—BREACH OF COVENANT TO REPAIR—NOTICE TO REPAIR—ACCEPTANCE OF RENT AFTER SERVICE OF NOTICE TO REPAIR—WAIVER OF FORFEITURE—CONTINUING BREACH —CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (44-45 VICT. C. 41), S. 14 (1)—(R.S.O. C. 155, S. 20 (2)).

New River Co. v. *Crumpton* (1917) 1 K.B. 762. This was an action by lessors to recover possession of the demised premises for breach of a covenant by the lessees to repair. The plaintiffs had given notice to the defendants to repair as required by the Conveyancing and Property Act 1881, s. 14 (1), (R.S.O. c. 155, s. 20 (2)), and had subsequently accepted payment of an instalment of rent. The defendants contended that in these circumstances no action for possession would lie until a new notice to repair should be given, and that the acceptance of rent operated as a waiver of the forfeiture; but Rowlatt, J., who tried the action, held that although the acceptance of rent was a waiver of the forfeiture up to the date of its receipt, yet as the breach complained of was a continuing breach, the acceptance of the rent did not waive forfeiture for non-repair after that

date, and he held that such being the case, and the premises being still out of repair, no fresh notice was necessary, following *Penton* v. *Barnett* (1898) 1 Q.B. 276, 281, although in that case some stress was laid on the fact that the premises in question were in the same physical condition as to repair as when the notice was given, whereas in the present case some repairs had been done subsequent to the notice.

CONTRACT TO DO WORK UPON GOODS AND RE-DELIVER — GOODS BURNT BY ACCIDENT ON CONTRACTOR'S PREMISES — REASONABLE TIME.

Shaw v. *Symmons* (1917) 1 K.B. 799. This was an action to recover damages for breach of a contract to do work on goods and re-deliver them. The goods in question were books to be bound by defendants. No time was specified for their delivery. On January 7, 1916, the plaintiffs demanded delivery of the whole of the books then bound, and on two occasions prior to the 20th January telephoned to the defendants, pressing for delivery. The defendants neglected to deliver the books, and on 20th January they were burnt by accidental fire on the defendants' premises. The defendants at the trial sought to excuse themselves on the ground of difficulties of transport, and shortage of labour, but this had not been previously set up as an excuse, and Avory, J., who tried the action, held that a reasonable time had elapsed from the demand for delivery, and that the defendants were guilty of a breach of contract, and liable for the loss of the goods.

HUSBAND AND WIFE—CONTRACT—SUPPLY OF GAS TO HOUSE OCCUPIED BY WIDOW — WIDOW RE-MARRYING AND CONTINUING OCCUPATION OF HOUSE—NON-DISCLOSURE TO GAS COMPANY OF RE-MARRIAGE—LIABILITY.

Lea Bridge District Gas Co. v. *Malvern* (1917) 1 K.B. 803. The plaintiffs, a gas company, sued the defendant, a married woman, for gas supplied to a house occupied by her in the following circumstances. The house in question was originally occupied by the defendant and a former husband. After his death gas was continued to be supplied to the house, of which she continued in occupation, and was from time to time paid for by her. Subsequently she married again, and her seecond husband came to reside with her in the same house, and the plaintiffs, without notice of such second marriage, continued to supply gas. The defendant paid for one quarter's account for gas,

after her re-marriage, but not having paid for a later quarter the present proceedings were instituted. The defendant contended that she was not liable, as she was not the consumer of the gas, that there was no contract between her and the plaintiffs, and that she was a married woman residing with her husband, who was the tenant and occupier of the premises to which the gas had been supplied. The justices who heard the complaint gave effect to these contentions, and dismissed the complaint, but stated a case for the opinion of the Court, and a Divisional Court (Lord Reading, C.J., and Ridley, and Lush, JJ.), held that the justices were wrong, and that, in the circumstances, the defendant continued liable to the company until she notified them of her re-marriage.

HUSBAND AND WIFE—ACTION BY WIFE AGAINST HUSBAND FOR RESCISSION OF SEPARATION DEED—FRAUD—ACTION OF TORT — RESTITUTIO IN INTEGRO — MARRIED WOMEN'S PROPERTY ACT, 1882 (45-46 VICT. c. 75), s. 12—(R.S.O. c. 140, s. 16).

Hulton v. *Hulton* (1917) 1 K.B. 813. This was an appeal from the decision of Lush, J. (1916, 2 K.B. 642, noted ante p. 13). The action was by wife against husband to set aside a separation deed made between them, on the ground of fraud and misrepresentation. One question was whether the action was for "tort" within the meaning of the Married Women's Property Act, 1882 s. 12 (R.S.O. c. 140, s. 16), and another was, whether the deed having been made on an agreement that all letters between the parties should be destroyed, could now be set aside as it was impossible to restore the parties to their former position, the letters having been in fact destroyed: the Court of Appeal (Eady, Bankes, and Scrutton, L.JJ.), agreed with Lush, J., that the action was not for a tort within the meaning of the section, and that the destruction of the letters was no bar to a rescission of the deed. The Court of Appeal also held that the defendant was not entitled to a refund of moneys paid under the deed as a condition of its rescission, because he had received corresponding benefits under the deed.

