Canada Law Journal.

VOL. XLI. NOVEMBER 15. NO. 22.

CHRISTOPHER ROBINSON.

At his residence, Beverley House, in the City of Toronto, in the seventy-eighth year of his age on the last day of October, there passed away from our midst one of the great lawyers and advocates of the Empire, and one of Canada's most worthy sons, Christopher Robinson, K.C., M.A., D.C.L.

As to some men who have made their mark in the world it is often difficult to foretell the place they will occupy in history, for they have lived, perchance, in troublous times, when great questions have divided men, and passions and prejudices have been aroused; but this was not the case with him of whom we now speak. He lived quietly and unostentatiously amongst us. In his younger days Toronto was a small place, and all knew him or knew of him. His reputation and the respect of his fellows grew with his growth; and though he came slowly and quietly to the front, his progress was sure; and for many years before he died he was regarded as the unquestioned leader of the Canadian Bar.

The life of Mr. Robinson must be sketched both as to his unique personality, and as to the estimate to be formed of him as a lawyer and advocate. In both respects, and especially the latter, his position was exceptional. He had been in truth for many years in a class by himself.

In his private life he secured the love of all who had the good fortune to be his friends by his gentle manners, his ready and unselfish helpfulness, his high sense of honour and his sterling integrity; and it may well be said that everyone who knew him was the better for being brought into contact with him. As a citizen, though taking but little part in public affairs, he enjoyed the respect of all. His was the highest type of a man—a man of whom Canada may well be proud—a gentleman in the truest sense of the word.

A casual acquaintance might have come to a wrong conclusion as to his force of character, if they judged him by his

modesty, his quiet manner and his extreme moderation in expressing his views on any subject; but behind all that was great strength arising from his innate and immovable rectitude. A man of strong convictions and firm as a rock when he thought he was right and had made up his mind, he was always so courteous and temperate in the expression of his views that none could take offence.

With his brethren of the profession, though he never sought popularity, none was more popular. Their affection was born of their admiration of his character and professional attainments, his unfailing courtesy, his kindly-given advice, his uniform consideration for others, his acknowledged fairness to his opponents and his accurate and never exaggerated statements. Students as well as seniors trusted him, believed in him, admired him and personally held him in the highest esteem and friendly affection.

As an advocate his position for some years past was unique; and though facile princeps, none were jealous of him. He was trusted by the Bench to a marked degree. The judges had absolute confidence in any statement he might make, for he had gained the reputation of never over-stating facts, never misleading the Court, or influencing their minds except by the force of his masterly arguments. Though a powerful and persuasive advocate his mind was eminently judicial. This was in truth one reason of his success, for he had the gift of always being able to see both sides of any case in which he was engaged.

This gift or habit of his, and it was both, naturally made him especially useful as a consulting counsel, and this, together with his great experience, his clearness of vision and his intensely logical mind gave him a judgment which was so unerring as to appear to be intuitive. It would be easy to refer to cases where his opinion, after it had been questioned and denied in intermediate Courts, was finally adopted by the highest tribunal. Nor was this sound judgment of his confined simply to legal propositions or the solving of difficult questions of fact; it was equally recognized in the affairs of every-day life and business. Very many can testify to the help he has given, in times of perplexity or doubt, to those who came to him for advice and counsel—so often sought and so freely given. The knowledge that Mr.

Robinson had expressed an opinion on some question of proposed litigation not infrequently resulted in there being no litigation, for he would have been a bold man who would enter upon a law suit in the face of an opinion of such a man against him.

Other features of his character have often been spoken of and might be enlarged upon; a marked absence of prejudice, so that he seemed to approach a subject with an open and unbiased mind, judging it on its merits and in its relation to all attendant circumstances—in business matters thorough, accurate and giving close attention to details. These valuable qualities, combined as they were with great intellectual gifts and a well recognized conciseness and clearness of expression, gave him a commanding position in his profession. His mental and physical activity and his interest in, and clear memory of, passing events was unimpaired by advancing years; and he continued to the end the same bright, cheery companion and warm personal friend he had always been. So swift and unexpected was his passing that although he had attained the ripe age of seventy-seven years the remembrance of him will remain with us as of one who retained to the last in a marked degree the freshness and vigour of youth.

Mr. Robinson was descended from a name-sake who, in the reign of Charles II., came from England to America as Military Secretary of the first Governor of Virginia, in which office he subsequently became his successor. The second son of this Christopher Robinson was John Robinson, President of the Council of Virginia, from whom was descended another Christopher Robinson, father of Sir John Beverley Robinson, Chief Justice of Upper Canada. Sir John's father was an ensign in the Queen's Rangers and served in that corps on the Royalist side until the Peace of 1783, when he came with other United Empire Loyalists to New Brunswick. Subsequently he moved to Upper Canada, where he was called to the Bar in 1797, residing at that time in Kingston, which he left for the Town of York, now Toronto, in 1798.

Christopher Robinson was the third son of Sir John Beverley Robinson, having been born at Beverley House, Toronto, January 21, 1828. He was educated at Upper Canada College, and took his degree at King's College, Toronto. In Trinity Term, 1850, he was called to the Bar of Upper Canada, and March 27th,

1863, was made a Q.C. In 1856 he became Reporter of the Court of Queen's Bench. He continued in that position until 1872, when he became the Editor of the Ontario Law Reports, but resigned on his election as a Bencher in 1885. In 1880 he completed the preparation (assisted by the late Frank J. Joseph) of a digest of all the cases contained in the Ontario Reports, from their commencement in 1822—a work of immense labour and invaluable to the profession. The first of the Upper Canada digests was made by Robert A. Harrison, while a student, under the supervision of James Lukin Robinson, in 1852; the next in order being made by Henry O'Brien, who subsequently entered into a partnership with Mr. Robinson, which continued for over thirty years.

As was the fashion in those days, men devoted themselves to special circuits, and Mr. Robinson chose the Western as his special field. The leaders of this circuit were at that time, John Wilson, Q.C., H. C. R. Becher, Q.C., Albert Prince, Q.C., and others. After the elevation of Mr. Wilson to the Bench, Christopher Robinson took the leading place, being engaged in nearly every case. Gradually, however, as his reputation increased, he devoted himself more and more to special work, his briefs being now largely confined to the Court of Appeal, the Supreme Court and the Privy Council; the rest of his time being occupied in the preparation of opinions on important matters.

Acknowledged leader of the Bar of his own Province of Ontario, we think we may safely say that he occupied the same position in reference to the Dominion. As such he was engaged in some of the most interesting and important legal events which have taken place in this country during the past thirty years. His reputation is also recognized in connection with many important interests affecting the Empire at large.

Mr. Robinson was in various important matters the confidential counsellor of the Government of Canada and the trusted representative of its interests in the great international questions hereafter referred to. His grasp of the subject and lucid and skilful presentation of the arguments in these matters were the admiration of all concerned.

It will now be of interest to refer to some of the most important cases of a public character in which he was engaged.

In 1868 the country was shocked by the death of one of the brilliant men of the day, the Hon. Thomas D'Arcy McGee, at the hands of his assassin, Whelan, who, being convicted of the murder, applied for a writ of error. Mr. Robinson's successful argument for the Crown in that case was a masterly effort, indicative of his minute and thorough familiarity with criminal law.

In 1875 party politics ran high, and out of this ferment grew the famous political suit of *The Queen* v. *Wilkinson*, the defendant being the editor of a newspaper in which the serious charge of political intriguing was made against Senator Simpson in connection with what was known as the "Big Push" letter. In connection with this the Hon. George Brown made a violent attack in the *Globe* newspaper upon the late Chief Justice Adam Wilson, then a puisne judge of the Queen's Bench. An application was thereupon made on behalf of Wilkinson, to commit Mr. Brown for contempt of Court. Mr. Robinson and Mr. Henry O'Brien were counsel for the applicant, Mr Brown conducting his defence in person with his usual force and courage, but repeating and emphasizing and seeking to justify the libellous charges made in his paper. The Court was composed of Chief Justice Harrison and Mr. Justice Morrison, Mr. Justice Wilson taking no part. The language used by Mr. Brown was held to be a reckless and unjustifiable attack on a judge of the Court and a contempt of Court; but, as the judges who heard the case were divided in opinion as to the action to be taken, the rule was dropped. Mr. Robinson's magnificent speech on this occasion will not be forgotten by those who heard it.

In 1884 Mr. Robinson was counsel for the Dominion Government in the arbitration with Manitoba respecting the boundaries of that province, arguing the case before the Judicial Committee of the Privy Council. In the next year he had a more serious task in connection with the North-West Rebellion, as senior counsel for the Crown, in the prosecution of Louis Riel for high treason, which resulted in the conviction and execution of that noted rebel. There was an appeal from the verdict to the Court of Queen's Bench of Manitoba. The verdict was sustained and a subsequent appeal to the Privy Council met the same fate. With Mr. Robinson were the late Mr. B. B. Osler, Q.C., and Mr. Burbidge, the present judge of the Exchequer Court of Canada.

Mr. Fitzpatrick, Q.C., now Minister of Justice, and Mr. Lemieux defended the prisoner.

The most famous matters of Imperial interest in which he has been engaged were the Behring Sea arbitration and the Alaska boundary dispute. In the former, in 1893, he represented the Dominion Government before the arbitrators at Paris, his colleagues being Sir Richard Webster, now Lord Alverstone, Sir Charles Russell, afterwards Lord Chief Justice of England, Mr. Box and Mr. Piggott; Sir Charles Hibbert Tupper being the agent in charge of the whole case for the Dominion. Amidst all the array of talent in this important international arbitration, not the least conspicuous figure was that of Mr. Christopher Robinson. The London *Times* refers in complimentary terms to his "brilliant speech at the conclusion of the argument, in which he summarized the whole case, reducing it to a series of concise propositions, which, from the British point of view, demonstrated the absurdity of the American claims." For his services in this case the learned counsel was offered knighthood, which, however, for private reasons, he declined. That he might have occupied, had he so desired, the highest judicial position in Canada goes without saying.

In his last great case, the Alaska boundary dispute, he was on the same side with the great leaders of the Bar in England, and pitted against the most brilliant advocates of the United States. The intellectual gifts of Mr. Robinson and his luminous and masterly presentation of the British case evoked the highest praise as well from the members of the Commission as from his opponents and his confreres. It is unnecessary to speak of the very many minor cases that were also entrusted to him. Suffice it to say that the same thoroughness was given to them, and he never failed to win distinction in all he undertook.

