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HIGH TREASON.

Prosecutions for this offence have been few for many years, but if speeches that have been made recently in England, Ireland and Canada had been made there a century or two ago, or made in Germany at the present time, there would not have been wigs on the green but heads in baskets. Sir Roger Casement's case, however, is the only one which has developed into a trial and conviction.

The offence was openly committed, the evidence was complete and the verdict was the only possible one under the circumstances. A semi-political explanation was put forward by Sergeant Sullivan and by the prisoner with much eloquence and ability, but the damning fact could not be got over that the prisoner was living in Germany as a free man assisted by citizens of that country, and apparently by those in authority, nor was the fact of his having a German secret code on his person explained or explainable on any theory of innocence.

The defence was raised that adhering to the King's enemies without the realm was not an offence within the statute of 25 Edw. III., which enacts that "If a man do levy war against our lord the King in his realm or be adherent to the King's enemies in his realm giving to them aid and comfort in the realm or elsewhere," he shall be guilty of treason.

The ruling of the Court was to the effect that the words "or elsewhere" apply equally to "adhering" and "aiding and comforting," the statute though of ancient date was declaratory of the common law, and, as the *Law Times* says: "It is abundantly clear that a man adhering to the King's enemies without the realm commits the crime of treason at common law. This view has been

held by the great text-writers for centuries, and has been accepted and acted upon both in subsequent enactments and decided cases. In fact, the point may be summed up in the sentence 'the subject owes allegiance at all times and in all places.'"

As we all know, the prisoner was found guilty and sentenced to death; but it is quite possible that the sentence may not be carried out. It may be wisdom not to make a martyr of him. Some of his countrymen, not themselves by the way under sentence of death, might be pleased if it should be enforced, as it would give them further material for treasonable declamations. The trial did not create as much interest as it would under other circumstances; the nation was too much engrossed with other matters to devote much time to Sir Roger Casement.

There were, however, several incidents at the trial worth noting. One of them is referred to by the *Solicitors' Journal* as follows:—

"A neat variation on the well-known plan of untying a Gordian knot by cutting it was found by Lord Reading on Wednesday in the Casement trial. Two counsel had been allotted to the prisoner in accordance with the procedure laid down by the Treason Act 1695 (7 & 8 Will. 3, c. 3), namely, Sergeant Sullivan and Mr. Artemus Morgan, the well-known authority on constitutional law, recently called to the English Bar; but as Professor Morgan was not one of the two counsel named by the Court under the statute, he was not strictly entitled to appear on behalf of the prisoner; at least, so Tindal, L.C.J., decided in *Reg.* v. *Frost* (4 State Trials, N.S. 105), when he refused to hear Mr. Thomas the third counsel briefed for the defendant Frost. On the present occasion Sergeant Sullivan took a highly technical and very interesting point on the statutory law of treason by way of objection to the indictment, and he desired permission for Professor Morgan to follow him. But how to get over the adverse precedent of *Reg.* v. *Frost*? Lord Reading found a graceful way of doing so; he consented to hear Mr. Morgan, not as counsel for the prisoner, but as *amicus curiæ* on the point of law."

FORGED CHEQUES.

The question of the rights and liabilities arising under forged cheques is somewhat complicated. The answer involves the consideration of combinations of circumstances the slightest variation in which may affect the solution that should be given. Nor is the law of England always a guide for, as the student of this subject must remember, in England a bank may charge its customer with payments made under a forged endorsement of the customer's cheque, but in Canada it is otherwise. Under the law of Canada a bank which pays a cheque on a forged endorsement cannot charge the drawer therewith. The consideration of the subject under the following heads while not exhaustive may afford an answer to most of the problems that arise in actual practice in connection with forged cheques:—

1. Can the rightful payee of a cheque sue a bank which has paid on a forged endorsement? Certainly not in England where, as I have stated, by statute the bank is free from liability if it pays without negligence and in the ordinary course of business, but in Canada where a bank is not so protected the answer must be "Yes." See *Smith* v. *Union Bank*, 45 L.J.Q.B. p. 149.

2. Can the rightful payee sue the drawer of a cheque where payment has been made by a bank under a forged endorsement? The question has been expressly decided in England in the case of *Charles* v. *Blackwell*, 2 C.P.D., p. 151. That was a case where a cheque drawn by the defendant on a certain bank in favour of the plaintiffs was endorsed by an agent of the plaintiffs who had no authority to endorse the cheque. The bank paid the agent and the plaintiffs thereupon sued the drawers, but without success. It was held that inasmuch as the bank was authorized to charge the drawer it would not be right that he pay twice. But this reasoning does not apply to Canadian law. In Canada, then, it would seem that the payee would have a right to sue the drawer. The reasoning in *Charles* v. *Blackwell* is founded entirely on the English statute. But it would seem that in order to succeed the payee must have the cheque in his possession or power at the time of suit. *Kelly* v. *C.P.Ry.*, 9 W.W.R , p. 531. The position the

Courts take is this, that if the endorsement were not forged the bank could charge the drawer. If then it were in a position to do so even after a judgment by the payee—if it were proved that the endorsement was not forged—the drawer might have to pay twice.

3. Can the payer, that is the bank, sue the wrongful payee to recover the moneys paid although such payee be innocent? The case of the *Imperial Bank* v. *The Bank of Hamilton*, 1903, A.C. 49, shews that it can. That was a case where the marked cheque for a bank for $5.00 was raised to $500.00 and eventually paid by the bank on which drawn to another bank which was the holder. On discovering the forgery the drawee bank sought to recover back the payment and it was held that it could do so.

4. Can the rightful payee sue the wrongful payee? There seems to be no doubt that the true owner of the instrument can recover from the person wrongfully paid the amount paid him. See Halsbury, vol. 2, page 550, and the cases cited in the footnote. Whether such action would be of much avail where if the wrongful payee is the person who effected the forgery, is another question.

If one were writing on the law as it was some years ago an exception would be made as to the right to recover where, in the case of a drawer, there had been negligence. It might have been held in Canada that a person who drew a cheque in such a way that it could be easily raised would be liable for his own negligence if such raising took place. That was the decision in *Young* v. *Grote*, 4 Bingham 253, but that decision is practically overruled in *Scholfield* v. *Londesborough*, 1896, A.C. 514. This decision puts an end to any question of negligence in drawing the cheque.

So far I have been considering the theoretical right to recover, the right to recover if there are no circumstances which would make it inequitable that recovery should be had and on this point there are two lines of decisions, those which culminate in *London and River Plate Bank* v. *Bank of Liverpool*, 1896, 1 Q.B.D., p. 7, where the law is laid down that recovery cannot be had if from a bona fide although unlawful holder on the ground that the position of the parties may have changed, and the other ending in *Imperial Bank* v. *Bank of Hamilton*, above cited, where it is held that recov-

ery might be had if no legal rights had been lost, rights such as notice, etc. In that case there was no one to notify and so no right of notice had been lost although, according to Matthew, J., in the *London and River Plate Bank* v. *Bank of Liverpool*, that is not necessary to prevent recovery. "Anything," he says, "which may seriously compromise the position of a man of business is sufficient" (to prevent recovery) "even though no legal rights had been compromised." *The Imperial Bank* v. *Bank of Hamilton* does not sustain this view but confines the right to recover to cases where no legal rights have been lost by delay in giving notice.

Thus far, I have discussed the question of forged endorsements. Now comes the question of forgery of the customer's signature. When the drawer's name is forged another combination of circumstances arises and the problem presented is somewhat different. For one thing, the question of the responsibility on the part of the drawer, which might arise in the case of endorsements, is absent. The drawer may be omitted from consideration as he is responsible to no one. But the question of the bank is altered. The bank is supposed to know its customer's signature and if it pay a cheque which does not bear such signature, but a forgery thereof, it cannot recover the sum so paid from holders in due course. See *Bank of Montreal* v. *The King*, 38 S.C. Reports, p. 258, and the case above cited, *Scholfield* v. *Londesborough*, applies as to negligence in drawing the cheque.

Finally, one must not overlook the provisions of sec. 49 of the Bills of Exchange Act, which limits the rights of the drawer to recover from a Bank. The drawer must notify the Bank of the forgery within a year after he discovers it. Possibly the use of crossed cheques would obviate some of the chances of forgery and diminish the number of embarrassing although interesting legal questions that follow, but Canadians have not, for some reason, taken kindly to crossed cheques and they are hardly met with in the business of banking in Canada.

J. H BOWES.

Chilliwack, B.C.

INFERIOR COURTS IN NEW BRUNSWICK.

In New Brunswick the Inferior Courts, that is, the Justices Courts having jurisdiction up to $20 in debt, and the Parish Commissioners and Stipendiary Magistrates' Courts having jurisdiction up to $80, are a not insignificant part of the judicial machinery, and are frequently resorted to in cases involving $80 or less.

It is, of course, necessary to provide for an appeal from these Courts, many of which are presided over by magistrates whose legal knowledge is of the most fragmentary kind,(a) and the Inferior Court Act, under the heading "Review," provides that:

"In all civil causes tried in any Inferior Court, if either party be dissatisfied with the judgment, he may within six days thereafter apply to the magistrate who presided in such Court at the trial for a copy of the evidence, a minute of the cause of action, the grounds of defense and the result, paying him one dollar therefor at the time of the application, and such presiding magistrate shall give him the same within three days; and if he neglect to do so, obedience may be enforced by a Judge's order and attachment. Upon these being laid before a Judge of the Supreme Court, or a Judge of the County Court, with an affidavit of the party that he thinks substantial justice has not been done him, the Judge may at any time within thirty days after such judgment, or after obtaining a copy of the minute aforesaid, appoint a time and place for hearing the matter, and notice thereof shall be given the opposite party; the Judge shall, after such hearing, decide the cause according to the very right of the matter, without regard to forms, unless such presiding magistrate acted wholly without jurisdiction, and may direct that judgment be affirmed, altered or reversed or that a non-suit be entered, and may remit the cause

(a) This statement is borne out by a personal experience of the writer, who once cited Crankshaw's Criminal Code in a Court presided over by a Magistrate named Thomas Shaw.

