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CHRISTIANITY AND THE LAW.

A learned Law Lord recently declared that the time honoured phrase, adopted by many learned judges of great eminence, that "Christianity is a part of the law of the land" is mere rhetoric.

We trust we may without presumption be permitted to point out that the unrepealed statutes of the Imperial Parliament have hitherto been usually considered, and by most lawyers are still considered to be "part of the law of the land." Among these statutes is to be found a certain Act of Parliament, 14 Car. 2, c. 4, known as the Act of Uniformity, which among other things gives a Parliamentary sanction and approval to a certain book called the Book of Common Prayer, which book among other things is a manual of the Christian religion and contains a large portion of the Gospels and Epistles, and the Catholic creeds of the Christian Church founded thereon, and also a rule of life according to Christian principles. No doubt since that law was passed the Imperial Parliament has by various subsequent statutes done away with some of the penal provisions of the Act of Uniformity, but it has never in any way repealed the formal sanction which that Act gave to the Christian religion. Moreover, the Imperial Parliament by the Lord's Day Act gave a legislative sanction to the observance of that day which the Christian Church has appointed for public worship. It has passed laws against, and imposed penalties for, the violation of the third, seventh, eighth and ninth commandments as set forth in the Book of Common Prayer. To say that "Christianity is not part of the law of England" seems to be "mere rhetoric" not founded on fact.

We agree with the Lord Chancellor that the majority of the learned Law Lords in the case referred to were not expounding the law as it existed, but practically legislating, and we may say

ignoring the existence of the Act of Parliament above referred to, and overruling former decisions of the Courts of Law and Equity founded thereon.

How far this argument may be applicable in Canada is another matter. Here we have no Act of Uniformity and no legislative adoption of the Christian religion in any form. It has been assumed by some judges that it is a part of the Common Law of England and as such became part of our law, but in the light of the recent decision of the House of Lords it is perhaps doubtful whether Christianity can be said here to be part of the law of the land as it is in England, at all events we are not able to point to an Act of the Legislature whereby the Christian religion has been formally adopted as the religion of the State.

DIVORCE IN SASKATCHEWAN AND ALBERTA.

Mr. Bram Thompson's interesting article on the subject of Divorce in Saskatchewan, which appeared in the October number of the *Canadian Law Times*, seems to deserve an answer, especially as the learned editor, no mean authority on our constitutional law, has given the article his approval.

Mr. Thompson claims that the law of divorce is part of the Common Law. If we look at the question as it stood prior to the Reformation, it will be found that marriage and divorce were within the jurisdiction of the Courts Christian, or the King's Ecclesiastical Courts, which owed their foundation to William the Conqueror, prior to whose reign the Bishop sat in the County Courts, and temporal and ecclesiastical law were administered in England by the same tribunals. When that King established the Courts Christian in England, jurisdiction in certain matters was implicitly conferred on them; among others the questions of marriage and divorce, which were regarded as matters within the sphere of the Christain religion, and therefore proper to be determined in the Courts Christian because marriage was accounted a sacrament. But when we speak of divorce it must be remembered that there were two kinds of divorce; one from bed and board

and the other an absolute dissolution of the marriage relation; but the latter kind of divorce was only granted in the English Courts Christian, where, as in the case of Henry VIII. and Catharine of Arragon, the marriage was null and void *ab initio* on the ground that the parties were at the time of the pretended marriage incompetent to enter into marriage with each other. It is therefore only in this modified sense that divorce can be said to have been part of the Common Law. The divorce *à vinculo* from any other causes than what would constitute grounds for a sentence of nullity of marriage is obviously no part of the Common Law, even assuming that Christianity is part of the law of the land, which, however, has been recently declared by a learned Law Lord to be "mere rhetoric," notwithstanding that the Act of Uniformity remains unrepealed, and the Creeds of the Christian Church are included in a schedule to that Act.

