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THE TRIAL OF THE EX-KAISER.

As might be expected, as soon as it has been determined that the ex-Kaiser is to be tried for his crimes, voices are heard in protest. There is no precedent. It is not usual. He has broken no law. There is no jurisdiction. If he is tried he will be regarded as a martyr to the vindictive vengeance of his enemies. It is better to let him sink into obscurity. He has been punished enough already, etc., etc.

In view of these and other objections, it may be well to see what the present German Government has to say. In the Canadian Official Record of 26 June, 1919, there is a resumé of the German protest against the terms of peace. In chapter 4, concerning Reparation, they say: "Germany accepts the obligation to pay for all damages sustained by the civil population in the occupied parts of Belgium and France inasmuch as she has brought upon them the terrors of war *by a breach of international law through the violation of Belgian neutrality.*" This it may be observed is a candid admission that the invasion of Belgium was a violation of international law. To kill peaceful people, to render their wives widows and their children orphans, to rob them, to burn their houses and property, to violate their women, cannot, after all is said and done, ever be compensated by money however large the sum.

When we come to chapter nine this is what is said: "As to the trial of the Kaiser, Germany cannot recognize the justification of such criminal prosecution which is not founded upon legal basis, or agree to the competence of the special tribunal proposed, or the admissibility of the surrender to be requested of the Netherland. She cannot admit that a German be placed before a special foreign tribunal to be convicted as a consequence of an exceptional

law promulgated by foreign powers only against him as principles not of right, but of politics, and to be punished for an action which was not punishable at the time it was committed.

"Nor can she consent to a request being addressed to Holland to surrender a German to a foreign power for such unjust proceedings. As to the surrender of persons accused of violation of the laws and customs of war for trial by a military tribunal, even where proceedings have already been begun by German Courts, Germany is forbidden by her Criminal Code to make such extradition of German subjects to foreign Governments. Germany again *declares her preparedness to see that violations of international law are punished with full severity* . . ."

As we have seen, Germany admits in chapter 4 the violation of international law, and in chapter 9 is prepared to see such violations "punished with full severity," and yet the principal ringleader in the violation of Belgian neutrality, which resulted in wholesale murder, robbery, arson and rape, is not to be punished for his part in the outrage. This is obviously inconsistent.

As for making the ex-Kaiser and his satellites martyrs. It is quite true that there are some people in the world who have a maudlin sympathy for criminals, no matter how atrocious their crimes. We had an instance of that in Toronto quite recently. But in spite of all such sympathisers with criminals, the better opinion appears to be that criminals should be made to pay the penalty of their crimes, if only as a deterrent to others who have similar criminal propensities.

As for the place of trial of the ex-Kaiser and his confederates, Belgium, the scene of their principal crimes, seems the more appropriate place and yet their other violations of international law to be atoned for—the murder of Captain Fryatt and of the passengers on the Luisitania — may well be tried in London as proposed. The official reply to the German protest puts the matter in a fairly convincing way. It is as follows:—

"The allied and associated Powers have given consideration to the observations of the German delegation in regard to the trial of those chargeable with grave offences against international morality, the sanctity of treaties and the most essential rules of practice.

They must repeat what they have said in the letter covering this memorandum, that they regard this war as a crime deliberately plotted against the life and liberties of the people of Europe. It is a war that has brought death and mutilation to millions, and has left all Europe in terrible suffering. Starvation, unemployment, disease, stalk across that continent from end to end and for decades its people will groan under the burdens and disorganization the war has caused. They therefore regard the punishment of those responsible for bringing these calamities on the human race as essential, on the score of justice.

They think it not less necessary as a deterrent to others who, at some later date, may be tempted to follow their example. The present treaty is intended to mark a departure from the traditions and practices of earlier settlements which have been singularly inadequate in preventing the renewal of war. The allied and associated Powers, indeed, consider that the trial and punishment of those proved most responsible for the crimes and inhuman acts committed in connection with a war of aggression is inseparable from the establishment of that reign of law among nations which it was the agreed object of the peace to set up.

As regards the German contention that a trial of the accused by tribunals appointed by the allied and associated Powers would be a one-sided and inequitable proceeding, the allied and associated Powers consider that it is impossible to intrust in any way the trial of those directly responsible for offences against humanity and international right to their accomp[illegible]es in their crimes. Almost the whole world has bonded itself together in order to bring to naught the German plan of conquest and dominion.

The tribunals they will establish, will therefore represent the deliberate judgment of the greater part of the civilized world. They cannot entertain the proposal to admit to the tribunal the representatives of countries which have taken no part in the war. The allied and associated Powers are prepared to stand by the verdict of history as to the impartiality and justice with which the accused will be tried. The ex-Emperor is arraigned as a matter of high international policy, as the minimum of what is demanded for a supreme offence against international morality, the sanctity of treaties and the essential rules of justice. The

allied and associated Powers have desired that judicial forms and judicial procedure, and a regularly constituted tribunal should be set up, in order to ensure to the accused full rights and liberties in regard to his defence, and in order that the judgment should be of the most solemn judicial character."

The law which was violated was in existence when the offence was committed. It is not an *ex post facto* law as the Germans suggest. When Canada was invaded by a band of Fenian scoundrels in 1866, those of them who were caught were tried as common criminals for violation of the law of Canada and sentenced to appropriate punishments. In what respect does the criminality of the Kaiser differ from that of these men except that the Kaiser's case was infinitely worse and accompanied by a thousand times more hideous cruelty and barbarity; for aught that appears to the contrary he consented to and authorized the outrage with full knowledge of the wrong he was committing and was thus an accessory before the fact to the murders and other outrages committed by his troops in Belgium.

Now ordinary people would like kaisers and chancellors and statesmen and generals and admirals to be made to understand that whatever may have been done or omitted to be done in the past ages of the world, they who commit and carry on such wholesale murders, robberies, arsons and rapes, as were committed in Belgium, do so at the peril of their lives, and the only way that lesson can be effectively taught is now to make the precedent. All things must have a beginning and the reign of law for sovereigns and statesmen and military advisers must have its beginning. If the precedent is made now the lesson may never need to be repeated.

Selected particular cases of crimes actually committed by German soldiers in Belgium should be made the subject of the indictment of the Kaiser and his principal advisers, and he and they should receive the punishment which, by the laws of Belgium, persons are liable to who commit murder, robbery, arson, and rape in that country.

The point of law to be solemnly affirmed is simply this, viz., hat those who invade a neutral country in defiance of international law are to be regarded as criminals in the country which

they invade, and that not only the persons who actually carry on the invasion are so criminally liable, but also all those who counsel, advise and direct the invasion to be made.

We observe that Von Bethmann-Hollweg has volunteered to stand trial for his part in the proceedings, and that Marshal Von Hindenburg is ready to assume all liability subsequent to 1916. How far the latter was responsible for bringing on the war remains to be seen. His offer to assume responsibility for acts of a later date will not relieve him from liability for prior misdeeds. Criminals are not usually permitted the privilege of selecting for what particular acts they shall be tried. It is needless to remark that the laws of Belgium against murder, robbery, arson and rape were not made *ex post facto*—but were in full force when they were violated wholesale by the ex-Kaiser and his fellow criminals.

INITIATORY PROCEEDINGS IN LITIGATION.

It used to be considered a matter of moment that litigants should initiate proceedings in the prescribed way, but it may almost be said that any formality on that point is in danger of disappearing, and we may soon be seeing the day when any parties having a dispute may, without the formality of any writ of summons or any other preliminary proceeding, just step into a Judge's room at Osgoode Hall, and move for judgment.

No less an authority than the Chief Justice of Ontario has declared: "It would be a startling thing, indeed, if, although a writ had not been issued, the parties had delivered their pleadings and gone down to trial and judgment had been pronounced and entered, the judgment must be held to be void because the action had not been commenced by the issue of a writ of summons, and the court which pronounced the judgment was therefore without jurisdiction." *Stothers* v. *Toronto General Trusts Corporation*, 44 O.L.R. p. 461. Mr. Justice Hodgins, who seems to be troubled by Rules of Court as to procedure, says: " 'Action' is defined in the Judicature Act, R.S.O. (1897), c. 57, s. 2 (3), as meaning a civil proceeding *commenced by writ*, and that has been held to include proceedings commenced by notice of motion

under Rules 938 *et seq.* But it has not yet been determined that it includes a civil proceeding begun by consent and of an informal character, and initiated in a way which is not laid down in the Rules."

Some little obstacle in the way of proceedings being carried to trial in the way the learned Chief Justice suggests might arise owing to the fact that, at all events, some officers of the court might have difficulty in passing a record in a proceeding in which no writ had been issued; they might, perhaps, conclude that there was really no action pending, and that the filing of a statement of claim or any other pleading in a case where no writ of summons had issued was a nugatory proceeding unwarranted by the practice of the court rightly interpreted.

It is quite possible, however, that some enterprising practitioner will seek to carry on litigation without the initiatory steps which the Rules prescribe, trusting to the dictum of the learned Chief Justice as a sufficient warrant for his proceedings. How far the *Law Stamp Act* may be thus evaded, however, does not appear at present to have been considered.

Practitioners desirous of adopting the simple and inexpensive plan of getting an adjudication of their cases without the troublesome procedure of issuing writs, or filing statements of claim or other pleadings, by just getting the counsel on the other side to step into a Judge's room and ask him to hear a motion for judgment, may thus be able to reduce the process of litigation in the Supreme Court of Ontario to a state of archaic simplicity.