A great lawyer, a good man and a true friend—he has gone from among us; and those who were his associates at the Bar and in private life seem, day by day, to miss him more and more. But no one of his character and gifts could live in vain. His name and that of his distinguished father, of whom he was a worthy son, shed lustre on the pages of Canadian history, and his memory will long live and be cherished by all true Canadians.

Many have borne testimony to the life and character of Mr.

Robinson. The remarks of Chief Justice Falconbridge on the opening of the Divisional Court at Osgoode Hall, Toronto, the day after his death were as follows:—

"It has not been the practice of our Courts for the presiding judge to say anything in the case of distinguished members of the Bar who have passed away without occupying any official or judicial position; but the place occupied by the late Mr. Christopher Robinson was so exceptional and unique that I feel (occupying, as I do, the seat on this Bench so long occupied by his illustrious father), that it is right and fitting that the departing of so noble and worthy a son should not be allowed to pass without some tribute to his memory. There is no public or private expression of mine that can adequately voice my appreciation of his high character, and of the loss that we have sustained. His career will furnish a ready answer to those who have doubted whether it is possible to combine the position of a great advocate with that of the stainless Christian gentleman. He was the Chevalier Bayard of the Canadian Bar, sans peur et sans reproche. For more than forty years he has been to me personally, guide, philosopher and friend. His death is a cruel blow privately and an irreparable public calamity."

The only public position which Mr. Robinson could be induced to accept was the Chancellorship of the University of Trinity College. In that capacity he urged and, through his influence, accomplished the broad-minded policy of federation with the University of Toronto. As has been said by a leading daily journal, "How much his unique character and influence contributed to this apparently impossible accomplishment can scarcely be over-estimated. The feeling was that whatever so wise, so disinterested and so sure a counsellor advised was something that could safely be done."

We cannot here forbear quoting also from the *Canadian Churchman* an extract referring to the loss sustained both by the Church of England and by Trinity College in the death of Mr. Robinson.

"Strong in intellect; ripe in judgment; possessing unusual keenness of insight and quickness of comprehension, he was completely at home in both the principles and practice of his profession. On all occasions, great or small, and in all his dealings

with his fellow-men—even with those to whom he was opposed—he bore himself as a perfect gentleman. His courage was ever tempered with courtesy. His advocacy was exquisitely balanced by a chivalrous regard for the rights and character of others His honour was flawless, his word as to fact or law was implicitly accepted by the Bench, and respectfully regarded by the Bar. With all the distinction of high social position, great professional reputation, refinement of taste and cultivation of manner, he was yet one of the most modest and unassuming of men, easy of access, courteous, considerate and affable to a degree that almost suggested the grace and delicacy of a woman. How perfectly in keeping with the character and institutions of our country was that sincere and unaffected simplicity that respectfully declined titles and honours, which though tokens of the Crown's appreciation for great services rendered the State in the highest Courts of the realm, yet could not add a jot or a tittle to the honour of his name or the nobility of his character. It has been well said 'there was no one like him.' England had her Sir Philip Sidney; France her Chevalier Bayard, and Canada has had her Christopher Robinson. May we repeat the quaint, but touching, words of the Loyal Serviteur in referring to the virtues of the good Chevalier Bayard: 'All nobility was in truth beholden to put on mourning raiment on the day of the death of the good Chevalier sans peur et sans reproche; for I deem that since the creation of the world, as well within the Christian pale as the pagan there is not to be found a single man who less than he hath wrought dishonour or achieved more honour''; and referring to his death he said, 'Whereat all those who heard the news thereof were exceedingly grieved.' ''

The gathering of those who desired to pay their last tribute of respect to the deceased was the largest and most representative ever seen at the funeral of any private citizen in the City of Toronto. The Cathedral Church of St. James was packed to the doors, nearly all being men. His own family, consisting of his wife and daughter and three sons were also present, together with a large number of relatives. The service was conducted by the Bishop of Niagara, Rev. Canon Welch, Rev. Canon Cayley, of St. George's Church, and the Provost of Trinity College. The pall-bearers were six of his oldest and most intimate friends, Mr. Jus-

tice Street, H. O'Brien, K.C., T. C. Patteson, J. F. Smith, K.C., Huson Murray, Barrister, and Dr. F. L. Grasett. He was buried in St. James' Cemetery.

In 1879 Mr. Robinson married Elizabeth, the eldest daughter of the Hon. J. B. Plumb, of Niagara, afterwards Speaker of the Senate. He leaves four children, a daughter, Christobel, and three sons, Christopher Charles, John Beverley and Duncan Strachan. The eldest son has taken up the profession of the law and gives good promise of following in the footsteps of his illustrious father and grandfather.

CHRISTOPHER ROBINSON.

Ob. Oct. 31, A.D. 1905.—Ætat. 77.

God is no niggard when He makes a man
To stand as an exemplar to his time.
The strength that crowns him, and the aim sublime
Moulding his every action that we scan
Persuade us that not here is our true clime;
Not here in this low vale where Life began
But ends not, no, nor ever sees its prime,
Shall we the Soul's high mansion build or plan.

Even such an one was he who late hath gone,
Beyond our greetings and beyond our ken,
Into the Master's peace and benison.
Careless of honours prized by lesser men
From youth to age he held our homage, then
Ended at even-tide his course well run.

CHARLES MORSE.

SIR JAMES ROBERT GOWAN, K.C.M.G.

Of all those who in this country have received honour from the Crown there has been no one more entitled to it than the eminent and highly-gifted member of the profession who was on the King's birthday promoted to Knight Commander of the distinguished order of St. Michael and St. George. We congratulating him upon his promotion.

Apart from the many qualities of head and heart which have gained him the respect and affection of the many who gladly claim him as a friend, his services to the public have been very

great, and none the less because the public generally does not know how much it owes to one who has in a quiet way and behind the scenes, as it were, done so much to suggest, originate and shape legislation which has proved of the greatest benefit in the administration of justice, and incidentally to the great advantage of the country at large.

It is generally recognized that these honours, though all given for distinguished services to the State, may be classified under different heads, such as: Civil or military, industrial or professional. The honours so worthily bestowed in this case, is one in which all members of the legal profession will, in a sense, share and have a common interest. Sir James Gowan's chief claim to recognition is as a lawyer, and in connection with services which, being a lawyer, he was enabled to perform and carry to a successful completion. It was for reasons such as these that the Bar of Ireland, some years ago, gave him an ad eundum.

As we have but recently given a sketch of his life (see ante vol. 36, p. 513) we need not repeat what has there been said. And really it is unnecessary to enlarge, for all are glad to re-echo what we then said, that "his life has truly been a series of public services and patriotic efforts."

THE LAWS OF WAR.

The time is ripe for a second Conference of the Hague, and unless the Czar is prevented by the revolutionary doings within his empire from being present, next summer ought to see all the signatory Powers in attendance. Several important points have arisen out of the late war for the consideration of the Conference; and their determination will prove a boon to commerce and further mitigate the asperities of armed conflict. Perhaps the most important matter of all is the right of mail steamers to immunity from capture. It is well known that the mails are not used now by belligerents for the communication of information; the electric cable has taken the place of the mails for such a purpose. The only justification, then, that a belligerent can urge for the detention of a mail steamer is the fact that she may be carrying contraband. It has been suggested that this may be

overcome by the promulgation of a rule founded upon the agreement of nations that no contraband shall be carried on mail steamers. There ought to be no difficulty in enforcing such a rule by means of the Customs at the port of departure, and this being achieved both vessel and mails should be held immune from seizure.

Another matter demanding amelioration is the unrestricted right to use floating mines, to the great hazard of neutral shipping in much frequented waters. The use of floating mines is in the same category with the practice of poisoning wells, and has no countenance on the higher plane of international law. At the first Conference of the Hague it was agreed that for five years it would not be permissible to throw explosives from a balloon upon a hostile force; it is necessary that some permanent agreement be arrived at in this matter also.

A further point of great interest to commerce has been emphasized during the war. It is a rule of international law that neutral merchandize in a neutral bottom, although bound for a belligerent port, is exempt from capture; but this rule is rendered of no effect by the paramount right of a belligerent to sink vessels carrying contraband, be the amount never so small. A number of instances arose during the war where neutral bottoms were seized by the Russians and sunk on the charge of carrying contraband, although there was no judicial determination upon the charge. This license to destroy property without a proper judicial enquiry is not only unfair, but a barbaric survival unbecoming to our civilization. Such matters must be referred to the arbitrament of a Prize Court, and no confiscation allowed until the issue of contraband is first found by the Court in favour of the captor.

These and other matters arising during the war will go far to justify the expediency of calling a second Conference of the Hague to settle them. The dream, however, that peace among the nations can be maintained by means of conferences or even by national contracts to that end has been rudely dispelled. And in reference to this we notice that a writer in the *Spectator* in speaking of Mr. Carnegie's expectation of the total abolition of war calls attention to the manifest necessity of an appeal to arms for the preservation of the Union at the time of the Civil War in

the enlightened and professedly christian United States of America, and then, in view of that as an illustration, asks the unanswerable question, "How can we think it possible that war can be banished forever and deny that sometimes it must be the last argument?" The best apparently that can be done is to, in some measure, mitigate the horrors of war. The millennium has not yet come, and apparently is not likely to come except through seas of blood and nameless horrors, of which the French Revolution and the past and present condition of affairs in Turkey and Russia are but faint pictures and mild types.

Judicial changes in Canada have been so numerous for sometime past as to make the aspect of the Bench almost kaleidoscopic. The removal of Mr. Justice Maclennan to the Supreme Court to take the place vacated by Mr. Nesbitt left a vacancy which has been well filled by the appointment of Mr. Justice Meredith. This will strengthen the Court of Appeal. Mr. Justice Meredith has gained the reputation of being a sound lawyer and an excellent and most satisfactory judge. The Government has done well in making this appointment. It is said, though the appointment has not yet been made, that Mr. Mabee, K.C., of the Beatty-Blackstock firm is to take the vacant seat in the High Court of Justice. Mr. Mabee enjoyed a large practice at Stratford, and was well known as one of the leading counsel in Western Ontario. His appointment would be well received by the profession.

THE LAW OF AUTOMOBILES.