I must also demur to Mr. Thompson's describing the King's Ecclesiastical Courts as "the Court of the King as Head of the Church." They are the Ecclesiastical Courts of the King as Head of the State. The English *Law Times* has more than once drawn attention to the impropriety of describing the Sovereign as "the Head of the Church" and has again done so in a recent number (see Oct. 13, p. 375). The Royal Supremacy is a judicial and governmental Supremacy, not in any way a Spiritual Supremacy. The Sovereign is the Supreme Judge in his own Dominions because the law has definitely declared that, in the British Dominions, there shall be no "*imperium in imperio*." He is the Supreme Judge not only of the Church of England, but of all other religious organizations in his dominions. As such he is the final judge not only of the disputes of Christian religious bodies, as many cases in the reports testify, but also of those of Jews and Mahomedans, so far as such disputes require the exercise of any coercive power. But of course he does not intervene unless his aid is invoked by one or other of the disputants.

The jurisdiction to grant absolute divorces except on grounds of nullity was not claimed or exercised by the Sovereign, or even by Parliament, until after the Reformation, and I believe that the first case in which the Parliamentary jurisdiction to dissolve a

marriage was exercised was in the case of the Marquis of Northampton.

In Burns' Ecclesiastical Law, by Phillimore (ed. 1842), p. 503, it is said: "The law of England is now in its letter and theory conformable to the ancient principle of the Roman Catholic Church, which regarded marriage as indissoluble. It was not till a century and a half afterwards* that a practice gradually crept in of dissolving marriage for infidelity by Acts of Parliament passed for each separate case."

Divorces *â vinculo* for causes other than those which warrant a sentence of nullity can therefore hardly with truth be said in sense to be a part of the Common Law, but are purely the result of statutory enactments. When Mr. Thompson says that the English Divorce Acts of 1857-8 did not enact new law, it appears to me he is mistaken. I think he also errs when he says that "the capital right to remarry formerly reposed in the King as head of the Church" was vested in the Probate and Divorce Court by those Acts, because the King was not the head of the Church, and in law, neither in that, nor in any other capacity, was the alleged right reposed in him, except only upon the theoretical idea that all English law is supposed to emanate from the Sovereign, and therefore in that sense, when Acts of Parliament dissolving marriage and permitting parties to remarry were passed, they may be said to be the Act of the Sovereign, but they are his Act not as the head of the Church, but as the head of the State.

The Acts in question did undoubtedly make new law, and gave a temporal Court jurisdiction to pronounce sentences of divorce *â vinculo* for causes for which no court, except the High Court of Parliament, had previously had any jurisdiction to dissolve marriages.

Mr. Thompson, I think, also errs in saying that on the passage of the Divorce Acts referred to, the Ecclesiastical Courts ceased to exist. They are still in existence but their jurisdiction is now confined to purely ecclesiastical matters.

When Mr. Thompson says that Colonies created before 1857

* We presume he means after the Reformation.

"were invested with the English law of divorce" it must have been the English law of divorce as it then existed, and not as it has been since developed and changed by statutes, and according to the English law prior to 1857 marriage lawfully contracted was indissoluble for any cause, and the only divorce permissible in such cases being *à mensa et thora*. Prior to 1857, as Mr. Thompson concedes, marriage and divorce were within the jurisdiction of the King's Ecclesiastical Courts in England. and no courts in Canada were created or set up prior to 1857 with any but a purely temporal jurisdiction. And it may be well to note that this does not appear to have been the result of any oversight as far as the Province of Quebec was concerned, because by the 17th section of the Quebec Act (14 Geo. 3, c. 83) it is enacted "that nothing herein contained shall extend or be construed to extend to prevent or hinder His Majesty his heirs and successors by his or their letters patent under the great seal of Great Britain from erecting constituting and appointing such courts of criminal civil and ecclesiastical jurisdiction within and for the said Province of Quebec (*which then embraced Ontario*) and appointing from time to time judges and officers thereof as His Majesty his heirs and successors shall think necessary and proper for the circumstances of the Province." The erection and constitution of Ecclesiastical Courts it is true was never carried out, but the enactment is a recognition of the then existing state of English law and its mode of administration in part by Ecclesiastical Courts. Prior to Confederation certain of the N. A. colonies enacted divorce laws, as they were competent to do, but after Confederation no Provincial Legislature has had any such power. We do not think it can properly be said that "the Matrimonial Causes Act, 1857, completely overwhelmed the pretence of the divine origin of divorce law." As I have shewn there was never any pretence that divorce law was of divine origin. According to the law of the Courts Christian, marriage lawfully contracted is undissoluble, and no divorce *à vinculo* of a properly contracted marriage could be obtained; the utmost relief was separation from bed and board. The statute referred to, as I have said, made a new law and authorized a temporal court to dissolve marriage absolutely, for