RESTITUTION OF CONJUGAL RIGHTS — SEPARATION DEED — COVENANT BY WIFE NOT TO SUE FOR THE RESTITUTION OF CONJUGAL RIGHTS—ORDER MADE NOTWITHSTANDING COVENANT.

Phillips v. *Phillips* (1917) P. 90. This was an action by a wife for the restitution of conjugal rights. The husband did not appear. On the hearing of the petition it appeared that the

parties had entered into a separation agreement which contained a covenant on the part of the wife not to sue for restitution of conjugal rights. The plaintiff contended that the Court was under no obligation to regard the covenant unless pleaded by the defendant, and Low, J., so held, and made the order as prayed.

PROBATE—LOST WILL—CONTENTS—ATTESTATION CLAUSE — ATTESTING WITNESS NOT PRODUCED—NO EVIDENCE OF IDENTITY OF WITNESSES TO WILL—PRESUMPTION OF DUE EXECUTION.

In re Phibbs (1917) P. 93. This was an application for probate of a will which had been lost. It appeared that the day before the death of the testator he requested one Knox to see that a cash box in his possession was handed to Miss Blanche Smith after his death. Knox took the box to Miss Smith and they together examined the contents and found therein a will which both read carefully. It was dated December 7, 1911, and appointed Tweedy, a Dublin solicitor, executor. The will was sent by registered post to Tweedy; but was believed to have been destroyed in a fire at the Dublin Post Office during a civil commotion. Miss Smith had been for fifteen years acting as a clerk in a solicitor's office and from memory she wrote the contents of the will which according to her statement bequeathed to her a legacy of £100, a like legacy to a nephew who had in fact been killed shortly before the testator's death, a small legacy to Mr. Tweedy the executor, and the residue to Miss Smith. Some letters of the testator to the executor were found with the will, which in many respects confirmed Miss Smith's statement. Miss Smith was a niece and one of the next of kin of the testator. Beyond the statement of Knox and Miss Smith that the will appeared to have been duly executed in the presence of two witnesses, there was no evidence as to who the witnesses were, or of execution of the will, although an effort had been made, by advertisement, to discover the witnesses. The other next of kin appeared and assented to the grant. In these circumstances Low, J., granted probate of the will in the terms sworn to by Miss Smith.

COMPANY — MEMORANDUM OF ASSOCIATION — CONSTRUCTION — STATEMENT OF OBJECTS — ULTRA VIRES — COMPANIES CONSOLIDATION ACT, 1908 (EDW. VII. c. 69) s. 3—(R.S.O. c. 178, s. 6 (2) (*b*)—(R.S.C. c. 79, s. 7 (*b*)).

In re Anglo Cuban Oil Co. (1917) 1 Ch. 477. This was an application to remove the name of a company from the list of

contributors to another company being wound up in the following circumstances. The applicants were the Essequibo Rubber Co. The memorandum of association of that company specified that the company might engage in almost every conceivable business which an individual could engage in, and was wide enough to cover the underwriting the shares of other companies. The applicants did underwrite the shares of the Anglo-Cuban Oil Co., which shares were allotted to the London and Mexican Exploitation Company. All three companies being in liquidation the liquidator of the Anglo Cuban Oil Company settled the London and Mexican Exploitation Co. on the B list; and the Essequibo Co. on the B list. The Essequibo Co. then applied to be struck off the list, on the ground that their underwriting of the shares in question was *ultra vires* of that company. Neville, J., refused the application; and the Court of Appeal (Lord Cozens-Hardy, M.R., and Warrington, L.J., and Lawrence, J.), affirmed his decision. Both Warrington, L.J., and Lawrence, J., express doubts as to the propriety of the registrar registering companies with such an unlimited specification of objects in their memorandum of association.

INSURANCE—PRE-WAR CONTRACT—MORTGAGE OF LIFE POLICIES—ASSURED BECOMING ALIEN ENEMY—SUBSEQUENT PAYMENT OF PREMIUMS—REDEMPTION OF MORTGAGE BY SURETY—SURETY'S RIGHT TO TRANSFER OF SECURITIES — TRADING WITH THE ENEMY.

Seligman v. *Eagle Insurance Co.* (1917) 1 Ch. 519. This was an action for redemption by a surety. The mortgage security consisted of policies on the life of the mortgagor, and the plaintiff was a surety for the payment of the debt secured by the mortgage. The policies were effected before the outbreak of the war in 1914 when the assured became an alien enemy and left the country. The surety subsequently paid the premiums, and ultimately tendered the whole debt, subject to the policies being transferred to him, but the mortgagees declined to transfer the policies except subject to the reservation that they did not warrant the validity of the policies. Neville, J., who tried the action, held that the war had not the effect of putting an end to the policies; that the payment of premiums to keep the policies alive was not a trading with the enemy, as no benefit could result to the alien enemy under the policies pending the war, but that his rights were suspended during the war. He therefore

held that the plaintiff was entitled, on payment of the debt secured, to a transfer of the policies without any such reservation as that proposed by the defendants.