"That's all right about Crankshaw," was the calm judicial retort; "but I'm Tom Shaw, and what I say goes farther in this Court than Crankshaw."

back to such magistrate to enter judgment accordingly, and issue execution thereupon. He may also by his order set aside the judgment and direct that a new trial be had before such magistrate, and may in and by said order give all directions necessary to give effect to the same, and may direct by which party or parties the costs of the trial shall be paid; and such magistrate shall upon such order hold such new trial, and enter judgment thereon, as thereby directed, and the costs of review shall in all cases be in the discretion of the Judge, and shall be taxed by him with or without notice and may be recovered by attachment."(b)

As soon as reviews began to be taken under this Act the question arose whether the decision of a Supreme or County Court Judge on a review was final or whether it could be appealed to the Supreme Court of the Province, and there is probably no question in the Province which has led to more judicial uncertainty or is more unsettled at the present time.

The point was first agitated in the case of *Ex parte Richards*(c) in 1873, where a review had been refused by a Judge of the Supreme Court and then an application was made to the Supreme Court for a certiorari to review the decision, which was refused.

The Court pointed out that having elected his tribunal by going to a single Judge in the first instance the applicant was bound by his decision.

"By coming here," said the Court, "you are in reality appealing from the Judge's decision, while the Statute does not provide an appeal."

In 1882 the Court decided in *Ex parte Kane*(d) that a certiorari would not be granted to remove review proceedings before a Supreme Court Judge, but that the proper remedy was by motion to set aside his order.

Then in *Smith* v. *Kinnie*(e) in 1890 the Court overruled the *Kane* case, and squarely held that a review decision by a Supreme Court Judge is final, and the same principle was affirmed in

(b) Con. Stat. N.B. Chap. 122, Sec. 6(1).
(c) 15 N.B.R. 6.
(d) 21 N.B.R. 370.
(e) 30 N.B.R. 226.

Hallett v. *Allen*(f) in 1907, and thus settled the question as far as Judges of the Supreme Court are concerned.

The status of a review order by a County Court Judge was first passed upon in the case of *Ex parte Welling*(g) in 1875, where the Court, while holding that a County Court Judge has the same power on a review as a Judge of the Supreme Court, granted a certiorari to remove a judgment on review by a County Court Judge.

Then in *Ex parte Fahey*(h) in 1882 the Court held that a certiorari would lie to remove a review order by a County Court Judge if he had no jurisdiction to make the order. Weldon, J., dissented. "The appeal," he said at page 396, "is purely a statutory authority, and I think the certiorari should not be issued to bring up the judgment of the Judge granting a review on the proceedings had before him, the County Court Judge having the same power in review matters as a Judge of this Court, and it would be rather an anomaly to make an order for a certiorari to go to one of our own Judges. I think, therefore, this application must be dismissed."

In *Ex parte Simpson*(i) in 1882, Wetmore and King, JJ., held that a certiorari would lie to a County Court Judge. Judge Weldon adhered to his opinion in the *Fahey* case, and Palmer, J., held that certiorari would not lie if the County Court Judge had jurisdiction to make the order, even if he were wrong.

The point was not raised again until 1903 in the case of the *King* v. *Forbes*,(j) where the Court (Tuck, C.J., Landry, Barker and McLeod, JJ., Hanington and Gregory, JJ., taking no part) held that where a County Court Judge on review had wrongly decided that authority to accept a surrender of a lease was to be implied from certain circumstances, a certiorari should go, as the Judge was manifestly wrong in his decision.

In a later case the same year, *The King* v. *Wilson*,(k) Haning-

(f) 38 N.B.R. 349.
(g) 16 N.B.R. 217.
(h) 21 N.B.R. 392.
(i) 22 N.B.R. 132.
(j) 36 N.B.R. 333.
(k) 36 N.B.R. 339.

ton and Gregory, JJ., held that Supreme and County Court Judges are of co-ordinate jurisdiction in matters of review and orders made within their authority are final.

Then in 1910 in the case of *The King* v. *Wilson*,(l) Barker, C.J., Barry and McKeown, JJ., held that where there was no want or excess of jurisdiction a review order by a County Court Judge should not be disturbed; while Landry, McLeod and White, JJ., held that an order may be set aside to prevent a gross miscarriage of justice; and in the same year the Court (Barker, C.J., McLeod, White, Barry and McKeown, JJ.), held in *The King* v. *Wedderburn*,(m) that such an order was final if within the jurisdiction of the County Court Judge, even although the Court may think it was wrong, and this was followed in 1914 in *Ex parte Ault*(n).

The last case on the point was decided in the same year, 1914, and in *The King* v. *Jonah*(o) the Court held where a County Court Judge did not have jurisdiction on account of the order for review not having been legally served his decision was not final, and that a certiorari should go.

To attempt to draw any general conclusion from these cases would be useless, and any practitioner, having lost a review case before a County Court Judge, must decide from the circumstances of the particular case whether it would be advisable to apply for a certiorari.

It may be laid down, however, that if the County Court Judge acted without or beyond his statutory jurisdiction, the Court will not hesitate to grant a certiorari; while if the Judge had jurisdiction but his decision is manifestly wrong or works a gross miscarriage of justice, then it may be well to apply for a certiorari, and the Court will at least consider the matter and exercise their discretion according to the circumstances of the case.

HARTLAND, N.B. M. L. HAYWARD, B.C.L.

(l) 39 N.B.R. 555.
(m) 40 N.B.R. 285.
(n) 42 N.B.R. 548.
(o) 43 N.B.R. 166

NOTES FROM THE ENGLISH INNS OF COURT.

The Dublin Four Courts.

Lawyers in English-speaking countries the world over will have been concerned to hear that the Dublin "Four Courts" on the bank of the Liffey were made one of the rebel strongholds in the Dublin riots. It appears that the Bar Library was occupied as a hospital for wounded rebels, while the books were used to barricade the windows. It is gratifying to hear, however, that little harm was done to them, and at date of writing it is said that the Courts will soon be reopened. Members of the Irish Bar use the library to a greater extent than their English brethren. In the Inns of Court we have six libraries of reference namely, those of the Four Inns, the Bar Library at the northern end of the Royal Courts of Justice, and the Probate Library; but most members of the Bar are in Chambers which are fairly well equipped with law reports and books. The library of the Inn, however, is always available if some obscure authority has to be found. The Irish barrister has no "Chambers." He sees his clients either in one of the various consulting rooms near the Library, or at his own house.

Every evening a cart draws up at the Four Courts to collect the bags of various members of the Bar who have evening work to do. These are distributed round the town at various private houses to be called for again in the morning.

A Capel St. opinion.

In the olden days members of the Irish Bar used to reside on what is called the "North side" which was then the fashionable quarter of Dublin. On their way to the Four Courts they would walk along Capel St. The would-be litigant, unable through lack of means, to approach the counsellor in the orthodox manner, would lurk somewhere in the vicinity of Capel St. and endeavour to obtain a walking opinion from some member of the Bar on his way to or from the Courts. Hence the phrase "a Capel St. Opinion" the leading characteristic of which was that it was worth about as much as was paid for it!

A Lengthy Suit.

A case is now proceeding before a Judge alone in the English Chancery Division which bids fair to throw *Jarndyce* v. *Jardynce*—so well known to readers of "*Bleak House*"—completely in the shade; not perhaps in the matter of the years over which the litigation extended but in the matter of days on which it was before the Court. Nor, indeed, is there much chance of this piece of litigation coming to an end owing to the estate being all absorbed in costs as in *Jardynce* v. *Jardynce*.

The dispute concerns certain gold mines in South Africa and involves a sum of £500,000 or thereabouts. Although the fees paid to Counsel and witnesses and the costs generally are large they are not likely to absorb the whole of that sum.

The opening speeches and examination of witnesses took eighty-six days and the hearing is not yet concluded. It is anticipated that Counsel will occupy the Court for ten days more.

Insuring a Judge's Life.

Litigants who become involved in a lengthy suit are faced, of course, with the prospect of having to pay a large sum in costs. Moreover, they are speculating upon the contingency that the learned Judge will live long enough to be able to pronounce judgment. Some years ago a heavy commercial suit came on for hearing shortly before the beginning of the Long Vacation. After trial which lasted a month the learned Judge intimated that he would reserve judgment until next term. Realising that if anything untoward happened to prevent his giving judgment the trial would have to begin *de-novo* before one of his learned brethren, the parties put their heads together and insured his life (at Lloyd's) over the Long Vacation in such sum as would pay the costs of a second trial. They agreed to treat the necessary premium as costs in the cause. Fortunately no claim had to be made upon the underwriters.

Law Reports.

The Lord Chief Justice of England has recently given public expression to the view that too many cases are reported.

The same thing has been said before now by other distinguished judges, but it is a matter in which everything depends upon the point of view. The practitioner, groping amid the dusty tomes for an authority, is glad enough to find some case which even remotely bears upon the point which is troubling him. Even an *obiter dictum* which (according to a phrase quoted by Mr. Augustine Birrell), is, in the language of the law, "an individual impertinence, which, whether it be wise or foolish, right or wrong, bindeth none—not even the lips that utter it" may serve a useful purpose. Possibly when the Lord Chief Justice was inveighing against the practice of reporting too many cases, he had in mind one peculiarity of English reports which may or may not be a difficulty in Canada. We are embarrassed by the multiplication of reports.

We have the *Law Reports*, sometimes (but quite erroneously) described as the official reports; the *Law Journal Reports; Law Times Reports; "Times" Law Reports; Justice of the Peace, Local Government Reports;* the *Solicitors' Journal; Cox's Criminal Cases, Butterworth's Compensation Cases;* the *Reports of the Patent Cases* and the *Reports of Tax Cases*. Of these series all, save the last two, are private ventures. Were the other reports to cease publication to-morrow there would be no record, so far as the Government is concerned, of the proceedings of the Courts.