causes which the King's Ecclesiastical Courts could not dissolve marriages.

In considering the effect of Dominion and Provincial legislation, two axioms are to be remembered:

(1) All legislative power in Canada is limited by the B.N.A. Act.

(2) No legislature may make laws by reference, which it could not itself enact.

When, therefore, we come to consider the effect of the North West Territories Act (R.S.O. (1886) c. 50) s. 11, it must be remembered that the right to make laws respecting "property and civil rights" is vested exclusively in the Provincial Legislatures, and when the Dominion Parliament assumed to enact that "the laws of England relating to civil and criminal matters as the same existed on the 15th July, 1870, shall be in force in the Territories," so far as regards "civil matters" are concerned, it appears to have been exceeding the limits of its legislative powers. The 146th section of the B.N.A. Act providing for the admission of the N.W. Territories gave no jurisdiction to legislate for such Territories in civil matters and we have not come across any statute giving the Dominion Parliament that power. Mr. Thompson's argument is that the English divorce law as it existed in 1870 by s. 11 above referred to incorporated into the law of the N.W. Territories, but if "divorce" can properly be regarded as a civil matter, his argument would be untenable if, as we conceive, the Dominion Parliament had no legislative power in "civil" matters. But even if it had such power, a reasonable proper construction of the B.N.A. Act would appear to require that "divorce and marriage" shall be regarded as something separate and distinct from "civil matters" which are assigned to Provincial jurisdiction, and therefore that the Dominion Parliament by the imposition of laws concerning "civil matters" could not be held to have imposed a divorce law.

The analogy which Mr. Thompson draws between the legislation in British Columbia and that relating to Saskatchewan appears to me to fail, because the British Columbia Legislature prior to Confederation had full power to incorporate English

law in all matters, whereas the legislatures which have dealt with the matter in Saskatchewan had only limited powers; so that although the same words used by the B.C. Legislature may have been sufficient to incorporate English divorce law into the law of that Province, it does not by any means follow that the like words as regards Saskatchewan have the same effect, when the competence of the legislature to enact the law is taken into account.

For these reasons it appears to me it would be unsafe and might lead to disastrous consequences if the courts in Saskatchewan and Alberta were to assume and exercise a jurisdiction in divorce as Mr. Thompson suggests even they should.

That they could possibly legally assume any such jurisdiction without the authority of the Dominion Parliament appears to me exceedingly doubtful. Marriage and divorce being admittedly within the legislative control of the Dominion Parliament, it is for that legislature to say what courts shall exercise jurisdiction on that subject, and I should hope that if the Dominion Parliament sees fit to pass any law on the subject that such law may apply to the whole Dominion and be administered upon a uniform plan, so that we may not have the law on this important subject varying in each Province.

With regard to Mr. Thompson's strictures on the private divorce Acts of the Dominion Parliament it may be admitted that this mode of combining judicial and legislative authority is not satisfactory; nevertheless, as the Dominion Parliament has undoubtedly power to pass a general law on the subject of divorce, I fail to see how there can be any reasonable doubt of its power to pass divorce laws in specific cases, and for the purpose to make such inquiry for ascertaining the facts, as to it may seem fit as a preliminary to enacting such laws.

GEO. S. HOLMESTED.

JUDICIAL CHANGES IN ENGLAND.

