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## *NEWSPAPER LIBELS—FAIR COMMENT.*

Fair comment is the only appropriate defence in the vast majority of newspaper libel cases. Such a defence can only fail if the jury think that what is complained of is a comment or statement of opinion not reasonably to be inferred from the truly stated facts. But it is not a plea of justification as that term is understood in libel cases, and the issue raised by it is completely different. If the trial Judge leaves it to the jury, that does not turn it into a plea of justification but presents the question merely as one either of libel or, if justified, fair comment, the latter being no libel. Lopes, L.J., in *South Hilton Coal Co.* v. *North Eastern News Association,* 1894, 1 K.B. 133, says at page 140: "This defence raises no question of privilege. The defence in such a case is that the words are not defamatory, that a fair and proper comment is no libel."

This is evident from an examination of the meaning of each plea. The ordinary plea of justification is that the libel, where there is no inuendo suggested, is true as published, or if there be an inuendo that it is true as interpreted thereby. The statement that, under a plea of justification, the defendants must justify every possible sinister inference to be drawn from the words used is, of course, to be limited to cases where there is no inuendo to define the sense in which the published words are offensive to the plaintiff; for there the plaintiff is bound by his paraphrase, and the defendant need not do more than justify to that extent.

But a plea of fair comment means that the origin of the words used which are complained of is to be found in some matter of public interest which it is therefore proper to discuss.

And in the course of that discussion they were used as affording a fair and proper vehicle for the expression of the defendant's views and inferences in relation to such matter. Instead of justifying the words as true and correct in themselves the plea of fair comment in effect admits that, standing alone, they would or might be defamatory, but that, having regard to certain facts and circumstances which had transpired in some matter of public interest, they must be regarded in their relation to those facts and circumstances. Thus they are justifiable, *i.e.*, they form reasonable remarks or comments on those facts and circumstances, although not necessarily fair if regarded apart therefrom.

The allowance of such a plea is necessary if newspaper criticism and free discussion of public events is to be maintained, and it has its origin in the belief that such latitude is essential in a country with an independent press.

No man can be convicted of a libel if his fellow citizens on the jury do not consider the words used to be libellous, no matter how extravagant and harmful the expressions may be. That is, of course, provided the jury are not actually perverse. And it follows, if fair comment is allowed to be pleaded as a defence, that no newspaper should be convicted of libel upon such an issue unless a jury are allowed to say whether what is called comment is fair or so unfair as to be not comment, but defamation.

Collins, M.R., in *Thomas* v. *Bradbury*, 1906, 2 K.B. 627, likened the defence of fair comment to that of privilege, but, with the dislike which British lawyers have to analogy and to a scientific basis for their law, this has not been accepted as the proper view. But his comparison makes clear the essence of this defence. While he rests privilege upon a private right and fair comment upon a public one, a doubtful distinction, his examination of the reason underlying this special defence demonstrates that its justification is to be found in the necessity for free and independent public criticism, and not in any personal exception favouring newspaper writers. For this reason

it is of the utmost importance that the issue of fair comment should be pronounced upon by the jury and not by the Judge. Libel or no libel is wholly for the jury, and if they find for a defendant on that issue, then he has not been guilty of libel, no matter how defamatory the words may seem. The plea of fair comment is really an appeal to public opinion as represented by the jury, and asserts the right in a free country to free speech and free comment. If that plea is successful, then, notwithstanding that, in the opinion of a Judge, the language exceeded the bounds of fair comment as he understands it, the defendant escapes punishment and the plaintiff suffers for the good of the community. As put by Mr. Justice Denman in *Odger* v. *Mortimer* (1873), 28 L.T. 472: "the jury are the guardians of the freedom of public comment as well as of private character." There is another and more prosaic reason given by Lord Atkinson in *Dakhyl* v. *Labouchere,* 1908, 2 K.B. 325, p. 329, namely, that the defendant is entitled to have his view, *i.e.,* what he contends is the meaning of his comment, placed before and considered by the jury.

This is the proper conclusion to be drawn from a long line of cases, and while the standard of what is and what is not fair comment has varied, there is no change as to the forum which has ultimately to decide its proper definition. In the *South Hilton case,* already cited, Lopes, L.J., says that the question, "is the comment fair and *bonâ fide?*" is essentially one for the jury, and Kay, L.J., whether the article is fair "is essentially a question for the jury."

One of the earlier cases is *Cooper* v. *Lawson* (1838), 8 A. & E. 746, where the comment was that the plaintiff, a surety on an election petition, was a hired surety. It was there laid down that, where the comment is in nature of a conclusion from the jury, and Kay, L.J., that whether the article is fair "is essentially a question for the jury."

In the well known case of *Campbell* v. *Spottiswoode* (1863), 3 B. & S. 769, which decided that *bona fides* did not save com-

ment from being libel, Crompton, J. (p. 778), says: "it is always to be left to the jury to say whether the publication has gone beyond the limits of fair comment on the subject-matter discussed." And Blackburn, J., at page 780, points out that the question of libel "or no libel, at least since Fox's Act, is for the jury, and in the present case, as the article published by the defendants obviously imputed base and sordid motives to the plaintiff, that question depended upon another—whether the article exceeded the limits of a fair and proper comment on the plaintiff's prospectus; and this question was therefore rightly left to the jury."

In 1874 in *Steel* v. *Licensed Victuallers Association*, 22 W.R. 553, the Court, in dealing with a newspaper report of proceedings before a magistrate, laid it down that in cases of libel, "the meaning of the words used, the fairness of the report, and the meaning of comments added by a reporter, are questions entirely for a jury to decide and should not be hastily withdrawn from the jury."

In more recent times this rule has been adhered to. In *Dakhyl* v. *Labouchere* (*ante*), Lord Loreburn, L.C., thus states it, at page 326: "The defendant is entitled to have the jury's decision as to the plea of fair comment, whether or not, in all circumstances proved, the libel went beyond a fair comment on the plaintiff and on the system of medical enterprise, treated by the defendant honestly and without malice."

There are, it is true, conflicting opinions, if indeed they can be properly so described, on what is the proper point of view for a jury which are referred to in *The Homing Pigeon Publishing Co. Limited* v. *The Racing Pigeon Publishing Co. Ltd.* (1913), 29 T.L.R. 398. These will be found discussed in *Lefroy* v. *Burnside* (1879), L.R. Ir. 4 C.L. 556; *Hunt* v. *The Star Newspaper Co. Ltd.* (1908), 2 K.B. 309; *Brown* v. *Elder* (1888), 27 N.B.R. 465, and *Douglas* v. *Stephenson* (1898) 29 O.R. 616, 26 A.R. 26, and date back to the time of Lord Chief Justice Cockburn. See *Risk* v. *Johnstone* (1868), 18 L.T. 615.

Perhaps the result stated by Lord Shaw in *Stubbs Ltd.* v. *Russell* (1913), A.C. at page 399, though discussing the proper principle for dealing with inuendo, may fairly be applied. It is that the inuendo "must represent what is the reasonable, natural, or necessary inference from the words used, regard being had to the occasion and the circumstances of their publication."

But it is always desirable if the plea of fair comment is to be properly understood and presented, that there should be a clear understanding as to the facts, which, in the defence of fair comment as now pleaded, are referred to as being true in substance and in fact.

Comment upon what some one else has said, accepted as true, and comment upon certain facts alleged to be true raise different considerations when regarded in connection with a plea of fair comment.

Is the newspaper in the first case bound to shew the truth of what someone else has said and on which the comment is made, or is it entitled to urge that if it has truly set out what that other person did say, comment upon it may be made without responsibility for its truth if done honestly? The question does not seem to have been dealt with except by Phillimore, J., in *Mangena* v. *Wright*, 1909, 2 K.B. 958. That learned Judge gives his opinion in this way (p. 976): "When there is one published document in which the writer partly alleges and partly comments, and of which the sum total is defamatory, the document cannot be justified unless the facts are true and the comment fair; because if the facts do not warrant defamatory comment, the comment is not fair, and if the facts as alleged warrant defamatory comment they are defamatory and must be proved to be true. But when one person alleges and another comments, this reason does not apply." He then cites instances such as a newspaper quoting and commenting on something derogatory to an individual contained in the judgment of a Judge, but which is in fact unfounded.

A case raising somewhat the same question is *Digby* v. *Financial News* (1909), 1 K.B. 502, where, however, the comments were upon particulars and documents supplied by the plaintiff himself. As pointed out by the Court (p. 508), the plea of fair comment on the contents of these documents did not involve proving the truth of the facts in them, but merely that they did not misstate the contents of these documents, nor misuse the material supplied to them.

In the case of *Peter Walker & Son, Ltd.* v. *Hodgson* (1909), 1 K.B. at page 255, Buckley, L.J., in reviewing that case says that "the truth or falsity of the plaintiff's statements was not in issue between them, and it was not for the defendants to prove their truth or falsity. The statement of facts which the defendants made was that the plaintiff had asserted certain facts which in fact the plaintiff had asserted."

The cases of *Conmee* v. *Lake Superior Printing Company*, 2 O.W.R. 543, 743; *Digby* v. *Financial News, Ltd.* (1907), 1 K.B. 502, and *Peter Walker & Sons, Limited* v. *Hodgson* (1909), 1 K.B. 239, are sufficient to suggest that particulars of the facts which at the trial are to be asserted as true, should be insisted upon. Street, J., in *Conmee* v. *Lake Superior Printing Company* (1903), 2 O.W.R. 543, gives the correct reason for the present form of the plea of fair comment: "Where an alleged libel upon a public man consists of statements of fact and comment upon them, it is not permissible to a defendant to plead as a blanket defence, covering all that he has alleged, that it is all fair comment. He must plead that the facts stated are true, and that the rest is fair comment."