Even in the House of Lords, the reporter is appointed by the Incorporated Council of Law Reporting. The Reports do not all overlap. Thus the Reports of Patent Cases and Tax Cases contain notes of many decisions which are recorded nowhere else. On the other hand, the *Law Journal* reports every case which is to be found in the *Law Reports*. The editor of the *Law Reports*, however, excludes from his pages many cases which appear in the *Law Times* and the *"Times" Law Reports*.

How Reports are compiled.

When a learned judge has *written* his judgment, the task of the reporter is comparatively simple. But where he delivers it *ex cathedra*, difficulties begin to arise. No official shorthand note is taken, except in patent and revenue cases. True, one or other of

the parties may have retained a shorthand writer to take a note; but the note is not transcribed unless an appeal is contemplated. Nor can the transcript often be copied, without extensive emendation, into a *Law Report*. Needless repititions must be excised; while the *ipsissima verta* even of our greatest judges are not always the best of good English. Where there is no transcript, the reporter must needs fall back on his own note of what was said, and as knowledge of shorthand is not made a necessary qualification for a reporter the task is one of some difficulty. But the fact that all the judges revise their judgments for the *Law Reports* ensures the accuracy of what are the best records of English legal proceedings.

1, Brick Court, Temple, E.C. W. V. BALL.

A writer in the *Yale Review*, of some eminence, expressed the hope that Mr. Justice Hughes, of the Supreme Court of the United States, would withstand the allurements of the political leaders of the party with which he was identified before his elevation to the Bench to become a candidate for the Presidency of the United States, and gave good reasons for his belief that a descent from the Bench would be fraught with injury to the State and tend to imperil the usefulness of an important and highly respected Court. But the fond hope of the writer has, as we know, met with disappointment, for Ex-Justice Hughes is now in a stiff partizan fight between the "ins" and the "outs" for the greatest prize held out to the politicians of the nation to the south of us; and the lustre and dignity of the Supreme Court of the United States appears to have suffered, more or less, in the direction spoken of by the *Yale Review*.

REVIEW OF CURRENT ENGLISH CASES.

(Registered in accordance with the Copyright Act.)

CONTRACT—ALIEN ENEMY—SUSPENSION OF CONTRACT—DISSOLUTION OF CONTRACT.

Disbrigton Hematite Iron Co. v. *Possehl* (1916) 1 K.B. 811. In this action the plaintiffs claimed a declaration that a contract entered into by them with the defendants before the war for the supply of ore had been dissolved owing to the existence of the war, the defendants being a firm of alien enemies. By the contract in question, the defendants were to take a certain quantity of ore yearly, but if they failed to do so were to incur no liability beyond the loss of the control of the output of the plaintiffs' mine. The plaintiffs agreed to refer all continental purchasers to the defendant as their sole agents. In case of strikes or stoppage of their works from unforeseen causes, the plaintiffs were not bound to deliver and during the mobilization of the German army the defendants were not bound to take delivery. Twelve months' notice of discontinuance might be given by either party. The plaintiffs claimed that the contract was dissolved at the date of the declaration of war. On behalf of the defendants, it was claimed that the contract was only suspended with the conclusion of peace. Rowlatt J., who tried the action, however, upheld the plaintiffs' contention, because the contract involved the parties in a continuous relation involving efforts on both sides, the essence of which was continuity, and to suspend the contract for an indefinite time would be tantamount to making a new contract between the parties.

DISCOVERY—PRODUCTION OF DOCUMENTS—PRIVILEGE—OFFICIAL DOCUMENTS IN POSSESSION OF PRIVATE PERSON—PREJUDICE TO PUBLIC INTEREST.

Asiatic Petroleum Co. v. *Anglo Persian Oil Co.* (1916) 1 K.B. 822. This was one action to recover damages for the alleged breach of a contract by the defendants to sell to the plaintiffs a cargo of crude oil. The plaintiffs claimed production of certain letters sent by the defendants to their agents in Persia in which was contained certain information received by the plaintiffs from the Government, the disclosure of which it was alleged would be prejudicial to the public interests. Scrutton, J., having inspected the documents, held that they were privileged and the Court of

Appeal, Eady and Bankes, J.LJ., affirmed his decision, holding that no ground had been made for interfering with the discretion of Scrutton, J.

ADULTERATION—ARTICLE OF FOOD MIXED WITH INGREDIENTS RENDERING IT INJURIOUS TO HEALTH—CREAM MIXED WITH BORIC ACID—SALE OF FOOD AND DRUG ACT, 1875 (38-39 VICT. c. 63), ss. 3, 5—(R.S.C. c. 133, ss. 3 (*f*), 20, 32, 33).

Haigh v. *Aerated Bread Co.* (1916) 1 K.B. 878. This was a case stated by a magistrate; the defendants were accused of selling cream adulterated with boric acid, under the title of "preserved cream," which was a well-known commodity, but it was found that the mixture of boric acid with cream was injurious to health. The defendants contended that they were not guilty of any offence because the purchaser (a sanitary inspector), had asked for "preserved cream," and the magistrate was of the opinion that making the sale in such circumstances was no offence but the Divisional Court (Bray and Avory, JJ.), held that the cream was adulterated by being mixed with an ingredient injurious to health and should therefore be convicted: see R.S.C. c. 133, ss. 3 (*f*), 32, 33.

CONTRACT—IMPOSSIBILITY OF PERFORMANCE—SUPERVENING ILLEGALITY—SUPPLY OF GAS FOR STREETS—ORDER RESTRAINING LIGHTING OF LAMPS—DEFENCE OF REALM ACTS.

Leiston Gas Co. v. *Leiston* (1916) 1 K.B. 912. The plaintiff Co. in this case had contracted with the defendant, a municipal corporation, to supply them with lamps and connect them with the gas mains and furnish gas for lighting the streets of the municipality at a specified price per quarter. They accordingly supplied gas for the purpose, but owing to the war while the contract was current, the defendants were, under the Defence of the Realm Acts, prohibited from lighting their streets with gas and the question was whether this state of facts furnished defendants with a defence to the claim of the plaintiffs for three quarterly payments due under the contract and Low, J., who tried the action, held that it did not, and that as the contract was not merely for the supply of gas but also for furnishing lamps and connecting them with the mains, etc., it was impossible to distinguish between the amount agreed to be paid in respect of the plant, and the amount attributable to the supply of gas; and that, as the supply of lamps had not become unlawful and the

prohibition of their use was merely temporary in its character, the contract must be regarded as executed and the defendants were liable as claimed.

LICENSED PREMISES — SUPPLYING INTOXICATING LIQUOR — GRATUITOUS SUPPLY BY LICENSEE TO FRIEND WITHIN PROHIBITED HOURS.

Thompson v. *Davison* (1916) 1 K.B. 917. The giving of intoxicating liquor by a licensee of a public-house to a personal friend to be consumed on the premises, within prohibited hours, was held to be supplying liquor contrary to an order prohibiting sale or supply within certain hours.

CRIMINAL LAW—EVIDENCE—ACCOMPLICE—CORROBORATION OF EVIDENCE OF ACCOMPLICE BY WIFE OF ANOTHER ACCOMPLICE.

The King v. *Willis* (1916) 1 K.B. 933. The question in this case was whether the evidence of an accomplice could be sufficiently corroborated by the evidence of the wife of another accomplice, but who was not herself in any was implicated in the offence charged; or whether her evidence also needed corroboration. The Court of Criminal Appeal (Lord Reading, C.J., and Ridley and Avory, JJ.), held that such evidence was sufficient corroboration and did not need to be corroborated.

PRIZE COURT—TURKISH CARGO ON BRITISH SHIP—DISCHARGE OF CARGO IN BRITISH PORT—STORAGE IN BONDED WAREHOUSE—SUBSEQUENT OUTBREAK OF WAR WITH TURKEY—SEIZURE AS PRIZE AND DROITS OF ADMIRALTY.

The Eden Hall (1916) P. 78. This was a claim for the condemnation of a cargo of tobacco belonging to a Turkish merchant which, before the war, had been brought to England in a British ship and was stored in a bonded warehouse where it was seized after the outbreak of war with Turkey. It was attempted to distinguish the case from *The Roumanian* (1915) p. 26 (1916) A.C. 124, on the ground that the goods had been landed before the outbreak of war, but Evans, PP.D., held that that made no difference and that on the authority of that case the goods were lawfully taken as prize.

SETTLEMENT—POWER TO APPOINT NEW TRUSTEES—SUBSIDIARY SETTLEMENT—POWER IMPORTED BY REFERENCE—APPOINTMENT OF NEW TRUSTEE—EVENT NOT SPECIFIED IN POWER—INVALID APPOINTMENT—TRUSTEE ACT, 1893 (56-57 VICT. C. 53) S. 10, 25, 35 (R.S.O. C. 121, S. 4).

In re Sichel Sichel v. *Sichel* (1916) 1 Ch. 358. This was an application to determine whether the defendants had been duly appointed new trustees under a settlement, and if not, that they might be appointed by the Court under the provisions of the Trustee Act 1893. (See R.S.O. c. 121, s. 4). The case was simple in regard to the facts. In 1882, life policies were assigned to the trustees of a settlement made in 1877 to be held on the same trusts and "with, under and subject to the same powers as in the settlement of 1877 contained." The settlement of 1877 contained a power to appoint new trustees in case of a trustee becoming incapable to act, but did not include the event of a trustee becoming unfit to act. One of the trustees became incapable and the other unfit to act, whereupon the donees of the power appointed the defendants new trustees in their place. Doubts having arisen whether this appointment was valid, this application was made. Reville, J., held that the power to appoint new trustees contained in the settlement of 1877 was imported by reference into the subsidiary settlement of 1882, but on the authority of the decision of Kekewich, J., *In re Wheeler* and *DeRochon* (1896) 1 Ch. 315, he held that the donees of the power were restricted to the particular event specified in the power, and as the power in question did not extend to the case of a trustee becoming unfit to act, the appointment was bad. The learned Judge, however, expressed his disapproval of that case, and only followed it because it had been treated as an authority since 1896. He was clearly of opinion that the omission of the case of a trustee unfit to act in the settlement of 1877, was not indicative of a contrary intention "within the meaning of the Trustee Act, 1893, s. 10 (5.), as Kekewich, J., had held. We may observe that this sub-sec. 5 does not appear to be incorporated in the Ont. Trustee Act, R.S.O. c. 121 and therefore under that Act the exercise of the power would appear to have been valid and consequently in Ontario this case would not appear to be an authority.