COMPANY — DEBENTURE — NO PLACE OF PAYMENT — DUTY OF DEBTOR TO SEEK HIS CEDITOR—INTEREST AFTER DUE DATE — LIABILITY OF COMPANY.

Fowler v. *Midland Electric Corporation* (1917) 1 Ch. 527. This was an action by the executor of a debenture-holder of a limited company to recover the amount of the debenture, one of a series. The debenture specified no place of payment. It was secured by a mortgage to trustees for the debenture-holders, and on the day named for payment the company had paid to the trustee the amount of the debenture and interest, and about the same time in 1913 wrote to the holder of the debenture informing her of the payment, and that the debenture should be sent to a specified bank for payment; but it turned out that the debenture-holder had died some months previously; subsequently the defendants were informed that the plaintiff was the executor of the deceased debenture-holder, and he obtained probate in November, 1913, but he put the debenture away with other papers, and forgot all about it until 1916. The company paid the principal and interest up to the due date, and the interest which had been earned on the money while in the hands of the trustee, but they objected to pay any more interest. The action was therefore brought to recover the difference between the amount of the interest at the rate borne by the debenture, and that tendered, and Eve, J., held that the plaintiff was entitled to succeed.

MORTGAGE—ASSIGNMENT OF INTEREST IN TRUST FUND—NOTICE OF MORTGAGE TO TRUSTEES OF FUND—SUBSEQUENT PAYMENT OF INCOME TO MORTGAGOR — RELIEF OF TRUSTEE — JUDICIAL TRUSTEES ACT 1896 (59-60 VICT. C. 35), S. 3 (R.S.O. C. 121 S. 37).

In re Pawson, Higgins v. *Pawson* (1917) 1 Ch. 541. In this case one Pawson, who was entitled to a life interest in the income of certain stocks and other personal estate in the hands of trustees of a settlement, executed a mortgage of his interest to the plaintiff, Higgins, to secure a loan. Higgins gave notice of his mortgage to the trustees but did not demand that the income

should thereafter be paid to him, and the trustees, *bonâ fide*, continued to pay it to the mortgagor for about a year and a half, when the plaintiff brought the present action claiming to recover all income which had accrued since the giving of the notice; but Sargent, J., who tried the action, held that the mere giving of notice of the mortgage was not equivalent to taking possession of the mortgaged property, but had no further effect than the giving notice of a mortgage of real estate, and did not deprive the mortgagor of the right to continue to receive the income. He held therefore that the action failed as against the trustees; but he was also of the opinion that even if the payment were wrong, it was a case for granting the trustees relief under the Judicial Trustees Act, 1896, s. 3 (see R.S.O. c. 121, s. 37), and that it was not necessary for them to plead the Act as a defence.

TRADE MARK—APPLICATION TO REGISTER — SURNAME "CRAWFORD."

In re Crawford (1917) 1 Ch. 550. This was an application to register the name "Crawford" as a trade mark for biscuits, cakes and shortbread, and the application was refused, it appearing that it was a common surname in Scotland, and not uncommon in England, although it was shewn that the name had been identified for twenty years with the applicants' goods, for which they had acquired an extensive trade in Scotland and England.

RAILWAY—CARRIAGE OF GOODS — OWNER'S RISK CONSIGNMENT NOTE—CONSTRUCTION — "NON-DELIVERY OF ANY CONSIGNMENT."

Great Western Ry. Co. v. *Wills* (1917) A.C. 148. This was an appeal from the decision of the Court of Appeal, 1915, 1 K.B. (noted ante vol. 51, p. 234). The case turns upon the construction of a consignment note for 752 carcasses of frozen mutton, whereby it was provided that they should be carried at a reduced rate and that the defendant railway company should be relieved from "all liability for loss, damage, misdelivery, delay or detention" unless arising from the wilful misconduct of their servants, but not from any liability they might otherwise incur in the case of "non-delivery of any package or consignment fully and properly addressed" and that "no claim in respect of goods for loss or damage during the transit" should be allowed

unless made within three days after delivery of the goods in respect of which the claim was made, or "in the case of non-delivery of any package or consignment" within fourteen days after despatch. When the consignment arrived at its destination there were twelve of the carcasses missing. A claim was made by the consignor within fourteen days from the despatch of the whole consignment, but not within three days from the delivery of the rest of the carcasses. The Court below considered that the non-delivery of the twelve carcasses was "the non-delivery of a consignment," and therefore that the plaintiff's claim was made in time. The majority of the House of Lords considered that the "non-delivery of a consignment" in the consignment note, meant non-delivery of the consignment as a whole, and that it was really a question of fact whether the delivery of the 740 carcasses was a substantial delivery of the consignment, notwithstanding the shortage in delivery, and that, strictly speaking, there ought to be a new trial on that question; but the amount involved being small, the parties agreed to waive a new trial, and their Lordships (Lords Loreburn, Haldane, Kinnear, and Parmoor—Lord Shaw dissenting), disposed of the case on the assumption that the delivery of the 740 carcasses was a substantial delivery of "the consignment," and therefore that the time for making claim was limited to the three days from that delivery and the plaintiff was therefore too late. Lord Shaw considered that "the delivery of the consignment" meant the delivery of every part of it, and that the omission to deliver any part of it was a "non-delivery of the consignment;" but the majority thinking otherwise the appeal was therefore allowed.