It has been suggested that the Judge has the right to decide whether the comment is capable of being considered comment at all.

The duty of a trial Judge, as stated by Collins, M.R., in *McQuire* v. *Western Morning News Company* (1903), 2 K.B. 100, is this (p. 110):—

"It is always for the Judge to say whether the document is capable in law of being a libel. It is, however, for the plaintiff

who rests his claim upon a document, which, on his own statement, purports to be a criticism of a matter of public interest, to shew that it is libel, *i.e.*, that it travels beyond the limit of fair criticism, and therefore it must be for the Judge to say whether it is reasonably capable of being so interpreted, and, if it is not, then there is no case for the jury, and it would be competent for him to give judgment for the defendant."

All the cases dealing with this subject limit the power of a Judge, in cases of fair comment, to deciding whether what is said to be comment can reasonably be considered to be so unfair as to amount to libel, and not extending to whether it should be so treated.

Examples of this are the *Capital Country Bank, Limited* v. *Henty* (1882), 7 A.C. 741; *Kimber* v. *Press Association* (1893), 1 Q.B. 65, where a verdict for defendants was upheld where it was said that no reasonable man could hold that the omissions from the report of a trial rendered it unfair: *Merivale* v. *Carson* (1887), 20 Q.B.D. 275, *per* Lord Esher, M.R., page 279, where he defined the power of the Court of Appeal in this way: "If the Court thought that the expression could not, by any reasonable man, be thought to have that (libellous) meaning, the Court could overrule the verdict of the jury," otherwise the question was for the jury.

In *Thomas* v. *Bradbury* (1906), 2 K.B. 627, Collins, M.R., considered that the Court would be usurping the functions of the jury if, where there was any evidence as to some of the innuendoes averring imputations of discreditable motives, it directed judgment for the defendants.

It is very clearly put in *Cooper* v. *Lawson*, 8 A. & E. 746, by Coleridge, J., at page 753: "It would be much too strong to say that all such comments are to be submitted to the jury: for there are cases, one of which has been put, where the inference is so fair that if you prove the fact you prove the correctness of the comment. But this was not such a case. The comment introduced an additional fact and then it was for the jury to say whether that was fairly done or not."

The difference between the function of a judge in an ordinary case of libel and one where fair comment is pleaded is often in the time of its exercise. His ruling, where fair comment is the issue, cannot possibly be effectively or properly given till the case is entirely closed, because the origin of the so-called libel and all matters raised by and admissible under the plea of fair comment must be given in evidence before he can make up his mind whether the matter is to be treated in one way or the other. Under the ordinary plea of justification the trial Judge may rule at the conclusion of the plaintiff's case upon the words themselves as spread out on the record, but under fair comment he cannot do so until he has heard both sides if the defence offers evidence. Indeed, the parties should at the least have the benefit of his view, which must be founded upon what has been proved before him.

A defendant in a libel suit is entitled, if his defence is for the jury, to have it passed on by them, or if it is for the Judge to consider, to have at least the chance of his ruling. It is by no means an unimportant thing to rule out a defence of fair comment on the ground that it is not comment at all. But if it should chance that for some reason or other no such ruling has been given, the function of a Court of Appeal is set out in principle by the House of Lords in *Bray* v. *Ford* (1896) A.C. 44, where the Court below were of opinion that the nature of the libel was such that the jury would have been entitled to give, and would probably have given, the same verdict even if a direction objected to had been the other way. Lord Halsbury, L.C., at page 48, said:—

"It is nothing to the purpose to say that the rest of the printed matter complained of as a libel would justify a verdict to the same amount of damages. I absolutely decline to speculate what might have been the result if the Judge had rightly directed the jury. It is enough for me that an important and serious topic has been practically withdrawn from the jury, and this is, I think, a substantial wrong to the defendant."

This view is enforced by Lord Herschell at page 53:—

"The Court may think, as I might think, in the case before your Lordships, that the jury would have given the same damages if the law had been correctly expounded; but that is a mere matter of speculation; it cannot be asserted with the least certainty that they would have done so. The jury have returned their verdict on what they were erroneously led to think was the case and not on the real case which the defendant was entitled, have submitted to them."

The case of *Dakhyl* v. *Labouchere* (*ante*), emphasizes this view. Lord Shaw, however, points out in *Stubbs, Limited* v. *Russell,* 1913, A.C. at p. 386, that the ruling of the trial Judge may be reversed after the jury have pronounced their verdict.

But if fair comment is to form a defence to a newspaper, the latter must, except in the clearest cases, be allowed to present to the jury its view of what has been said, and it must be the jury who decide for or against that view.

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## *ORDEAL BY BATTLE.**

### Military Service.

We quite agree with one of the best writers for the English press, who says that Mr. Oliver has produced the most notable book concerning the war that has yet appeared: "The style is lucid and distinguished, and there is thought in every page. This book is not only thoughtful but compels thought, and should be read by every earnest man." It is in fact a classic of the war, and is most welcome at the present time, especially so when the great question comes before us, both in England and in Canada, as to how best to secure recruits, and recruits of the right class. The burning questions at home and at the battle front are as to the supply of men and munitions of war.

Before giving Mr. Oliver's views on that subject, we would draw attention to the leading features of his book. He groups the contents under the following heads: Part I. deals with the

*"Ordeal By Battle," by Frederick Scott Oliver: The Macmillan Company, St. Martin St., London, 1915.

causes of the war: It sets out the main incidents which occurred at the opening of the present European struggle, and explains the immediate reasons for, as well as the deep-seated and premeditated causes of, the conflict. Parts II. and III. are styled the spirit of German policy, and the spirit of British policy. These are treated in a luminous and instructive manner, and give a careful, and, so far as one can judge, accurate analysis of subjects with which we are already more or less familiar. We regret that want of space forbids any further reference to them. We advise those who are interested to get the book; its pages will explain many things and solve many of the problems which have confronted the public in the study of these complex subjects.

Part IV. deals with democracy and national service. As to the former, the author says: "Democracy is not unlike other human institutions; it will not stand merely by its own virtue. If it lacks courage, loyalty and strength to defend itself when attacked, it must perish as certainly as if it possessed no virtue whatsoever. Manhood suffrage implies manhood service. Without the acceptance of this principle, democracy is merely an imposter."

As to the expression, national service (which covers conscription), he says: "It is not only military duties which the State is entitled to command its citizens to perform unquestioningly in times of danger, but also civil duties. Under conditions of modern warfare it is not only armies which need to be disciplined, but whole nations. The undisciplined nation engaged in anything like an equal contest with a disciplined nation will be defeated. It is not only men between the ages of twenty and thirty-eight to whom the State should have the right to give orders, but men and women of all ages."

Every page of this book is fascinating reading. It has great literary merit. The author is logical and convincing, and the illustrations which are given—sometimes quaint, and sometimes homely—are always brilliantly presented.

The scope of the work is extensive and world-wide, inasmuch

as the conflict is world-wide, but the mind of the reader is drawn gradually to what is the writer's main object, viz., to establish the need for national service, in order that the British Empire may maintain itself securely under the present circumstances of the world. If there be a *need,* it is obvious that a corresponding *duty* lies upon the whole nation to accept the burden of military service.

It cannot be denied that those who are responsible for obtaining men for the army are gradually coming to the conclusion that the so-called voluntary system is inadeqate, and, for practical purposes, largely a failure. Our author advocates putting the burden of the defence of the country where it belongs, that is equally upon all. Under his array of facts, his withering logic and unanswerable arguments, the voluntary system at present in force fades away as a foolish dream, and can only be supported by those whose patriotism has been dried up by a life of ease and money-making, and who are not ashamed to let some one, else suffer hardship or death so long as their selfish skins are safe, or their wives and children protected. Mr. Oliver is of the opinion that the proper mode of establishing military service is for the Government of the Empire to enforce military service, by conscription if necessary, and he claims that the objections raised to this system (which, by the way, is gradually coming into force in the British Isles) is that "Neither *need* nor *duty* has ever been made clear to the British people by their leaders. Owing to the abuses of the party system, increasing steadily over a considerable period of years, a certain type of politician has been evolved, and has risen into great prominence, a type which does not trust the people, but only fears them. In order to maintain themselves and their parties in power, politicians of this type have darkened the eyes and drugged the spirit of the nation."

This point is illustrated by the action taken by Abraham Lincoln during the Civil War in the United States. "Disregarding the entreaties of his friends to beware of asking of the people what the people would never stand, disregarding the

clamours of his enemies about personal freedom, he insisted upon conscription, believing that by these means alone the Union would be saved. And what was the result? A section of the press foamed with indignation. Mobs yelled, demonstrated, and in their illogical fury lynched negroes, seeing in these unfortunates the cause of all their troubles. But the mobs were not the American people. They were only a noisy and contemptible minority of the American people, whose importance as well as courage had been vastly over-rated. The quiet people were in deadly earnest, and they supported their President."

Looking at our own Dominion, we can well imagine that in certain sections there would be vehement protests against anything in the nature of conscription, and party politicians, afraid of losing votes, would object to the putting in force of the Militia Act of Canada (as to which see ante vol. 51, p. 428), placed on the Statute Book by our wise and patriotic forefathers. Its having been placed there in those days, and continuing there to the present time, is perhaps prophetic or at least suggestive of its wisdom; and those who are weary of the voluntary system and its constant breakdowns may wish for a little more of the spirit that animated our United Empire Loyalists, and that our leaders might exercise some of the force and courage and faith in the common sense of the people, that dwelt in Abraham Lincoln, "one of the greatest, noblest, and most human men in the whole of history," in his daring action, which tested, almost to the breaking point, the mettle of the Northern States in their struggle for freedom and the integrity of their Commonwealth.