HUSBAND AND WIFE—ALIMONY—ARREARS OF ALIMONY DUE AT HUSBAND'S DEATH—LIABILITY OF ESTATE OF HUSBAND FOR ARREARS OF ALIMONY.

In re Stillwell, Brodrick v. *Stilwell* (1916) 1 Ch. 365. This was an application by originating summons to determine whether a

deceased husband's estate was liable, and to what extent, for arrears of alimony payable to his wife under an order made by the Divorce Court under the Matrimonial Causes Act 1857 (20-21 Vict. c. 85), s. 17. It was contended that such an order does not constitute the alimony a debt, because the order is subject to variation by the Court: that it is not proveable as against the husband's estate if insolvent and therefore cannot be proved against his estate if solvent; but Sargant, J., held that the claim constituted a liability against the estate and he ordered it to be paid but not exceeding one year's arrears.

ADMINISTRATION—DEFICIENCY OF PERSONALITY TO PAY DEBTS —PAYMENT OF DEBTS BY EXECUTRIX OUT OF HER OWN MONEY —RECOUPMENT OUT OF TESTATOR'S REALTY—REAL PROPERTY LIMITATION ACT 1874 (37-38 VICT. C. 57) SS. 8, 10—(R.S.O. C. 75, S. 24, 25).

In re Welch Mitchell v. *Willders* (1916) 1 Ch. 375. In this case the sole executrix of a testator who died in 1885 paid certain debts of her testator, which the personal estate was insufficient to pay, out of her own money. Part of his realty was devised to the executrix for life and after her death to trustees for sale; and part of it was devised to trustees for sale. In the events which happened the executrix became sole trustee. She took no steps in her lifetime to obtain recoupment out of the realty and died in 1915. We do not notice that it is explicitly stated in the report when the debts were paid, but Sargant, J., in giving judgment, says that "she abstained for 30 years from taking proceedings" and that being the case, he held that her executor was now barred by the Statute of Limitations, ss. 8, 10 (see R.S.O. c. 75, ss. 24, 25) from recovering out of the realty.

FERRY—FRANCHISE—DISTURBANCE—CHANGE OF CIRCUMSTANCES —NEW TRAFFIC—DECLARATORY JUDGMENT.

Hammerton v. *Dysart* (1916) A.C. 57. This was an appeal from the Court of Appeal in the case of *Dysart* v. *Hammerton* (1914) 1 Ch. 822 (noted ante vo. 50, p. 435). The action was brought to restrain the disturbance of plaintiff's ferry. Warrington, J., held that there had been no disturbance, but nevertheless made a declaration that the plaintiff was entitled to the ferry as claimed. The Court of Appeal held that there had been a disturbance, and held that if there had not been, it would not be right to make any declaration of right. The House of Lords

(Lords Haldane, Parker, Sumner, Strathclyde and Parmoor) came to the conclusion that as the land shortly below the plaintiff's ferry on both sides of the river served by the plaintiff's ferry had been acquired for public purposes and the lands on the north side had been laid out as a public park in consequence of which the public resorted to it in large numbers, and for their convenience the park authority had licensed the defendant to moor a barge in the river adjoining the park to carry persons visiting the park across the river to the opposite side. This must be regarded as a "new and different traffic" from that for which the plaintiff's franchise had been granted, and was therefore not an interference with the plaintiff's ferry. But their Lordships agreed with the Court of Appeal that as the plaintiff had failed to establish any interference entitling him to relief, it would be improper to make any declaration as to his right to the franchise claimed by him.

PRIZE COURT—ENEMY CARGO ON BRITISH SHIP—DIVERSION TO BRITISH PORT—CARGO DISCHARGED INTO OIL TANKS—LIABILITY TO SEIZURE.

The Roumanian (1916) A.C. 124. A British ship, having on board at the outbreak of hostilities an enemy cargo, was diverted by the owners into a British port, and under their orders part of the cargo was discharged into oil tanks on shore. After the greater part of the cargo had been so discharged, the whole cargo was seized and condemned as lawful prize as droits of Admiralty. On behalf of the owners of the cargo it was contended that the cargo, being on a British ship before the outbreak of hostilities, was immune from seizure; and that even if liable to seizure while on board the ship, it ceased to be so when transferred to the oil tanks, which it was claimed were not within the port where the vessel was, and therefore beyond the jurisdiction of the Admiralty. But the Judicial Committee of the Privy Council (Lords Mersey, Parker, Sumner, and Parmoor and Sir Edward Barton) negatived all these contentions, and held that the jurisdiction of the Prize Court extended to the oil in the tanks and did not depend on the locality where the oil was seized but on the fact that it was taken as a prize, and that it was immaterial whether the tanks were within the port of discharge or not.

PRIZE COURT—PLEDGES OF ENEMY CARGO—CONSIGNEES UNDER BILL OF LADING—OWNERSHIP—BOUNTY OF CROWN.

The Odessa (1916) A.C. 145. This was another appeal from the Admiralty Prize Court. The prize in question was an enemy

cargo, the legal ownership of which at the time of seizure was in an enemy subject. It was claimed by a pledgee of the cargo who was holder of the bills of lading and named therein as consignee of the cargo. The pledgees had accepted bill of exchange for £41,153 1s. 5d., the price of the cargo and held the bills of lading as security. The Admiralty Court held that in determining the national character of property seized as prize, legal ownership is the sole criterion and therefore the claim of the pledgees was disallowed and with this conclusion the Judicial Committee of the Privy Council (Lords Mersey, Parker, Sumner and Parmoor and Sir Edward Barton) agreed, but their Lordships held that notwithstanding the Civil List Act 1910 (10 Edw. 7 and 1 Geo V. c. 28) the Crown might still exercise its bounty to redress cases of hardship to subjects or neutrals occasioned by decrees of the Prize Court.

CONTRACT—SALE OF SHARES—BREACH BY BUYER MEASURE OF DAMAGES—RISE IN VALUE AFTER BREACH.

Jamal v. *Dawood* (1916) A.C. 175. This, though an appeal from a Burma Court, is nevertheless deserving of attention because it turns on the construction of the Indian Contract Act which, as the Judicial Committe of the Privy Council holds, is merely declaratory of the common law on the point in question. The action was brought for breach by the buyer of a contract for the purchase of shares. After the breach the shares increased in value and the question then arose what is the proper measure of damages in such circumstances. The Judicial Committee (Lords Haldane and Wrenbury, and Sir John Edge and Mr. Ameer Ali) overruled the Court below and held that the damages are to be ascertained at the date of the breach and if the seller retains the shares he cannot recover any further loss if the market falls, neither is he liable to have his damages reduced if the market rises. The market value at the date of the breach is the decisive element.

RAILWAY—CARRIAGE OF GOODS—CONDITION IN CONSIGNMENT NOTE—GENERAL LIEN—STOPPAGE IN TRANSITU—PRIORITY.

United States Steel Products Co. v. *Great Western Ry. Co.* (1916) A.C. 189. This was an appeal from the decision of the Court of Appeal (1914) 3 K.B. 567 (noted ante vol 50, p. 617). The railway company had received certain goods for carriage from the United States Steel Products Company, the vendors, to Tupper

& Co., the vendees. The consignment note stated that the goods were received subject to the condition that they should be subject to a lien in favour of the railway company for the freight and charges upon such goods, and also to a general lien for any moneys owing to them by the owners of the goods for carriage. The property in the goods had passed to the buyers, but before delivery, the purchasers having become insolvent, the vendors stopped the goods in transitu. The freight charges in respect of the goods in question were paid to the railway company, but there was also a debt for freight due by the purchasers in respect of other goods, and the railway company claimed a lien under the consignment note in respect of such debt. Pickford, J., disallowed the claim as against the vendors, but the Court of Appeal allowed it. The House of Lords (Lord Buckmaster, L.C., and Lords Atkinson, Parker, Waddington, Parmoor, and Wrenbury) have now reversed the decision of the Court of Appeal and affirmed the judgment of Pickford, J., their Lordships holding that the condition in question did not expressly cut out the vendor's right to stop in transitu nor did it impliedly do so. Lord Parker seems to us to put the case in its true light when he says that, by the stoppage in transitu, the vendors again became the owners of the goods within the meaning of the condition, and that, as against them, the railway company could not claim a general lien except for debts due by themselves, their Lordships being agreed that the word "owners" in the condition must be taken to mean the persons for the time being entitled to demand and demanding possession of the goods.

PUBLIC AUTHORITIES PROTECTION ACT, 1893 (56-57 VICT. c. 61, s. 1)—LIMITATION OF TIME FOR BRINGING ACTION—CORPORATION CARRYING ON TRADE UNDER STATUTORY POWERS—NEGLIGENCE — STATUTORY DUTY — PRIVATE OBLIGATION — (R.S.O. c. 89, s. 13).

Bradford v. *Myers* (1916) A.C. 242. This was an appeal from the decision of the Court of Appeal (1915) 1 K.B. 417 (noted ante vol. 51, p. 245). The action was brought against the defendant, a municipal corporation, which under its statutory authority manufactured and sold coke. The defendant contracted to sell and deliver to the plaintiff a ton of coke, which, owing to the negligence of the defendant's servant, instead of being deposited in the plaintiff's cellar, was shot through the plate glass window of his shop. The action was not brought

within six months after the act complained of, and the defendant claimed the protection of the Public Authorities Protection Act, 1893 (see R.S.O. c. 89, s. 13). The Court of Appeal held that the act complained of was not done in the direct execution of any statute or in the discharge of a public duty or in the exercise of a public authority, but in the execution of a voluntary contract, and, therefore, the Act did not apply, and the House of Lords (Lord Buckmaster, L.C., and Lords Haldane, Dunedin, Atkinson and Shaw) agreed.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—TIME OF ESSENCE OF THE CONTRACT—DEFAULT OF PURCHASER—FORFEITURE OF MONEY—PENALTY—RELIEF AGAINST PENALTY.