From the earliest days in the history of English litigation the litigant was bound to bring his opponent before the court by due process, usually a summons from the Sovereign, "the fountain of law." In Chancery there was the subpœna to answer—but before the Judicature Act the latter formality had been superseded by a notice.

More recently we have, in Ontario, following this Equity practice, in some cases substituted a notice of motion, called an originating notice, as a mode of bringing an opponent before the court, but in England the old procedure by summons, even in such cases, is perpetuated.

Whether it is wise to dispense with the notice prescribed by the Rules seems doubtful, and yet the inclination of the Appellate Division appears to be in the line of treating an originating notice as unnecessary, if the parties choose to waive it. But the originating notice is intended to be not only a substitute for a writ of summons, but also for a statement of claim in an action, and for a Judge to dispense with an originating notice and accept the oral statement of counsel, is like waiving the filing of any pleadings in an action. And an order drawn up without anything on its face to shew how the Judge came to pronounce it, or on what claim or demand it is based, or, how the Judge came to have any jurisdiction to make it, would seem to be obviously defective,—and a record of such an order having nothing on the files of the court to support it, would be like a judgment pronounced without any writ of summons or pleadings, and but for the dictum of the learned Chief Justtice one would imagine to be about as valuable as a piece of waste paper.

In the anxiety of the court to escape from technicalities, it is possible to go too far, but as hard cases have often been found to make bad law, so also they may be found also to make bad practice.

The "slap dash" method of administering the law finds great favour with some lawyers but we venture to doubt whether it is a wise method for practitioners either to take themselves, or to invite complaisant judges to take.

PROPERTY AND CIVIL RIGHTS.

A legal journal is not concerned with the present agitation as to Prohibition, but we have a distinct duty as to the preservation of law and order and the conservation of the principles which have been instrumental in the maintenance of steadiness in the progressions and developments which must be part of the history of every nation, and which have been particularly noticeable in that of the British Empire; and these changes and developments will run their course as long as this Dispensation lasts. As to this development, a president of the Trades and Labour Council, on a recent occasion, said: "There can be no development but by the orderly progress of evolution."

These remarks are called forth by an article in a recent number of *Law Notes* (Northport, New York, U.S.A.), which contains so much common sense, that we gladly copy it:—

"Whatever one may think of the merits of the trade union movement, the patriotic attitude maintained during the war by its present head, Samuel Gompers, and his earnest efforts to check Bolshevist tendencies in his organization, give weight to his views on the present industrial situatio .. He is quoted as having said recently that the effect of prohibition is to cause a spirit of discontent among the laboring classes which furthers the spread of Bolshevism. Its practical working in this respect is beyond our province, but perhaps no man in the United States is in a better position than Mr. Gompers to know whereof he speaks on this point. From the theoretical standpoint, there is every reason why prohibition should engender Bolshevism, since the two are identical in spirit. The theory on which the American republic was founded is that civil liberty is the right of every man to do as he pleases except so far as his acts interfere with the enjoyment of like liberty by others. Opposed to that is the theory that any person or class of persons who may seize the power so to do may rightfully impose on their fellows such restrictions as whim or self interest may dictate. The victory of the allied powers on the bloody fields of France merely cut off one head of that hydra. Between rule by the Kaiser and his junkers, rule by the proletariat as expounded by Lenine, and rule by the pharisaical prohibitionists, there is no distinction in principle. So close is their identity that the decisions sustaining the prohibition laws are sufficient to sustain a large share of the Bolshevist programme if the ultra radical element ever gets control of a legislature. If industries lawful and respected for centuries may be wiped out by a stroke of the pen and individual rights in a recognized class of property destroyed without recompense, where is the stopping place? There are men who are as sincerely convinced that private ownership of land is iniquitous as any prohibitionist is of the evil of permitting the ownership of a quart of wine. If those persons succeeded in controlling a legislature long enough to destroy every landed

interest in the state, could the Federal Supreme Court honestly say that the decision in *Crane* v. *Campbell* (245 U. S. 304, 38 S. Ct. 98, 62 U. S. (Led.) 304) did not sanction the statute? The Bolshevist hates a church as heartily as the prohibitionist does a distillery. A confiscation of all church property would bring forth an anguished wail for constitutional protection, yet where is the distinction in principle between that and the legislation for which prayers of thanksgiving have been offered? 'Spirits and distilled liquors are universally admitted to be subjects of ownership and property.' License Cases, 5 How. 504, 12 U. S. (L. Ed.) 256. What greater sanctity can any piece of property in the United States claim? This time when an imported horde of anarchists is clamoring for an opportunity to pillage seems ill chosen for the breaking down of the constitutional protection of property rights.''

SOME MATTERS OF PRACTICE.

A valued correspondent calls our attention to some matters of interest connected with professional matters which it is well to refer to. He notes the practice of many barristers who, acting as counsel for the Crown, sign indictments under the impression that their signatures thereto are essential. This would appear to be an improper practice and probably may have grown out of the former practice of Crown counsel, when submitting an indictment to a grand jury, of signing to the left in the margin, as an indication to the jury that the form of the indictment had been approved, but not as being essential thereto. He also refers to the too common practice of practitioners describing themselves in affidavits as barristers instead of solicitors. This is a small matter, but it is well for our brethren to be particular even in small matters. In the same connection it may be noted that in some offices suit papers are endorsed with the name of the firm as barristers, instead of solicitors for the plaintiff or the defendant, as the case may be.

UNIFORMITY OF LAW IN THE EMPIRE.

The question of making law more uniform throughout the Empire crops up from time to time, but little headway is made in the direction of greater uniformity. So far as the statute law is concerned, a fair degree of uniformity has been secured in some branches of mercantile law—such as the law of bills of exchange—but this covers only a small part of the field. The subject is much wider than merely securing identical legislation.

The problem of the best method of making law more uniform throughout a large number of communities which, whilst under one central Government for national or Imperial purposes, have wide powers of self-government in local matters is one that exists in America as well as in the British Empire. Judging by a thoughtful article in the May number of the *Yale Law Journal*, the problem in the United States is at least as urgent and difficult as in our own case. Notwithstanding—indeed, perhaps, by reason of—the differences in the two problems, a perusal of the article entitled "The Federal Courts and a Uniform Law," in which the American writer deals with his own problem, will be found instructive and stimulating to any English lawyer who is dissatisfied with the existing state of things in the British Empire. For, both in our Empire and in the United States, it is possible for courts of ultimate appeal to promulgate as binding decisions quite contradictory propositions. This ought not to be, and the reform of a system under which it is possible should be regarded as a matter of pressing importance.

The chief cause of the present lack of uniformity in American case law is the existence of a double set of courts—State and Federal—which to some extent work independently of each other. On most questions over which the State courts have jurisdiction the ultimate Court of Appeal is a State court, and the constitution does not at present permit appeals to be carried as a matter of course from a State court to a Federal court. The Supreme Court of the United States is not, therefore, the final appellate tribunal for all questions that come before the State courts. The result is that contradictory decisions on questions of (for instance) property law are frequently to be found in the American reports.

The decisions of the courts of one State are not binding on the courts of another State, and there is no ultimate appellate authority to decide between them. The remedy suggested by the writer of the article referred to is, shortly, that the decisions of the State courts should be subject to review by Federal courts. If that were done, the Supreme Court of the United States would eventually be the final appellate tribunal for the whole country, and a consistent and uniform body of case law would thus be in time created. This, it is expressly pointed out, would not interfere with the political or legislative independence of the individual States, nor with the creation of any statute law that might be considered desirable in any particular State or States.

Now, although the conditions of the British Empire differ in many respects from those of the United States of America, the problem of how to obtain uniformity in case law is at bottom the same for both British and American peoples. We have in our Empire many different systems of jurisprudence—Roman-Dutch, Mahomedan, etc.—and there is no question of interfering with these or replacing them with the common law. This particular feature is substantially non-existent in America. On the other hand, we have, in theory, made a considerable advance in the direction of a single appellate tribunal for the Empire. Nearly all decisions of nearly all courts in the oversea dominions are in the last resort subject to the right of appeal to the Privy Council, and the Privy Council is composed of nearly the same members as the House of Lords—the Appeal Court for the United Kingdom. The pity is that the theoretical side of this arrangement is not made at least equal to the practical side by formally amalgamating the House of Lords (as a Court of Appeal) and the Judicial Committee of the Privy Council into one appellate tribunal for the whole Empire. If this were done, a great step would be taken towards securing real and complete uniformity in case law throughout the Empire. Other steps too would be required to arrive at the goal of complete uniformity, and these would, no doubt, be taken without much difficulty when once a single appellate court for the whole Empire was set up. The chief obstacle in the way of all

reforms of this kind appears to be that the urgent need for them is not sufficiently appreciated either by the general public or leading statesmen.

The need for reform is, however, very urgent. It ought not to be possible that on the same point of law—apart from statute law—two courts in the Empire should arrive at diametrically opposite decisions, and that each of these courts should be right. Instances of this may not be very frequent—if they were, no doubt a remedy would at once be found—but their occurrence should be impossible. At present these contradictory decisions do occur sufficiently often to constitute a juridical scandal. In all branches of law, from mercantile law to constitutional, cases can be cited from the reports in which contradictory answers to the same question have been given by courts of the same Sovereign. The larger class of cases in which these conflicts occur consists of cases in which the English courts (including the House of Lords) differ from the oversea courts (including the Privy Council). A smaller class consists of cases in which the Privy Council differs from oversea courts.