Mr. Justice Ridley of the King's Bench Division has retired after a long period of judicial service. He was an Official Referee for many years before he went to the Bench. He does not seem to have been a great success as a judge. As one of our exchanges remarks: "It is perhaps unwise to promote at 55 an Official Referee whose previous career at the Bar has not given him any adequate opportunities of dealing effectually with the intricacy and subtlety of our jurisprudence as they arise during the actual hearing in court. Robert Lowe, a most successful coach and barrister, but an indifferent Chancellor of the Exchequer, sagely remarked of himself that you cannot transplant an oak at 50." Some of these observations are not inapplicable to some appointments to the Bench in other places besides England.

The two new Judges just appointed are Mr. Arthur Clavell Slater, K.C., and Mr. Alexander Adair Roche, K.C. Mr. Roche had devoted himself almost exclusively to commercial causes, whilst Mr. Slater was a great jury advocate. These appointments are highly spoken of by the Bar in England.

The new Common Sergeant is Mr. H. F. Dickens, K.C., who succeeds Sir F. A. Bosanquet. Although going on the Bench at the age of 68, his great legal knowledge, varied experience and vigour of mind and body will make him a success. His duties are to preside at the Mayor's Court and the Central Criminal Court. It is interesting to know that Mr. Dickens is a son of Charles Dickens, the novelist, famous as a writer wherever the English language is read.

CRIMINAL STATISTICS IN ANGLO-SAXON COUNTRIES.

Among the enlightened nations the United States leads the world in manumitting murders and enlarging felons, while Anglo-Saxon countries not under the American flag have the least percentage of murderers and felons.

Has any other nation laws which its courts of last resort

characterize as "a shelter to the guilty," which "has no place in the jurisprudence of civilized and free countries outside the domain of the common law and it is nowhere observed among our own people in the search of truth outside the administration of the law" or as "the privilege of crime."

Ex-President William H. Taft in his address before the Civic Forum of New York City on April 28, 1908, said:

"And now, what has been the result of the lax administration of criminal law in this country? Criminal statistics are exceedingly difficult to obtain. The number of homicides one can note from the daily newspapers, the number of lynchings and the number of executions, but the number of indictments, trials, convictions, acquittals, or mistrials it is hard to find. Since 1885 in the Unites States there have been 131,951 murders and homicides, and there have been 2,286 executions. In 1885 the number of murders was 1,808. In 1904 it has increased to 8,482. The number of executions in 1885 was 108. In 1904 it was 116. This startling increase in the number of murders and homicides as compared with the number of executions tells the story. As murder is on the increase, so are all offences of the felony class, and there can be no doubt that they will continue to increase unless the criminal laws are enforced with more certainty, more severity than they now are."

The criminal statistics referred to by ex-President Taft are those published by the Chicago *Tribune* either on New Year's Day or else on the last day of each year since 1885, showing the number of homicides and executions in the United States for each year.

The Chicago *Tribune* gives the number of homicides (including manslaughters) in the United States in 1912 as 9,152; the number of executions in 1912 as 145; it gives the number of homicides (including manslaughters) in 1913 as 8,902; the number of executions in 1913 as 88; it gives the number of homicides (and manslaughters) in 1914 as 8,251; the number of executions in 1914 (including 2 for another felony) as 74; it gives the number of homicides (and manslaughters) in 1915 as 9,230; the number of executions in 1915 (including 8 for another felony) as 119.

According to the Judicial Statistics, England and Wales, 1913, there were reported to the police of England and Wales during the year 1913, 111 murders of persons aged more than one year and 67 murders of infants of one year or less. On these 178 reported English and Welsh murders, 67 persons were brought to trial for murder; there were 28 convictions and death sentences; 16 executions; 12 commutations to penal servitude for life; 5 accused were found insane on arraignment; 17 were found guilty but insane and 17 were acquitted.

In 1913, 154 manslaughters were reported to the English and Welsh police, on which 136 persons were brought to trial, on which trials there were 63 convictions and sentences.

In 1914, the number of murders and manslaughters reported to the police of England and Wales is not given; 55 persons were brought to trial for murder; 23 were convicted of murder and sentenced to death; 14 were executed; the sentences of 8 were commuted to penal servitude for life; 12 were found guilty but insane; 11 by jury and 1 by Court of Criminal Appeal; 6 were found insane on arraignment and 14 were acquitted including one quashed conviction by Court of Criminal Appeal.