Steedman v. *Drinkle* (1916) A.C. 275. This was an appeal from the Supreme Court of Saskatchewan. The action was brought for the specific performance of a contract for the sale of lands. The contract provided that time should be of the essence of the contract, and in case of default all payments made on account of purchase money should be retained by the vendors as liquidated damages. The contract price was $16,000, of which $1,000 was paid down and the balance was to be paid by yearly instalments of $1,000. Default having been made in the payment of the first instalment, the vendor cancelled the agreement. In these circumstances the plaintiffs, as assignees of the purchaser, sued for specific performance. The Supreme Court granted relief, relying on the case of *Kilmer* v. *British Columbia Orchard Lands* (1913), A.C. 319. The Judicial Committee of the Privy Council (Lords Haldane, Parker and Sumner), however, held that that case did not apply, because there, although the contract made time of the essence, the vendors had in fact waived it by agreeing to an extension of time. In the present case there had been no such waiver, and their Lordships held the condition to be binding, but, notwithstanding the terms of the contract that the payments made on account were to be retained as "liquidated damages," their Lordships held that this was in the nature of a penalty from which relief should be granted on proper terms.

ARBITRATION CLAUSE IN CONTRACT—DISPUTE ARISING OUT OF THE CONTRACT—CUSTOM AFFECTING RIGHTS UNDER CONTRACT—JURISDICTION OF ARBITRATOR TO DETERMINE EXISTENCE OF CUSTOM.

Produce Brokers Co. v. *Olympia Oil & Cake Co.* (1916) A.C. 314. In this case the simple question was whether, under a

usual arbitration clause in a contract, the arbitrators were entitled to determine whether or not any custom existed affecting the rights and liabilities of the parties under the contract. The Court of Appeal (Buckley, Phillimore and Pickford, L.JJ.), against their own view, but in deference to the cases of *Hutcheson* v. *Eaton*, 13 Q.B.D. 861, and *In re Northwest Rubber Co.* v. *Huttenbach* (1908), 2 K.B. 907, decided that they could not: but the House of Lords (Lord Loreburn, Atkinson, Sumner and Parmoor) adopted the view of the Court of Appeal, and in allowing the appeal overruled the two decisions above mentioned.

HABEAS CORPUS—ALIEN ENEMY—INTERNMENT—GERMAN-BORN SUBJECT.

Ex parte Weber (1916) A.C. 421. The House of Lords (Lord Buckmaster, L.C., and Lords Loreburn and Atkinson) have affirmed the decision of the Court of Appeal (1916) 1 K.B. 280*n*.

SALARY OF MEMBER OF PARLIAMENT—LIABILITY OF, TO CLAIMS OF CREDITOR—BANKRUPTCY.

Hollinshead v. *Hazelton* (1916) A.C. 428 may be briefly noticed. The House of Lords (Lords Atkinson, Shaw, Parker and Sumner), overruling the Irish Court of Appeal, held that the salary of a member of Parliament may properly be made available in bankruptcy to satisfy the claims of creditors of the bankrupt, and that the salary is not exempt by reason of its being intended to enable the member to support the dignity of his position.

ASSESSMENT—SCHOOL RATES—MUNICIPAL BY-LAW EXEMPTING PROPERTY FROM TAXATION—CONFIRMING STATUTE—CONSTRUCTION OF STATUTE—PUBLIC SCHOOLS ACT (1892) (55 VICT. c. 60 ONT.), s. 4.

Ontario Power Co. v. *Stamford* (1916), A.C. 529. This was an appeal from the Appellate Division of the Supreme Court of Ontario, the facts of the case being as follows: By the Public Schools Act, 1892 (55 Vict. c. 60 Ont.), s. 4, it is provided that no municipal by-law hereafter passed exempting any portion of the rateable property of a municipality from taxation, in whole or in part, shall be held or construed to exempt such property from school rates. In 1904 the plaintiffs passed a by-law fixing the assessment of the defendants, the Ontario Power Co., at $100,000 for the next twenty years. This by-law, not having received

the assent of two-thirds of the voters, was subsequently confirmed by an Act of the Provincial Legislature. Notwithstanding the by-law and confirmatory Act, the plaintiffs claimed the right to tax the defendant for school rates on an assessment of $900,000 and for general rates on the assessment of $100,000. The defendants disputed the right of the plaintiffs to tax the defendants for school rates on any assessment beyond $100,000. Falconbridge, C.J.K.B., who tried the action, gave judgment for the plaintiffs, and the Appellate Division affirmed his decision, which in turn is now affirmed by the Judicial Committee of the Privy Council (Lord Buckmaster, L.C., and Lords Haldane, and Sumner).

RAILWAY — LANDS TAKEN — COMPENSATION — SEVERANCE — IMPAIRED ACCESS—NOISE, SMOKE AND VIBRATION—DISJOINED PROPERTIES—RAILWAY ACT (R.S.C. c. 37) s. 155.

Holditch v. *Canadian Northern Ont. Ry.* (1916) A.C. 536. This was an appeal from the Supreme Court of Canada reversing a judgment of the Supreme Court of Ontario and restoring the award of arbitrators made under the Railway Act (R.S.C. c. 37) fixing compensation for lands taken by a railway. The lands taken were 20 lots in a block of land originally owned and laid out in building lots by the appellant or his predecessor in title, some of which lots had been sold, but three-fifths of which were still owned by the appellant. The arbitrators found that 49 other specified lots of the appellant were injuriously affected by the expropriation of the 20 lots, by reason of the access thereto being made more difficult owing to the construction of the railway and the raising of the grade of the streets at crossings, to the extent of $4,800. Also that 40 other lots were injuriously affected by reason of vibration, noise and smoke from trains, but as to neither of these claims did the arbitrators make any award of damages, considering that the Railway Act did not authorize them so to do. The Appellate Division of the Supreme Court of Ontario remitted the matter to the arbitrators holding that they were entitled to award damages for the injurious affection of both the 40 lots and the 49 lots as claimed, but the Supreme Court of Canada reversed that decision; and the Judicial Committee of the Privy Council (Lords Haldane, Parker and Sumner) have now affirmed the judgment of the Supreme Court of Canada. With regard to the claim for damages for injurious affection of lands Lord Sumner, who delivered the judgment of the Committee, says: "The basis of a claim for compensation for lands injuriously affected

by severance must be that the lands taken are so connected with, or related to, the land left, that the owner of the latter is prejudiced in his ability to use or dispose of them to advantage by reason of the severance. The bare fact that before the exercise of the compulsory power to take land he was the common owner of both parcels is insufficient, for in such case taking some of his land does no more harm to the rest than would have been done if the land taken had belonged to his neighbour . . ." The owner of the lands taken in this case was, as the Committee found, "one owner of many holdings, but there was not one holding, nor did his unity of ownership conduce to the advantage or protection of them all as one holding," and therefore, as the Committee held, the claim for damages for severance could not be maintaied. The claim in respect of vibration, noise and smoke was, the Committee, held, a claim arising out of the prospective use by the railway of the land taken, and was, as the Committee held, quite distinct from damage caused by the construction of the railway, and "it is well settled by decisions of the highest authority" that the use of land taken does not give rise to a claim for compensation.

COMPANY—DIRECTORS—BREACH OF DUTY—RATIFICATION BY GENERAL MEETING—VOTING POWER OF DIRECTORS.

Cook v. *Deeks* (1916) A.C. 554. This was an appeal from the Appellate Division of the Supreme Court of Ontario 33 O.L.R. 209. The facts were that three directors of a construction company in breach of their duty as directors obtained a construction contract for themselves, to the exclusion of the company and thereby in effect became trustees of the benefits of the contract for the company. By their votes as holders of three-quarters of the issued shares of the company they passed a resolution at a general meeting of shareholders declaring that the company had no interest in the contract. The Court below held that the resolution was valid and binding on the company, but the Judicial Committee of the Privy Council (Lord Buckmaster, L.C., and Lords Haldane, Parker and Sumner), were of the opinion that the benefit of the contract belonged in equity to the company and that the three directors could not validly use their voting power to deprive the company of that benefit and vest it in themselves. They accordingly directed an account for the benefit of the company, but gave the conduct of the proceedings to the plaintiff.

CANADA—INCORPORATION OF COMPANIES—LEGISLATIVE AUTHORITY OF PROVINCE—PROVINCIAL COMPANY—CAPACITY OF PROVINCIAL CORPORATION OUTSIDE PROVINCE—B.N.A. ACT (30-31 VICT. c. 3), ss. 12, 46, 91, 92—ONTARIO COMPANIES ACT (R.S.O. 1897, c. 191) 3. 9.

Bonanza Creek Gold Mining Co. v. *The King* (1916) A.C. 566. This was a petition of right brought by the Bonanza Creek Gold Mining Co., complaining of breaches by the Crown of agreements contained in certain leases of mining rights in the Yukon Territory; and the question involved was whether a company incorporated by a Provincial authority had capacity to do business and accept leases of property outside of the province. The plaintiff company was incorporated by charter granted by the Lieutenant-Governor of Ontario, issued under the authority of the Ontario Companies Act (R.S.O. 1897 c. 191). Cassels, J., directed the question of law to be argued, and in deference to what he considered to be the views of the Supreme Court of Canada dismissed the petition, and the Supreme Court of Canada, though divided in opinion on the questions involved, affirmed his decision. The Judicial Committee of the Privy Council (Lord Buckmaster, L.C., and Lords Haldane, Parker, and Sumner) differ from the Supreme Court of Canada. They point out that there is a difference between companies incorporated pursuant to a statute, whose powers are strictly limited by the terms of the Act authorizing their incorporation, and companies incorporated by charter granted by the Crown in exercise of its prerogative right—that in granting a charter of incorporation the Crown, through the Lieutenant-Governor, is exercising its prerogative right, although its mode of doing so may be regulated by statute; that companies incorporated by Provincial statutes or by charters of Lieutenant-Governors are under the B.N.A. Act incorporated, for provincial objects, and with such powers and rights as a provincial government can bestow and exercisable within the province. But in addition to the actual powers and rights which the Province can bestow, companies incorporated by charter have also a capacity to accept extra-provincial powers and rights. In the case of such a company the doctrine of *ultra vires* has no application, in the absence of any statutory restriction added to what is written in the charter. Such a company has the capacity of a natural person to acquire powers and rights. Therefore their Lordships held the plaintiff company had a capacity to accept the leases in question, and therefore that the hearing of the petition of right should be proceeded with. It will be well to bear in mind that, having regard to what is said in this case, it does not follow that

a company incorporated by provincial statute would necessarily have the same extensive capacity for acquiring extra-provincial rights and powers as a charter company is held to have; the rights and power and capacities of a company incorporated by statute being, as above mentioned, restricted to the terms of the statute under which it is incorporated. But as regards Ontario Companies: see now 6 Geo. 5, c. 35 (Ont.)