That there should occasionally be divergence in the decisions of courts of co-ordinate jurisdiction is not remarkable, and it would not, therefore, be surprising to find the courts in England declining to be bound by oversea decisions. But that the courts in England (below the House of Lords) should not be bound by decisions of the Privy Council, the final appellate court for the oversea courts, is anomalous and inconvenient. The oversea courts are themselves bound by decisions of the Privy Council, and the result of the latter not being binding on the English courts is that one rule of law may prevail oversea and another in the United Kingdom. The inconvenience (though not the anomaly) is equally great in the case of the House of Lords itself and the Judicial Committee coming to different conclusions on the same point of law. This anomaly and inconvenience would, of course, at once cease to exist if both English and oversea courts had as their common appeal court of final resort such a tribunal as could be set up by amalgamating the House of Lords and Privy Council judicial bodies. In illustration of the conflict between English and oversea

courts it will be sufficient to refer to cases, one occurring in 1869 and another a year ago, in which two points of mercantile law have been decided in one way for the oversea dominions and in another way for the United Kingdom.

Rodger v. *Comptoir d'Escompte de Paris* (21 L. T. Rep. 33; L. Rep. 2 P.C. 393), was an appeal from the Supreme Court of Hong Kong, and the decision of the oversea court was reversed. The question at issue was as to the validity of an assignment of goods by indorsing the bill of lading, as against the right of the unpaid vendor to stop the goods *in transitu*. It was held by the Privy Council that a pre-existing debt was not a valuable consideration for the assignment, and that the vendor's right was not defeated. This, therefore, was established as the rule in this branch of mercantile law to be applied in Hong Kong and other oversea dominions whose final appeal court was the Privy Council. But in 1877 the same point came before the Court of Appeal in England, and the Privy Council decision was cited as authority: (*Leask* v. *Scott Brothers*, 36 L.T. Rep. 784, 2 Q.B. Div. 376). The Court of Appeal declined to follow *Rodger* v. *Comptoir d'Escompte de Paris*, and held that a pre-existing debt was sufficient valuable consideration to support the assignment and defeat the unpaid vendor's right of stopping the goods *in transitu*. Thus the proper rule of law to be applied in England is contrary to that applicable overseas with respect to the nature of the consideration for the assignment. The possibility of the House of Lords eventually overruling the Court of Appeal, and so making the rule on the subject alike in England and overseas, must, of course, be taken into account, and this element of uncertainty is a further disadvantage of the Privy Council decisions not being binding on English courts.

In 1906 the case of *Colonial Bank of Australasia* v. *Marshall* (95 L.T. Rep. 310; (1906) A.C. 559), came from the High Court of Australia on appeal to the Privy Council. The Australian Court had held that a banker was liable for the loss to his customer caused by the fraudulent alteration of a cheque, where the customer had so drawn the cheque by leaving blank spaces that it could easily be altered. This decision the Privy Council upheld, and

thus settled the rule on this point for all the oversea dominions as well as Australia. Last year a similar case came before the House of Lords on appeal from the Court of Appeal in England: (*London Joint Stock Bank* v. *Macmillan*, 119 L.T. Rep. 387; (1918) A.C. 777). It was held that the banker was not liable, and that the loss must fall on the customer himself. Thus, under such circumstances, a banker will be liable overseas, but not in the United Kingdom, unless in any of the oversea dominions an alteration in the rule is made by statute. The divergence between the House of Lords decision and that of the Privy Council in this instance is particularly striking, as the Court of Appeal had followed *Colonial Bank of Australasia* v. *Marshall* and was reversed by the House of Lords.

The smaller class of cases in which the Privy Council and the oversea courts have differed has chiefly been brought into existence by the provisions of the Australian Commonwealth constitution, by which the High Court of Australia, and not the Privy Council, is made the ultimate court of appeal in matters relating to the interpretation of the constitution. In *Webb* v. *Outrim* (95 L.T. Rep. 850; (1905) A.C. 81), the Judicial Committee disagreed with the High Court of Australia's decision in *Deakin* v. *Webb* (1904, 1 Commonw. L. Rep. 585), on a matter relating to the interpretation of the Australian constitution, and in *Baxter* v. *Commissioners of Taxation* (1907, 4 Commonw. L. Rep. 1087), the High Court of Australia definitely declined to accept the views of the Privy Council. Even if no such further disagreements occur between the Australian court and the Judicial Committee—and Australian legislation will probably prevent this—the setting up of the Australian court as the ultimate interpreter of the constitution of a component part of the Empire is an evil in itself. Apparently there is no direct remedy available, but it would be a gain to the Empire as a whole if an appellate court could be set up in London which would so command the respect of Australia as to bring about the abrogation of such of the provisions of the constitution as prevent appeals on constitutional points being carried further than the High Court of Australia. This seems the more desirable, because, apart from the disagreements already

referred to, the Privy Council has shewn a disposition to resist the view that is making way overseas and elsewhere—that each Dominion is in effect, and is to be treated as, a corporate entity: (see *Williams* v. *Howarth*, 93 L.T. Rep. 115; (1905) A.C. 551, reversing the Supreme Court of New South Wales) and with this case compare such cases as *Municipal Council of Sydney* v. *Commonwealth* (1904, 1 Commonw. L. Rep. 208, 231) and *Baxter* v. *Commissioners of Taxation* (1907, 4 Commonw. L. Rep. 1087, 1126). Possibly a new appellate court of the right calibre would do what it has been said "the Lords of the Judicial Committee must sooner or later" do—that is, "recognise that Dominion and Commonwealth, Provinces and States, being living members of one Empire and perfectly real persons in political fact, have to be so treated in law." It certainly will not make for uniformity in law if we have the Privy Council propounding one theory of sovereignty in the Dominion and the High Court of Australia another.—*Law Times.*

WAR CRIMINALS.

There seems to be no question, but that offenders against the law and customs of war as carried on between civilized nations are responsible and liable to punishment. Such offences are crimes, that is, acts forbidden by law under pain of punishment. The articles in the Peace Treaty which refer to this are as follows:—

ARTICLE 227.

The Allied and Associated Powers publicly arraign William II. of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties.

A special tribunal will be constituted to try the accused, thereby assuring him the guarantees essential to the right of defence. It will be composed of five judges, one appointed by each of the following Powers: namely, the United States of America, Great Britain, France, Italy, and Japan.

In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn obligations of international undertakings and the validity of international morality. It will be its duty to fix the punishment which it considers should be imposed.

The Allied and Associated Powers will address a request to the Government of the Netherlands for the surrender to them of the ex-Emperor in order that he may be put on trial.

ARTICLE 228.

The German Government recognises the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office, or employment which they held under the German authorities.

ARTICLE 229.

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

ARTICLE 230.

The German Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders, and the just appreciation of responsibility.

The following summary of the most important and most atrocious of these criminals is taken from a daily paper, and will be of interest, when the time comes for their trial:

"The most important of these men is, of course, William Hohenzollern, although it is not known that any names were mentioned to the German plenipotentiaries at the time. Nor have any names but his been officially mentioned since, although it is easy to guess some of them at least. For instance, the Crown

Prince is sure to be asked to answer to his name in a London court. He might be charged with wholesale robbery and the rape of a countryside, or, as is more probable, an effort might be made to determine his responsibility for the war and the violation of treaties. Equally sure is it that the Crown Prince Rupprecht of Bavaria will be put on trial. He was the strongest hater of the British among the German generals, and is reported in an official document to have ordered his men to take no British prisoners. He is held responsible for the execution of British prisoners that were taken by his army and was responsible for the deportation of the population of Lille, Turcoing and Roubaix.

Rupprecht was perhaps the best general, the most competent, if also the most ruthless soldier among the German royalties who fought or directed in the war. Between him and the Crown Prince of Prussia there appears to have been constant ill-feeling, and it has been reported that on more than one occasion when they held different views of military operations, Hindenburg preferred the judgment of Rupprecht. This is not surprising, since the Bavarian is a man ten years older than the Prussian, was a more serious-minded soldier, and on several occasions had to supply his young kinsman with reserves when the Prussians had got themselves into difficult positions. His character seems to have a streak of calculated cruelty which is not conspicuous in the character of the former heir to the German Crown, who was rather immoral and callous than savage and vindictive. Therefore, Rupprecht will be among the ex-royalties who may be expected to have the opportunity to shew cause why the sentence of the court should not be carried out.

It is taken for granted that Hindenburg, Ludendorff, Tirpitz and Bethmann vol Hellweg will be called. There can be no doubt that they had a certain responsibility for the conduct of the war, and perhaps for the events leading up to the invasion of Belgium. Another Cabinet Minister who is likely to be demanded by the Allies is Von Capelle, who followed Von Tirpitz as Minister of Marine. He pinned his hopes on the success of the submarine campaign, which was carried out with renewed vigour under his auspices. There will also be several submarine commanders summoned to the bar, and among them will certainly be Von Forstner and Wilhelm Wernher, both of whom were decorated by the Hohenzollern for some atrocity. Several of the submarine commanders, perhaps most of them are no longer within the jurisdiction of any earthly court. Commander Max Valentiner is supposed to have commanded the U-boat which

sank the Lusitania, but whether he is living is uncertain. This man, by the way, is the son of the Dean of the Sondersburg Cathedral, and was credited with having sunk no fewer than 128 vessels.