So far as we know there has been no litigation in connection with automobiles in this country which has come into our reports; but this modern juggernaut is sure to make law in Canada, as it has done (to a much larger extent than perhaps is generally supposed) in the United States. These machines were, of course, in use there long before they came into use here, and there are vastly more of them. We notice an article on the subject in the last number of *Law Notes*. We are told that in 1899 there were no decided cases on the subject. In fact there were only about fifty machines in existence in the United States at that time; but,

as manifestly appears from the article referred to, there are now quite a sufficient number of reported cases to warrant a conclusion that there has commenced a branch of the law peculiar to these monstrosities. It is amazing that there has not as yet been any litigation on the subject here, but it is sure to come. It will be of interest, therefore, to give our readers the benefit of our excellent contemporary's industry. The article reads as follows:—

The status of the automobile cannot be likened to any existing vehicle which travels over the highway. The bicycle perhaps comes the nearest to it. The motor car's freedom of navigation, speed, control, power, purposes, and the existence or non-existence of noise in running necessarily give to it a status of its own. This is demonstrated by recent legislation. It is a matter of common knowledge that an automobile is likely to frighten horses. It is propelled by a power within itself, is of unusual shape and form, is capable of a high rate of speed, and produces more or less of a puffing noise when in motion. All this makes such a horseless vehicle a source of danger to pedestrians and persons travelling on the highway in vehicles drawn by horses(*a*). An automobile is a "carriage" within the meaning of a statute requiring highways to be kept in a reasonably safe condition for travellers with horses, teams, and carriages(*b*).

The owner of an automobile has the right to use the highways, provided in using them he exercises reasonable care and caution for the safety of others and does not violate the law of the State(*c*).

The law does not denounce motor carriages as such on the

(*a*) *Christie* v. *Elliott*, 216 Ill. 31.

An automobile is a vehicle of recent times, carrying its motive power within itself, but as such it has the same duties to perform when meeting pedestrians or vehicles in the streets to which other vehicles are subjected. *Thies* v. *Thomas*, 77 N.Y. Supp. 276.

(*b*) *Baker* v. *Fall River* (Mass.) 72 N.E. Rep. 336, also holding that a person riding in an automobile was not precluded from recovering for an injury sustained by reason of a defect dangerous to ordinary vehicles. The court declined to consider the question whether the roads must be kept in such a state of repair and smoothness that an automobile can go over them with assured safety.

(*c*) *Christie* v. *Elliott*, 216 Ill. 31.

It was not negligence as a matter of law, to use automobiles on the public highways. *Indiana Springs Co.* v. *Brown* (Ind. 1905) 74 N.E. Rep. 615.

public highways, for so long as they are constructed and propelled in a manner consistent with the use of highways and are calculated to subserve the public as a beneficial means of transportation with reasonable safety to travellers by ordinary modes, they have an equal right with other vehicles in common use to occupy the streets and roads(*d*). In all human activities the law keeps up with improvement and progress brought about by discovery and invention; and in respect to highways, if the introduction of a new contrivance for transportation purposes, conducted with due care, is made with inconvenience and even incidental injury to those using ordinary modes, there can be no recovery provided the contrivance is compatible with the general use and safety of the road. It is, therefore, the adaptation and use, rather than the form or kind of contrivance, that concerns the Courts. It is improper to say that the driver of horses has rights in the road superior to the drive of an automobile. Both have the right to use the easement, and each is equally restricted in the exercise of his rights by the corresponding rights of the other. Each is required to regulate his own use by the observation of ordinary care and caution to avoid receiving injury as well as inflicting injury upon the other. And in this the quantity of care required is to be estimated by the exigencies of the particular situation; that is, by the place, presence or absence of other vehicles and travellers; whether the horse driven is wild or gentle; whether the conveyance and power used are common or new to the road; the known tendency of any feature to frighten animals, etc.(*e*). Although the right of an automobile

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(*d*) Because automobiles are novel and unusual in appearance, and for that reason likely to frighten horses unaccustomed to seeing them, is no reason for prohibiting their use. *Indiana Springs Co.* v. *Brown* (Ind. 1905) 74 N.E. Rep. 615.

(*e*) *Indiana Springs Co.* v. *Brown* (Ind. 1905) 74 N.E. Rep. 615.

In *Upton* v. *Windham*, 75 Conn. 288, which held that a town was liable for injuries resulting from a defect in a highway even though an automobile caused the accident by frightening a horse, it was said: "The passing of an automobile driven with ordinary care and at a reasonable speed, and the fright and shying of the gentle animal, constitute one of those events in the proper use of the highway calling for its maintenance in a safe condition, and the hurt which may be done to a traveller by an unsafe condition, in connection with such event, is one of those dangers to which travellers are exposed by defects in the highway, and in consideration of which the state has provided an indemnity when the danger ripens into an actual damage."

to use the streets and highways is undoubted, and the streets and highways must be used without interfering with the safety of others in the exercise of the same right, it has been held that subject to that limitation the right cannot be regulated by a city ordinance. The fact that an automobile is a comparatively new vehicle is beside the question. The use of the streets must be extended to meet the modern means of locomotion(*f*).

As to the regulation of automobiles, there can be no question of the right of the legislature, in the exercise of the police power, to regulate their operation on the public ways of the State. They are capable of being driven, and are apt to be driven, at such a high rate of speed, and when not properly driven are so dangerous, as to make some regulation necessary for the safety of other persons on the public ways(*g*). However, the constitutionality of automobile regulations has been very strenuously contested in not a few cases as class legislation and on other constitutional grounds. Thus an automobile Act of Illinois, passed in 1903, limiting the speed of automobiles upon public highways, and imposing certain duties upon the drivers of automobiles, was held not to be unconstitutional as class legislation discriminating against automobiles and other horseless conveyances(*h*). On the other hand it has been held that to compel, by a city ordinance, a party who uses his automobile for his private business and pleasure only to submit to an examination and to take out a license, is imposing a burden upon one class of

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In The Texas, 134 Fed. Rep. 909, it was held that an automobile, in which the motive power was generated by passing an electric spark through a compressed mixture of air and gasoline in the cylinder, causing intermittent explosions, carried a fire while in operation, so as to make its reception on a ferryboat while under its own power a violation of Act of Congress, Feb. 20, 1901, c. 386, forbidding the carriage of automobiles using gasoline as a source of motive power, unless all fire be extinguished before entering the boat.

(*f*) *Chicago* v. *Banker*, 112 Ill. App. 94.

(*g*) *Com.* v. *Boyd*, 188 Mass. 79.

The speed of automobiles may be regulated by a municipality, and reasonable safety appliances, such as gongs and brakes, may be required. *Chicago* v. *Banker*, 112 Ill. App. 94.

(*h*) *Christie* v. *Elliott* 216 Ill. 31, also holding that such legislation constituted a valid exercise of the police power of the state for the protection of the safety and welfare of society, and was not, therefore, unconstitutional as a deprivation of liberty or property without due process of law.

A statute of New York which provides for the registration of auto-

citizens in the use of the streets not imposed upon the others, and such an ordinance so far as it obliges the owner to take out a license before he can use his automobile in his own business, or for his own pleasure, is beyond the power of a city council and is, therefore, void(*i*).

The registration and licensing of automobiles is a wise statutory requirement. It is necessary that the vehicle should be readily identified to debar the operator from violating the law and the rights of others, and to enforce the laws regulating the speed, and to hold the operator responsible in cases of accident. It has been deemed that the best method of identification, both as to the vehicle and the owner or operator, is by a number on a tag conspicuously attached to the vehicle. In case of any violation of law this furnishes means of identification, for, from the number, the name of the owner may be readily ascertained and through him the operator(*j*). Legislation requiring registration and the display of numerals is constitutional(*k*). A license to operate an automobile has only a local

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mobiles and enacts that they shall have placed upon their backs, in a conspicuous place, the number of the certificate issued, is not invalid as class legislation because it provides that it shall not apply to a person manufacturing or dealing in automobiles or motor vehicles, except those for his own proper use, and except those hired out. The statute does not require an interpretation that the legislature intended to permit manufacturers and dealers to operate automobiles and motor vehicles which they have in stock and for sale upon the public highways without a number tag, but includes all automobiles regardless of the purpose for which they are owned or held. *People* v. *MacWilliams*, 91 N.Y. App. Div. 176.

An automobile Act of Illinois which provided that a person driving an automobile shall cause the same to come to a full stop whenever it shall appear that any horse driven or ridden by any person upon any street, road, or highway, is about to become frightened by the approach of any such automobile, until such horse or horses have passed, the title of the Act being "An Act to regulate the speed of automobiles and other horseless conveyances upon the public streets, roads, and highways of the State of Illinois," was held not to violate the constitutional provision concerning the titles of Acts, as the title embraced the subject of stopping the automobile. *Christie* v. *Elliott*, 216 Ill. 31.

(*i*) *Chicago* v. *Banker*, 112 Ill. App. 94.

(*j*) *People* v. *MacWilliams*, 91 N.Y. App. Div. 176; *People* v. *Schneider*, (Mich. 1905) 103 N.W. Rep. 172.

(*k*) *Com.* v. *Boyd*, 188 Mass. 79. See also *People* v. *MacWilliams*, 91 N.Y. App. Div. 176.

In *People* v. *Schneider* (Mich.) 103 N.W. Rep. 172, a city ordinance regulating the speed of automobiles and requiring them to be registered and to have attached to the rear a number of specified dimensions corresponding to the registration number, was held not to be a violation of the constitutional provision against unreasonable searches, or of that declaring that no person shall be compelled in any criminal case to be a witness

application. It affords no protection beyond the boundaries of the jurisdiction of the officer who issues it(*l*).

The high speed of automobiles has been the cause of the greatest complaint. Legislative enactments have sought to prevent excessive speed(*m*). It may be said that a person controlling the motive power of an automobile is driving it, within the meaning of a rule of a board of park commissioners providing that no one shall "ride or drive" in a parkway over a certain rate of

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against himself, or to be deprived of his liberty or property without due process of law. And the provision requiring the owner to pay one dollar to cover the cost of the number for his machine was held not to be objectionable, it being at most a mere means of regulation and not for revenue. See also *Com.* v. *Boyd*, 188 Mass. 79.