CANADA—LEGISLATIVE AUTHORITY—INSURANCE—"REGULATION OF TRADE AND COMMERCE"—INSURANCE ACT 1910 (9 & 10 EDW. 7 c. 32, D.)—B.N.A. ACT, 1867 (30–31 VICT. c. 3) ss. 91 92 (13) (2) (25).

Attorney-General of Canada v. *Attorney-General of Alberta* (1916) A.C. 588. In this case the question at issue was whether ss. 4, 70 of the Dominion Insurance Act (9–10 Edw. 7, c. 32), were *intra vires* of the Dominion Parliament. Section 4 prohibits the doing of insurance business in any province of Canada without first obtaining a Dominion licence, and section 70 prescribes a penalty for breach of the provision of s. 4. The Dominion Government sought to uphold the legislation as being an enactment regulating trade and commerce, but the Judicial Committee of the Privy Council (Lord Buckmaster, L.C., and Lords Haldane, Parker and Sumner) held that the sections in question were an invasion of Provincial rights respecting property and civil rights, and were *ultra vires*. A further question was propounded, viz., whether it would be competent for the Dominion Parliament to enact legislation prohibiting foreign insurance companies from doing business in all provinces or any province of Canada without a Dominion licence and their lordships held that under the B.N.A. Act s. 91 (2) (2s), it would be competent so to enact.

CANADA—LEGISLATIVE AUTHORITY OF DOMINION AND PROVINCES —INCORPORATION OF COMPANIES—POWERS AND CAPACITIES OF COMPANIES—B.N.A. ACT 1867 (30–31 VICT. c. 3) ss. 91 92.

Attorney-General for Ontario v. *Attorney-General for Canada* (1916) A.C. 598. This is still another case dealing with the relative rights of the Dominion and Provincial legislatures in regard to the incorporation of companies. The case arises on questions submitted to the Supreme Court of Canada. Seven questions are propounded, but they are not answered categorically, but simply by reference to the previous decisions of the Judicial Committee of the Privy Council in the following cases: *Bonanza Creek Gold Mining Co.* v. *The King; Attorney-General for Canada*

v. *Attorney General for Alberta* and *John Deere Plow Co.* v. *Wharton* 1915 A.C. 330 (noted vol. 51 p. 330.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—CONTINUING NEGLIGENCE OF DEFENDANT—PROXIMATE CAUSE OF INJURY.

British Columbia Electric Ry. v. *Loach* (1916) A.C. 719. This was an appeal from the Supreme Court of Appeal of British Columbia. The action was brought under the Families Compensation Act (R.S.B.C. 1911, c. 82) (sec R.S.O. c. 151). The circumstances of the case were that Benjamin Sands (of whose estate the plaintiff was administrator), was riding in a cart which crossed the defendant's tramway and whilst so doing the vehicle was struck by one of the defendant's cars and Sands was killed. The evidence was that the deceased and his companion did not observe the approach of the car until they were on the track, and it was too late for them to avoid the car, but that the motorman had seen the wagon when he was 500 yards distant and if the brake had been in efficient order the car could have been brought to a stop within 300 yards, but that the brake was and was known to be defective and consequently the car could not be stopped until after it had struck the wagon. The jury found that the deceased was guilty of contributory negligence in not having taken extraordinary precautions to see that the road was clear, but they also found that, although both parties were negligent, the defendants' motorman might, notwithstanding the deceased's negligence, have avoided the accident if the brake had been in effective condition. The Judge of the trial held that, as both parties were negligent and as there was no evidence of any further negligence on the part of the defendants, they were not liable; the Court of Appeal reversed his decision and gave judgment for the plaintiff and with that conclusion the Judicial Committee of the Privy Council (Lords Haldane, Parker, and Sumner) agree, and in doing so their Lordships refer with approval to the decision of Anglin, J., in *Brenner* v. *Toronto Ry. Co.* (1907) 13 O.L.R. 423. With reference to that case, it may be well to note on the question of ultimate negligence, their lordships say: "This matter was much discussed in *Brenner* v. *Toronto Ry. Co.*, 13 O.L.R. 423, when Anglin, J., delivered a very valuable judgment in the Divisional Court. The decision of the Divisional Court was reversed on appeal (1907) 15 O.L.R. 195; (1908) 40 S.C.R. 240, but on other grounds, and in their comments on the decision of the Divisional Court, Duff, J., in the Supreme Court, and also Chancellor Boyd, in *Rice* v. *Toronto Ry. Co.* (1910) 22 O.L.R. 456, 450; and Hunter, C.J., in *Snow* v. *Crow's Nest Pass Coal Co.* (1907) 13 B.C.R. 145, 155, seem to have missed the point to which Anglin, J., had specially addressed himself.

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Que.] LAFOREST v. FACTORIES INSURANCE CO. [May 2.

Fire insurance—Statutory conditions—R.S.Q., 1909, arts. 7034-7036—Conditions of application—Conditions indorsed on policy—Keeping and storing coal oil—Agent's knowledge—Waiver—Adjustment of claim—Offer of settlement by adjuster—Estoppel—Transaction.

As required by article 7034 of the Revised Statutes of Quebec, 1909, the statutory conditions were printed upon the policy of insurance, the application for the insurance did not refer to them but contained a condition that the insured should not use coal oil stoves on the premises insured. At the time the premises were destroyed by fire, coal oil was kept and stored there in excess of the quantity permitted by clause 10 of the statutory conditions, without written permission of the insurance company. The company had given no written notice to the insured pointing out particulars wherein the policy might differ from the application as provided by the second clause of the conditions.

Held, Brodeur, J., dissenting, that the law did not require the statutory conditions to be referred to in applications for insurance; that all applications for insurance to which the Quebec legislation applies must be deemed to be made subject to those conditions, except as varied under articles 7035 and 7036 Revised Statutes of Quebec, 1909, and that there was no necessity for the insurance company to give notice, as mentioned in the second clause of the conditions, calling the attention of the insured to the conditions indorsed upon the policy of insurance.

Per curiam.—Knowledge by an agent soliciting insurance that coal oil, in large quantities, was kept and stored upon the premises to be insured does not constitute notice of that fact to the company insuring them, nor does notice that coal oil in such quantities was kept stored upon the premises prior to the insurance involve knowledge that it would be kept there afterwards in violation of the conditions of the policy.

In the absence of proof that adjusting agents employed by the insurer had authority to dispose of the matter, the offer of settlement of the claim by the adjuster does not constitute waiver on the part of the insurer of objections which might be urged against the claim.

Appeal dismissed with costs.

G. G. Stuart, K.C., and *Crépeau*, K.C., for appellant. *A. Geoffrion*, K.C., and *Perrault*, K.C., for respondents.

Man.] MALLORY v. WINNIPEG JOINT TERMINALS. [May 25.

Railways—System of construction—Exposed switch-rods—Negligence —Verdict—Findings against evidence.

In accordance with what was shewn to be good railway practice, the tracks in the company's yards were provided with switch-rods which were left uncovered and elevated a slight distance above the ties. While in performance of his work, during the day-time, an employee sustained injuries which, it was alleged, happened in consequence of tripping on switch-rods while a car was being moved over the switch. In an action by him for damages, the jury based their verdict in his favour on a finding that the railway company had been negligent in permitting the switch-rods to remain in an exposed condition.

Held, per curiam, affirming the judgment appealed from (8 West W.R. 853), that the finding of negligence by the jury in regard to the switch-rods in question was against the evidence as to proper method of construction and could not be upheld. Idington and Brodeur, JJ., dissented on the view that evidence respecting the unsafe condition of the switch-rods had been properly submitted to the jury and their findings thereon ought not to be questioned.

Appeal dismissed with costs.

Wallace Nesbitt, K.C., and *McMurray*, for appellant. *O. H. Clark*, K.C., for respondents.

Ont.] CANADA CEMENT CO. v. FITZGERALD. [May 2.

Deed of land—Reservation—Right of passage—Changed conditions—Object of conveyance.

F. sold land to the Cement Company reserving by the deed "the right to pass over for cattle, etc., for water going to and from Dry Lake." The company, in using the land for excavating marl

deposit, cut away the shelving bank of Dry Lake and rendered it inaccessible for cattle.

Held, Fitzpatrick, C.J., dissenting, that cutting away the bank at this place without providing another suitable watering-place with a proper way leading thereto was an unwarranted interference with the rights of F., and the fact that the company purchased the land for the purpose of digging marl did not give them a right to extinguish F.'s easement of passage for his cattle.

Appeal dismissed with costs.

Tilley, K.C., and *Northrup*, K.C., for appellants. *Mikel*, K.C., for respondent.

Province of Nova Scotia.

COUNTY COURT.

Forbes, J.] REX *v.* HATT. [27 D.L.R. 638.

Notice of appeal from summary conviction—"Party aggrieved"—Who may appeal.

A notice of appeal given under Cr. Code, sec. 750, by the person convicted and which shews on its face that he appeals as such from the summary conviction made against him, need not specifically state that he is the "person aggrieved" (Cr. Code, sec. 749).