JURY—FAILURE TO REVISE JURY LIST—VERDICT—NEGLECT TO OBSERVE STATUTORY REGULATIONS.

Montreal Street Ry. v. *Normandin* (1917) A.C. 170, deserves attention. It was an appeal from a Quebec Court and the question raised thereby was as to the validity of a verdict given in a civil action, where the proper officers had neglected to revise the list of jurors as required by R.S.Q. c. 909, art. 3426; and it was claimed that one of the jury was disqualified from being a juror under art. 455 (2) of the Code. Their Lordships the Judicial Committee of the Privy Council (Lords Haldane, Buckmaster, Dunedin, and Parker, and Sir A. Channell), found that

there was no evidence in support of the alleged disqualification of a juror, and that it had not been established that the appellants had been really prejudiced, and they therefore came to the conclusion that in the circumstances the statutory provisions as to making the jury panel should be regarded as directory, and the omission to comply therewith did not render the jurors who tried the case disqualified from acting as jurors. The appeal therefore failed.

A NEW CURE FOR MOBS.

Inter arma legis silent does not seem to be a maxim of universal application. Recently a mob gathered around a jail in a Virginia city clamouring for the blood of a prisoner confined therein and manifesting a strong disposition to overcome the guards and break in the jail door. The Judge of a local Court mounted the jail steps, accompanied by his clerk and bailiff, opened Court in due form, and announced that any person disturbing the peace in that vicinity would be committed for contempt. The crowd promptly withdrew and the riot was over. Even allowing something for the American sense of humour, the incident affords some scope for reflection. Every man in that mob was guilty of a felony and liable to a penalty more severe than any which could be imposed for contempt, but that did not in the least deter them from their unlawful enterprise. What made the difference? Simply that in the one case the apprehended penalty was certain and immediate, while in the other it existed only in the dim future, beyond a hundred delays and a myriad of possible salvation-working quibbles. The lesson is plain and emphatic. When criminal trials are prompt and businesslike, with technicalities summarily brushed aside, punitive justice will gain immeasurably in its deterrent effect, and penalties can be humanized without detracting from that result.—*Law Notes.*

Reports and Notes of Cases.

Province of Alberta.

SUPREME COURT.

Harvey, C.J., and Stuart, Beck, and Walsh, JJ.] [34 D.L.R. 514.

REX v. LEVERTON.

1. *False pretences—Fraud of employee tendering under cover of a trade name—Obtaining rejection of lower tender.*

Where an employee makes representations to his employer to the effect that a tender for the supply of goods to the latter is an actual *bonâ fide* one from an independent tenderer, whereas it was in fact, although unknown to the employer, the employee's own tender, submitted in a different trade name through such employee's nominee, the employee may properly be convicted of obtaining by false pretences the additional money which, by means of such tender and his employer's reliance on the same as independently made, he obtained for the goods supplied over and above the amount for which the employer would have obtained them by acceptance of a competitive tender which the employee fraudulently caused to be rejected.

R. v. *Cooper*, 2 Q.B.D. 510, 46 L.J.M.C. 219, considered.

2. *Indictment—False pretences.*

An indictment or charge for obtaining money under a false pretence is not bad for not setting out what the false pretence was or stating to whom it was made. (Code secs. 852, 1152, Code form 64 (c)).

A. A. McGillivray, for the Crown; *J. McKinley Cameron*, for accused.

ANNOTATION ON ABOVE CASE IN D.L.R.

In a charge for obtaining goods by false pretences it must be proved (1) that a false pretence was made, (2) that the prosecutor believed the pretence, and (3) that the goods were obtained by means of the pretence. *R.* v. *King*, [1897] 1 Q.B. 214.

The offence declared by Code sec. 405 of the Criminal Code 1906 applies to "anything capable of being stolen" and which is obtained by any false pretence as defined by sec. 404. And sec. 405A makes it an indictable offence for a person in incurring any debt or liability to obtain credit "under false pretences or by means of fraud." The definition of "false pretense" contained in Code sec. 404 is as follows:—

"404. A false pretense is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

"(2). Exaggerated commendation or depreciation of the quality of anything is not a false pretense, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

"(3). It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact."

The false pretence need not be made in words or writing, it may be made "otherwise" and it will suffice if it is signified by the conduct and acts of the accused. *R.* v. *Létang* (1899), 2 Can. Cr. Cas. 505.

To render a defendant liable, his false representation must have been with regard to a past or existing matter, not to a future undertaking as that he will pay for goods on a certain day. *Mott* v. *Milne*, 31 N.S.R. 372; *Regina* v. *Bertles*, 13 U.C.C.P. 607.