(*l*) *State* v. *Cobb* (Mo. App. 1905) 87 S.W. Rep. 551, holding that under the Missouri statute which provides that every party desiring to operate any automobile shall obtain a license from the license commissioner, if in a city having such commissioner, or, if desiring to operate the same in any county outside of the corporate limits of any such city or any of the public highways, streets, or roads of the state, shall obtain a license from the county clerk of such county, the owner of an automobile must procure a license from the county clerk of each and every county over whose public roads he may desire to run before he can lawfully operate his automobile on them.

(*m*) The Massachusettes statute of 1902, c. 315, which regulated the speed of automobiles throughout the state, was not intended to apply to park regulations. It referred to the speed of automobiles on public highways, streets and ways. This Act was repealed by Mass. Stat. 1903, c. 473, s. 15, and was superseded by section 8 of the same statute, which referred only to public ways or private ways, excluding parkways. *Com.* v. *Crowninshield*, 187 Mass. 221.

The provisions of the New York highway law to the effect that no ordinance or regulation adopted by the authorities of any city shall require an automobile to travel at a slower rate than eight miles an hour within the closely built up portions of the city, not at a slower rate of speed than fifteen miles an hour where the houses in such city upon any highway are more than 100 feet apart, and enacting that any person who shall violate any of the provisions of this statute, or of any speed ordinance adopted pursuant thereto, upon conviction thereof shall in addition to certain penalties be punished for the first offence by a suspension of his right to run an automobile for a period of not less than two weeks, were held not to fix a rate of speed or make it a crime to exceed any particular rate of speed, but that the provision simply operated to prevent the city authorities from fixing a lower rate of speed than eight miles an hour. *People* v. *Ellis*, 88 N.Y. App. Div. 471.

Under the Pennsylvania Act of April 28, 1899, (P.L. 104), the authority of a township of the first class to fix a maximum speed for automobiles was not suspended by the Act of April 23, 1903 (P.L. 268), which permitted, outside of cities and boroughs, a speed of twenty miles an hour.

In England, under the "Light Locomotives on Highways Order" of 1896, art. 4, it is provided that no person shall drive a light locomotive at any speed that is greater than is reasonable and proper, regard being had to the traffic on the highway. Under this it was held that a motor tricycle driven at a speed from eighteen to twenty miles an hour, there being no direct evidence that traffic was interrupted or affected, justified a conviction, since the words "having regard to the traffic on the highway" mean having regard to the traffic on the road and not that in the immediate

speed(*n*). The Court will take judicial notice of the high rate of speed at which automobiles may be driven(*o*). No operator of an automobile is exempt from liability for a collision in the public street by simply shewing that at the time of the accident he did not run at a rate of speed exceeding the limit allowed by law(*p*). The authority to pass regulations governing the speed of automobiles is unquestionable(*q*).

In reference to care in operating an automobile, the rule of the common law is and always has been that while a person might travel the highway with a conveyance or a loaded vehicle liable to frighten horses yet he must while doing so exercise reasonable care to avoid accidents and injury to others travelling along the highway(*r*). While automobiles are a lawful means of conveyance and have equal rights upon the public roads with horses and carriages, their use should be accompanied with that degree of prudence in management and consideration for the rights of others which is consistent with their safety(*s*). But every operator of an automobile has the right to assume, and to act upon the assumption, that every person whom he meets will also exercise the ordinary care and caution according to the circumstances and will not negligently or recklessly expose himself

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vicinity of the machine. *Smith* v. *Boon*, 34 L.T. 593, 49 W.R 480, 65 J.P. 486, 19 Cox C.C. 698.

Under the "Light Locomotives on Highways Order" of 1896, art 4, s. 1, to drive a light locomotive on a highway "to the common danger of passengers" is an offence, and a party who is shewn to have driven such a locomotive on a highway at a fast pace may be guilty even though there is a lack of evidence to shew that there were any passengers on the highway at the time. *Mayhew* v. *Sutton*, 71 L.J.K.B. 46, 86 L.T. 18, 50 W.R. 216.

(*n*) *Com.* v. *Crowninshield*, 187 Mass. 221.

(*o*) *People* v. *Schneider* (Mich. 1905), 103 N.W. Rep. 172.

(*p*) *Thies* v. *Thomas*, 77 N.Y. Supp. 276.

(*q*) See supra, note 7.

Under the Pennsylvania Act of April 28, 1899 (P.L. 104), a township of the first class possesses authority to pass an ordinance providing a maximum speed of ten miles an hour. *Radnor Tp.* v. *Bell*, 27 Pa. Super, Ct. 1.

An ordinance providing that on and after a certain date, all automobiles shall be propelled on the public highways at a speed not exceeding ten miles an hour was held not to be unreasonable, or insensible in form or wording so as to make it void. *Radnor Tp.* v. *Bell*, 27 Pa. Super. Ct. 1.

(*r*) *Murphy* v. *Wait*, 102 N.Y. App. Div. 121.

Where children are met on the street by an automobile, the operator is required to exercise more than ordinary care. *Thies* v. *Thomas*, 77 N.Y. Supp. 276.

(*s*) *Shinkle* v. *McCulloch*, 116 Ky. 960.

to danger, but rather make an attempt to avoid it. It is only when such an operator has had time to realize, or by the exercise of a proper lookout should have realized, that a person whom he meets is in a somewhat helpless condition or in a position of danger and, therefore, seemingly unable to avoid the coming automobile, that the operator is required to make increased exertion to avoid a collision (*t*). In turning corners a person, whether an adult or an infant, has the right to assume that the operator of an automobile will exercise care and respect the rights of pedestrians. Due care in operation requires, under such circumstances, that the vehicle should be slowed down and operated with diligence. At such a place the operator is bound to take notice that people might be at the crossing, or entering thereon; and this obligation on the part of the operator of the machine is one which a pedestrian has a right to assume will be observed (*u*).

Frightening horses has caused much litigation. The propensities of a horse, its liability to become frightened and its action at sight of the automobile are elements to be taken into account by the operator in coming on or passing a horse and carriage. He must do what reasonable care under the circumstances requires or what a statutory provision demands (*v*). The duty to stop the running of the machine where such a course is reasonably demanded by the circumstances and the exercise of due care, is a more or less well-defined positive duty. This duty exists

(*t*) *Thies* v. *Thomas*, 77 N.Y. Supp. 276.

(*u*) *Buscher* v. *New York Transportation Co.*, 94 N.Y. Supp. 796.

No matter how great the rate of speed may be which the law permits, the owner or operator of the automobile still remains bound to anticipate that he may meet persons at any point in a public street, and he must keep a proper lookout for them and keep his machine under such control as will enable him to avoid a collision with another person also using care and caution. If necessary he must slow up and even stop. No blowing of a horn or of a whistle, nor the ringing of a bell or gong, without an attempt to slacken his speed, is sufficient if the circumstances at a given point demand that the speed should be slackened or the machine be stopped, and such a course is practicable, or in the exercise of ordinary care and caution proportionate to the circumstances should have been practicable. The true test is that he must use all the care and caution which a careful and prudent driver would have exercised under the same circumstances. *Thies* v. *Thomas*, 77 N.Y. Supp. 276.

(*v*) See infra, notes 23 and 24.

A verdict for the plaintiff was held to be justified where his horse was frightened by an automobile, and ran away, causing injury to the horse, harness, and wagon, where there was evidence that the automobile, which

independently of statute(*w*), though in some jurisdictions express statutory provisions require the operator to stop the automobile(*x*).

Acts of the chauffeur in operating an automobile, within the authority of his employment, are the acts of a servant or agent. The relation of master and servant exists between the chauffeur and his employer, and the rules of law applicable to that rela-

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was of a crude and unusual construction, gave forth a loud puffing noise and could be heard for over two blocks; that the odor was pronounced; that there was a humming sound from its engine; that steam or smoke issued from the exhaust; that teams had been frightened by it; and that at the time of the accident it was passing the plaintiff's horse at a speed of ten to twelve miles an hour, and did not slacken until the horse became frightened. *Nason* v. *West*, 61 N.Y. App. Div. 40, reversing 31 Misc. (N.Y.) 583.

(*w*) Where a party operating an automobile knows, or should know by the exercise of ordinary care, that the machine in his possession and under his control has so far excited a horse as to render the horse dangerous and unmanageable, it is the party's duty to stop the automobile and take such other steps for safety as ordinary prudence might suggest. *Shinkle* v. *McCulloch*, 116 Ky. 960.

Where an automobile was driven at a speed of twenty miles an hour in the direction of the plaintiff, who was at a place from which he could not extricate himself except by the defendant stopping or slowing down to enable the plaintiff to reach a cross street, and the defendant saw that the plaintiff's horse had become frightened, and that he was in danger which was reasonably certain to increase by the approach of the motor car, it was held that it was the defendant's legal duty to stop and remove the plaintiff's peril, a neglect of which subjected him to liability for injuries. *Indiana Springs Co.* v. *Brown* (Ind. 1905) 74 N.E. Rep. 615.

(*x*) An Act of Illinois which provides that the person driving an automobile shall cause the same to come to a full stop whenever it shall appear that any horse driven or ridden by any person upon any street, road, or highway is about to become frightened by the approach of any such automobile, was held to mean that if it might appear to the driver of the automobile, by the exercise of reasonable diligence on his part, that the horse was about to become frightened, it would be his duty to stop. *Christie* v. *Elliott*, 216 Ill. 31.

The defendant's automobile was running along the highway and met a horse and wagon driven by the plaintiff's husband. The horse became frightened at the automobile and overturned the wagon, and the plaintiff was thrown out and injured. The claim was that the defendant was guilty of negligence in not stopping his machine when it was apparent that the horse was frightened and that an accident was likely to occur. Negligence was predicated on the principles of the common law and on the provisions of recent statutes of New York with reference to automobiles. By s. 3 of c. 625, p. 1421 of New York Laws 1903, it is provided that every person driving an automobile shall, at request or signal, by putting up the hand, from a person driving a restive horse, cause the automobile to immediately stop and to remain stationary, and upon request cause the engine to cease running so long as it may be necessary to allow the horse to pass. When the automobile came in view the horse was afraid, and plaintiff's husband got out of the wagon, motioned the automobile with his hand to stop, went to the horse's head and took him by the bit. The automobile stopped once and then started along towards and passed the horse. As it approached, the horse become unmanageable, reared and plunged, forcing

tion apply(*y*). Where the relation of master and servant does not exist and the operator is not acting within the employment of the master at the time of an injury, the master is not liable(*z*). Thus, where a chauffeur, contrary to the instructions of his master, takes out the master's automobile for his own pleasure, he is not acting within the scope of his employment so as to render his employer liable to third parties for his negligence(*a*). It is not the duty of a chauffeur in leaving an automobile on the street to chain the machine to a post or in some way fasten it so that it is impossible for it to be started by the act of a third party. The law does not impose upon him a degree of care that makes the starting of the machine impossible. It is his duty to exercise such care as a person of ordinary prudence would use under the circumstances(*b*).