Mackensen, the man who did so much to break the heart of Russia, and who conquered Serbia and Rumania is also to be extradited. He will be charged with the monstrous crimes which accompanied the invasion of Rumania in 1916, when the country was stripped of the necessities of life and hundreds of prisoners were executed. After the war he was interned in Hungary with his army for attempting to violate the terms of the armistice. He is now in the hands of the Allies, it is believed, and can be produced on a few days' notice. He and Hindenburg are the only holders of the Grand Cross of the Iron Cross, and it may be that his age will save him as it may protect Hindenburg and Tirpitz from capital punishment. Another German general against whom a long score has been run up is Otto von Below, the most prominent item being the burning of Ardenne and the execution of one hundred people. Gen. Liman von Sanders, in command of the Turkish campaign in Mesopotamia, will be accused of ordering or sanctioning the massacres in Armenia and Syria. Baron Oscar von der Lancken is held partly accountable for the execution of Miss Cavell and Capt. Fryatt, for he was head of the German political department in Brussels, and it was to him that the appeals were made on behalf of these prisoners.

It will be remembered that after the armistice von der Lancken was appointed with Dr. Reith, who had been prominent in the German occupation of Belgium, to confer with Mr. Hoover about food supplies for Germany, and that Mr. Hoover sent back the brief message that they could 'go to hell,' and that if he had to deal with Germans it would not be with that pair. Another commander who is to be held partly responsible for the murder of Miss Cavell is Baron Kurt von Manteuffell, military commander of Louvain. Gen. von Schroeder was the military officer immediately responsible for the shooting of Capt. Fryatt. There will be several officers tried for brutalities to prisoners, among them Gen. Olsen and Gen. von Cassel, who were in charge at Doberitz. Lt. Rudiger was in charge at Ruhleben, Major von Goertz at Madgeburg and the brothers Niemeyer at Holzminden and Clusthal. One of the latter was a German-American and was particularly brutal to British prisoners."

ST. GEORGE AND THE DRAGON.

In days of old, a dragon fierce,
Did from his foul and loathsome den
Steal forth and havoc make of men.
His eyes were keen, his claws were sharp,
His mouth was reeking red with blood,
His savage heart by pity was unmoved,
And moans and shrieks were music to his ear.
Equipped by Hell with every hellish power,
He ravaged and he killed and did devour
All who within his fearful clutches came,
And woe and misery followed in his train.

The gallant Knight, Saint George, no sooner heard
The fearful story of the monster beast
Than he resolved the world of it to rid.
Mounted on gallant steed and fully armed
With shield and sword, breast plate and helmet, too,
He on his bosom bore the conquering sign,
And thus apparell'd sallied forth to war.

No sooner on the noxious beast he came,
Than straight the fight began with deadly force.
The dragon every cunning art essayed
To lure the valiant Knight within his power.
But he, most wary, all these arts o'ercame
And ever and anon a mighty stroke brought home
Upon the monster's head or through his body drove
His sharp two-edged sword with all his might,
Until at last by many weighty blows
The noisome beast lay prostrate at his feet.
Then from a stricken world the shout went forth
"Rejoice, the dragon's slain."

Once more in this poor World a dragon is abroad,
More venomous, more hellish than of yore,
By Devil furnish'd well with every art
And every foul device his ends to gain.
For forty years within his den he lurk'd
Preparing for "the Day" when he should spring
Upon a careless unsuspecting world,
For which the hideous monster look'd with glee.
Alas! that Day has dawned and this sad world beholds
The cruel monster raging through the earth,
And this vile beast which erstwhile look'd so fair
Now to mankind its true self doth declare—
A child of Hell.

Once more St. George hath armed him for the fray,
And once again goes forth the foe to slay.
Upon his breast the conquering sign he wears
And with courageous heart to heaven he swears
To conquer or to die—his thrice cross'd flag unfurl'd
He now stands forth the champion of the World.

Let all true men with one accord
Their utmost aid to him afford,
For none but recreant hearts can play
A neutral part in this great Day.
O Lord of Hosts his arm uphold,
The mystery of Thy will unfold
That soon a tortur'd world again
May shout with joy "the Dragon's slain."

L'ENVOI.

With rancorous rage the monster foul did fight,
And from his mouth came forth a deadly blight.
No devilish deed conceived beneath the sun
Was found too base for him to leave undone.
And all the arts of Hell he did array
Against that fearless Knight, to gain the day
And other three as hateful to the sight
To help him, strove with all their might.
For many months the contest fierce did rage
And ebb'd and flow'd with varying success.
As, like the rolling wave, the monster beast
Did hurl himself with all his brutal force
Against that gallant Knight, him to o'ercome.
And all the world did fairly stand aghast
Lest evil over virtue should prevail.
But when the fight against the Knight did go
Angelic voices whispered in his ear,
"Fight on brave heart, for we are near
And in good time the waiting world shall see
The crowning victory shall rest with thee."

Meanwhile from widow'd hearts did prayers ascend
In constant stream to God for that brave Knight;
And all who virtue loved came to his aid.
At length the reptile comrades of the beast
Shrunk sorely wounded one by one away.
And with a stroke supreme the dragon's head was crush'd
And weltering in a sea of blood the victim lay.
Then echoed through the world the glad refrain,
"Let every soul rejoice, the Dragon's slain."

—GEO. S. HOLMESTED.

REVIEW OF CURRENT ENGLISH CASES.

(Registered in accordance with the Copyright Act.)

DOMINION OF CANADA—MUNICIPAL WATER SUPPLY—DOMINION GOVERNMENT BUILDING—IMPLIED OBLIGATION TO PAY FOR WATER SUPPLIED—TAXATION—B.N.A. ACT (30 & 31 VICT. C. 3), S. 125.

Minister of Justice for Canada v. *Levis* (1919) A.C. 505. This was an action for a mandamus to the City of Levis to compel it to supply water from the municipal waterworks to a building in the city belonging to the Dominion Government. The city was ready and willing to supply the water at and for an annual charge of $300 which the Courts below found to be a reasonable charge; but the plaintiff claimed that it was a tax, and by the B.N.A. Act, s. 125, the Dominion Government was free from municipal taxation in respect of its property; the plaintiff also claimed that the proposed charge of $300 was excessive and unreasonable, and that $35 per annum was all that the supply was actually worth. The Judicial Committee of the Privy Council (Lords Sumner, Parmoor, and Wrenbury, J.), dismissed the appeal agreeing with the Superior Court of Quebec, that the exemption of the Dominion Government from liability for municipal taxes did not extend to exempt it from liability for charges for water supplied from municipal waterworks, as to which there was an implied obligation on the part of the Government to pay. They also agreed that the proposed charge of $300 was not, in the circumstances, an excessive or unreasonable charge.

PRIZE COURT—ENEMY SHIP—OUTBREAK OF WAR—SEIZURE IN PORT—DAYS OF GRACE—FORCE MAJEURE—HAGUE CONVENTION NO. VI. ART. 2.

The Turul (1919) A.C. 515. In this case the Judicial Committee of the Privy Council (Lords Sumner, Parmoor, Wrenbury, Sterndale and Sir Arthur Channell), decide that where, on the outbreak of the war, a vessel was seized in an Australian port and her papers and charts were removed and a watchman placed on board; and after the seizure was made a proclamation was issued granting enemy ships a period in which to depart, but the Master was not informed by the proclamation, or otherwise, that upon his applying for a pass the ship would be put in a position to depart in consequence whereof the vessel remained in port beyond the

days of grace; in such circumstances that the ship was unable to leave by "circumstances beyond its control" (*force majeure*), within the meaning of art. 2 of the 6th Hague Convention and therefore was not liable to condemnation.

PATENT — PATENT AMBIGUITY — EVIDENCE OF USER — FALSA DEMONSTRATIO.

Watcham v. *Attorney-General* (1919) A.C. 533. This was an appeal from the Court of Appeal for Eastern Africa. The main question turned upon the construction of a Crown patent made in 1897, whereby a "piece of land delineated on a plan hereto attached situate in the railway zone and containing 66¾ acres or thereabouts being in extent" (*setting out a description by boundaries*) was conveyed. There was in fact no plan attached, and the boundaries included about 166 acres. The question which the Judicial Committee of the Privy Council (Lords Loreburn, Atkinson, Scott, Dickson and Sir Arthur Channell) were called on to decide was whether the extent of the property conveyed by the patent was to be fixed by the description of its boundaries or the description of its area. Their Lordships held that the rule adopted for the construction of an ancient document wherein a latent ambiguity occurred applied also to a modern deed wherein an ambiguity appeared whether patent or latent, viz., that extrinsic evidence might be adduced to shew how the grantee had himself construed the deed; and it appearing in this case that the defendant had by admissions shewn that he did not claim as within his grant the land now sought to be included therein, the Court was right in treating the description by boundaries as *falsa demonstratio*, and in construing the grant as limited to an area of 66¾ acres.

ARBITRATION—AWARD—MOTION TO ENFORCE AWARD—REFUSAL TO ENFORCE—ARBITRATION ACT, 1889 (52-55 VICT. C. 49), S. 12—(R.S.O. C. 65, S. 14).