Dealing with the question of the need of men—where and how to get them—the author's scornful words come home to us. Speaking of Lord Kitchener's perplexities, and the hindrances to his work, owing to the cobwebs of the party system, he puts the views of the advocates of the voluntary system and a summary of what their answer to Lord Kitchener might have been, in these words: "Put your trust in us, and we will get you the men. We will go on shouting. We will paste up larger and larger pictures on the hoardings. We will fill whole pages of the

newspapers with advertisements drawn up by the livest publicity artists of the day. We will enlist the sympathies and support of the press; for this is not an Oriental despotism, but a free country."

What he conceives to be the better way is amusingly illustrated by an incident which he relates in reference to a recruiting campaign in Devonshire. Things were going badly for the recruiting officers, when one of them was thus answered by a yokel, who was urged to take the shilling, as follows: "We do-ant think nought, Zur, o' them advertaizments and noospaper talk about going soldgering. When Guv'ment needs soldgers really sore, Guv'ment'll say so clear enough, like it does when it wants taxes—'Come 'long, Frank Halls, you're wanted.' And when the Guv'ment taps Frank Halls on showlder, and sez this: I'll go right enough; but I'll not stir foot till Guv'ment does, nor will any man of sense this zide Exeter."

Mr. Oliver deals trenchantly with those who scoffed and derided Lord Roberts, who did his best to save the situation before the crush came—perhaps the war might have been averted if his views had prevailed—and lays the blame largely where it belongs when he calls attention to Mr. Asquith's refusal to listen to warnings about Germany for fear any definite action might be discourteous to the Germans and injurious to his party. He also dwells upon the insane folly of Lord Haldane in reducing the British army when the Kaiser was enormously increasing his. It was decreased, Lord Roberts says, by thirty thousand men. Such silly twaddle as the following was certainly not worthy of one holding the position of Minister of War: "He did not think that compulsory training would be adopted in this country until after England had been invaded once or twice." Also, "that Great Britain had the best reason for feeling secure for they were always a nation of splendid fighters; they were never ready, but they fought better the less ready they were." And again, "The first step for developing anything for the national basis of the army was to cut off the regular force." Speaking of Lord Haldane's profitless mission, as a self-appointed dip-

lomat to Germany in 1913, we are told that it was a "puzzle from first to last." The Kaiser had asked that he should be sent (but what for?) and he returned quite proud of his performance, not realizing that the Kaiser had fooled him to the top of his bent. As to this the comment is: "The man whose heart swells with pride in his own ingenuity usually walks all his life in blinkers." It is not surprising that Lord Haldane's visit to the Kaiser was a failure, that it awoke a distrust at the time, or that it opened the way to endless misrepresentation in the future. What surprises is his stoicism; that he should subsequently have shewn so few signs of disappointment, distress, or mortification; that he should have continued up to the present moment to hold himself out as an expert on German psychology." Lord Haldane certainly gave occasion to his critics to question his loyalty, though we do not go as far as that.

Speaking of Mr. Asquith and his colleagues, he says in reference to their indifference and refusal to take warning: "But supposing that no one had told them, they had their own wits and senses, and these were surely enough. A body of men whose first duty is the preservation of national security—who are trusted to attend to that task, paid for performing it, honoured under the belief that they do attend to it and perform it—cannot plead, in excuse for their failure, that no one had jogged their elbows, roused them from their slumbers or their diversions, and reminded them of their duty."

The following remarks of a Canadian commanding officer whose experience qualifies him to speak intelligently of the situations, so far as the voluntary system is concerned, does so in the following words:—

"The volunteer system is ineffective, unreliable, inequitable, undemocratic, and prodigally wasteful of economic energy. It lacks dignity. It smacks of insincerity and moral weakness, if not of hypocrisy. It is the refuge of the shirker. It cannot claim to be the child of hoary antiquity. It never has been the British system, which is the militia levy."

We cannot, however, quote further. Our interest as a legal

Journal in the subject of Military Service largely centres in the thought that, as we have in this country a statute which is appropriate to the present emergency, the sensible thing is to enforce it, without being deterred by suggested difficulties, largely imaginary, and regardless of the noisy clamour of party politicians—the curse of true democracy when a nation is in the grip and stress of a world-wide war.

The operative portions of the Act above referred to (The Militia Act, c. 41, of Revised Statutes of Canada) are as follows:

Sec. 10.—All the male inhabitants of Canada, of the age of eighteen years and upwards and under sixty, not exempt or disqualified by law, and being British subjects, shall be liable to service in the militia.

Secs. 25, 144-146.—The Governor in Council shall, from time to time, make all regulations necessary for the enrolment of persons liable to military service, and of cadets; and for all precedure in connection therewith, and for determining, subject to the provisions of this Act, the order in which the persons in the classes fixed by this Act shall serve, and for carrying the Act into effect for organization, discipline, etc., such regulation to be laid before Parliament, and they shall have the same force and effect as if they formed part of this Act.

Sec. 69.—The Governor in Council may place the militia, or any part thereof, on active service anywhere in Canada, and also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency.

So far as Ontario is concerned an Act will be passed this session requiring assessors to insert in their rolls the names and ages of all male persons between the ages of 18 and 45 years, inclusive, residing at the property assessed, including those temporarily absent.

This is a step in the right direction, as it provides a foundation on which to build up a system of compulsory service and enable the Militia Department to lay hands on the slackers and shirkers.

## *MARKET PRIVILEGES IN UPPER CANADA.*

The following document, furnished to us, as also to the Ontario Archives, by the Honourable Sir Glenholme Falconbridge, C.J., illustrates an important stage of early settlement life in Upper Canada, viz., the establishment of a public market, always an evidence of agricultural and commercial development in a new country. Among the earliest markets in Upper Canada were those at Kingston, York, Niagara, and Cornwall, which were provided for by statute, while the subjoined Letters Patent empowered the Sheriff of the District to establish a Fair or Mart.

Frank Town, the location of the market, was a village well situated for such a purpose, being on the old Richmond Road, an artery of traffic which served a large district. The village comprised lots Nos. 11, 12, and 13, in the 3rd concession of the township of Beckwith, county of Lanark. It is on the line of the Brockville branch of the Canadian Pacific Railway, about midway between Smith's Falls and Carleton Place. The village plot was surveyed by Josias Richey, D.L.S., in September, 1819. The river Jock traverses the village site from a south-easterly to a north-easterly direction. The plan of survey provided for a subdivision of the village site into twenty-four park lots of 25 acres each, with the usual Government reservations for clergy, public burial-ground, and other purposes.

The first settlers of the village were the following, whose patents were issued on the dates given below:—

Park lot No. 1, Thomas Wickham, 25 acres, May 9, 1826; No. 2, Patrick Nowlan, 25 acres, March 25, 1829; No. 3, Joseph Tutton, 25 acres, August 17th, 1829; No. 4, Owen Quinn, 25 acres, April 9, 1827; No. 5, John Fallon, 25 acres, February 20, 1830; No. 6, John Shaw, 19 acres, April 22, 1828; No. 7, Churchyard, 6 acres, March 30, 1827; No. 8, John Nesbitt, 25 acres, February 25, 1831; No. 9, Patrick Nowlan, 25 acres, June 11, 1832; No. 10, Owen MacCarthy, 25 acres, March 1, 1837; No. 11, John Nolan, 25 acres, May 8, 1826; No. 12, John Nesbitt, 25 acres, April 30, 1834; No. 13, Peter Fallon, 25 acres, February, 20, 1838; No. 14, Charles McCarthy, 25 acres, May 8, 1826;

No. 15, James Burrows, 25 acres, October 20, 1843; No. 16, Daniel Ferguson, Jr., 25 acres, May 8, 1826; No. 17, Andrew Hughton, 25 acres, February 22, 1830; No. 18, Stephen Redmond, 25 acres, May 8, 1824; No. 19, Murray Nowlan, 25 acres, November 11, 1826; No. 20, James Burrows, 25 acres, February 18, 1822; No. 21, Josiah Moss, 25 acres, May 9, 1826; No. 22, John Moorhouse, 25 acres, May 8, 1826; No. 23, Thomas Armstrong, 25 acres, February 24, 1831; No. 24, George Nesbitt, 25 acres, December 29, 1828.

Some of the earliest settlers were military emigrants, who were located by the Quartermaster-General's Department, under the regulations which were adopted by the Government providing for their settlement on public lands. Frank Town became in course of time an important trading point for the settlers, on account of its favourable location on leading highways, and considerable business was transacted there, according to accounts of the oldest settlers. It drew from the country lying between the Richmond Road and the Ottawa Valley above the Falls, and furnished a convenient point of outlet for a thriving and expanding territory.

LETTERS PATENT

*Upper Canada.*

GEO. ARTHUR.

Great Seal of the Province of Upper Canada.

F. 201 & 2.

Decr. 3rd.

(Sgd.)

W. A. HACERMAN,

*Atty.-Gen.*

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

TO OUR TRUSTY and Well-beloved JOHN A. POWELL, Sheriff of the District of Bathurst, in our Province of Upper Canada, Esquire, and to all to whom these Presents shall come,

GREETING.