2. *Highways—Removing obstruction—Fence placed by municipal authority.*

The defendant charged under Cr. Code, sec. 530, with breaking down a fence erected across a road which had been a public highway, may set up in answer that the proceedings by which the Municipal Council purported to order the diversion of the highway and the closing of that portion thereof were irregular and invalid, and on its so appearing is entitled to have the charge dismissed by reason of his lawful right to remove the obstruction.

McQuarrie v. *St. Mary's*, 17 N.S.R. 497, referred to.

Arthur Roberts, for defendant, appellant. *D. F. Matheson*, for prosecutor, respondent.

ANNOTATION ON THE ABOVE CASE FROM D.L.R.

The sections of the Criminal Code specially dealing with notices of appeal in summary conviction matters are secs. 749 and 750.

Section 749 states who may appeal, in the following words:—

"Any person who thinks himself aggrieved by any such conviction or order or dismissal, the prosecutor or complainant, as well as the defendant, may appeal."

The phrase, "any person who thinks himself aggrieved," appeared also in the corresponding sections in Canadian statutes, from which sec. 749 is derived, *viz.*:—

(*a*) 32-33 Vict. Canada Statutes, 1869, ch. 31, sec. 65; 40 Vict. Canada Statutes, 1877, ch. 27, amending said sec. 65.

(*b*) Revised Statutes of Canada, 1886, the Summary Convictions Act, sec. 76.

(*c*) The Criminal Code, 1892, sec. 879, and continued in the various amendments to the Code, down to the present time, as it is now in said sec. 749.

The statutory enactment dealing with the notice of appeal is sec. 750. A glance at the history of this section is interesting and instructive.

If the words are really and fairly doubtful, then, according to well-known legal principles, and principles of common sense, historical investigation may be used for the purpose of clearing away the doubt which the phraseology of the statute creates: *The Queen* v. *Most* (1881), 7 Q.B.D. at p. 251, per Lord Coleridge, C.J.

(*a*) 32-33 Vict. Canada Statutes, 1869, sec. 65, the material part reads:—

"Provided that such person (*i.e.*, the aggrieved person) shall give to the prosecutor or complainant a notice in writing of such appeal, and the cause and matter thereof." In the schedule thereto a "General Form of Notice of Appeal against a Conviction" is given, but there is no statement or reference in such form requiring a recital that the appellant is a person aggrieved.

(*b*) Revised Statutes of Canada, 1886, the Summary Convictions Act, sec. 77 "b," reads:—

"The person aggrieved shall give to the prosecutor or complainant, or to the convicting justice, for him, a notice in writing (R) of such appeal." Form (R) is the form in the schedule of "Notice of Appeal against a Conviction," but there is no statement or reference therein requiring a recital that the appellant is the person aggrieved.

(*c*) The Criminal Code, 1892, sec. 880 "b," reads:—

"The appellant shall give to the respondent, or to the justice who tried the case for him, a notice in writing, in the form N.N.N. in schedule 1 to this Act, of such appeal."

The form referred to contains no statement or reference that the appellant is the person aggrieved.

This section has been amended, and no form is now prescribed by the amended section.

The Nova Scotia Summary Convictions Act also says (sec. 55), "any person who thinks himself aggrieved" may appeal, and sec. 56 (*b*) says that the appellant shall give a notice of appeal in the form D D in the schedule, but the form contains no statement or reference that the appellant is the person aggrieved.

Code sec. 750 reads:—

"(*b*) The appellant shall give notice of his intention to appeal by filing in the office of the clerk of the Court appealed to a notice in writing setting forth with reasonable certainty the conviction or order appealed against, and the Court appealed to, within ten days after the conviction or order complained of, and by serving the respondent and the justice who tried the case each with a copy of such notice."

Halsbury's Laws of England, in vol. 19, under the title "Magistrates," at p. 647, note, says with respect to summary convictions:—

"Where the right of appeal is given to an 'aggrieved party,' the *grounds* of appeal must shew that the appellant is aggrieved . . . But it is otherwise where the appellant is appealing against a conviction or order made against himself."

R. v. *The Justices of the West Riding of Yorkshire*, 7 B. & C., p. 678, and *R.* v. *The Justices of Essex*, 5 B. & C. 431, were cases under the Highway Act, where the justices, as our municipal councils under certain conditions now have, had the power to stop up or divert a highway. There were no parties to the proceedings, but any "person aggrieved," *i.e.*, a ratepayer or resident in the district, could appeal. Those cases are authority for the proposition that anyone appealing under such a statute and who is not a party to the record, must shew by his notice of appeal that he is appealing as a "person aggrieved," and when the appeal is heard he must qualify accordingly.

Further, in *R.* v. *Essex Justices*, the judgment expressly states that it was the construction the Court put upon the particular statute there in question, "without giving any rule for the construction of others."

And see *R.* v. *Somersetshire*, decided the same year, and reported in the note to *R.* v. *Yorkshire*, *supra*.

The opinion delivered in *R.* v. *Jordan*, 5 Can. Cr. Cas. 438, an appeal under the British Columbia Summary Convictions Act states:—

"Another point taken before me was, that the notice did not state that Jordan was the person aggrieved; the Act does not,

nor does the form in the schedule require that to be alleged. It would be quite superfluous to state that fact, as the man does say that he was convicted and fined $50. The inference that he is the person aggrieved is plain."

In *R.* v. *McKay* (1913), 10 D.L.R. 820, 21 Can. Cr. Cas. 211, it was held on an appeal from a summary conviction on a charge of assault that it is not essential that the notice of appeal given by defendant shall state explicitly in the language of Crim. Code sec. 749 that the defendant is a "person aggrieved."

In the judgment in that case Judge McLorg of the Saskatoon District Court said:—

"I know that for the past fifteen years notices of appeal without this allegation have continually been held sufficient, and I think it is too late now to entertain this objection, which is of the most technical character."

In *R.* v. *Nichol*, 40 U.C.Q.B. 46, cited in *The King* v. *Bryson* 10 Can. Cr. Cas. 398, the notice of appeal was held good although not signed by anyone. Mr. Justice Gwynne (afterwards of the Supreme Court of Canada) said:—

"We must, I think, read these notices, not with a critical eye but literally *ut res magis valeat*, and so as to uphold not to defeat the rights of appeal given to parties summarily convicted."

The expression, "party aggrieved," has been held not to be a technical expression, but one to be construed according to the ordinary meaning of the words: *Robinson* v. *Currey*, L.R. 7 Q.B. 465.

Where a statute gives a right of appeal "to any person who may think himself aggrieved" it is necessary that the appellant should have legal grounds for thinking himself aggrieved by what he appeals against: *Harrup* v. *Bayley* (1856), 6 Ellis & Bl. 218 (Lord Campbell, C.J., Erle, J., and Crompton, J.).

In that case Lord Campbell said: "The Act . . . gives an appeal to any person who 'may think himself aggrieved'; but that does not mean to any person who says or fancies he is aggrieved. Giving it a reasonable construction, the enactment means to give an appeal to any one who has legal ground for saying he is aggrieved. Now, how can such a provision apply to a person who wishes to complain of the act which he himself authorized and expressly required to be done?"

Crompton, J., in the same case, said: "The parties all thought that the application of the (town)funds would not be legal though it would be beneficial . . . Now, though others not parties to that resolution may be entitled to complain that it was acted

on, I think the appellant is precluded from saying that he is aggrieved by what was his own act."

Where a prosecution under a special Act may be brought only by "a person aggrieved," a summary conviction will be quashed unless the informant be a person who has sustained a loss or liability recognized by law by reason of the alleged offence: *R.* v *Frankforth* (1904), 8 Can. Cr. Cas. 57.

Section 749 is by its terms limited to the following adjudications made by a justice:—

(*a*) Convictions;

(*b*) Orders made by the justice for the payment of money;

(*c*) Orders dismissing informations or complaints.

The party who may appeal from any of the above is described in sec. 749 in the following terms: "Any person who thinks himself aggrieved by any such conviction or order or dismissal, the prosecutor or complainant as well as the defendant."

Part XV. of the Code outlines a general scheme of procedure applicable to summary conviction matters, and its provisions are not limited to such matters arising under other provisions of the Criminal Code. Part XV. applies, subject to any special provision to the contrary, wherever any person commits an offence for which he is liable under Federal law on summary conviction to punishment, and it also applies to cases where a justice can under Federal authority make any order "for payment of money or otherwise." See Code sec. 706.

It will be noted that the words "or otherwise" are not carried into sec. 749 which gives the right of appeal. Section 749 applies to an order made by the justice "for the payment of money." There are various enactments where justices may make orders of forfeiture or orders for the destruction of property and which are not orders for the payment of money, and could not be made the subject of appeal either under that heading or under the heading of convictions. See Code sec. 623 as to seizure and forfeiture of copper coin unlawfully imported; sec. 622, as to orders for impounding and destroying weapons carried by persons convicted under secs. 122 to 124 inclusive; and see the Canada Temperance Act as to orders for destruction of intoxicating liquors seized under process of search under that Act, and similar provisions under Code secs. 613 and 614 as to liquors found in proclaimed districts in the vicinity of public works.

The words "persons aggrieved," as applied to appeals from justices' orders seem to have come down through the various statutes of Canada above referred to from English statutes under which the right of appeal was not so limited as that given under

Code sec. 749. The phrase, "any person who thinks himself aggrieved," was an apt one to include not only the party to the proceedings against whom the decision of the justice had been given, but a person who had some direct and special property interest which was adversely affected by the justice's order. It was in fact applied to various orders which justices were empowered to make in furtherance of local government regulations. This is exemplified by the case of *Draper's Co.* v. *Haddon*, 57 J.P. 200.

The Drapers Company, who were freeholders of the roadways and footways of London Wall Avenue, considered themselves "aggrieved" by a conviction of a carrier for allowing a wooden case to remain on the footway longer than was necessary. The carrier contended the place was not a highway, as it was a *cul-de-sac*, and led only to houses belonging to the company, who paid the expense of repairing the roads, and claimed the right to put up a gate, but the carrier did not appeal, and the Q.B. Division held that persons whose legal rights were directly affected by the decision were the only persons "aggrieved" within sec. 33 of the S.J. Act, 1879, and entitled to apply for a case to question the conviction: *Drapers' Co.* v. *Haddon*, 57 J.P. 200, 9 T.L.R. 36.