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the wagon into the ditch, and injuring the plaintiff. It was held that there was a sufficient cause of negligence to go to the jury and it was error to have granted a nonsuit. *Murphy* v. *Wait*, 102 N.Y. App. Div. 121.

When horses are frightened by an automobile the duty of the chauffeur to stop the machine does not depend on his receiving a signal from the party in charge of the horses. *Christie* v. *Elliott*, 216 Ill. 31.

(*y*) Where it was shewn that the defendant was the owner of an automobile and that the operator or the chauffeur was in his employment for the purpose of operating the machine, it was held that there was a sufficient prima facie shewing that the chaffeur at the time of the collision was acting within the scope of his employment. *Stewart* v. *Baruch*, 93 N.Y. Supp. 161.

In *Collard* v. *Beach*, 81 N.Y. App. Div. 582, it was held that the court erred in refusing to give the following charge to the jury as requested: "If the jury finds either that the defendant left the automobile in charge of his son to take it home, or in charge of his son and coachman together to take it home, or in charge of the coachman alone, and the coachman neglected his duty in that regard and allowed the son to run the machine, and by the negligence of the son the accident occurred, without contributory negligence on the plaintiff's part, then in either case the defendant is responsible and liable for that negligence and its consequences."

(*z*) *Reynolds* v. *Buck* (Iowa 1905), 103 N.W. Rep. 946.

(*a*) *Stewart* v. *Baruch*, 93 N.Y. Supp. 161.

(*b*) *Berman* v. *Schultz*, 84 N.Y. Supp. 292, 40 Misc. (N.Y.) 212, holding that where a chauffeur left an automobile in the street temporarily, after turning off the power and applying the brake, and the automobile was started by the wilful act of boys, resulting in a collision with a wagon, the act of the boys was the proximate cause of the injury, and there was no liability on the part of the owner.

A writer in the *Albany Law Journal* discusses "Ambulance chasing," and therein makes a strong protest against the popular cap trap about dishonest lawyers. He says: "It is true there are dishonest lawyers, and no one knows it quicker or better than

the lawyer. But I am convinced, after twenty years of active life, that the proportion of dishonest lawyers is less than the proportion of dishonest farmers, business men, preachers and judges. Nor has any class of men on earth more temptations to be dishonest than lawyers, and such temptations do not come from the lawyer, either." In another place he speaks of the requirements for successful practice in these modern days:—"It means hustle; it means a clear conception of business principles and methods and the ability to apply them; the power to grasp facts and to classify them properly; a fair knowledge of human nature, and, above all, absolute honesty."

As to "Ambulance chasing" he has some appropriate sentences as to the doing of "claim agents" of railway companies, and others. These gentlemen are promptly on the ground after an accident and often induce the victim to sign iron-clad releases for entirely inadequate compensation, and often use most dishonest strategy and misrepresentation to that end. We fear there is good foundation for his remarks on that subject:—"It is but common knowledge among attorneys that even hospitals, their employees and the physicians are subsidized by railroads and other corporations to induce the injured taken there to sign releases and make settlements of their claims for little or nothing. Indeed, it is quite impossible to get an interview with one's client when taken to one of these hospitals after suffering injury before the physician and nurse have advised a settlement with the 'claim agent;' and all know that the injured are immediately followed to their homes by the claim agents, if not taken to a hospital and cajoled, deceived and tricked into signing releases for a few dollars, having been told that they were merely receipts." It is not surprising, therefore, that lawyers have found it absolutely necessary in order to protect their clients to be vigilant in securing interviews with them before the claim agent appears on the scene.

In his defence of the legal profession he has a word for the judges. We are glad to believe that some of his caustic remarks are more appropriate to those in his own country than in Canada. He thus writes:—"While it is necessary for the law-

yer to have the respect of clients and citizens generally, it is vastly more necessary that the Courts and judges have the respect of the lawyers and the people. Courts are not better than the judges that preside over them. Litigants lose a great deal less through the dishonesty of attorneys than through the inability, carelessness or selfishness of judges. One dishonest or incompetent judge will do more damage, financially and morally, in the community in one year than ten dishonest and incompetent attorneys can do in five years. It is doubtless well for Courts to have a guiding eye on all business transacted before them, but it is just as important that litigants and lawyers have a watchful eye on the Courts and the judges who preside over them. Judges are not angels. All good ones were good lawyers, and all poor ones were either bad lawyers or—something else. America is exceedingly fortunate in that most of her judges have been an honour to the courts over which they have presided and are presiding. But it is quite apparent that many men are ascending to those high positions through bad politics, who are qualified neither mentally or morally to hold the places."

There is nothing new in an adverse criticism of unnecessarily long judgments, and particularly as to any part of them which may be properly termed obiter dicta. But, as a writer in one of our exchanges says, "of what use are dissenting opinions. What good is accomplished by dissenting opinions, which are not an expression of the law, but of what it not the law." He cites a number of instances taken from the United States reports where the space devoted to dissenting opinions is largely in excess of that containing the judgment which lays down the law applicable to the case in point, and concludes with the following:—"Would not the suppression of these gratuitions opinions eventually tend to enhance respect and promote obedience to the law and teach us to submissively agree that what ever is, is right." We doubt if the evil (if it is an evil, and we think it is, certainly in a Court of last resort) is as great in this country as in the States; but by way of example it may be said that about one seventh of vol. 34 of the Supreme Court reports would have been saved if dissenting opinions ad been consigned to oblivion.

REVIEW OF CURRENT ENGLISH CASES.

LANDLORD AND TENANT — NOTICE TO QUIT — YEARLY RENT — HABENDUM "UNTIL SUCH TENANCY SHALL BE DETERMINED AS HEREINAFTER MENTIONED"—PROVISION FOR THREE MONTHS' NOTICE—EXPIRY OF NOTICE.

Lewis v. *Baker* (1905) 2 K.B. 576 was an action of ejectment by landlord against tenant, in which the question in dispute was the sufficiency of a notice to quit. The defendant held the premises under a written lease dated June 1, 1901, at a yearly rent, the habendum being "until such tenancy shall be determined as hereinafter mentioned," and it was subsequently therein provided that either party might determine the tenancy on giving three months' notice. On May 11, 1903, the landlord gave the defendant notice to quit on August 13, 1903. This notice was not complied with, and subsequently the landlord assigned his interest in the premises to the plaintiff, who relied on the notice to quit given in May, 1903. This Jelf, J., held was insufficient because in his judgment the tenancy was in fact a yearly tenancy terminable only by a three months' notice expiring with any year of the tenancy. The action was therefore dismissed.

HUSBAND AND WIFE—GOODS SUPPLIED ON ORDER OF WIFE—ACTION AGAINST HUSBAND AND WIFE—JUDGMENT AGAINST WIFE FOR PART OF DEBT—LEAVE TO DEFEND AS TO BALANCE—LIABILITY.

In *French* v. *Howie* (1905) 2 K.B. 580 the plaintiff sued husband and wife for goods furnished on the order of the wife; on a motion for summary judgment the wife admitted liability for £4 of the claim and judgment was given against her for that amount, and leave was given to husband and wife to defend as to the residue of the claim. The debt sued on was one debt, and at the trial the jury found that the husband was solely liable and judgment was given against him for the balance. He appealed from this judgment, contending that as the plaintiff had taken judgment against his wife for part of the debt he had thereby, according to *Morel* v. *Westmoreland* (1904) A.C. 11, precluded himself from proceeding against the husband for any part of the debt. But the Divisional Court (Lord Alverstone, C.J., and Kennedy and Jelf, JJ.,) overruled this contention, holding that the case was distinguishable from *Morel* v. *Westmoreland* on the ground that there the judgment against the wife was for the whole amount sued for, whereas here it was only for a

part, and that part not included in the amount for which judgment was awarded against the husband. Jelf, J., however, dissented and thought the case governed by *Morel* v. *Westmoreland*.

LIMITATIONS—REAL PROPERTY—INFANCY OF CLAIMANT—REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT. C. 57) S. 1—(R.S.O. C. 133, S. 4).

Garner v. *Wingrove* (1905) 2 Ch. 233 was an action to recover land, in which the defendant pleaded the Statute of Limitations. Joseph Meek, through whom the plaintiff claimed title, in 1883 placed the defendant in possession of the land in question as tenant at will, and he had ever since remained in possession without paying rent or giving any acknowledgment of title to Meek or anyone claiming under him. Meek died in 1888, having devised the land to trustees with power of sale. The trustees sold to Frederick Garner in 1891. Garner died in 1892, having devised the land to trustees to divide between the plaintiffs, both of whom were infants, and the sole question was whether the infancy of the plaintiffs was any answer to the defence of the Statute of Limitations, Buckley, J., following *Murray* v. *Watkins* (1890) 62 L.T. 796, held that it was not, and that the statute having begun to run in the lifetime of Meek, it was not stopped by any disability on the part of any subsequent owner of the land.

COMPANY—PROSPECTUS—NON-DISCLOSURE OF CONTRACT IN PROSPECTUS—SHAREHOLDER TAKING SHARES ON FAITH OF PROSPECTUS—PROOF OF DAMAGE—COMPANIES ACT, 1867 (30 & 31 VICT. C. 131) S. 38—(2 EDW. VII. C. 17, S. 34 (D.)).

Nash v. *Calthorpe* (1905) 2 Ch. 237 was an action brought by a shareholder of a joint stock company against three of the directors to recover damages occasioned to the plaintiff by the non-disclosure of a material contract in the prospectus of the company, contrary to the provision of the Companies Act, 1867, s. 38 (2 Edw. VII. c. 17, s. 34 (D.)). Joyce, J., who tried the action, held that the contract in question ought to have been specified in the prospectus, and that the defendants had "knowingly" issued the prospectus; he was not satisfied that no damage had been sustained by the plaintiff by reason of the omission, and he, therefore, directed an inquiry as to damages. On appeal, however, his judgment was reversed on the ground that it was incumbent on the plaintiff to shew that he was induced, by the omission to specify the contract, to subscribe for shares which otherwise he would not have done. This onus the plaintiff failed to satisfy in the opinion of the Court of Appeal (Williams,

Romer and Stirling, L.JJ.,), and therefore the decision of Joyce, J., was reversed and the action dismissed. Williams and Stirling, L.JJ., consider that the plaintiff in such an action is bound to prove that, but for the omission, he *would* not have applied for shares, whereas Romer, L.J., considers that it would be sufficient if he satisfied the Court that but for the omission he *might* not have applied for shares.