WHEREAS it hath been represented to Us that the Establishment of a FAIR or MART in the township of Beckwith in the said District of Bathurst, would tend greatly to the welfare and convenience of the Inhabitants of the said District, NOW KNOW YE that being desirous of promoting by every means the prosperity of

our Subjects, WE, of Our Special Grace, certain knowledge and mere motion, HAVE given and GRANTED, and by these Presents DO give and GRANT unto JOHN A. H. POWELL aforesaid, being our Sheriff of our said District, and to his Successors respectively being Sheriffs of the said District for the time being, all and singular the PUBLIC FAIR or MART, and the right, privilege, advantage and franchise of Keeping and holding a Public Fair or Mart, as Stewards of the same respectively, at a certain place called "FRANK TOWN" in the said Township of Beckwith. TOGETHER with all the privileges, customs, usages, Courts of Piepoudre incident to fairs and laws of fairs in general as now established, used and exercised within that part of Great Britain called England.—TO HAVE AND TO HOLD the said Fair, Mart, Franchise, Right, Hereditaments and Premises to him the said John A. H. Powell Sheriff of the said District and to his Successors forever, being Sheriffs of the said District, to and for the use, benefit resort and intercourse of all our liege Subjects of our Province of Upper Canada to be used and exercised at the several times and for and during the periods hereinafter mentioned, that is to say: at two several times in each and every year (TO WIT) to begin and be holden on the Second Tuesday in the months of May and October respectively in each and every year at ten o'clock in the morning and to continue at each time respectively until sunset of the same day.—SUBJECT NEVERTHELESS to the powers, provisoes, restrictions, payment of picage and stallage, conditions and limitations hereinafter mentioned, that is to say, PROVIDED ALWAYS and it is the true intent and meaning of these Presents that all and every person and persons bringing and exposing to sale any Goods, Wares and Merchandize within the said Fair or Mart shall pay unto the said John A. H. Powell and to his Successors respectively being Sheriffs of the said District, such sum or sums of money by way of Toll for the license of keeping and erecting a stall or booth or otherwise using or occupying any space or plot of ground within the said fair or mart during the continuance of the same for the purpose of selling, vending or disposing of by barter or otherwise any goods, wares or merchandize, cattle, horses, sheep, hogs or any other live stock within the said Fair or Mart, as our Justices of the Peace in quarter sessions assembled or the major part of them shall from time to time in their discretion adjudge and determine to be paid. AND WE DO HEREBY GIVE AND GRANT unto the said Justices or the major part of them in Quarter Sessions Assembled as aforesaid full power and authority to fix, adjudge and determine the Tolls of the said Fair or

Mart accordingly and from time to time to vary and alter the same and substitute greater or less Tolls according to emergency as the said Justices or the major part of them assembled aforesaid shall think proper: Hereby also giving and granting to our said Sheriff and his Successors, Sheriffs for the time being of our said District, & Stewards of the said Fair or Mart, full power to levy and enforce the payment of such tolls as fully and effectually to all intents and purposes as if the same had been specifically herein named and given or granted to our said Sheriff and his Successors as aforesaid. PROVIDED ALWAYS that all sums of money thus collected shall be solely appropriated towards the clearing away the plot of ground whereon the said Fair or Mart shall be kept and towards other the incidental expenses necessary to be incurred in making the said Fair-stead convenient and commodious and most useful to the public at large. Provided also that nothing herein contained shall extend to the prejudice or common nuisance of our liege subjects of our Province of Upper Canada.

IN TESTIMONY whereof we have caused these our Letters to be made Patent and the Great Seal of our said Province to be hereunto affixed.

Witness our Trusty and Well-beloved Sir George Arthur, K.C.H., Lieutenant of our said Province and Major General Commanding our Forces therein at Toronto this fourteenth day of November in the year of our Lord one thousand eight hundred and thirty-eight, and in the Second year of our Reign.

By Command of His Excellency.

R. A. TUCKER,
*Secretary.*

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The recent case of *Re Wilson*, 113 L.T. 116, where Horridge, J., held that an alien enemy could not be admitted to prove a claim in bankruptcy, is directly opposed to *Re Boussmaker*, 13 Ves. 71, which does not seem to have been brought to the attention of the Court. In the older case Lord Eldon held that the claim might be proved, but that the dividend thereon could not be paid pending the war, on the ground that the disability of an alien enemy was not to benefit other creditors.

# Correspondence

## *THE LAW SCHOOL OF ONTARIO.*

*To the Editor,* CANADA LAW JOURNAL:

Sir,—There is a passage in Mr. McWhinney's address as President of The Ontario Bar Association, bearing on the Law School, which naturally excites interest in one who is upon its staff, and perhaps you will allow me sufficient space to refer to it. In so far as the passage deals with the standing or fitness of the lecturers it would be improper for me to comment upon it and that aspect of the subject will not be dealt with.

Neither is there any desire to deprecate criticism of the Law School. It is much better to be discussed critically than ignored, and a disheartening feature of one's work as a lecturer is the indifference to the welfare of the School which is prevalent amongst members of the Bar. Everyone grows interested in his work even though only a "lecturer-practitioner," and it is a decided damper upon a lecturer's enthusiasm to find that discussion with a brother lawyer about the School either becomes a monologue because only the lecturer knows what he is discussing or it languishes because the others are not interested. Anything, therefore, which stimulates interest in the School is desirable, and in this aspect Mr. McWhinney's public reference to it is most welcome. A more lively interest in the School by those who are no longer students would go far to improve its standing, a thing which, as Mr. McWhinney suggests, is always desirable. As a matter of fact, the Law School has now, and has had for years a good name, and students frequently come from other Provinces to attend its lectures. It is probably correct to say that it is the leading Law School in Canada; but how many lawyers know this or take the slightest trouble to enquire whether the statement is, or is not, justified? If all lawyers were interested in its work and position and took the trouble to ascertain what was actually being done, their active interest and sympathy would, in themselves, be beneficial, but this has during the last few years been singularly lacking. It would probably surprise people to know how seldom lecturers are asked about their work. Once the late Mr. Lancaster asked if he might attend a lecture given to a class which his son attended but this is the only time, in my own experience, when a member

of the profession was present as a listener at an ordinary Law School lecture. It is not for a lecturer to invite the public to the lectures but the incident is worth mentioning as being the one exception to the general rule of entire indifference to the lectures which usually prevails.

Dealing more specifically with Mr. McWhinney's remarks, it is difficult to discover just what evil the speaker sought to remedy. Towards the end he refers to a re-arrangement of lectures "so that students could devote half of the day to office practice instead of attending lectures to meet the convenience of lecturer-practitioners."

The implication is that lectures are at hours inconvenient for office practice. The fact is, that most lectures are from 9 to 9.50 a.m. and from 4.40 to 5.30 p.m. There are some exceptions, partly temporary and due to an attempt to arrange lectures so that students may attend drill. Normally it is difficult to see how hours could be arranged so as to interfere less with a student's office hours. Admittedly they are also convenient for lecturer-practitioners, and there is no desire to conceal this, but, after all, it is only right, while under the present system the lecturer earns most of his daily bread in his office or the courts.

One wonders whether the reference to office hours is due to the inconvenience which we all feel when students cannot be found because they are at lecture. This, I know, has been a matter of complaint; but it is a very minor feature. The primary duty of a student-at-law is to study law and any arrangement of his office work which prevents this is not fair to him. It is much more important to his future to get his work up properly than to attend on a judgment summons or close a deal, at lecture hour.

The President's main contention, however, is that lecturers should devote themselves exclusively to lectures, as otherwise we cannot hope to compete with the growth of law faculties at universities.

There is a great deal to be said for the well paid professor whose whole time is devoted to study and teaching. Nevertheless there is necessarily much preparation under the present system. Anyone who attempts to deliver a lecture to a body of law students without must previous thought and study is not only unjust to them, but is a very foolish man, because the students will soon take his measure. They are perfectly capable of forming an opinion upon the quality of the information imparted to them, and though uniformly courteous to the lecturer, they do not

pretend to delight in slipshod scholarship. No doubt, if a lecturer could devote all his time to teaching and preparation, his lectures would improve greatly, not only in arrangement and method, but even more in the substance of the information which he tries to convey, but it ought not to be assumed that there is neither method nor substance in current lectures.

Under the present system there is neither time to dwell extensively upon the historical foundations of the law, nor is the lecturer able to devote the thought and research necessary to give his lectures the stamp of originality or profound learning. This is almost necessarily university work and could hardly be done—or appreciated if done—where the students are engaged for most of the time in office practice as well. At the same time it is doubtful whether too much work of that kind is desirable for students who propose to engage in the active practice of our profession for a living.