The false pretence must be a false representation, express or implied, as to the past or present existence of some fact; a mere promise as to future conduct, or representation as to future expectations are not sufficient. For instance, the giving a cheque in exchange for goods is ordinarily a representation that the drawer has an account at the bank on which the cheque is drawn, and that that account is in such condition that in the ordinary course of events the cheque will be met. If the drawer knows that these conditions do not exist, the giving of the cheque is in law a false pretence. But representations of future expectations, unless they are representations of existing facts, do not constitute a false pretence, and obtaining goods on credit by means of such representations is not obtaining goods by false pretences. The false pretence may be made in any way, either by words, by writing, by conduct. It is no excuse to say that a person of common prudence could easily have found out the pretence was untrue, nor to say the existence of the alleged fact was impossible, or that it was intended to make compensation for the goods in the future. Tremeear's Criminal Code sec. 404; *R.* v. *Martel*, 27 Can. Cr. Cas. 316.

Where goods are obtained on the faith of the buyer's cheque given in payment therefor, a charge of false pretence of an existing or present fact, as distinguished from a future event, is sustainable, although there may have been funds in the bank to the credit of the drawer at the precise time of delivery of the cheque or of the receipt of the goods, if it be shewn that the drawer issued other cheques at about the same time, the payment of which had been planned to so reduce the fund that the cheque in question would be dishonoured and that the drawer had no credit arrangements with the bank for an overdraft. *R.* v. *Garten*, 22 Can. Cr. Cas. 21, 13 D.L.R. 642.

A charge of obtaining goods by false pretences through the giving in payment by his agent of a worthless cheque against the principal's account will lie against the principal if it be shewn that the latter deliberately planned that the cheque should not be paid for lack of funds at his credit in the bank and had re-sold the goods and applied the proceeds to his own use, and this whether or not the agent was aware of the fraud. *R.* v. *Garten* (1913), 22 Can. Cr. Cas. 21, 29 O.L.R. 56, 13 D.L.R. 642; *R.* v. *Garrett*, 6 Cox C.C. 2?0; *R.* v *Hazelton*, L.R. 2 C.C.R. 134, 13 Cox C.C. 1.

The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the bank on the date thereof and is not, in itself, a false representation of a fact past or present. *R.* v. *Richard*, 11 Can. Cr. Cas. 279.

False pretences may be founded on the false idea conveyed fraudulently by the accused: it is not requisite that the false pretence should be made in express words. *R.* v. *Holderman*, 23 Can. Cr. Cas. 369, 19 D.L.R. 748.

A person may be convicted of obtaining the return to himself of his own promissory notes from the payee if such return is obtained under false pretences, and it is not a ground of defence that the notes were overdue when so obtained. *Abeles* v. *The King* (1915), 24 Can. Cr. Cas. 308, 24 Que. K.B. 260.

In Stephen's Digest of the Criminal Law, p. 161, it is said:—

"The words, 'Whosoever shall, by any false pretence, obtain, from any other person, any chattel, and with intent to defraud,' seem simple enough, but they are obviously open to an interpretation which would make any dishonest breach of contract criminal. A man who buys goods, which he does not intend to pay for, may be said to obtain them by a false pretence of his ability and intention to pay. The Courts, however, soon held that this was not the meaning of the statute, and that, in order to come within it, a false pretence must relate to some existing fact. . . . A mere lie, told with intent to defraud, and having reference to the future, is not treated as a crime. A lie, alleging the existence of some fact which does not exist, is regarded as a crime, if property is obtained by it."

In *Alderson* v. *Maddison*, 5 Ex. D. 303, Stephen, J., said, and Lord Selborne referred to it, on the appeal, with approval:—

"To say, 'I have cancelled the bond,' when you have not, is to tell an untruth. To say: 'I intend to cancel the bond' is to make a statement as to a present revocable intention. If a person chooses to act on such a representation, without having it reduced to the form of a binding contract, he knows, or ought to know, that he takes his chance of the promisor changing his mind, and therefore he is in no worse position, if the statement is false when it is made, *i.e.*, if the intention is not really entertained, than if it is true when it is made, *i.e.*, if the intention exists, and the person making the statement intends to revoke it, if he pleases."

Where a defendant hired a bicycle, of the value of $20, representing that he wished to use it to go to L., for the purpose of visiting his sister, and, instead of returning the bicycle, sold it to C.:—*Held*, that evidence which shewed these facts, was not sufficient to support a conviction for having "unlawfully, and by false pretences obtained from X. one bicycle, of the value of $20," the prosecutor not having been induced and not intending to part with his right of property in the goods, but merely with the possession of them, and there being no representation as to a present or past matter of fact. *Rex* v. *Nowe*, 36 N.S.R. 531, 8 Can. Cr. Cas. 441. But see Code sec. 347 as to the offence of theft by conversion of the property. Tremeear's Criminal Code, sec. 347; *R.* v. *Kelly*, 27 Can Cr. Cas. 94, 140 and 282, 34 D.L.R. 311.

A person who does not otherwise make a false representation himself but who is present when it is made, knows it to be false, and gets part of a sum of money obtained by such false pretence, is guilty of obtaining such sum of money by false pretences. *The Queen* v. *Cadden*, 4 Terr. L.R. 304, 5 Can. Cr. Cas. 45.