LESSOR AND LESSEE—OPTION TO PURCHASE FEE CONTAINED IN LEASE—EXECUTORS INTEREST IN LAND—PERPETUITY—COVENANT RUNNING WITH LAND—32 HEN. VIII. C. 34—(R.S.O. C. 330, S. 13).

Woodall v. *Clifton* (1905) 2 Ch. 257 is a case of first impression, and it is somewhat strange to find that such is the case. The action was brought against the assignor of a lessor by the assignee of the lessee to enforce an option to purchase the fee contained in a lease of land for a term of 99 years, which, according to the terms of the option, the lessee or his assigns were to be entitled to exercise at any time during the currency of the lease. The plaintiff contended that it was a covenant running with the land and therefore enforceable against the assignee of the lessor under 32 Hen. VIII. c. 34 (R.S.O. c. 330, s. 13), and that as the rule against perpetuities was held not to apply to such covenants, so it did not apply to the covenant in question. Warrington, J., who tried the case, held that the option conferred an interest in land, and was subject to the rule against perpetuities, and was, therefore, void. The Court of Appeal (Williams, Romer and Stirling, L.JJ.,) affirmed his decision, but on the ground that the covenant did not run with the land and could not be enforced against an assignee of the lessor, under the statute, 32 Hen. VIII. c. 34 (R.S.O. c. 330, s. 13); and as a contract binding on the land apart from the statute it could only be enforced provided it did not infringe the law as to perpetuities. Although covenants for renewal in leases are held to run with the land, yet this is regarded as anomalous and the result of decisions which it is not possible to reconcile with principle.

RAILWAY CONTRACT—CONTRACT TO BUILD STATION—SPECIFIC PERFORMANCE—DAMAGES—ULTRA VIRES.

In *Corbett* v. *South Eastern, etc., Ry.* (1905) 2 Ch. 280 the plaintiff sued the defendant railway for breach of a contract to build a railway station. The facts were as follows: In 1887 the Bexley Heath Ry. Co. obtained a private Act of Parliament which, for the protection of one Barron, contained a provision that the company should erect and maintain a station for passengers and goods at Well Hall close to Barron's property; and

this station was duly erected. In 1900 the Bexley Heath Ry.'s undertaking was vested by Act of Parliament in the defendants, who subsequently in good faith, and in ignorance of the provisions of the Act of 1887, agreed with the plaintiff to pull down the station at Well Hall and erect another station in lieu thereof nearer to the plaintiff's property; and it was for the specific performance of this contract that the plaintiff sued. The defendants contended that the Act of 1887 in providing for the station at Well Hall created certain public rights, and that the contract sued on was in derogation of those rights and was, therefore, ultra vires of the defendants without first obtaining Barron's consent; but Farwell, J., declined to accede to that contention, and held that the contract was valid, and as Barron's consent could not be obtained the plaintiff was entitled to damages for the breach of the defendant's contract with him.

WILL—VESTING—DEVISE TO A "WHEN" SHE SHALL ATTAIN 25.

In re Francis, Francis v. *Francis* (1905) 2 Ch. 295, a testator devised land to his niece Hilda "when she shall attain twenty-five years." She being still an infant, an application was made to Eady, J., to determine whether the devise was contingent, or whether it was vested, subject to being divested in case the devisee failed to attain twenty-five, and it was held that the devise was contingent, and that a residuary devisee in consequence, was entitled to the rents and profits of the property until the devisee should attain 25.

WILL — CONSTRUCTION — "BORN IN MY LIFETIME" — DIVESTING CLAUSE—CHILD EN VENTRE SA MÈRE.

In *Villar* v. *Gilbey* (1905) 2 Ch. 301 a testator devised land in strict settlement to the first and second sons of his brother, who were alive at the date of the will, with remainder to their first and other sons successively in tail, with remainder to the third and other sons of his said brother successively in tail. But the testator declared that his intention was that any third, or other son, born in the testator's lifetime, should not take a larger interest than an estate for life, with remainder to his issue in tail male. The brother's third son was at the time of the testator's death en ventre sa mère, and was born within a month after the testator's death. The question, therefore, for Eady, J., was whether this third son being en ventre sa mère could be deemed to have been born in the testator's lifetime, and he came to the conclusion that he could not, and that the words of the will must be strictly construed, as the result of holding the contrary would be to cut down the estate devised to him from an estate tail to an estate for life.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.] HEWSON *v.* ONTARIO POWER CO. [Oct. 24.

Constitutional law—Construction of statute—B.N.A. Act, 1867, s. 92, sub-s. 10 (c)—Legislative jurisdiction—Parliament of Canada—Local works and undertakings—Recital in preamble—Enacting clause—General advantage of Canada, etc. —Subject matter of legislation—Presumption as to legislation of Parliament being intra vires—Motion to refer case for further evidence.

In construing an Act of the Parliament of Canada, there is a presumption in law that the jurisdiction has not been exceeded.

Where the subject matter of legislation by the Parliament of Canada, although situate wholly within a province, is obviously beyond the powers of the local legislature, there is no necessity for an enacting clause specially declaring the works to be for the general advantage of Canada or for the advantage of two or more of the provinces.

Semble, per SEDGEWICK and DAVIES, JJ., (GIROUARD and IDINGTON, JJ., contra).—A recital in the preamble to a special private Act enacted by the Parliament of Canada, is not such a declaration as that contemplated by sub-s. 10 (*c*) of s. 92 of the B.N.A. Act, 1867, in order to bring the subject matter of the legislation within the jurisdiction of Parliament.

A motion, made while the case was standing for judgment to have the case remitted back to the courts below for the purpose of the adduction of newly discovered evidence as to the refusal, of Parliament to make the above-mentioned declaration was refused with costs. Appeal dismissed with costs.

Lafleur, K.C., and *H. S. Osler*, for appellant. *W. Cassels*, K.C., and *F. W. Hill*, for respondents.

Province of Ontario.

COURT OF APPEAL.

O'CONNOR *v.* CITY OF HAMILTON. [June 29.

Way — Non-repair — Negligence of municipal corporation — Notice of accident—Reasonable excuse for want of.

While the plaintiff was engaged in driving a watering cart along the street, the surface suddenly gave way, and the cart falling, or partly falling, into the hole thus caused, the plaintiff was thrown out and injured. The break in the street was caused by the falling in of a sewer pipe which had been laid some 12 or 14 feet below the surface of the ground. In an action to recover damages for the injuries, the negligence alleged was, that the street was at this time, and for a long time previous had been, out of repair and dangerous for travel, to the knowledge of the defendants; that the bed of the street was of quick sand; that the sewer pipe had been improperly and negligently laid therein.

Held, upon the evidence, reversing the judgment of a Divisional Court, 8 O.L.R. 391, that there was no sufficient evidence of the existence of surface indications of danger below, which the defendants could be charged with negligence in not having attended to before the day of the accident; and that negligence could not justly be imputed to the defendants either in the original construction of the sewer or the absence of subsequent examination and inspection.

Semble, as regards the question whether there was reasonable excuse for omission to give the statutory notice of the accident under section 606 of the Municipal Act, 3 Edw. VII., c. 19 (O.), that what may constitute reasonable excuse is not defined and must depend very much upon the circumstances of the particular case. Where there is actual knowledge or oral notice, it may be regarded as an element of the excuse, but something more is required. The fact of the accident, by itself, is not a reasonable excuse, if it is not accompanied by some disabling circumstance. The plaintiff was not misled by any one into not giving notice, and was under no disability except that of ignorance of the law.

Armstrong v. *Canada Atlantic R.W. Co.* (1902) 4 O.L.R. 560 explained.

F. MacKelcan, K.C., for the appellants. *William Bell*, for the plaintiff.

HIGH COURT OF JUSTICE.

Boyd, C., Meredith, J., Anglin, J.] [June 14.

RE HUYCK.

Will—Gift to religious society—"Charitable and philanthropic purposes"—Validity.

A testator gave his residuary estate "to the West Lake Monthly Meeting of Friends (Hicksite) of West Bloomfield, to be applied in charitable and philanthropic purposes, as said Monthly Meeting or Society may direct."

Held, that the gift was not void for uncertainty as to its objects, but was valid.

Williams v *Kershaw*, 5 L.J. Ch. 86, 11 Cl. & Fin. 111, 42 R.R. 269, followed.

Decision of TEETZEL, J., affirmed.

Watson, K.C., for executors and specific legatees. *Middleton*, for the other beneficiaries.

Meredith, C.J., Street, J., Britton, J.] [June 27.

MOLSONS BANK *v.* EAGER.

Vendor and purchaser—Incumbrance—Lis pendens—Adverse claims to purchase money—Interpleader—Rule 1103(a).

A certificate of lis pendens is not an incumbrance within the meaning of R.S.O. 1897, c. 119, s. 15.

One who had contracted to purchase land was sued by his vendor for the purchase money, and an action was brought in respect of the same land by creditors of the vendor's husband, seeking to set aside a conveyance of the land by the husband to the wife.

Held, that, although the purchase money was not actually claimed in the latter action, yet, as the plaintiffs therein appeared upon an interpleader application by the purchaser and stated their willingness that the purchase should be carried out, the purchase money being applied to pay the debts of the husband, they were making an "adverse claim" to the purchase money, within the meaning of Rule 1103 (*a*), and the purchaser was entitled to an interpleader order.

Decision of ANGLIN, J., reversed.

D. L. McCarthy, for purchaser. *H. M. Mowat*, KC., for vendor and others. *J. A. Macintosh*, for plaintiffs.

Boyd, C., Anglin, J., Magee, J.] [June 29.

GAMBELL *v.* HEGGIE.

Seduction—Evidence of plaintiff's daughter—Rape—Question for jury.