The purely practical lawyer or law student who knows no law and exults in his ignorance cuts a deplorable figure in a learned profession, but, on the other hand, the lawyer steeped in historical detail, who attaches importance to the form of an indictment or pleading merely because those matters were considered vital by an earlier generation, is a menace. It is he who is largely responsible for appeals on interlocutory matters, for litigation upon some point of only technical significance, and for elaborate arguments upon the form of indictment under which a thief has been convicted. We hear much about the length of debates over technicalities in some of the States of the Union, about the difficulty of securing convictions there, owing to some defect in form and about the number of appeals taken, and one sometimes wonders whether these defects in the administration of the law are not partly due to the fact that the lawyer engaged attended a good Law School in the States without spending much time in an office, devoted all his time to his studies, and heard much about the earlier law upon technical matters delivered by professors who had laboured greatly in unearthing ancient decisions, and who, perhaps, had unwittingly caused the student to attach undue importance to his researches. It may be that, in Ontario (as in England), our law is more expeditious, while quite as satisfactory in its results, because so often information on the subject has been imparted by a lecturer-practitioner to one who is equally a student-practitioner. In this way the practical and theoretical are permitted to work and do work side by side. To those who advocate the

appointment of professors devoting all their time to their duties and paid accordingly and (by the way, they would probably not be paid "accordingly") I suggest these considerations. Let me also suggest that if the profession took the interest in the Law School which the School deserves, there would be little difficulty, even under the present arrangement, in getting "distinguished scholars" to lecture. Make it a point of pride, to help the school and improve its standing; and there is no doubt that some men of high standing could be found willing to devote part of their time for small remuneration or none to teaching what they have themselves learned. Even now, distinguished men do deliver special lectures on their own peculiar subjects, and this might easily be developed. There is one *sine qua non* for any lecturer (special, practitioner or professor) and that is, much study and preparation for his lecture. If, under the existing system, the lecturer is always mindful of these requirements, his standing in the profession should make his lectures quite as valuable for practical purposes as those of a professor who has perhaps never had a personal interest in the everyday problems which his students will shortly have to face.

The Law School might, no doubt, with additional facilities and at increased expense, contribute largely to the growth of a more scientific spirit in the study and application of the law, but it is doubtful whether a student qualifying solely for fitness to practice law should be compelled to spend all his time at such work. It belongs rather to a post-graduate course, and perhaps it will be feasible some day to establish one or two chairs devoted to the exposition of important legal topics upon a truly historical and scientific basis. Such courses should be optional and open to any student, barrister or other person wishing to attend, and the results would shew rather in theses than in examinations. If the subjects to be dealt with were important matters, such as Company Law, Real Property, Mercantile or Admiralty Law, which have a practical as well as a theoretical side, the course would be attractive to any, whether students or solicitors, who desired to specialize in these branches. It will probably be found that it is in work such as this rather than in lectures to First and Second Year Students that the "professor" in the true sense of the word could be most usefully employed.

This letter is not designed to encourage any feeling of self-satisfaction with the standard of legal learning in Ontario. The Law School honestly tries to do its part and probably has done much to improve the study of the law here; but three or four

lecturers, speaking a few hours a day, cannot hope to create an atmosphere favourable to the growth of a really scholarly handling of the law in actual practice. It would be worth while enquiring whether conditions, as we find them in doing our day's work, are favourable to the development of any profound scholarship. Our Ontario text books are seldom more than collections of cases, usually in the form of annotations of Statutes or of English Works. Our modern digests are not thoughtfully arranged, and bear few marks of painstaking classification. Our arguments in court often degenerate into a form of catechism, discouraging to a careful and scientific preparation of the case beforehand; and our judgments do not always shew that mastery of the subject and intimate acquaintance with the history of the law which are necessary if the English Common Law is to be scientifically applied to modern problems.

This is too large a topic to be treated effectively here, but it furnishes much food for thought and suggests not only that we are a long way from the ideal of profound and yet practical scholarship which ought to be our goal, but also that the attainment of that goal depends only in part upon the Law School but to a much greater extent upon the labour and enthusiasm of the Bench and Bar.

Yours very truly,

March 7th, 1916. SHIRLEY DENISON.

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Mr. Denison having sent us Mr. McWhinney's reply to the above, as a matter of convenience, we publish both communications together. They will be interesting reading to those who, "when this cruel war is over," will be free to discuss the important subjects dealt with in relation to the training of those who desire to enter the legal profession.—EDITOR, C.L.J.

*Re Law School.*

Dear Denison,—I thank you for your favour of 9th instant, with article addressed to CANADA LAW JOURNAL. I deem it favourable to the main object of my reference to the subject in my address.

An address covers many things. It does not leave scope for details, and the hour question was a mere incident of minor importance, as you state.

You touch the crux when you refer to my contention "that lecturers should devote themselves exclusively to lectures, as otherwise we cannot hope to compete with the growth of law

faculties at universities." Waiving, for the present, your difficulties about my references, the subject-matter came up in this way. On different occasions it was urged publicly there should be a faculty of law in connection with the Toronto University, and the matter was pressed upon me privately. I discussed it with members of the profession, students, and I think one lecturer. The contention I make is, that it is better to have a first-class law school, unexcelled by any other, equipped to furnish the highest possible standards of legal attainments, and thereby holding off any necessity for law faculties in our universities. You put it correctly, I think, when you state, "but three or four lecturers, speaking a few hours a day, cannot hope to create an atmosphere favourable to the growth of a really scholarly handling of the law in actual practice." That sums up briefly what has been stated to me on different occasions, and that the time had come when the Benchers must be alive to the necessities of the time, and to keep ahead of the times, in furnishing the best education possible to afford law students.

It seems to me that the Benchers are not unwilling if they can be made to realize that the time is opportune. It would be too late to wait until our universities establish law faculties. One good school, in every way up-to-date, is preferable to three mediocre ones. That we are a long way from the ideal of profound, and yet practical scholarship, which ought to be our goal, may be a correct statement of the fact, and apparently some think so, and if so, the improvement suggested would be a step in the right direction.

I hope that your article will bring out further criticism and friendly discussion of the subject so as to create an interest in the Bar as well as the Bench, as the active practitioner, no doubt, does not take the personal interest in the law school that might contribute to its greater prosperity. I hope our present and future law students will have more before them than merely, as you say, to engage in the active practice of our profession for a living. It is deplorable that so few of our members are willing to devote any time to law reform, and the general interests of the profession. We must not forget either that the quality of our judges and legislators as well as of lawyers depends upon the foundations which are laid and the inspiration which is given in the Law School.

I shall be pleased to do what I can to further the main object which I was the instrument of bringing to the attention of the profession.

Believe me, etc.,

W. J. McWHINNEY.

# Reports and Notes of Cases.

## Dominion of Canada.

### SUPREME COURT.

B.C.] [26 D.L.R. 51.

ATTORNEY-GENERAL OF CANADA v. RITCHIE CONTRACTING CO. AND ATTORNEY-GENERAL FOR BRITISH COLUMBIA.

*Constitutional law—Dominion or provincial domain—Public harbours, what are.*

English Bay, lying outside the entrance to the harbour of Vancouver, B.C., is not a "public harbour" within the meaning of that term used in the third schedule of the British North America Act, 1867, and, therefore, not "the property of Canada" under sec. 108, so as to entitle the Dominion Government to restrain parties from removing gravel from a bank running out from the coast into the bay, necessary for the protection of ships anchoring therein, as a harbour of refuge from storms.

*Fisheries Case*, [1898] A.C. 700, considered; 17 D.L.R. 778, 20 B.C.R. 333, affirmed.

*Newcombe*, K.C., Deputy Minister of Justice, for appellants. *L. G. McPhillips*, K.C., and *J. A. Ritchie*, for respondents.

ANNOTATION ON ABOVE CASE FROM 26 D.L.R., P. 69.

Constitutional interest attaches to this case because it, apparently for the first time, suggests a question which will some day, no doubt, have to be decided, and which may be expressed in this form: Is the British North America Act to be construed as always speaking, or did it speak once for all on July 1, 1867, when it was brought into force? This question may take two forms; it may relate to the transfer of property from the provinces to the Dominion, or it may relate to the distribution of legislative power. In the principal case, so far as it is touched on, it took the former shape. Mr. Newcombe, on behalf of the Dominion Government, contended that sec. 108 and schedule 3, whereby it is enacted that "Public Harbours" belonging to the different provinces shall be the property of Canada, should be construed as passing to the Dominion, not only those harbours which were public harbours at the time of the Union, but also those which afterwards became public harbours. In *Atty.-Gen. of B.C.* v. *Canadian Pacific R. Co.*, 11 B.C.R. 289, at 296, Hunter, C.J., had so held. He there says: "The public works forming part of the public harbour, as well as the bed of the harbour, are, and always have been, vested in the

Crown, and it was no doubt considered advisable, if not actually necessary, to transfer the jurisdiction, executive and legislative, over public harbours to the Dominion, as ancillary to the proper exercise of its powers relating to shipping and navigation. The jurisdiction, in my opinion, is latent, and attaches to any inlet or harbour as soon as it becomes a public harbour, and is not confined to such public harbours as existed at the time of the Union."

In the principal case it was perhaps not really necessary to decide the point, because Fitzpatrick, C.J., and Anglin, J., distinctly, and Idington, J., and Brodeur, J., apparently, hold that English Bay, the *locus* in question, was not a harbour in 1871, when British Columbia came into the Union, and is not a harbour now. Duff, J., however, holds that, though not a harbour in 1871, it is a harbour now. But whether actually necessary to decide the point or not, Davies, and Duff, JJ., hold decidedly, and Anglin, J., strongly inclines to the view, that sec. 108, schedule 3, does not apply to harbours which have only come into use as such after the Union.