In order to establish the offence of obtaining money by false pretences it is necessary to prove what was laid down by Buckley, J., in *Re London and Globe Finance Corporation*, [1903] 1 Ch. 728. He said: "To deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury." *R.* v. *Bennett* (1913), 9 Cr. App. R. 146 at 154.

On an indictment for obtaining money by false pretences it is essential that the jury should understand that there should be no conviction without an intent to defraud, and, unless such intent is clear from the facts, they should be directed on the point; they should also be directed that the obtaining must be due to the false pretense alleged. *R.* v. *Ferguson*, 8 Cr. App. R. 113; *R.* v. *Boyd*, 4 Can. Cr. Cas. 219; *R.* v. *Brady*, 26 U.C.Q.B. 13.

But where the statement relied upon and shown to be false could not have been made with any other object than that of

defrauding the prosecutor, it is not reversible error that the jury was not instructed specially on the question of intent. *Rex* v. *Carr* (1916), 12 Cr. App. R. 140.

An intent to defraud may be inferred from the wilful use of a forged instrument to support a genuine claim. *Rex* v. *Hopley*, 11 Cr. App. R. 248.

In *Rymal's* case, 17 Ont. R. 227, the defendant, by untrue representations, made with knowledge that they were untrue, induced the prosecutor to sign a contract to pay $240 for seed wheat. The defendant also represented that he was the agent of H. whose name appeared in the contract. H. afterwards called upon the prosecutor and procured him to sign and deliver to him a promissory note in his H's favour for the $240. The contract did not provide for giving of a note, and when the representations were made the giving a note was not mentioned. The prosecutor, however, swore that he gave the note because he had entered into contract. The defendant was indicted for that he, by false pretences, fraudulently induced the prosecutor to write his name upon a paper so that it might be afterwards dealt with as a valuable security; and upon a second count for, by false pretences, procuring the prosecutor to deliver to H a certain valuable security:—*Held*, upon a case reserved that the charge of false pretences can be sustained as well where the money is obtained or the note procured to be given through the medium of a contract, as when obtained and procured without a contract; and the fact that the prosecutor gave a note instead of the money, by agreement with H. did not relieve the prisoner from the consequences of his fraud; the giving of the note was the direct result of the fraud by which the contract had been procured; and the defendant was properly convicted on the first count as being guilty of an offence under R.S.C. ch. 164, sec. 78; *Regina* v. *Rymal*, 17 O.R. 227.

In *Regina* v. *Hope*, 17 Ont. R. 463, the defendant was indicted in the first count of the indictment for obtaining from one H. a promissory note with intent to defraud, and in the second count with inducing H. to make the said note, with like intent. The evidence shewed that on May 4th, 1887, the defendant's agent called on H. and obtained from him an order addressed to defendant to deliver to H. at R. station 30 bushels of Blue Mountain Improved Seneca Falls Wheat, which H. was to put out on shares, and to pay defendant $240 when delivered, and to equally divide the produce thereof with the holder of the order, after deducting the said amount. On 23rd May defendant called, produced the order, and by false and fraudulent representations as to the quality of the wheat and his having full control of it, its growth and yielding qualities, and that a note defendant requested him to sign was not negotiable, induced H. to sign the note. Evidence was received, under objection, of similar

frauds on others shewing that the defendant was at the time engaged in practicing a series of systematic frauds on the community. The defendant was found guilty and convicted:—*Held*, on a case reserved, that the conviction should be affirmed on the second count, as the evidence shewed that the note was signed by H., not merely to secure the carrying out of the contract contained in the order, but on the faith of the representations made; and it was immaterial that a note was taken when the order called for cash; and, also, that the evidence objected to was properly receivable. *R.* v. *Hope*, 17 Ont. R. 463.

The defendant was foreman of works on roads, and certified to the inspector A. that certain persons had worked under him and were entitled to pay. He also produced orders for this pay purporting to be signed by those persons, but which in fact were not genuine. The inspector A. delivered the money to D. his agent, with instructions to pay it to the defendant if satisfied of the genuineness of the orders. On an indictment for obtaining money under false pretences from D. the defendant was found guilty, and the conviction was upheld on a case reserved. *Regina* v. *Cameron*, 23 N.S.R. 150.

There may be an intent to defraud although the prosecutor got something which was of real value for his money. Where money is obtained by pretences that are false, there is, *primâ facie*, an intent to defraud, although this presumption may by displaced. *R.* v. *Hammerson* (1914), 10 Cr. App. R. 121.

In a New Brunswick case, the prisoner wrote to the prosecutor to induce him to buy counterfeit bank notes. The prosecutor, in order to entrap the prisoner and bring him to justice, pretended to assent to the scheme, arranging a meeting place of which he informed the police, and had them placed in position to arrest the prisoner at a signal from the prosecutor. At such meeting the prisoner produced a box which he said contained counterfeit bank notes, which he agreed to sell the prosecutor on payment of a sum agreed upon. The prisoner gave a box which he pretended to be the one containing the notes to the prosecutor, who then gave the prisoner $50 and a watch as security for the balance which he agreed to pay.