In an action by a father for the seduction of his daughter the jury disagreed, and a motion was made by the defendant for judgment dismissing the action under Rule 780. The plaintiff's daughter swore that the defendant was the father of her child, but that the connection effected with her by the defendant was by force and without her consent. The daughter was not in the plaintiff's service or living at home at the time of the seduction.

Held, that it was for the jury to say, on the evidence of the daughter (even if no other evidence was given) whether or not they accepted her whole statement; they might be satisfied as to the connection and paternity, and discredit the evidence of force.

Vincent v. *Sprague*, 3 U.C.R. 283, and *Brown* v. *Dalby*, 7 U.C.R. 162, discussed.

Judgment of TEETZEL, J., reversed.

Blain, for plaintiff. *Middleton*, for defendant.

Boyd, C., Anglin, J., Magee, J.] [June 29.

RE DEWAR AND TOWNSHIP OF EAST WILLIAMS.

Municipal corporations—By-law—Local option in intoxicating liquors—Right of council to pass upon by-law approved by electors—Procedure at meetings—Defeat of motion—Subsequent re-introduction and adoption—Statute—Imperative or directory.

A local option by-law of a township was voted upon and approved by the electors on the 2nd January, 1905, and was finally passed by the unanimous vote of the council at a special meeting held Jan. 21, 1905. It was objected that the council had no power to pass the by-law on that day, because at a meeting of the council on the 9th January, when only four of the five members were present, a motion for the final passing was negatived as the result of two voting for the motion and two against.

Held, that it was competent for the council at the special meeting of January 21 to reconsider their action, to reverse it, and, without again introducing and submitting the by-law to the vote of the electors, to pass it.

Re Wilson and Town of Ingersoll (1894) 25 O.R. 439 commented upon.

Per ANGLIN, J.:—The first sentence of s. 373 of the Municipal Act, 3 Edw. VII. c. 19 (O.), is not imperative; notwithstanding

the approval of the electors, the council may still reject the by-law, and are not bound to pass it.

Decision of BRITTON, J., affirmed.

Haverson, K.C., for applicant. *Masten*, for township corporation.

Boyd, C.] IN RE SMITH. [Sept. 22.

Wills—Constitution—Gift of entirety followed by inaccurate enumeration of particulars—"All my real estate composed of, etc."

The rule of construction that the entirety which has been expressly and definitely given shall not be prejudiced by an imperfect and inaccurate enumeration of the particulars of the specific gift, is applicable to testamentary dispositions whether of land or personal property by virtue of the Wills Act and the Devolution of Estates Act; and so applied in this case, when the testator devised "all my real estate, being composed of," etc., and proceeded to mention a lot which was an accurate designation of the estate at the date of the will, but not at the date of the death.

Hutchison, K.C., for the executor. *Raney*, *J. E. Jones* and *M. C. Cameron*, for other parties.

Street, J.] GIBSON *v.* LE TEMPS PUBLISHING CO. [Sept. 29.

Lien of solicitor on money paid into Court as security for costs —Priority of execution creditor—Stop order.

Money paid into Court by a plaintiff in an action, as security for costs is not property "recovered or preserved" by the solicitor for the plaintiff within the meaning of Con. Rule 1129, on which the solicitor's lien for costs will attach as against an execution creditor who has obtained a stop order.

W. H. Barry for applicant. *D. J. McDougal*, for solicitors.

Britton, J.] ROYAL TRUST CO. *v.* MILLIGAN. [Oct. 10.

Arbitration—Partnership—Nomination of arbitrator to adjust accounts—Staying action.

A partnership agreement contained a provision by which the parties thereto nominated and appointed a named person "as sole and final arbitrator in case of the death of either of the partners before the expiration of the said contract to finally adjust and settle all matters between the survivor and the personal representatives of the deceased partner within such time and on such conditions as he may see fit."

Held, upon the application of the surviving partners in an action brought against them by the personal representatives of the deceased partner to have the accounts of the partnership wound up, that this clause applied, and the action was stayed and a reference to the arbitrator directed.

Latchford, K.C., for defendants. *Orde,* for plaintiffs.

Divisional Court.] [Oct. 17.

GEIGER *v.* GRAND TRUNK RY. CO.

Damages—Nervous shock—Impact—Railway.

The plaintiffs were rightfully travelling on a highway in an enclosed vehicle, which was struck by a moving car of the defendants, pushed a short distance sideways, and struck on the other side by a car moving in the opposite direction. The plaintiffs suffered no visible bodily injuries except slight bruises, but complained of mental or nervous shock, and a jury assessed damages therefor.

Held, that they were not entitled to recover.

Victorian Railway Commissioners v. *Coultas* (1888) 13 App. Cas. 222, and *Henderson* v. *Canada Atlantic Ry. Co.* (1898) 25 A.R. 437 followed.

Judgment of TEETZEL, J., reversed, CLUTE, J., dissenting.

Riddell, K,C. for appellants. *DuVernet* and *Boultbee,* for respondents.

Divisional Court.] REX *v.* BRECKENRIDGE. [Oct. 19.

Alien Labour Act—Consent to prosecution.

The written consent required by sub-s. 3 of s. 3 of the Alien Labour Act, 60 & 61 Vict. c. 11 (D.), as amended by 1 Edw. VII. c. 13 (D.), for the bringing of proceedings for the recovery of the penalty for an offence against the Act must contain a general statement of the offence alleged to have been committed, the name of the person in respect of whom the offence is alleged to have been committed, and the time and place with sufficient certainty to identify the particular offence intended to be charged.

A consent "to a summary prosecution being maintained under the provisions of the Alien Labour Act against A. for violations of the above Act and amendments thereto," is not sufficient. Conviction quashed.

W. H. Blake, K.C., for defendant. *J. G. O'Donoghue,* for private prosecutor.

COUNTY COURT OF HURON.

REX *v.* LEWIS.

Liquor License Act—Resolutions of License Commissioners—Ultra vires—Two bars in one tavern.

Held, 1. The erection of an additional bar in a license hotel for one day is not a violation of s. 65 of the Liquor License Act, R. S. O. c. 246, "That not more than one bar shall be kept in any license house or premises licensed under this Act," or of a resolution of a License Board that "The bar room in every tavern shall consist of one room only."

2. A resolution of License Commissioners imposing a penalty of not less than $25 and not more than $50 and costs and in default of distress imprisonment for not less than 20 days nor more than 40 days is *ultra vires*, the penalty being in excess of that provided by s. 100 of the Liquor License Act.

[GODERICH, Sept. 14, 1905.—HOLT, Co. J.

Appeal from a conviction made by Charles Humber, Police Magistrate for the Town of Goderich, dated August 11, 1905, for a violation of a resolution of the License Board of West Huron providing that the bar room in every tavern shall consist of one room only.

The defendant, P. B. Lewis, was a duly licensed hotelkeeper and is the landlord of an hotel in the Town of Clinton, County of Huron.

The License Commissioners for the West Riding of Huron on April 29, 1905, passed certain regulations pursuant to the powers conferred by s. 4 of c. 245, R.S.O. 1897, and particularly sub-ss. 1, 4, 5. The defendant was tried and convicted for a breach of regulation 12, which provides, amongst other things, that a "bar room shall consist of one room only," the conviction reads "that he unlawfully had a bar which consisted of more than one room." The offence, if any, took place on July 12, 1905, and it appears that upon that day there was an Orange demonstration in the Town of Clinton, and an unusually large number of people were assembled in Clinton, and the defendant, to accommodate the people and for his own convenience, and perhaps for his own gain, erected in the hall in the hotel a temporary structure composed of a few loose planks or boards laid upon trestles, from which he served liquor and beer to his customers, and behind which some decanters stood upon a temporary shelf, and underneath these loose planks or boards were kegs of beer. As shewn in the plans the entrance to the rear of this so-called bar, where the bartender would stand, was through a door which opened from behind the ordinary bar and was at the end of it; the structure which is complained of was in the downstairs hall of the hotel, and this hall had, as the

plans shew, the entrance to it that I have already mentioned, and also one from another part of the bar room, and other entrances. The defendant was fined $20 and costs, in all $33.90, and in default of payment distress, and by the adjudication in default of distress imprisonment without hard labour for 15 days, and by the formal conviction, in default of distress, imprisonment at hard labour for 15 days.

Haverson, K.C., for the appellant, urged three objections to the conviction: That it is not a conviction under the regulations or resolutions, as it imposes a penalty of $20 and costs or 15 days in gaol, which is not warranted by the regulations. That having or placing a structure of the kind mentioned in the hall next to and connecting with the bar of the hotel for one day only is not a breach of the regulations, nor is it contrary to s. 65 of the Liquor License Act, which says, "Not more than one bar shall be kept in any house or premises licensed under the Act." That the regulations and resolutions are all ultra vires and beyond the powers of the License Commissioners.

1. Under clause 17 of these regulations the magistrate had no power to fine the defendant $20, as the clause states that any person guilty of an infraction of any of these regulations shall forfeit and pay a penalty of *not less than $25* or more than $50 and costs, etc., etc.

2. That the words "the bar room shall consist of one room only," mean exactly what s. 65 of the Act says, namely, "that not more than one bar shall be kept in any house," and that the penalty provided by the statute for a violation of s. 65 is to be found in s. 86 of the Act, which limits the amount to not less than $20, besides costs, and not more than $50, besides costs, and in default of payment, imprisonement for a period not exceeding one month.

3. The License Commissioners have no greater power as to passing these regulations or resolutions than the Municipal Councils formerly had, that is, that the power to pass regulations and resolutions was transferred from the latter body to the former, and what the Municipal Councils could formerly do by by-law, the Commissioners may now do by resolution. Under s. 100 of the Liquor License Act, the penalties imposed by the Commissioners for an infraction of any regulation passed by them may be recovered and enforced by summary proceedings before any justice of the peace having jurisdiction, in the manner and to the extent that by-laws of Municipal Councils may be enforced under the authority of the Municipal Act, s. 702, and this section limits the extent of the fine to $50, and says that in default of sufficient distress imprisonment with or without hard labour for a period

not exceeding 21 days; whereas the regulation number 17, imposes a fine of not less than $25 or more than $50, and in default of distress imprisonment for not less than 20 days, nor more than 40 days, and he refers to *The King* v. *Wendling*, 40 C.L.J. (1904) 432; an unreported case of *Regina* v. *Herlick*, Nov. 6, 1896; *Marks* v. *Benjamin*, 5 M. & W. 565; *Shutt* v. *Lewis*, 5 Esp. 128, Digest of English Case Law, vol. 5, p. 970; *Syers* v. *Conquest*, 28 L.T. 402, 21 W.R. 524; *Regina* v. *Osler*, 32 U.C.R. 324; *McLeod* v. *Kincardine*, 38 U.C.R. 617.