In re Boks & Co. and *Peters* (1919) 1 K.B. 491. This was a summary application to enforce an award under s. 12 of the Arbitration Act, 1889 (see R.S.O. c. 65, s. 14). The award related to a contract made January 17, 1918, for the sale of palm kernels; and it appeared by an order of May 1, 1917, made by the Minister of Munitions, trade in palm kernels was forbidden except under license. No license was produced authorizing the sale in question and subsequently to the date of the award the buyers discovered

that no license had been in fact granted. In these circumstances Lush, J., reversed the order of the Master to enforce the award, and the order of Lush, J., was affirmed by the Court of Appeal (Eady, M.R., and Scrutton, J.), the court being of the opinion that it was not a case for the summary enforcement of the award, but that the parties should be left to enforce it by action if so advised.

PRINCIPAL AND AGENT—CONFIDENTIAL COMMUNICATION—DUTY OF SECRECY—BREACH OF DUTY—LIBEL—DAMAGES—EX TURPI CAUSA NON ORITUR ACTIO.

Weld-Blundell v. *Stephens* (1919) 1 K.B. 520. This was an action by a principal against his agent to recover damages for an alleged breach of duty in the following circumstances: The plaintiff had been asked to advance money to a company, and for the purpose of considering the application he employed the defendant, who was an accountant, to examine the accounts of the company, and in a letter of instructions, he made certain libellous statements against persons who were, or had been, officially connected with the company. This letter the defendant handed to his partner who negligently left it lying in the company's office, where it was found by the manager and read by him, and its contents communicated to the persons libelled, who thereupon brought an action against the plaintiff and recovered judgments aggregating £1,850; this sum, with the costs of the libel action, the plaintiff now claimed to recover from the defendant. The action was tried by Darling, J., who held that the defendant was not under any implied obligation to keep the letter secret, and that the plaintiff could not in any case recover damages to indemnify himself against his own wrongful act. The Court of Appeal (Bankes, Warrington and Scrutton, L.JJ.), were of the opinion that the defendant was under an obligation to keep the letter of the plaintiff secret and on this point reversed the judgment of Darling, J., but the Court of Appeal were divided on the question of damages, the majority (Bankes and Warrington, L.JJ), however, substantially agreed with Darling, J., and held that the plaintiff was only entitled to recover nominal damages, as the damages recovered against him in the libel actions were really occasioned by his own wrongful act for which he was not entitled to be indemnified by the defendant. Scrutton, L.J., on the other hand, thought that the plaintiff was entitled to recover substantial damages. He says: "My brothers, while thinking the agreement legal and one

they could enforce before breach, will not enforce it after breach by giving the damages caused by its breach and to prevent which it was made."

CRIMINAL—OBTAINING MONEY BY FALSE PRETENCES—SALE—FRAUDULENT STATEMENTS TO INDUCE PURCHASE.

The King v. *Sanders* (1919) 1 K.B. 550. This was an appeal from a conviction for obtaining money by false pretences in the following circumstances: The appellant sold to the prosecutor for £70 two mares which he represented were sound and in foal. It was agreed that if the mares were not as warranted the prosecutor should have the right to return them within fourteen days. The mares were, to the knowledge of the appellant, not as warranted in any respect. The prosecutor having failed to get back his £70 did not return the mares. The appellant was charged on indictment with obtaining £70 by false pretences and convicted and the Court of Criminal Appeal (Bray, Avory and Sankey, JJ.), held that the conviction was right. The prosecutor's wife had written to the appellant demanding back the money, and counsel for the Crown had proposed in his opening speech to read the letter, but objection was made and sustained. Subsequently the prosecutor, when called as a witness, was questioned about the letter and no objection was then raised, and the Court of Appeal refused to entertain on appeal an objection to the admissibility of such evidence, it not having been taken at the trial. See *Rex* v. *King*, 16 O.W.N. 314, a somewhat similar case.

TREES OVERHANGING ADJOINING PREMISES—RIGHT OF NEIGHBOUR TO PICK FRUIT FROM OVERHANGING BRANCHES—CONVERSION.

Mills v. *Brooker* (1919) 1 K.B. 555. The relative rights of the owner of a tree whose branches overhang an adjoining property to the fruit growing on such overhanging branches, must have been a question which must have often arisen, and yet up to the present time it does not appear to have been the subject of judicial decision. It has been determined that the adjoining owner has a right to lop off the overhanging branches, *Lemmon* v. *Webb* (1895) A.C. 1, and upon the strength of that right the defendant in this case thought he had the right to pick off apples, which he did to the value of £10, for which amount the County Court Judge who tried the action gave judgment for the plaintiff, and a Divisional Court (Avory and Lush, JJ.), affirmed his decision.

CRIMINAL LAW—RECEIVING—MONEY TAKEN BY WIFE FROM HUSBAND—EVIDENCE OF THEFT BY WIFE—"LIVING TOGETHER"—HUSBAND SERVING IN ARMY—LARCENY ACT, 1916 (6-7 GEO. V., C. 50), SS. 33 (3), 36—(CR. CODE, S. 354: 1913, C. 13, S. 15).

The King v. *Creamer* (1919) 1 K.B. 564. This was an appeal from a conviction for receiving property knowing it to have been stolen in the following circumstances: The property in question consisted of money left by a soldier in the custody of his wife, he being on service in France. Some time before November, 1917, she broke open the box containing the money. She subsequently in December, 1917, or January, 1918, commenced an adulterous intercourse with the accused, and in May, 1918, left her husband's home and went to live with the accused as man and wife. There was evidence that the accused had received some of the money, but when does not appear from the report. His defence was that he believed it to belong to the wife. He was convicted. On the appeal it was argued that so long as the wife was living with her husband there could be no larceny by her of her husband's property, unless it was taken with the intention of deserting him, and of this there was no evidence, and there being no theft there could be no receiving within the Larceny Act, 1913 (6-7 Geo. V. c. 50), ss. 33 (3), 36. (See Cr. Code, s. 354, as amended by 1913, c. 13, s. 15), and the Court of Criminal Appeal (Darling, Avory, Shearman and Sankey, JJ), upheld this contention and quashed the conviction, the court holding that the wife must be deemed to have been living with her husband although he was temporarily absent on military service, so long as she remained in her husband's home and had not committed adultery. The court, however, intimated that had the judge at the trial properly directed the jury they might have found facts displacing the protection afforded by s. 36.

CRIMINAL LAW—PROSECUTION—NO CASE—OBJECTION OVERRULED—EVIDENCE FOR DEFENCE INCRIMINATING DEFENDANT.

The King v. *Power* (1919) 1 K.B. 572. This was also an appeal from a conviction. At the trial, at the conclusion of the evidence for the prosecution, the counsel for the appellant objected that no case had been proved. The objection being overruled the appellant and his co-defendant gave evidence and the latter was cross-examined by the appellant's counsel and incriminated the appellant and he was convicted. On behalf of the latter it was argued

that the objection taken on his behalf at the close of the case for the prosecution was wrongly overruled and, notwithstanding the evidence of the co-defendant, ought to be given effect; but the Court of Criminal Appeal (Darling, Avory, Lush, Shearman, and Sankey, JJ.), held that the court could not properly disregard the evidence for the defence and the conviction was affirmed, a prior decision of Darling, J., in *Rex* v. *Joiner*, 4 Cr. App. 64, being overruled; and *Rex* v. *Fraser*, 7 Cr. App. 99, 101, being followed.

SHIP REQUISITIONED BY ADMIRALTY—CHARTERPARTY—NAVIGATING WITHOUT LIGHTS IN COMPLIANCE WITH ADMIRALTY REGULATIONS—COLLISION—LOSS OF SHIP—CONSEQUENCE OF HOSTILITIES OR WARLIKE OPERATIONS—"CAUSE ARISING AS A SEA RISK."

Britain S.S. Co. v. *The King* (1919) 1 K.B. 575. This was a petition of right on a charterparty to recover for the loss of the vessel. The vessel had been requisitioned by the Admiralty, and by the charterparty the Admiralty took the risk of "all consequences of hostilities or warlike operations" but was not to be liable for collision or any other cause arising from sea risks. The ship was navigated at night without lights pursuant to the Admiralty regulations, and while so navigating came into collision with another vessel also navigating without lights, and also lost. Bailhache, J., who tried the action, held that the loss was not occasioned by hostilities or warlike operations, but was due to other cause arising as a sea risk and therefore that the action failed.

CONTRACT—ILLEGALITY—COVENANTS IN RESTRAINT OF PERSONAL FREEDOM—PUBLIC POLICY—COVENANT ENTERED INTO WITH OBJECT OF PAYING CREDITORS—13 ELIZ. C. 5 (R.S.O. C. 134, S. 5).

Trustee v. *Denny* (1919) 1 K.B. 583. This was an action to set aside a deed as fraudulent as against creditors and contrary to public policy in the following circumstances: A father being anxious to save his son (who was of extravagant and dissolute habits) from moral and financial ruin, made an arrangement with him whereby the son transferred to the father all the property he had, and the father agreed to pay all the son's debts, amounting to £4,000, and to redeem and hand over to him all articles then in pawn in value of £500 or more and pay the son £800 a year on condition (a) that he did not become bankrupt or alienate the annuity, or make any composition with his creditors, (b) amend his

way of living, (c) give up certain associates, (d) did not reside within 80 miles of London, (e) did not drink alcoholic liquors to excess, (f) did not borrow or bet or have any relations with money-lenders or bookmakers. The object of the deed was to save the son and for a time it had some effect, but subsequently he began to borrow again and was made bankrupt on petition of a money-lender, who was his chief creditor. The action was brought by the Trustee in Bankruptcy to set aside the deed. Sankey, J., who tried the actions, held that there was a good and valid consideration for the deed, and that none of the conditions imposed on the son were contrary to public policy, and that the deed so far from being any contravention of the 13 Eliz. c. 5 was made for the purpose of paying all the son's creditors, and that this object was in fact achieved.