The prosecutor immediately gave the signal to the police and seized the prisoner and held him until they arrested him and took the money and watch from him. On examining the box given the prosecutor it was ascertained that he had not given him the one containing the notes as he pretended, but a similar one containing waste paper. The box containing the notes was found on the prisoner's person. It was clear and undisputed that the motive of the prosecutor in parting with the possession of the money and the watch, as he had done, was to entrap the prisoner. The prisoner was found guilty of obtaining the money and watch of the prosecutor by false pretence of giving him the counterfeit notes, which he did not give.

On a case reserved for the opinion of the Court the minority opinion given by Allen, C.J., and Palmer, J., was that in order to complete the crime of obtaining property by false pretence, there must not only be the false pretence but an actual parting and intention to part with the property of the person imposed upon by the pretence; that the prosecutor here never intended to part with his property in the money and watch, and that the conviction should be quashed.

They were also of the opinion that as the prosecutor only expected to receive from the prisoner counterfeit notes which were of no value, it was extremely doubtful whether he could be said to have been defrauded because he received worthless goods of another kind. But it was held by the majority of the Court of six Judges that the prisoner was rightly found guilty, and that the conviction should be affirmed, *Regina* v. *Corey*, 22 N.B.R. 543.

On a charge of obtaining goods by false pretences by giving a bill of exchange due in seven weeks where some of the averments made were that the accused professed to be a man of financial strength and able in due time to meet the bill, it was held to be proper to admit in evidence for the prosecution the bank account of the accused and proof of the number of cheques on it being dishonoured during the time of the transaction. *R.* v. *Fryer* (1912), 7 Cr. App. R. 183.

Upon a trial for false pretences, it is competent, in order to prove intent, to shew that the accused made similar representations about the same time to other persons, and by means of such false representations obtained goods: Wharton, Crim. Law, 8th ed., sec. 1184; and other acts, part of the same system of fraud, may be put in evidence. *Reg.* v. *Francis*, 12 Cox C.C. 612, 43 L.J. Mag. Cas. N.S. 97, L.R. 2 C.C. 128; *R.* v. *Wyatt*, [1904] 1 K.B. 188; Tremeear's Cr. Code, sec. 404.

If there is evidence of two persons acting together and one assents to a false representation made by the other as an inducement to a contract, such assent may amount to a false pretence by conduct. *R.* v. *Grosvenor* (1914), 10 Cr. App. R. 404.

A postmaster transmitted to defendant several post office orders, which defendant in connivance with him presented and got cashed. The orders were fraudulently issued as no moneys had been received by the postmaster for transmission to the defendant, and frauds to a large extent had been thus committed. Defendant was held properly convicted of having obtained these sums with intent to defraud. And, semble, that defendant might also have been properly convicted under another count of indictment charging him with having obtained the money by false pretences. *Regina* v. *Dessauer*, 21 U.C.Q.B. 231.

When in an indictment for obtaining by false pretences, one of the pretences alleged was that defendant was carrying on a

genuine business in buying and selling pigs, the mere fact that he did not keep any pigs in his own possession, nor hold an option of purchase, does not establish falsity of his advertisement offering pigs for sale where he was in the habit of having deliveries made direct by the breeders. If it were open to the jury to find that the advertisement meant that he was ready to supply pigs of the description advertised, although not in his possession or control, the practical withdrawal of that view in the charge to the jury will be a ground for quashing the conviction. *R.* v. *Jakeman* (1914), 10 Cr. App. R. 38.

In *R.* v. *Lee*, 23 U.C.Q.B. 340, the prisoner sold a mare to B. taking his notes for purchase money, one of which was $25 and a chattel mortgage on a mare as collateral security. After this note had matured he threatened to sue, and B. got one R. to pay the money, the prisoner promising to get the notes from a lawyer's office, where he said they were, and give them up next morning. This note, however, had been sold by the prisoner some time before to another person, who afterwards sued B. upon it, and obtained judgment:—*Held*, that the prisoner was properly convicted of obtaining the $25 by false pretences. *Regina* v. *Lee*, 23 U.C.Q.B. 340.

In *Reg.* v. *Cooper*, 13 Cox C.C. 617, 46 L.J.M.C. 219, the accused was charged with falsely pretending that he was a dealer in potatoes, and as such dealer, in a large way of business and in a position to do a good trade in potatoes and able to pay for large quantities of potatoes, as and when the same might be delivered to him. The only evidence thereof was a letter from the prisoner to the prosecutor, reasonably conveying to the mind the construction put upon it in the indictment. Lord Coleridge, C.J., is reported (at p. 620) as follows:—

"The question for the Court, as I understand the case, is whether there was evidence upon which the false pretences alleged in the indictment could fairly be sustained. It was a question for the jury whether the false pretences alleged did or did not reasonably arise from the letter. The true principle applicable to this case was well enunciated by Blackburn, J., during the course of the argument in *Reg.* v. *Giles*, 10 Cox C.C. 44: 'It is not requisite that the false pretence should be made in express words, if the idea is conveyed.'"