If "Public Harbours" were the only provincial property which sec. 108 referred to, more might be said for the opposite contention. For, as the Privy Council pointed out in the *St. Catherines Milling & Lumber Co. Case* (1888), 14 App. Cas. at p. 56, in construing such enactments in the B.N.A. Act, it must always be kept in view that, where public land, with its incidents, is described as the "property of," or as "belonging to" the Dominion or a province, these expressions merely import that the right to its beneficial user, or to its proceeds, has been appropriated to the Dominion, or the province, as the case may be, and is subject to the control of its legislature, the land itself being vested in the Crown. See also the *Fisheries Case*, [1898] A.C. 700 at 709-711. It might then have been contended, not unreasonably, if "public harbours" stood alone, that, inasmuch as "navigation and shipping" had been placed under the exclusive jurisdiction of the Dominion parliament, the proper construction of sec. 108 was that whenever a place became a public harbour, even after Confederation, it should automatically cease to be under provincial administration, and pass under Dominion administration. But Duff, J., seems to give the *coup de grâce* to such a contention when he points out that sec. 108, besides "public harbours," includes "railways," "piers" and "public vessels," and says: "It could hardly have been within the contemplation of the Act that the roadbed of a provincial government railway, for example, constructed after Confederation, should pass to the Dominion as soon as it should be a completed railway, or that a ship acquired for provincial government purposes should forthwith become the property of the Dominion. One can hardly distinguish between such subjects (which, if existing at the date of the Act, would, of course, fall within the third schedule), and a pier, or an artificial harbour constructed as a provincial government work."

But let no one suppose that this convicts the B.N.A. Act of a *casus omissus*. For just as in *Atty.-Gen. of B.C.* v. *Can. Pac. R. Co.*, [1906]

A.C. 204 (*cf. Booth* v. *McIntyre* (1880), 31 C.P. at p. 193), the Privy Council decided that for the purposes of a Dominion railway company, the Dominion Parliament has power to dispose of provincial Crown lands, and, therefore, of a provincial foreshore to a harbour, so there can be no doubt that, under its exclusive jurisdiction over "navigation and shipping," the Dominion parliament could expropriate a provincial harbour. And so, in the principal case, *per* Davies, and Duff, JJ.

Some day, as already stated, the question whether the B.N.A. Act is to be construed as always speaking may arise, not in reference to its section transferring provincial property to the Dominion, but in reference to its clauses defining areas of legislative power. Such a question has already arisen in the Australian Commonwealth, where "trademarks" is one of the subjects with respect to which the Federal parliament is expressly given power to make laws. Such a power is conceded, though not expressly granted in our Federation Act, to the Dominion parliament, no doubt as incidental to, or included in, its exclusive jurisdiction over "the regulation of trade and commerce." In *Atty.-Gen. for New South Wales* v. *Brewery Employees Union of N.S.W.* (1908), 6 C.L.R. 469 (*cf.* Keith's Responsible Government in the Dominions, vol. II., p. 840), the validity of part VII. of the Commonwealth Trademarks Act, 1905, came up for consideration. That section of the Act provided for the registration of workers' trademarks. These marks or labels were marks affixed to goods to shew that they were manufactured by the workers or associations of workers by whom they were registered, and the Act penalized the use of marks in the case of goods not produced by the workers or associations. The aim of the enactment was, of course, to extend the influence of trade unions by allowing the immediate identification of goods as produced under union conditions, and several brewery companies of New South Wales questioned its validity. The Court decided against the validity of the part of the Act attacked, because they held that the power of the Commonwealth to legislate as to trademarks did not extend to permit the creation of what was not a trademark at all in the sense of that word as understood in 1900, the date of the enactment of the Constitution. O'Connor, J., pointed out, 6 C.L.R. 469 at 540, that a workers' trademark was deficient in both of the essential characteristics of a trademark as ordinarily understood, a trade or business connection between the proprietor of the trademark and the goods in question, and distinctiveness in the sense of being used to distinguish the particular goods to which it is applied from other goods of a like character belonging to other people. Even so we may surmise, in view of the liberal construction given to those clauses in our Federation Act which confer spheres of legislative power, that the decision would be different under our Constitution, if the subject of trademarks was expressly placed within the legislative powers of the Dominion parliament.

There can be no doubt that the phrases by which subjects of legislative power are conferred must acquire a more extended connotation as the

inventions of science and developments of the national life extend the significance of such phrases beyond what they comprehended when the Constitution was originally framed. Thus, in *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.* (1877), 96 U.S. 1, the power of the Congress of the United States to regulate commerce with foreign nations, and among the several states, and with the Indian tribes was held not confined to the instrumentalities of commerce as they were known and used when the constitution was adopted. As the Court says: "It keeps pace with the progress of the country and adapts itself to the new developments of times and circumstances. It extended from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successfully brought into use to meet the demands of increasing population and wealth."

In annotating the principal case, we must not overlook the contribution which Duff, J., makes to the knotty point of what constitutes a "public harbour" within sec. 108 of the Federation Act. After quoting some words of Lord Esher, in *Regina* v. *Hannam*, 2 Times L.R. 235, and referring to some observations of Lords Herschell and Watson, reported as occurring on the argument before the Privy Council in the *Fisheries Case*, [1898] A.C. 700, he says: "In *Atty.-Gen.* v. *Can. Pac. R. Co.*, [1906] A.C. 204, it was assumed that it was necessary to shew user for commercial purposes as distinguished from purposes of navigation merely. Generally speaking, I think such user must be shewn, in the absence of some evidence of recognition by competent public authority of the locality in controversy as a harbour in a commercial sense. *The King* v. *Bradburn*, 14 Can. Ex. 419. As to the extent of the commercial user necessary to bring a given locality within the description 'public harbour' a variety of circumstances may, no doubt, affect the determination of that decision."

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B.C.] BALL v. ROYAL BANK OF CANADA. [Nov. 29, 1915.

*Banking—Purchase of company's assets—Bill of sale—Description of chattels—B.C. Bills of Sale Act, R.S.B.C., 1911, ch. 20—Registration—Recital in bill of sale—Consideration—Defeasance—Reference to unregistered note—Collateral security—Loan by bank—Bank Act, 3 & 4 Geo. V. ch. 9, sec. 76.*

Under the British Columbia Bills of Sale Act, R.S.B.C., 1911, ch. 20, any description by which the goods affected by a bill of sale can be identified is formally sufficient, as the Act does not require specific description of the chattels comprised therein.

A bill of sale given as security for the payment of a promissory note contained recitals shewing particulars of the note and that interest was payable on the amount thereof, but the rate of

interest was not mentioned and the note was not annexed thereto nor registered with the bill of sale.

*Held, per* Davies, Idington, Duff and Brodeur, JJ., that the recitals stated the consideration in a manner which substantially conformed to the requirements of section 19 of the Bills of Sale Act, R.S.B.C., 1911, ch. 20, and the omission to annex the note to the instrument as registered was, in this regard, immaterial. *Credit Co.* v. *Pott*, 6 Q.B.D. 295, followed.

*Per* Duff, Anglin and Brodeur, JJ. (Idington, J., *contra*).—As the assurance was embodied in two documents, the bill of sale and the note, and one of these documents, the note, was not registered as required by sec. 19 of the B.C. Bills of Sale Act, the absence of a complete statement of the terms of defeasance in the bill of sale rendered it void as a security to the bank. *Cochrane* v. *Matthews*, 10 Ch.D. 80*n*; *Ex parte Odell*, 10 Ch. D. 84; *Counsell* v. *London and Westminster Loan and Discount Co.*, 19 Q.B.D. 512; *Edwards* v. *Marcus* (1894), 1 Q.B. 587; and *Ex parte Collins*, 10 Ch. App. 367, referred to.

As part of the consideration of an agreement by which the bank acquired the office site and business of a trust company, the bank became responsible for the claims of persons who had deposited money with the company, and, to secure the bank in respect to this liability and form a fund to meet payments to depositors, the company gave the bank a promissory note for the amount of the deposits and assigned assets to the bank, which included, amongst other securities, the bill of sale above mentioned.

*Held*, (Idington, J., *contra*), that the transaction was not a loan of money or an advance made by the bank in contravention of sec. 76, sub-sec. 2 (*c*), of the Bank Act, 3 & 4 Geo. V., c. 9, but a legitimate exercise of the powers conferred by the Act.

*Per* Duff, J.—If the transaction were to be considered as a loan subsidiary to the purchase of the company's assets by the bank, it would, nevertheless, be unobjectionable because it would be a loan upon the security of a corporation within the meaning of clause (*c*) of the first sub-section of sec. 76 of the Bank Act, and it is immaterial that security was given on the property of the corporation.

The judgment appealed from (22 D.L.R. 647) reversed, Fitzpatrick, C.J., and Davies, J., dissenting.

*J. W. deB. Farris*, for appellant. *G. F. Henderson*, K.C., for respondent.

Alta.] [Nov. 29, 1915.

CANADIAN PACIFIC RAILWAY CO. *v.* JACKSON.

*Damages — Verdict — Excessive award — Personal injuries—Complete reparation—Loss of prospective earnings—Pain and suffering—Evidence—Mortuary tables—Practice—New trial.*

Where, from the amount of the damages awarded and the circumstances of the case, it does not appear that the jury took into consideration matters which they should not have considered, or applied a wrong measure of damages, the verdict ought not to be set aside or a new trial directed simply because the amount of damages may seem excessive to an appellate Court. Duff, J., dissented on the ground that a jury appreciating the evidence and making due allowance for the risk of accident, apart from negligence, in the hazardous pursuit in which the plaintiff was employed, could not have given the verdict in question.

*Per* Idington and Anglin, JJ.—The evidence of a witness testifying in regard to estimates based on mortuary tables in use by companies engaged in the business of annuity insurance is admissible, *quantum valeat*, notwithstanding that he may not be capable of explaining the basis upon which the tables had been prepared. *Rowley* v. *London and North-Western Ry. Co.*, L.R. 8 Ex. 221, and *Vicksburg and Meridian Railroad Co.*, 118 U.S.R. 545, referred to.

Appeal dismissed with costs.

*O. M. Biggar*, K.C., and *Geo. A. Walker*, for appellants. *Frank Ford*, K.C., and *G. M. Blackstock*, for respondent.