ADMIRALTY—INTERNATIONAL LAW — JURISDICTION — IMPLEADING FOREIGN SOVEREIGN POWER—STATUS OF ESTHONIAN GOVERNMENT—PROVISIONAL RECOGNITION OF DE FACTO GOVERNMENT—INTERNATIONAL COMITY.

The Gagara (1919) P. 95. This was an application to set aside a writ in *rem* claiming possession of a vessel in the possession of the Esthonian Government which had put in to a British port. The vessel had originally been in the Russian Imperial Service, but had been seized and appropriated by the Bolshevik Government, and had thereafter been seized and condemned as prize by the Esthonian National Council. The plaintiffs claimed title under the Bolshevik Government. Hill, J., having been informed by the law officers of the Crown that the Esthonian Government had been provisionally acknowledged by His Majesty as a *de facto* sovereign power, held that the court had no jurisdiction to compel that power to implead in a British court and accordingly granted the application and set aside the writ.

ADMIRALTY—JURISDICTION—FOREIGN SHIP—ACTION FOR POSSESSION—STATUS OF PROVISIONAL GOVERNMENT OF NORTHERN RUSSIA—RECOGNITION OF SOVEREIGNTY.

The Annette (1919) P. 105. This was a somewhat similar case to the last. The plaintiffs were Esthonian subjects and with the consent of the Esthonian Government claimed possession of two vessels in a British port which had been requisitioned or sequestered by the Provisional Government of Northern Russia under whom the defendants claimed. The Provisional Government

entered an appearance under protest and now applied to set aside the writ. From information received from His Majesty's Government it appeared that the Provisional Government of Northern Russia had not been recognized by His Majesty's Government. In this case, therefore, the motion was refused by Hill, J.

WILL—CONSTRUCTION—GIFTS TO NEPHEWS AND NIECES "AND THEIR ISSUE IN STIRPES"—STIRPITAL DIVISION WHEN IT COMMENCES.

In re Alexander, Alexander v. *Alexander* (1919) 1 Ch. 371. The construction of a will was in question in this case; by it the testator gave a fund in trust for certain persons for life and then "in trust for such of my nephews and nieces living at the death" of the last surviving tenant for life "and for the issue then living of such nephews and neices of mine who may have previously died . . . and if more than one as tenants in equal shares per stirpes." The testator had four brothers and nineteen nephews and nieces, children of these brothers: fourteen of these survived the last tenant for life and five predeceased her, leaving issue, some of whom survived the last tenant for life, and some of whom died leaving issue who survived the last tenant for life. The first question raised was as to the meaning of the word "issue" and Sargent, J, held that it was not confined to children but included issue of all degrees; and that as between issue in the same line of descent, of different degrees, the nearer excluded the more remote, and that issue took as tenants in common and not as joint tenants. The remaining question was as to the time when the stirpital division was to begin. And as to this Sargent, J., held that the fund was divisible into 19 parts, according to the number of the nephews and nieces who survived the period of distribution either by themselves or their stocks.

VENDOR AND PURCHASER—AGREEMENT—SIGNED BY AGENT LAWFULLY AUTHORIZED—OMISSION OF TERM—WAIVER—SPECIFIC PERFORMANCE—STATUTE OF FRAUDS (29 CAR. 2 C. 3), S. 4 (R.S.O. C. 102, S. 5).

North v. *Loomes* (1919) 1 Ch. 378. This was an action for the specific performance of a contract for the sale of land in which the Statute of Frauds was set up as a defence. First, it was alleged that there was no writing properly signed by the purchaser or his agent, and, secondly, that if there was an agreement it was incomplete as it did not set out all the terms. The contract was in the

first place verbal accompanied by the payment of £50 deposit, for which the vendor, the plaintiff, gave the defendant a receipt, which the defendant sent to his solicitor with instructions to carry out the contract. The plaintiff's solicitor then sent a draft contract to the defendant's solicitor which the latter returned with a letter signed by himself stating that no further contract was necessary as the one which plaintiff had signed was sufficient. Younger, J., held that this letter of the defendant's solicitor was a sufficient note or memorandum to satisfy the statute. It appeared that one of the terms of the bargain was that the defendant was to pay all costs attending the sale, and it was contended on behalf of the defendant that the omission of this term rendered the agreement incomplete and therefore not specifically enforceable; but the vendor waiving this term it was held its omission was immaterial, as it was a term solely for his benefit.

ANCIENT LIGHTS—THREATENED OBSTRUCTION—QUIA TIMET ACTION FOR INJUNCTION—DECLARATORY JUDGMENT WITH LEAVE TO APPLY FOR INJUNCTION—COSTS.

Litchfield-Speer v. *Queen Anne's Gate Syndicate* (1919) 1 Ch. 407. This was an action to restrain a threatened interference with the plaintiff's ancient lights. The defendants were engaged in erecting a building on their premises which the plaintiff claimed would, when completed, interfere with his ancient lights. The defendants contended that a *quia timet* action in such circumstances would not lie; but Lawrence, J., held that it would, and he made a declaratory judgment to the effect that the defendants were not entitled to erect any buildings so as to cause a nuisance or illegal obstruction to the plaintiff's ancient windows and reserved leave to the plaintiff to apply for an injunction if necessary; but he ordered the defendants to pay only one-half of the plaintiffs' costs of the action.

SOLICITOR—CHARGING ORDER—PROPERTY RECOVERED OR PRESERVED—DISPUTE BETWEEN HUSBAND AND WIFE AS TO OWNERSHIP OF PROPERTY—APPOINTMENT OF RECEIVER—ABANDONMENT OF CLAIM BY PLAINTIFF—SOLICITORS' ACT, 1860 (23-24 VICT. C. 127), S. 28—(ONT. RULE 689).

Wingfield v. *Wingfield* (1919) 1 Ch. 462. This was an action brought by a wife against her husband claiming to be the owner of certain property in the wife's possession. On the application of the wife an interim receiver of the property was appointed. Sub-

sequently the plaintiff abandoned all claim to the property, and her solicitor then applied for a charging order on the property for the amount of his costs. Peterson, J., thought that the appointment of a receiver was a "preservation" of the property within the meaning of the Solicitors Act, 1860, s. 28 (Ont. Rule 689), but the Court of Appeal (Eady, M.R., and Scrutton, L.J., and Eve, J.) reversed his order, being of the opinion that the appointment of the receiver did not in any way "recover or preserve" the property. According to Scrutton, L.J., in order to entitle a solicitor to a charge it must appear that the property in question has been recovered or preserved through the exertions of the solicitor, and of which the real owner of the property takes the benefit; but the mere assertion of an unfounded claim against property, he thought, could give no such right.

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Davies, C.J., Idington, Anglin, Brodeur and Mignault, JJ. [47 D.L.R. 5.

Re COCHRAN'S TRUSTS, ROBINSON v. SIMPSON.

Evidence (§ IV A—393)—Proof of identity—Alleged ancient documents in proof of—Enlarged photographs—Evidence—Consideration of by court.

In order to establish the identity of a brother of the testator, who by his will directed his property to be divided under certain circumstances between the grandchildren of his brothers and sisters, certain claimants produced a large number of partially torn documents said to be recently discovered under the floor and between the walls of the family home of some of the claimants; copies of most of these writings were photographed on an enlarged scale by handwriting experts and put in evidence at the trial and these photographs were used on the appeal to the Supreme Court of Canada.

After examination of the original documents and the enlarged photographs and weighing the conflicting evidence the court held that the documents were not genuine, and found against these claimants.

G. F. Henderson, K.C., for appellants; *Rogers*, K.C., and *Burchall*, K.C., for respondents.

ANNOTATION FROM 47 D.L.R. p. 5.

Use of Photographs.—Examination of Testimony on the facts by Courts of Appeal.

It appears that the decision in this case finally depended in large measure upon the interpretation of certain fragmentary and partially illegible documents and upon the examination of this evidence itself by the judges who were to make final judgment in the case. The documents had been appropriately enlarged and arranged in convenient and accessible form so that the evidence, some of which was of a somewhat delicate character, was easily available and could be distinctly seen. Without this photographic assistance

it would have been difficult, if not practically impossible, to shew this evidence clearly to an appellate court under the usual conditions surrounding an argument.

The Judges in the Supreme Court in this case themselves examined and passed upon the physical evidence in its original form, and also in the form of enlarged photographs, and were thus able themselves to weigh the conflicting testimony of the witnesses on this particular subject. The Supreme Courts of numerous states of the United States, and some judges of Canada, refuse to consider questions of fact of this character in a case of conflict of testimony, and undoubtedly by this refusal may defeat the ends of justice.

A proper distinction in fact testimony thus is made, in the Supreme Court of Canada, between merely oral testimony and testimony relating to physical evidence like writings and photographs which are actually before the court.