It has been held by Judge Ouseley, of the Moose Jaw (Sask.) District Court, in *Gates* v. *Renner*, 24 Can. Cr. Cas. 122, that the effect of the words, "the prosecutor or complainant as well as the defendant," which are used in Cr. Code, sec. 749, in reference to the appeal given to "any person who thinks himself aggrieved" is to limit the right of appeal from the dismissal of an information in a summary conviction proceeding to the prosecutor or complainant. And in the same case it was held that it is ground for quashing an appeal under Cr. Code, sec. 749, from the dismissal of a summary conviction proceeding that the appellant has not shewn upon the appeal that he is the complainant and so within the limitation of Code sec. 749 as a party aggrieved by the order of dismissal; the Court to which the appeal is taken under a notice of appeal which does not state the appellant to be the complainant in the proceedings below is not bound to look at the information transmitted under Cr. Code, sec. 757, to ascertain whether the appellant was such complainant if the information was not put in evidence on the appeal.

Where an information is laid in the name of an individual describing himself as the agent of a society named, the society does not thereby become a party to the proceedings and it has no *locus standi* to appeal from the justices' order dismissing the charge. The notice of appeal must in such case be taken in the name of the

agent personally, otherwise it may be quashed: *Canadian Society* v. *Lauzon* (1899), 4 Can. Cr. Cas. 354 (Que.), 5 Rev. de Jur. 259.

Mr. Crankshaw, at p. 876 of his Annotated Criminal Code, 4th ed., says that a notice of appeal from a summary conviction "should state that the appellant is aggrieved by the conviction order appealed from." In support of this statement he cited the cases above referred to: *R.* v. *West Riding*, 7 B. & C. 678; *R.* v. *Essex*, 5 B. & C. 431. It will be seen, from the summary of these cases given above and the extract from Halsbury, that this statement is too wide and does not apply where the defendant himself is appealing from the conviction made against him. If anyone but the complainant or the defendant can have a status to appeal from a summary conviction, those cases would shew that such other party must state in his notice of appeal that he is a person aggrieved. Furthermore, Mr. Crankshaw cites at p. 877 the case of *R.* v. *McKay*, 21 Can. Cr. Cas. 211, in support of the conflicting proposition that upon an appeal from a summary conviction for common assault it is not essential that the notice of appeal shall state explicitly in the language of sec. 749 that the defendant is a "person aggrieved."

The Licensing Act, 1872, 35-36 Vict. (Imp.), ch. 94, sec. 52, had provided that if "any person feels aggrieved" by any order or conviction made thereunder by a Court of summary jurisdiction, he might appeal. It was held that the "person aggrieved" is the person who has been convicted, or against whom an order has been made. Where a license-holder was convicted, it was held that the landlord has no right to appeal to quarter sessions, though his interest may be indirectly affected by the conviction: *R.* v. *Andover JJ* (1886), 16 Q.B.D. 711, 50 J.P. 549, 55 L.J.M.C. 143, 55 L.T. 23, 34 W.R. 456. Mathew, J., said: "I am of opinion that sec. 52 applies to a person directly aggrieved by the order, and that a person who, like this owner, feels himself indirectly aggrieved by the order cannot appeal against it."

By a "person aggrieved" is meant *prima facie* the person against whom the proceedings were originally instituted (*ibid.*, A. L. Smith, J.).

But a mortgagee has been held under the Licensing Act to be sufficiently aggrieved by the refusal of the renewal of the tenant's license to be able to appeal to quarter sessions, if the mortgage made the mortgagee the attorney in fact for the license-holder in that respect: *Garrett* v. *Middlesex JJ.*, or *R.* v. *Garrett* (1884), 12 Q.B.D. 620, 53 L.J.M.C. 81, 48 J.P. 357, 32 W.R. 646. In general, the landlord, as such, is a stranger to the license (except in those cases where notice of a conviction is to be sent to him), and

cannot insist on appealing in his own right to quarter sessions against a conviction of the license-holder: *R.* v. *Andover JJ.* (1886), 16 Q.B.D. 711, 50 J.P. 549, 55 L.J.M.C. 23, 34 W.R. 456, 2 T.L.R. 546. Where, however, the renewal or transfer of a license is refused to his tenant, the landlord may join with the applicant in an appeal to quarter sessions as he is an aggrieved party under 9 Geo. IV. (Imp.), ch. 61, sec. 27. Compare *Ex parte Stott*, [1915] W.N. 362, 32 Times L.R. 84; *Re Imperial Tobacco Co.'s Trade-mark*, [1915] 2 Ch. 27.

And in a later case it was held that a prosecutor is not "aggrieved" by the defendant being acquitted: *R.* v. *Keepers of Peace, etc., of London* (1890), 25 Q.B.D. 357, 59 L.J.M.C. 146, 63 L.T. 243, 39 W.R. 11; *R.* v. *London JJ., Re Fulham Vestry* (1890), 55 J.P. 56.

These English cases shew the necessity for the present form of Code sec. 749 as regards the words "the prosecutor or complainant as well as the defendant." The complainant might be excluded as a "party aggrieved," were it not for those words in sec. 749.

In *R.* v. *Law* (1915), 25 Can. Crim. Cas. 251, it was held that a complainant was a "person aggrieved" so as to entitle him to proceed by certiorari to quash the defendant's summary conviction made by a justice in excess of his jurisdiction where the latter should have held a preliminary enquiry only.

War Notes.

The Lieutenant-Governor of the Province of Ontario has issued a Proclamation appointing August 4th, 1916, the second anniversary of the Declaration of War, as a day on which we should reaffirm our belief in the righteousness of the cause for which we are fighting, and our inflexible determination to continue the struggle until victory has been achieved. He also urges the calling of public meetings throughout the Province on the day mentioned for the purpose of stimulating the devotion and patriotism of our people and of embodying the above sentiments in appropriate resolutions and thereby uniting them effectively for the supreme effort which is necessary to bring the war to a victorious issue.

The Proclamation begins as usual in the name and under the authority of "George V., by the Grace of God, King, Defender of the Faith, etc." This is the only reference in the Proclama-

tion of the fact of there being a Supreme Being who overrules the destinies of the nations, and controls the issue of the present conflict.

The Lieutenant-Governor of each Province represents the King therein. The King is the Sovereign of a nation which professes the Christian religion, and Christianity is part of the law of the land (see ante Vol. 51, pp. 385, 474). The King is also recognised and styled the "Defender of the Faith," that is defender of the religious belief of this Christian nation.

This being so, surely it is becoming that any Proclamation from such a source should, when the occasion is appropriate, publicly recognise the existence and sovereignty of the Supreme Being who, "by the Grace of God," gives delegated powers to His Majesty the King and indirectly to His Honour the Lieutenant-Governor. Surely the occasion is appropriate; and one cannot read the Proclamation without a feeling that when it deals with such an anniversary and with a war, the most stupendous in the history of the world, and which has wrought such awful havoc and killed so many of Ontario's sons, it should have some reference to Him who said: "Oh that My people had hearkened unto Me, and had walked in My ways; I should soon have subdued their enemies and turned My hand against their adversaries." There is no such recognition in this Proclamation. Its language, from a merely patriotic and recruiting point of view, is excellent; but it is not what the occasion demands. It misses the mark. God is carefully left out, and the appeal for victory is hoped for as a result of the devotion and patriotism of men. No Christian people can afford to leave God out, and as the Proclamation comes from the governmental head of a great Province of the Empire, that Province as a unit leaves Him out.

Those who think as we do are in good company, and we quote the name of no high ecclesiastic, no sentimental woman, when we refer to the names of men known to warlike fame, the bravest of the brave, stern, hard-hitting soldiers such as Havelock, Stonewall Jackson, Gordon, Lord Roberts, and last, but not least, Sir David Beatty. These did not leave God out, and they were honoured for their faith. If the nation followed their example by a humble recognition of the God of Battles, peace would ere this have been signed at the point of the bayonet at the City of Berlin.

"When England can look out on the future with humbler eyes and a prayer on her lips, then we can begin to count the days towards the end."—Vice-Admiral Sir David Beatty, K.C.B.

Flotsam and Jetsam.

"Nemo mortalium omnibus horis sapit." Even *we* are occasionally rapped over the knuckles for some mistake or inaccurate expression, and so we should like to relieve our feelings by remarking on some inaccuracies of others. Let us begin with a volume of constant reference, and of great importance, and one which has occupied the thought and attention of most learned and presumably accurate people. A subscriber calls our attention to the Revised Statutes of Ontario and to some inaccurate (he said "sloppy") headings therein (of course, we knew this all the time but did not like to say so before). One of these is, "Constitution of the Provincial Courts" (p. 678). Presumably, what was meant was "Constitution of the Courts of the Province of Ontario," for, of course, Ontario has nothing to do with the Courts of other Provinces. Again, looking at page 676, we see the heading, "Dominion Courts of Canada." Our correspondent thinks, "Courts of the Dominion of Canada" would be less grotesque. Of course, these are only trifles, but as straws show which way the wind blows, these trifling matters raise a suspicion that more serious inaccuracies exist, and some say they do exist. Again, why is the Index put in a separate volume? It would be vastly more convenient if put at the end of each volume as formerly. Admittedly it would make a larger volume, but the inconvenience of handling a larger volume is as nothing compared to the annoyance occasioned by the present plan; and this difficulty would be obviated by using paper such as is used in the last edition of "Holmsted and Langton," or by the use of India paper. This would be more expensive, but the government of Ontario boasts of an ample surplus and some of it which is now spent foolishly might preferably be spent in this infinitesimal extravagance.

The Ontario Legislature has passed an Act whereby "the grants of $5,000 to the Canadian Patriotic Fund, $500 to the British Red Cross Society, and $500 to the Belgian Lawyers' Relief Fund made by the Law Society of Upper Canada are declared to be and to have been legal and valid and within the competence of the Law Society of Upper Canada."