Denman, J., at p. 622, said:—

"In *Reg.* v. *Giles*, 10 Cox C.C. 44, the prisoner pretended that she had power to bring the prosecutrix's husband back, and that was held to be a statement of fact. That warrants us in holding that where a man is not in a position to do what he professes he will do at a given time, he is making a false statement of fact. The indictment charges that the prisoner falsely pretended that he then was able to pay for large quantities of potatoes as and when the same might be delivered to him, and that pretence, I think, is proved by the letter."

And Pollock, B. (*R.* v. *Cooper*, 13 Cox C.C. 617, 622), says:—

"Having heard the whole of the argument, I have come to the conclusion that the conviction should be affirmed. It is not sufficient for the prisoner to shew that the letter might bear another meaning, if it is reasonably capable of bearing the meaning imputed to it in the indictment. It is the duty of the prisoner to shew by special circumstances that it bore the construction he contends for. I think that the false pretences charged may be fairly inferred from the letter, and that the conviction should be affirmed."

In the case of *Edgington* v. *Fitzmaurice*, L.R. 29 Ch.D. 459, at 483, Bowen, L.J., is reported as follows:—

"There must be a misstatement of an existing fact, but the state of a man's mind is as much a fact as the state of his digestion. It is true it is very difficult to prove what the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else. A misrepresentation as to the state of a man's mind is, therefore, a misstatement of fact."

It is open to a jury to find that a trade name has been assumed with intent to defraud. *R.* v. *Whitmore* (1914), 10 Cr. App. R. 204.

If a person offers in exchange for goods the promissory note of another, he is to be taken to affirm, although he says nothing, that the note has not to his knowledge been paid either wholly or to such an extent as to almost destroy its value. *R.* v. *Davies* (1859), 18 U.C.Q.B. 180.

There are cases where the facts disclose that what was obtained by the false pretence was a contract, and that it was in pursuance of the contract that the goods were obtained; but on such facts a conviction for obtaining goods by false pretences was held to be good. *R.* v. *Kenrick* (1843), Davison & M. 208; 5 Q.B. 49; 12 L.J.M.C. 135.

The case of *R.* v. *Gardner*, 25 L.J.M.C. 100, has given rise to discussion. In that case the prisoner pretended to be a naval officer, and by reason of that false pretence obtained lodging; after he had been there some little time he entered into a contract with the prosecutrix to be supplied with meat and drink on specified terms. It was held that it was in pursuance of the contract, and not of the false pretence, that the goods were obtained; he was indicted for obtaining the goods by false pretences, and in the circumstances the Court held that there had been no continuing false pretence, and that the goods had been obtained, not by means of the original false pretence, but by means of contract.

The decision in *R.* v. *Kenrick*, 5 Q.B. 49, was followed in *R.* v. *Abbott*, 1 Den. C.C. 273, 2 C. & K. 630, in which case a strong Court of ten Judges held that a false pretence knowingly made to obtain money is indictable, though the money be obtained

by means of a contract which the prosecutor was induced to make by false pretence of the prisoner; therefore the mere fact that the money was obtained by means of a contract does not seem to revent the operation of the law on the ground that the money was obtained equally by the false pretence as by the contract.

R. v. *Gardner*, 7 Cox C.C. 136, which followed *R.* v. *Abbott*, 1 Den. C.C. 273, and cannot be said to overrule it, because two Judges were parties to the two decisions, was clearly decided on the ground that there was no continuing false pretence, and therefore, although at first sight the two cases seem a little out of harmony, when the facts are looked at it is not so. Per Coleridge, J., in *R.* v. *Moreton* (1913), 8 Cr. App. R. 214. In the last mentioned case, Coleridge, J., added: "*R.* v. *Martin*, L.R. 1 C.C.R. 56, 36 L.J.M.C. 20, leaves the law in no doubt; it was held there that the fact that the goods are obtained under a contract does not make the goods so obtained goods not obtained by a false pretence, if the false pretence is a continuing one and operates on the mind of the person supplying the goods." *R.* v. *Moreton* (1913), 8 Cr. App. R., 214, at p. 217.

The false pretence alleged in a Nova Scotia case was by representing himself to be the owner of a vessel, whereas at the time he had transferred ownership to another person who had again transferred to defendant's wife. The representation to the prosecutor that he was owner was made some three or four months before and was by appending the style "Owner" to his signature to a letter in relation to another matter:—*Held*, that the pretence was too remote to warrant a conviction. And that the term "Owner" has no definite meaning in law, and does not mean "registered owner" of a ship. *Regina* v. *Harty*, 31 N.S.R. 272, 2 Can. Cr. Cas. 103; and see *R.* v. *Brady*, 26 U.C.Q.B. 13.

"Obtaining money or property by false pretences" is an extradition crime within the meaning of the Extradition Act and the extradition arrangement between Great Britain and the United States of America. *Re F. H. Martin* (No. 2), 2 Terr. L.R. 304, 8 Can. Cr. Cas. 326.

Bench and Bar

Judicial Appointments.

Hon. John Alexander Mathieson, of the City of Charlottetown, New Brunswick, K.C., to be Chief Justice of the Supreme Court of Judicature of Prince Edward Island, vice Hon. Sir Wilfred Sullivan, resigned. (June 13, 1917.)