It is obvious that with evidence of this kind before the court the usual objection to reviewing the facts, that the actual witnesses are not before the court, does not apply as it does with ordinary testimony, because the actual physical evidence itself is before the court. In some States of the United States, New York among others, courts of appeal in cases of this kind do consider the facts before them. This was done in a positive and definite manner in the case of *Townsend* v. *Perry* (1917), 177 Appel. Div. 415 (N.Y.), in which the Appellate Court set aside the verdict of a jury specifically on the facts. In this case the court says: ". . . a mere comparison of the signatures upon the instrument with the genuine signatures of Cyrenius C. Townsend, his wife, and of plaintiff's mother, clearly demonstrate, even to the layman, that the former are but clumsy forgeries."

Several State Supreme Courts of the United States have recently refused to pass upon, or even consider, the fact evidence even in cases in which the evidence was all before them; they would not make "a mere comparison." This question is often discussed in a manner that makes no distinction between merely oral testimony, the value of which depends solely upon the credibility of the witness, and technical testimony as to documents which illustrates and interprets physical evidence which is itself in visible form before the court. It would appear from the comments of some judges that they almost confessed to blindness and incompetence.

On this very point the Supreme Court of Kansas, U.S.A., in a recent case, *Baird* v. *Shaffer* (1917), 168 Pacific 836, discusses the question, emphasizing the modern view of the subject. Three witnesses testified that they had witnessed the will and the jury were convinced that the will was a forgery by the illustrated testimony of an expert witness. The proponents sought to reverse the verdict in this case on the question of weight of evidence, and the decision says:

"The testimony of attesting witnesses to a will may be overcome by any competent evidence . . . 2 Wigmore on Evidence, 886, 1514. Such evidence may be direct, or it may be circumstantial; and expert and opinion evidence is just as competent as any other evidence. Indeed, where the signature to a will is a forgery, and where the attesting witnesses have the hardihood to commit perjury, it is difficult to see how the bogus will can be overthrown except by expert and competent opinion evidence tending to shew that the pretended signature is not that of the testator, but spurious."

Province of Ontario

SUPREME COURT, APPELLATE DIVISION.

ABELL v. VILLAGE OF WOODBRIDGE AND COUNTY OF YORK.

Highways—Dedicated by owner—Private rights—Common and public—Easements.

Section 433 of the Ontario Municipal Act (1913, 3 & 4 Geo. V., c. 43, Ont.), provides that "the soil and freehold of every highway shall be vested in the corporation of the municipality or municipalities," and by s. 432, "all roads dedicated by the owner of the land t public use" are declared to "be common and public highways." The effect of this legislation and of the repeal of 3 Edw. VII. c. 19, which was concurrent with it, is to remove any easement or reservation to which the vesting of the highway was subject, and to vest absolutely and without qualification the soil and freehold in the municipal corporations.

Abell v. *Village of Woodbridge*, 37 D.L.R. 352, 39 O.L.R. 382, reversed.

O. L. Lewis, K.C., and *C. W. Plaxton*, for the County of York; *W. A. Skeans*, for the Village of Woodbridge and *J. H. Moss*, K.C., and *W. Lawr*, for plaintiff, respondent.

ANNOTATION FROM D.L.R. P. 513

Private rights in Highways antecedent to Dedication.

By A. D. ARMOUR.

Highways under English law were of two kinds, those in which the title to the soil remained in the Crown, subject to the public right of travel on the "King's Highway," and others, in which the ownership of the soil remained in some private owner who had, or was presumed to have, dedicated the land as a public highway. But this was never a dedication of all the soil, but a setting aside of the land as it were for a particular and paramount purpose. And it is to be observed that in neither of these cases did the public acquire anything more than a right to travel; subject to that right the ownership in the soil remained untouched. This being so, the owner of the soil could use it in any way he pleased, provided that he did not interfere with the public right. Such a freedom on the part of the owner could clearly result in the acquisition of private rights by others, either by grant or prescription, and many cases of private rights in highways, either antecedent to dedication, or subsequent and subject to the private right, are to be found in the reports.

To appreciate the effect of legislation and judicial decisions in this connection, it is necessary to understand clearly that at common law, the existence of a highway gives no ownership in the soil. The public have a mere right to travel, and the right cannot be exercised for any other purpose. Ownership presupposes the right to use the object of possession in any way pleasing to the owner, whereas in the case of a highway, the ownership in the soil of which remains in the owner of adjoining lands, a traveller cannot shoot game, flying or straying over the highway from the adjoining lands, without being guilty of a trespass. *Harrison* v. *Rutland*, [1893] 1 Q.B. 142. There being no ownership in the users of the highway, therefore it follows that they have a mere right which they may or may not exercise, as they see fit; something which has no physical existence, but is purely an abstract thing in its nature. The existence of this abstract right is not inconsistent with the ownership of the soil or freehold. It may also be subject to or co-existent with other rights acquired by private persons. In the case of highways, the title to which remained in the Crown, such rights could not have arisen except by grant. In the case of land dedicated by a private owner, many rights might have been acquired prior to dedication and might co-exist with the public right of travel. A private individual for instance may have his own right of way over the same land as that subject to the public right, and he need not justify his user of the land as one of the public, but may assert his private right. *Allen* v. *Ormond* (1806), 8 East 4, 103 E.R. 245. There may also be private rights co-existent with the public right of travel, both over and under the surface of the highway, as for instance, the right to maintain an arch and passageway over a highway, or a mining lease of lands under the highway. If these private rights are acquired prior to the acquisitions of the public right of travel, it is clear that under the English law, the dedication is subject to the antecedent rights. In the case of dedication, the owner cannot dedicate more than he has, and can only grant a right to use the land as a highway subject to any pre-existing rights. *R.* v. *Chorley* (1848), 12 Q.B. 515, 116 E.R. 960; *Duncan* v. *Louch* (1845), 6 Q.B. 904 at p. 915, 115 E.R. 341. That was supposed to be the law in this province until the recent case of *Abell* v. *Village of Woodbridge and County of York* (1917), 37 D.L.R. 352, 39 O.L.R. 382, reversed in the principal case, construing s. 433 of the Municipal Act of 1913 (3 & 4 Geo. V. c. 43). The law of this province governing ownership in the soil of highways before the passing of that Act was contained in 3 Edw. VII., c. 19, s. 601, which provided that "every public road, street, bridge or other highway in a city, township, town or village, except . . . shall be vested in the municipality, subject to any rights in the soil reserved by the person who laid out such road, street, bridge or highway." The effect of this enactment was stated in *Abell* v. *Village of Woodbridge*, 37 D.L.R. 352, and on appeal *ante* p. 513, to be that "not merely the surface but the freehold as well, subject to any rights reserved by the person who laid out the highway" was vested in the municipality. These words are not very clear, as the surface is part of the freehold, and it is presumed that what was meant was that the soil of the land over which the public right to travel existed, was vested, as well as the right to use the surface. The word "reserved" used in the Act is unsatisfactory, as a reservation can only be made of something

issuing out of the land. Giving the word its strict legal significance therefore, easements and licenses would not come within the Act. It seems to have been taken for granted, however, that the words "rights reserved" extended to easements, and licenses as well as *profits à prendre.** If this is so, the statute merely vested the soil of the highway in the municipality, and affirmed the common law rule as to rights acquired in the soil prior to dedication. That enactment has been substantially altered in form in the Ontario Municipal Act of 1913 (3 & 4 Geo. V., c. 43, s. 433), which provides that "the soil and freehold of every highway shall be vested in the corporation or corporations of the municipality or municipalities, the council or councils of which for the time being have jurisdiction over it under the provisions of the Act"; and by s. 432, all roads dedicated by the owners of land to public use are declared to be common and public highways. It will be noticed that the affirmation of the common law rule saving antecedent rights has been omitted from this enactment. But the mere silence of an Act of Parliament is not sufficient to take away a common law right, very clear words are needed to have such an effect, and any interference with a common law right is strictly construed by the courts. The words "subject to any rights reserved by the person who laid out the highway" in the former Act, being only an affirmation of a part of the common law rule, it is submitted that their omission in the Act of 3 & 4 Geo. V. and the general repeal of the Act of 3 Edw. VII., do not destroy the common law right. The judgment in the *Abell* v. *Woodbridge* case states in part, however, that "there is no escape from the conclusion that the effect of this legislation and of the repeal of 3 Edw. VII., c. 19, which was concurrent with it, is to remove the qualification to which under that Act the vesting of highways was subject, and to vest absolutely and without qualification the soil and freehold of them in the municipal corporation." If this decision is correct, once land becomes a highway, it can be subject to no other rights than those of the municipality as owner in fee. If the statute acted by way of expropriation of the lands that would be a fair statement of the law. But it is submitted that the statute does not create the highway. The public right of travel is gained either by dedication or by prescription. In the former case, the owner cannot dedicate more than he has, and the public right must be subject to the rights already existing. In the case of prescription, a grant must be presumed, and the public cannot acquire a greater right than the owner could have granted. The acquisition of such a public right to travel is a necessary condition precedent before the statute can operate. It is only when that condition has been fulfilled that the Act vests the soil and freehold in the municipality. But the ownership of the soil and the right to travel are two different things, the one being in the municipality, and the other being a public right. Nothing in the statute enlarges the public right. Nor is there anything more inconsistent in the vesting taking place under the statute subject to existing rights than there was in the case of a dedication at common law. Moreover, the necessary condition precedent being the generosity, neglect or indifference of the owner of the land, the statute cannot operate as a confiscation of the property of another