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Alta.] [Dec. 20, 1915.

DOMINION FIRE INSURANCE CO. *v.* NAKATA.

*Fire insurance—Bawdy house—Immoral contract—Legal maxim—"Ex turpi causa non oritur actio"—Cancellation of policy—Statutory condition—Notice to insured—Return of premium—Principal and agent.*

On application by plaintiff, through an insurance broker, the company insured her house and furniture against loss by fire, the premises being described as a "sporting house" (a house of ill-fame), and soon afterwards the local general agent of the company received notification from the head office that the policy had been cancelled. On being notified, the broker wrote to plaintiff informing her of the cancellation, but his letter was not delivered and was returned through the mails.

*Held*, reversing the judgment appealed from (9 Alta. L.R. 47), Idington and Duff, JJ., dissenting, that, on the face of the policy of insurance, it appeared that the effect of the contract was to facilitate the carrying on of an illegal or immoral purpose, and, therefore, it would not be enforced in a Court of justice. *Pearce* v. *Brooks*, L.R. 1 Ex. 213, applied; *Clark* v. *Hagar*, 22 S.C.R. 610; *Johnson* v. *Union Marine Fire Insurance Co.*, 97 Mass. 288; and *Bruneau* v. *Laliberte*, Q.R. 19 S.C. 425, referred to.

*Per* Davies, J.—In the circumstances of the case the broker through whom the plaintiff effected the insurance became her agent for all purposes in connection therewith, and he was also constituted the agent of the company for the purpose of giving notice of the cancellation of the policy.

*Per* Idington and Duff, JJ., dissenting.—The mere description of the premises insured as a bawdy house is not sufficient evidence to justify the inference that the contract had the effect of promoting illegal or immoral purposes. *Bruneau* v. *Laliberté*, Q.R. 19 S.C. 425, discussed.

*Per* Idington and Duff, JJ.—The broker, who was handed the policy for delivery to insured and collection of the premium, became the agent of the company for those purposes. He, however, had no authority from the insured to receive notice of cancellation of the policy on her behalf nor to waive the requirements of statutory condition 19 of the Northwest Territories Ordinance, ch. 16 (1st Sess.), 1903, as to notice of cancellation of policies of insurance and return of premiums paid.

Appeal allowed with costs.

*Hamilton Cassels*, K.C., for appellants. *C. T. Jones*, K.C., for respondent.

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Ont.] SINGER *v.* SINGER. [Feb. 1.

*Will — Construction — Devise of Income — Trust — Codicil — Postponement of division—Maintenance of children.*

The will of S. contained the following provision:—"I direct my said trustee to pay to my wife, Annie Singer, during the term of her natural life and as long as she will remain my widow, the annual income arising from my estate for the maintenance of herself and our children; should, however, my wife re-marry, then such annuity shall cease."

*Held*, that Annie Singer was entitled to said income during her widowhood for her own use absolutely, but subject to an obligation to provide, in her discretion, for the maintenance of the children, which discretion would not be controlled or interfered

with so long as it was exercised in good faith. Such obligation did not extend to a child married or otherwise forisfamiliated.

*Per* Anglin, J.—The jurisdiction of the Court to consider the question of the good or bad faith of the widow on an originating notice is questionable.

Another clause of the will directed the trustees "to pay to each of my sons who shall reach the age of thirty years a sum equal to half that portion of my estate to which such son is entitled under this my will upon the death of his mother. . . . Such payment to be considered as a loan from the estate." A codicil added several years later contained this provision:—"I hereby further direct that my real property shall not be divided among the beneficiaries as directed by my will until after the lapse of ten years from my death."

*Held*, that the division so postponed was not the final division to be made on the death or marriage of the widow; that it had the effect of postponing any advance to a son thirty years old of half his portion until the ten years from the testator's death had expired so far as such advance would necessitate the sale or mortgage of any of the real estate.

Judgment of the Appellate Division (33 Ont. L.R. 602) affirmed.

*Dewart*, K.C., for appellant, M. J. Singer. *Cowan*, K.C., and *Rose*, K.C., for the other appellants. *Watson*, K.C., for the respondent, Annie Singer.

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Ont.] KOHLER *v.* THOROLD NATURAL GAS CO. [Feb. 14.

*Contract — Construction — Conditions — Mutual performance — Damages.*

In a contract for the sale and delivery of gas, if the vendor, not being in default, is prevented, by the wrongful act of the purchaser, from fulfilling his obligation to deliver, he is entitled to the compensation he would have received but for such wrongful act.

Appeal allowed with costs.

*Tilley*, K.C., and *W. T. Henderson*, K.C., for appellants. *Collier*, K.C., for respondents.

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Exch.] PAULSON *v.* THE KING AND THE INTERNATIONAL COAL AND COKE CO. [Dec. 29, 1915.

*Dominion lands—Lease of mining areas—Dominion Lands Act, s. 47—Statutory regulations—Conditions of lease—Defeasance —Notice—Cancellation on default—Forfeiture of rights.*

The regulations regarding the leasing of school lands in the North-West Territories for coal mining purposes, made pursuant to sec. 47 of the Dominion Lands Act, provided a condition in such leases that, on default by the lessee to perform conditions of the lease, the Minister of the Interior should have power to cancel the lease by written notice to the lessee, whereupon the lease should become void, and the Crown might re-enter, repossess and enjoy its former estate in the lands.

*Held*, reversing the judgment appealed from (15 Ex. C.R. 252), Idington and Brodeur, JJ., dissenting, that, in order to determine such a lease, the notice should declare the intention of the Minister to make the cancellation on account of breach of the conditions, and the lessee should be given an opportunity to remedy the breach in question or, at least, to be heard before forfeiture. No proposed cancellation can be effective against the lessee unless such a notice has been given to him before the forfeiture is declared. *Per* Duff, J.—In the absence of special authority, solicitors employed by the lessee in respect of his business with the Department cannot be deemed agents to whom such notice of cancellation could be given on his behalf.

*Per* Idington and Brodeur, JJ. (dissenting).—The lease in question determined, under the statutory regulations, upon the mere fact of breach of conditions, and the Minister was not competent to revive it or to waive the consequences of default.

*Per* Brodeur, J.—By notification of his solicitors and the effect of the correspondence with the Department, which took place thereafter, it must be taken that the lessee had actual notice of the intention of the Minister to cancel the lease for breach of conditions.

Appeal allowed with costs.

*W. N. Tilley*, K.C., and J. F. Smellie, for appellant. *R. G. Code*, K.C., for respondent, the King. *Lafleur*, K.C., and *Falconer*, K.C., for respondents, the International Coal and Coke Co.

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Ont.] TOWNSHIP OF CORNWALL v. OTTAWA AND NEW YORK RAILWAY CO. [Feb. 14.

*Appeal—Jurisdiction—Provincial tribunal—Consent of parties—Assessment—Railway bridge—Navigable river—R.S.O.*, 1914, *c.* 195, *R.S.O.*, 1914, *c.* 186.

By the Ontario Assessment Act an appeal is given from a decision of the Court of Revision to the County Court Judge, with, in certain cases, a further appeal to the Railway and Municipal Board. Certain railway companies took an appeal direct

from the Court of Revision to the Board. When said appeal came up for hearing, the Chairman stated that the Board was without jurisdiction, and the parties joined in a consent to its being heard as if an appeal from the County Court Judge. The Board then heard the appeal, and gave judgment dismissing it. The companies applied for and obtained leave to appeal from said judgment to the Appellate Division, which reversed it. On appeal from the last-mentioned judgment to the Supreme Court of Canada,

*Held*, Fitzpatrick, C.J., and Idington, J., dissenting, that the case was not adjudicated upon by the Board *extra cursum curiæ;* that it came before the Appellate Division and was heard and decided in the ordinary way; an appeal would, therefore, lie to the Supreme Court of Canada under sec.41 of the Supreme Court Act.

A railway company, under the authority of the Parliament of Canada, built an international bridge over the St. Lawrence River at Cornwall, and have since run trains over it.

*Held* that such superstructure, supported by piers resting on Crown soil and licensed for railway purposes, was not included in the railway property assessable under sec. 47 of the Ontario Assessment Act (R.S.O., 1914, ch. 195); if it is included, it is exempt from taxation under sub-sec. 3 of sec. 47.

Judgment appealed from, 34 Ont. L.R. 55, affirmed.

*Watson*, K.C., and *Gogo*, for appellant. *Ewart*, K.C., and *W. L. Scott*, for respondents.

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Alta.] [Feb. 21.

THE NORTH-WEST THEATRE CO. v. MACKINNON.

*Construction of statute—Alberta "Assignments Act"—Assignment for benefit of creditors—Occupation of leased premises—Liability of official assignee.*

The Alberta Assignments Act, as amended by the Alberta Statutes, ch. 4, sec. 14, of 1909, and ch. 2, sec. 12, of 1912, provides that assignments for the general benefit of creditors must be made to an official assignee appointed under the Act, and that the assignment shall vest in such assignee all the assignor's real and personal property, credits and effects which may be seized and sold under execution. The lessee of premises held under a lease from the plaintiffs made an assignment to the defendant who took possession thereof and, on threat of distress, agreed that he would guarantee the rent so long as he remained in occupation. After three months the defendant quitted the premises and notified the landlord that

he would no longer be responsible for or pay the rent. In an action for breach of the covenants of the lease and to recover the rent accruing to the end of the term:—

*Held*, reversing the judgment appealed from (8 West. W.R. 237), Idington and Brodeur, JJ., dissenting, that by the effect of the assignment and entry into possession the term of the lease passed to the official assignee who thereupon became liable for the whole of the rent accruing for the remainder of the term.