Seager, County Attorney, contra. The conviction is good either under the Act or under the regulations, and that if it can be sustained under either, he is entitled to do so. The whole matter turns on the meaning of the word "keep," and that to do as the defendant did, even for one day only, is a breach of either the regulation or of s. 65 of the Act. Under sub-s. 4, of s. 4, of the Liquor License Act, the Commissioners have the fullest power delegated to them by Parliament to regulate hotels. *Hodge* v. *The Queen*, 9 A.C. 117; *Kruse* v. *Johnston*, 2 Q.B. 91; Biggars' Municipal Act, pp. 335, 337. The fact of the Legislature having legislated does not imply that the Commissioners are prevented from legislating as to the two bar rooms. *Rex* v. *Laird*, 6 O.L.R. 182; *Reg.* v. *Martin*, 21 A.R. 146. And both bodies may deal with this subject, and both deal with it by awarding different punishments. There is nothing in the conviction that is against the law, nothing which is excessive. The $20 fine seems to be $5 less than the regulation provides for, but that is a matter for amendment. *Reg.* v. *Spooner*, 4 Can. Crim. Cas. 214; *Ex parte Nugent*, referred to 1 Can. Crim. Cas. 126; Crim. Code, s. 889; Liquor License Act, s. 118, sub-s. 8.

Reg. v. *Dunning*, 14 O.R. 82, is cited to shew that where part of a conviction is wrong it may be quashed as to that part, without quashing the remaining part.

As to the meaning of the word "keep," this applies to one day as much as it would to a week or a month, and the judgment in *Reg.* v. *Herlick* is erroneous.

HOLT, Co. J.:—I shall deal first with the regulation 12, which says, "the bar room in every tavern . . shall consist of one room only." This, to me, seems to mean the same thing as s. 65 of the Act, which says that not more than "one bar shall be kept . . ." I can't conceive of there being two bar rooms without two bars. As I understand the meaning of the word, bar room is the room in which there is a bar, so that without two bars you can't have two bar rooms. If this is so, then the Commissioners have imposed a larger fine by their regulation 17 than the Act, s. 86, allows for keeping two bar rooms; for the latter offence the fine is not less than $20, besides costs, nor more than $50,

besides costs, and in default of payment imprisonment for a period not exceeding one month; but the regulation 17, for the former offence, imposes not less than $25 or more than $50, and in default of payment distress, and if no sufficient distress imprisonment for not less than 20 days nor more than 40 days.

If the Commissioners had the right to pass this resolution, then the penalty and enforcement for any breach of it is provided for by s. 100, which invokes the aid of s. 702 of the Municipal Act, which section limits the fine or penalty to a sum not exceeding $50; and in case of non-payment and there being no distress, imprisonment for a period not exceeding twenty-one days. It will be thus seen that for an infraction of this resolution, and non-payment of the fine, a defendant might be imprisoned for a term exceeding 21 days, namely, 40 days.

In my opinion, this resolution is on this ground bad, being ultra vires and beyond the powers of the Board of License Commissioners, and I refer to *McLeod* v. *Kincardine*, 38 U.C.R. 617, 620, where it is held that a by-law which provides that a person shall, under the circumstances therein detailed, be imprisoned for a term of not less than 10, nor more than 30 days, must be quashed, for the power to imprison in such a case is only for a period not exceeding 21 days; and also to the judgment in *Hodge* v. *The Queen*, 9 A.C. 135, where their Lordships state as follows: "In either case the Municipal Act must be read to find the manner of enforcing the penalty and the extent to which it may be enforced. The most reasonable way of construing statutes so framed, is to read into the later one the passages of the former which are referred to." Now, their Lordships are here dealing with s. 70 of c. 181, R.S.O. 1877, the Liquor License Act, and in the Act of 1897, c. 245, s. 100, the words are almost identical and enact that where regulations are passed by the Commissioners, the penalties imposed for the infraction thereof may be recovered and enforced in the manner and to the extent that by-laws of Municipal Councils may be enforced under the authority of the Municipal Act.

Now, applying the above rule to the case, we must read into this Act, c. 245, R.S.O. 1897, s. 702, of the Municipal Act, which only provides in case of non-payment of the fine, and there being no distress, imprisonment for a term not exceeding 21 days; whereas the regulation 17 makes the imprisonment not less than 20 days nor more than 40 days, clearly an excess of what the statute permits. On these two grounds alone the conviction cannot be sustained.

Then there is the further ground, supposing the resolution 12, so far as it refers to the bar room consisting of one room only, to be good and within the power of the Commissioners to

pass and to inflict the penalty for an infraction of it, as provided in regulation 17 Can it be said that the defendant had, on July 12, a bar room in his hotel which consisted of more than one room. The structure complained of was connected with the regular bar of the house. It was only used on one day, when there was in the Town of Clinton an unusual gathering of people, and the defendant, in order to avoid too much crowding, I suppose, erected this temporary structure, which, in my opinion, would have the effect of keeping the crowd more in order and less liable to create a disturbance. I think the meaning of the word bar is a place over which liquor is usually sold in an hotel, where there are proper appliances, such as beer pumps, shelves, and many other appliances, and where the structure is of a permanent nature, and so constructed, all of which was wanting in the structure complained of. I cannot come to the conclusion that this structure was such a bar as would, by its use for one day only, constitute the hall in which it was, a bar room.

Then, again, it was argued that if the resolution was bad, I should still find the appellant guilty under s. 65 of the Act, which provides for one bar only being kept. I was referred to a case of a man called Herlick, who was convicted of a similar offence in 1896, and who appealed, and whose appeal was sustained and the conviction quashed. The learned judge who heard the appeal was of opinion that the word "kept" in this connection meant that it must be used on more than one occasion.

The Standard Dictionary, p. 976, gives this meaning, among many others, to the word "keep," and I think this perhaps applies better than any of the others to the meaning of the word in this connection: "(3) To manage, conduct, carry on, or attend to as a business, as to keep store or keep an hotel." This signifies something more permanent and lasting than one day, and no doubt the Legislature in passing this section, 65, intended to prevent a licensee maintaining and keeping two separate bars under one roof and for one license fee.

See also the Encyclopedic Dictionary, p. 2704, Sinclair's Liquor License Act, pp. 24, 62, 131; *Marks* v. *Benjamin*, *Shutt* v. *Lewis*, and *Syers* v. *Conquest*, ante, infra.

In view of the authorities quoted, and the meaning therein given to the word "keep," I am of opinion that the defendant, Lewis, did not on the 12th of July last violate s. 65 of the Act, or commit a breach of regulation 12, and I therefore quash the conviction, with such costs as are provided for in s. 119 of the Act, to be paid by the prosecutor to the defendant.

Province of British Columbia.

Irving, J.] REX *v.* NEIDERSTADT. [Oct. 13.

Dominion brewers' license—Provincial License Act.

Defendant, a brewer holding a license under the Inland Revenue Act, was convicted of having sold beer within the province, in quantities of less than two gallons, without having taken out a license under the provisions of the Provincial Liquor License Act, c. 18 of 1900.

Held, that, under the provisions of sub-s. (9) of s. 92, B.N.A. Act, and following the decision in *Brewers' Association of Ontario* v. *Attorney-General* (1897) A.C. 231, the Provincial Legislature has power to require a brewer, duly licensed as such by the Dominion Government, to take out a license under the Provincial Statute, to sell intoxicating liquor manufactured by such brewer. The statute under which the conviction was made being intra vires, the conviction must be maintained.

Lennie, for the Crown. *O'Shea*, for the defendant (appellant).

Book Reviews.

The History of Political Theories, by WILLIAM ARCHIBALD DUNNING, Ph. D., Professor of History in Columbia University, New York. London: The MacMillan Company. Toronto: Morang & Co. 1905. 2 vols. $2.50 each, 818 pp.

The first volume speaks of ancient and mediæval times, and begins with the Hellenic peoples and brings the history down to the time of Machiavelli. The second volume continues the history from the time of Luther and the Reformers, whom the writer looks upon as the first exponents of modern political life, down to the time of Montesquieu. These are interesting and instructive volumes. Nowhere else that we are aware of can the information given be found in such a convenient form. The author seeks in this way to supply a felt want, in that there has been no serious attempt to trace out in origin and development the ideas of government in the broad field of the world's progress, although it is true that ancient and mediæval life and institutions have of late years received much attention from writers both in England and America. The author adds largely to the value of these volumes by appending to each chapter a reference

to the works which are his sources of information; and at the end of the volumes these are given alphabetically. The work is thus made interesting not only to anyone who desires a comprehensive summary of the course of political theories; but also to the student of political science, who is thus placed in touch with a vast fund of information on this and cognate subjects.

Civics.—Studies in American Citizenship, by WALDO H. SHERMAN. New York: The Macmillan Co., Toronto: Morang & Co., Limited.

This is intended to aid in the more efficient and direct work which the author thinks should be done in high schools along the line of citizenship training, and to teach and inspire civic patriotism. It is time that something more of this sort were done in Canada. We have a country with a future before it greater even than that of the republic to the south of us. Our children should be better instructed as to its enormous possibilities, and to know that they, more than most, have something to be proud of, and so be inspired to take their share in its development.

Obituary.

Remembering that the founder of this journal was the venerable jurist soon, we trust, to enter on his ninety-first year, Sir James Robert Gowan, K.C.M.G., we venture to intrude upon his sorrow and to express a share therein at the death of his saintly wife, his faithful partner in life for 52 years. In addition we quote the following true and appropriate words of a leading daily journal in reference to his great loss:

"In the death, at Barrie, of the wife of Senator Gowan, there has suddenly passed out of human sight one whose whole life was spent for others—a life of self-abnegation and large wide-spreading practical love. Early and late, in sickness or in health, she was ever planning to help some needy or sorrowful one, or to spread the knowledge of the Saviour she loved, at home, or in far distant heathen lands. Not until rewards are given by the Master's hand for true service, will be made known the eternal issues of her saintly life. She was a true helpmeet to her husband, "whose heart did safely trust in her." Wise and far-seeing, she looked to the result of her actions rather than to present appearances. Her example will be an inspiration to many."