*See annotation, 40 D.L.R. 144.

person. It was not intended to operate by way of expropriation, but merely to give all the necessary control over the soil of the highway to the municipality. If it destroys all the rights to which the soil may be subject, then where the land is subject to an easement, the statute operates upon the dominant tenement, which is no part of the highway; a result not probably intended by the legislature. The decision will have a far-reaching effect. Highways being laid out in a mineral bearing county, now that minerals pass to the grantee of the crown unless reserved, would make it impossible for many owners to grant an effective mining lease, for wherever there was a highway, the statute would erect a subterranean wall more effective to interfere with mining than the loss of the lode. He will also affect the law as to public highways closed by a municipality under s. 472 of the Municipal Act. The case of *Johnson* v. *Boyle* (1853), 11 U.C.Q.B. 101, decided that where a private right was claimed, and the defendant pleaded that the land over which the way was claimed had been a public highway, and had been closed by the municipality, the court allowed a demurrer to the plea on the ground that the antecedent right of way might still be extant, notwithstanding the facts averred in the plea. Since that decision a provision has been enacted in the Municipal Act, which appears in R.S.O., c. 192, s. 473, as follows:—

"A by-law shall not be passed for stopping up, altering or diverting any highway or part of a highway if the effect of the by-law will be to deprive any person of the means of ingress and egress to and from his land or place of residence over such highway or part of it, unless in addition to making compensation to such person, as provided by this Act, another convenient road or way of access to his land or place of residence is provided."

And by s. 492 of the Act, the owner of the land which abuts on the closed highway shall have the right to purchase the soil and freehold. If the *Abell* v *Woodbridge* decision is correct any private right of way over the closed highway would be extinguished, and the municipality would be bound to furnish another right of way. But as before pointed out, the owner of a private right of way over a highway need not justify his user as one of the public, *Allen* v. *Ormond, supra.* And Osler, J., in an *obiter dictum* in *Re Vashon & East Hawkesbury* (1879), 30 U.C.C.P. 194, 202, suggested that the private right survived the dedication of the highway and its closing by the municipality. If that is the law, when the owner of the private right purchased the closed highway, he would lose his right of way on the principle of merger, and the municipality would be bound to furnish another convenient way. But if he refused to purchase, or a stranger bought after his refusal, the municipality might refuse to provide another way on the ground that the private way still existed.

A. D. ARMOUR.

Bench and Bar.

Judicial Appointments.

His Honour Emerson Coatsworth, Junior Judge of the County Court of the County of York, to be Judge of that Court (July 11).

His Honor J. H. Denton, Third Junior Judge of the above Court, to be Junior Judge there of (July 11).

Hon. H. A. Robson, of the City of Winnipeg, K.C., and W. F. O'Connor, of the City of Ottawa, K.C. (appointed August 12, 1919), and Frederick A. Acland, of the City of Ottawa, Deputy Minister of Labour (appointed August 20, 1919), to be the Commissioners of the Board of Commerce of Canada.

His Honour Evan Hamilton McLean, Junior Judge of the County Court of the County of Renfrew, Ontario, to be Judge of the County Court of the County of Prince Edward, vice Judge Morrison, deceased (August 30).

The Prince of Wales and the Bar.—On Wednesday, the 2nd July, the Prince of Wales was called to the Bar by the Middle Temple and elected as Master of the Bench of that Inn, of which his grandfather, His late Majesty King Edward VII., was also a Bencher. The connection of the Royal House with the Inns of Court is an intimate one. His present Majesty is a Bencher of Lincoln's Inn, H.R.H. Prince Albert of the Inner Temple, and H.R.H. the Duke of Connaught of Gray's Inn.—*Law Times.*

Canadian Bar Association.

The programme for the Annual Meeting to be held in Winnipeg on August 26 to 29th, has been issued with commendable promptitude. The bill of fare is a full and interesting one, and the subjects to be discussed are very important.

A number of speakers from various parts of the Dominion, as well as from the United States, will be present, including the representative of the American Bar Association, Chief Justice Winslow, of Wisconsin, and others. Last but not least of those who are expected is Rt. Hon. Viscount Finlay, of Nairn, G.C.M.G., well and most favourably known to many of our Bar who have had cases before the Judicial Committee of the Privy Council.

Since then, as all know, Sir Robert Finlay became Lord Chancellor of England. Sir James Aikins is to be congratulated on securing his attendance.

The most important of the subjects to be discussed will be: Legal Education, Insurance, Company Law, Uniformity of Law, Bankruptcy, and Administration of Justice.

This gathering promises to be the most interesting meeting of the Association which has as yet been held. It is to be hoped that there will be a large attendance.

The volume (vol. 3) which contains the proceedings of the third annual meeting of the Canadian Bar Association, held at Montreal last September, has been received. It gives a full report of the proceedings of the meeting and other information of interest to the profession. The contents are suggestive of the valuable work done by various members of the Association during the past year. As it is now in the hands of the members it is unnecessary to give further particulars, except to say that it contains *in extenso* the reports of the various Committees.

Law Society of Alberta.

We have received the summary of the proceedings of the 23rd Convocation of this Society, held at Banff on July 2nd to 4th. The number of barristers and solicitors on the roll is 762, 19 having been added during the first half of the year 1919. The number of those who have taken out their annual certificates is 475. The total number in good standing is 534.

We notice that a resolution was passed in reference to the sittings of the Supreme Court of Canada elsewhere than at Ottawa, as follows: "That in the opinion of Convocation it is not in the interests of the administration of justice that the Supreme Court be made migratory."

There were full reports as to finances and matters connected with the library, etc.

New York State Bar Association.

The proceedings of the 42nd annual meeting of this Association, held at New York last January, make a bulky volume of nearly 900 pages. It contains the charter, constitution, by-laws, lists of the members, officers, Committees and Reports for last year. The public have little idea of the amount of work the profession does for them without fee or reward.

Flotsam and Jetsam.

THE ENGLISH VS. THE AMERICAN CONSTITUTION.

The CANADA LAW JOURNAL referring to a recent statement in *Law Notes* that the American Government, however imperfect, is the best the world has ever seen, says: "We who belong to the British Empire demur to the statement that it is the best constitution the world has ever seen. That should not, however, be laid to the charge of those who formulated it; they did the best they could at the time. The British constitution is the result of development for a thousand years or so, and ought to be, as it is, the best." The remark thus demurred to was aimed, not at our British cousins, but at the nations whence come those who seek to repay our hospitality by destroying our institutions. Having borrowed our common law and many of our other institutions from Britain, we are certainly estopped to criticise harshly her Governmental system. What our contemporary forgets, however, is that it was after about nine hundred of those thousand years of British development that men, chiefly of British birth or ancestry, took all that they deemed good of British institutions, and used it as the basis of the American constitution. Many of the archaic fragments which then clung to the ancient institutions of the British Isles, England herself has since discarded, until at the present time but two radical differences exist, elective as compared to hereditary sovereignty and a written as compared to a traditional constitution. In respect to the first of these England has in effect adopted the American system by relegating the King to the position of a highly respected figurehead, and vesting the real executive power in the Premier. Even with this done, the possibility of a strong and evil King coming to the throne argues in favor of the American system. Our written constitution certainly gives a fixity to personal rights which no mere tradition can insure, and the fact that it has been eighteen times amended shews that it is not too inflexible. This leaves us free to boast of the absence of an established church and a hereditary nobility, relics of the past, whose right to present existence few thoughtful Englishmen will maintain. But over and above these differences and such friendly argument as may be indulged in with respect to them, the fact remains that between the two great governments of Anglo-Saxon origin there should exist no contention "save that noble contention, or rather emulation, of who best can serve and best agree" in the evolution and establishment of a system of just law.—*Law Notes.*

The Biggest Trust of All.

Whether trusts shall be prohibited or regulated is purely an economic question, and since there is to be a renewal of agitation on the subject it is to be hoped that its political animus will be enlightened with some small measure of economic knowledge. At the present time our anti-trust laws cannot command the respect of any thinking man, for the reason that they apply only to combinations of capital and not to combinations of labor. Between the two there is no possible distinction in principle. With respect to their effect, the combination of capital sometimes increases directly the price to the consumer, while the labor combination accomplishes the same result indirectly but surely by increasing the cost of production. As to the matter of methods, the capitalistic trust usually confers some benefit on the public by reductions while endeavoring to put a rival out of business. Organized labor knows no method of establishing a monopoly except by a stoppage of industry, often accompanied by destruction of property and assaults on individuals. There are two possible industrial theories, that of efficiency gained by the stress of unfettered competition and that of efficiency gained by combination under a single management. There is something to be said in favor of each. One thing, however, is certain, no sound industrial structure can be reared on the basis of capital organized according to one theory and labor organized according to another. The original argument in favor of the labor union was that the individual worker was at a disadvantage in dealing with an employing corporation and that collective bargaining was necessary to secure fair dealing. Now the shoe is on the other foot. The employer of a thousand men, in case of a dispute with them, is confronted with the threat that a million men in all parts of the United States will boycott his product unless he yields something that he does not think is justly due. The Government should either remove its inhibition from all industrial combinations in restraint of trade, or impose it equally on all combinations. For either course reasons may be adduced, but for the present policy of leaving unregulated only the combination which manifests the most brutal disregard of the rights of others nothing but political expediency can be pleaded.—*Law Notes.*