*O. M. Biggar*, K.C., for appellants. *J. S. Scrimgeour*, for respondent.

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Ont.] WOOD *v.* GAULD ET AL. [Feb. 21.

*Partnership—Dissolution—Death of partner—Survivor's right to purchase share—Goodwill—Annual balance sheet.*

If one member of a partnership dies the survivor has a right to take over his interest at a valuation though there is no express provision therefor in the partnership agreement if the intention of the partners that he should, clearly appears from its terms. Brodeur, J., dissented. Idington, J., dissented on the ground that such intention was not clearly manifested.

The partnership articles provided that at the end of each partnership year an account should be taken of the stock, liabilities and assets of the business and a balance sheet struck for that year; that in case one partner died the co-partnership should continue to the end of the current financial year, or, at the option of the survivor, for not more than twelve months from such death; that for twelve months from the death of his partner the survivor should not be required to pay over any part of the latter's capital in the business; and that any dispute between the survivor and representatives of deceased as to the amount of debits against or credits to either in the balance sheet or the valuation of the assets should be referred to arbitration.

*Held*, Duff, J., dissenting, that the value of the interest of the deceased partner was not to be determined by the account taken and balance sheet struck at the end of the financial year following his death, but the assets should be valued in the ordinary way.

*Held*, also, Davies and Duff, JJ., dissenting, that the goodwill of the business was to be included in said assets, though it never formed a part of them in the annual sheets struck since the co-partnership began. [Judgment of the Appellate Division (34 Ont. L.R. 278) reversed in part.]

*Tilley*, K.C., and *Washington*, K.C., for appellant. *E. F. B. Johnston*, K.C., for respondents.

Ont.] ONTARIO ASPHALT BLOCK CO. *v.* MONTREUIL. [Feb. 21.

*Specific performance—Agreement for sale of land—Inability to perform—Liability to damages—Diminution in price.*

A lease of land for ten years provided that on its termination the lessee could, by giving notice, purchase the fee for $22,000. In a suit for specific performance of this agreement:—

*Held*, applying the rule in *Bain* v. *Fothergill* (L.R. 7 H.L. 158), Fitzpatrick, C.J., and Davies, J., dissenting, that if the lessor, without fault, was unable to give title in fee to the land, the lessee was not entitled to damages for loss of his bargain.

*Per* Fitzpatrick, C.J., and Davies, J.:—The above rule should not be applied when the lease contained onerous conditions binding the lessee to expend large sums in improving the property whereby he would suffer special damages if the contract was not carried out.

Judgment appealed from (32 Ont. L.R. 243) affirmed.

*D. L. McCarthy*, K.C., and *Rodd*, for appellants.

*Cowan*, K.C., for respondent.

## EXCHEQUER COURT.

Cassels, J.] [Jan. 26.

THE KING, ON INFORMATION OF ATTORNEY-GENERAL OF CANADA, *v.* TRUSTS AND GUARANTEE COMPANY.

*Provincial rights—Title to land—Dominion lands—Intestacy—Failure of heirs and next-of-kin—Escheat—Bona vacantia.*

R., a resident of and domiciled in the province of Alberta, was at the time of his death the registered owner of a certain parcel of land in said province under a patent issued to him by the Department of the Interior of Canada on the 25th July, 1911. He died on November 18, 1912, leaving no heirs or next-of-kin. Letters of administration to his property, both real and personal, were granted to the defendant, as public administrator under the law of the province, and a certificate of title to the land in question was granted to defendant under the Land Titles Act of Alberta. The land was thereafter sold by the defendant, and the provincial government claimed the proceeds of the sale, except in so far as they were amenable to debts and administration expenses as belonging to it under the provisions of the Alberta statute, 5 Geo. V. ch. 5, sec. 1. Upon an information being exhibited by the Attorney-General of Canada to have it determined that such proceeds belonged to the Crown in right of Canada,

*Held* (1), that the right of escheat to the lands in question, or if the principle of escheat did not apply and the lands were to be treated as *bona vacantia*, then the right to them as such belonged to the Crown in right of the Dominion as *jura regalia*.

(2) That, in so far as rights of the Dominion Crown to escheated lands or *bona vacantia* in the province are concerned, the provisions of the Alberta statute, 5 Geo. V. ch. 5, sec. 1, purporting to vest the property of intestates dying without next-of-kin or other persons entitled thereto in the Crown in right of the province are to be regarded as *ultra vires*.

*Attorney-General of Ontario* v. *Mercer* (1883), 8 App. Cas. 767; *Church* v. *Blake*, 2 Q.L.R. 236; *The King* v. *Burrard Power Co.*, 12 Ex. C.R. 295; *Dyke* v. *Walford*, 5 Moo. P.C. 434, referred to.

*W. D. Hogg*, K.C., for plaintiff; *Frank Ford*, K.C., for defendants.

## Book Reviews.

*A treatise on the law relating to Canadian Commercial Corporations, with an Appendix containing the Dominion and Provincial Companies Acts and the Winding-up Acts.* By VICTOR E. MITCHELL, K.C. Montreal: Southam Press, Limited, Law Publishers. 1916.

Mr. Mitchell gives to the profession and to the business men of the Dominion a most useful compilation of the law affecting companies. It contains nearly 2,400 pages of closely printed matter. The first part discusses the principles of the Law of Corporations, followed by thirty-six chapters devoted to an examination of the law as it affects the numerous sub-divisions into which company law naturally falls. A multitude of authorities are given in support of the proposition advanced. An appendix gives the various Companies Acts of the Dominion and its several provinces.

The author, in the preface, calls attention to the differences in legislation as to company law in our various provinces. In Nova Scotia, Saskatchewan, Alberta, and British Columbia the system of incorporating by registration, as followed in England, has been adopted; whilst the Dominion Parliament and the legislatures of Ontario, Quebec, Manitoba, Prince Edward Island, and New Brunswick are under the system of incorporation by letters patent. He calls attention to the inconveniences occasioned by these different methods, and very properly urges that there should be a uniformity. Perhaps it would be best to adopt

inventions of science and developments of the national life extend the significance of such phrases beyond what they comprehended when the Constitution was originally framed. Thus, in *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.* (1877), 96 U.S. 1, the power of the Congress of the United States to regulate commerce with foreign nations, and among the several states, and with the Indian tribes was held not confined to the instrumentalities of commerce as they were known and used when the constitution was adopted. As the Court says: "It keeps pace with the progress of the country and adapts itself to the new developments of times and circumstances. It extended from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successfully brought into use to meet the demands of increasing population and wealth."

In annotating the principal case, we must not overlook the contribution which Duff, J., makes to the knotty point of what constitutes a "public harbour" within sec. 108 of the Federation Act. After quoting some words of Lord Esher, in *Regina* v. *Hannam*, 2 Times L.R. 235, and referring to some observations of Lords Herschell and Watson, reported as occurring on the argument before the Privy Council in the *Fisheries Case*, [1898] A.C. 700, he says: "In *Atty.-Gen.* v. *Can. Pac. R. Co.*, [1906] A.C. 204, it was assumed that it was necessary to shew user for commercial purposes as distinguished from purposes of navigation merely. Generally speaking, I think such user must be shewn, in the absence of some evidence of recognition by competent public authority of the locality in controversy as a harbour in a commercial sense. *The King* v. *Bradburn*, 14 Can. Ex. 419. As to the extent of the commercial user necessary to bring a given locality within the description 'public harbour' a variety of circumstances may, no doubt, affect the determination of that decision."

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B.C.] BALL *v.* ROYAL BANK OF CANADA. [Nov. 29, 1915.

*Banking—Purchase of company's assets—Bill of sale—Description of chattels—B.C. Bills of Sale Act, R.S.B.C.*, 1911, *ch.* 20—*Registration—Recital in bill of sale—Consideration—Defeasance—Reference to unregistered note—Collateral security—Loan by bank—Bank Act*, 3 & 4 *Geo. V. ch.* 9, *sec.* 76.

Under the British Columbia Bills of Sale Act, R.S.B.C., 1911, ch. 20, any description by which the goods affected by a bill of sale can be identified is formally sufficient, as the Act does not require specific description of the chattels comprised therein.

A bill of sale given as security for the payment of a promissory note contained recitals shewing particulars of the note and that interest was payable on the amount thereof, but the rate of

# War Notes.

Many of our readers will appreciate and applaud the sentiment set forth so well in the following hymn. We therefore make no apology in publishing it:—

God of our fathers, at whose call
We now before Thy footstool fall;
Whose grace hath made our Empire strong,
Through love of right, and hate of wrong;
In this dark hour we plead with Thee,
For Britain's cause on land and sea.

Not for the lust of war we fight
But for the triumph of the right.
The strife we hate is on us thrust;
Our aims are pure, our cause is just;
So, strong in faith, we plead with Thee,
For Britain's cause on land and sea.

Asleep beneath Thine ample dome
With many a tender dream of home;
Or charging in the dust and glare,
With war-bolts hurling through the air:
In this dark hour we plead with Thee,
For Britain's sons on land and sea.

If wounded in the dreadful fray,
Be Thou their comfort and their stay;
If dying, may they in their pain
Behold the Lamb for sinners slain;
In this dark hour we plead with Thee,
For Britain's sons on land and sea.

And soon, O blessed Prince of Peace,
Bring in the days when war shall cease,
And men and brothers shall unite
To fill the world with love and light;
Meanwhile, O Lord, we plead with Thee,
For Britain's cause on land and sea.