In 1914, 117 were brought to trial in England and Wales for manslaughter, of which 48 were convicted and sentenced.

According to the Canadian criminal statistics for the years ending Sept. 30, 1913, and September 30, 1914:

In 1915, 55 persons were charged with murder, of whom 23 were convicted and sentenced to death, 5 were detained for lunacy and 27 were acquitted.

In 1914, 62 persons were charged with murder, of whom 27 were convicted and sentenced to death, 4 were detained for lunacy and 31 were acquitted.

In 1913, 61 persons were charged with manslaughter, of whom 44 were convicted, 1 was detained for lunacy and 16 were acquitted.

In 1914, 59 persons were charged with manslaughter, of whom 39 were convicted and 20 were acquitted.

In 1913, also in 1914, two persons each year were charged with infanticide; all four were acquitted.

The population of the Dominion of Canada is given by the last census as 7,206,643.

Moorfield Storey, quoting Andrew D. White, says:

"The murder rate in the United States if from ten to twenty times greater than the murder rate of the British Empire and other northwestern European countries."

The *World* Almanac for 1911, 1912 and 1913, under "Statistics of Homicide," says convictions in Germany equalled 95 per cent. and a fraction; in the United States 1.3 per cent.

Frederick L. Hoffman, Life Insurance Statistician of Newark, New Jersey, says:

"Our murder death rate (for, of course, the statistics used refer only to the recorded deaths from homicide and not to judicial convictions) for the registration area for the period 1909-1913 was 6.4 per 100,000 of population. The rate for England and Wales (1904-1913) was 0.8; for Prussia (1904-1913), 2.0; for Australia (1910-1913), 1.9; and finally, for Italy (1908-1912), 3.6. In other words, the number of murders in the United States at the present time, proportionate to population, is about 100 homicides for every thirteen committed in England and Wales, thirty in Australia, thirty-one in Prussia and fifty-six in Italy. . . . It admits of no argument that among the civilized countries of the world the United States stands to-day in deplorable contrast as regards the security of the person against the risk of homicidal death."

In addition to "The Statute" extending the privilege of avoiding self-incrimination, "in tenderness to the weakness of those who . . . may have been in some degree compromised, 21 out of our 48 States have either by constitution or statute reduced the trial judge in jury cases to a mere moderator by forbidding him from advising the jury on the facts or expressing his opinion on questions of fact, notwithstanding that all questions of fact in jury cases are left to the jury's sole and ultimate determination. This took away a judicial right and duty which every English and Federal trial judge exercises to the public advantage. In 15 more of our States the State courts of last resort have by judicial decisions suppressed or abdicated their trial judges' right

and duty to act as judges and have reduced them to mere moderators.

Other results of statutory shelter to the guilty, statutory privileges of crime and statutory tenderness to the weakness of the compromised, accompanied by the trial judges in a majority of the States being forced to act as moderators and abdicate their inherent functions as judges to advise the jury on the facts.

Between 1882 and 1903 lynchings aggregating 3,337 were reported in 44 of our 49 continental States and Territories. In other nations lynching now exists only in parts of rural Russia where the laws provide an inadequate punishment for horse stealing. Lynching does not now exist anywhere under the British, French, Dutch or German flags (Cutler, Lynch Law, 1, 3), although all these nations have frontier and mixed race conditions in their colonies, dependencies and possessions, which if either mixed races or frontier conditions were primary causes of lynching, would lead to an amount of it in excess of anything we have ever known.

It is quite true that Anglo-Saxon popular tribunals and lynching originated in the marches of Scotland in the days of the border wars and was practiced also by the vehmgericht in Germany in the days when the power formerly exercised by the Hohenstaufen Emperors had been usurped by the robber knights; also that it was used in expelling Tories and desperadoes and confiscating their lands during the lawless times of and following the American revolution.

To understand popular tribunals and lynching, the attitude of the vigilants and their responsible supporters and neighbors is of more weight than that of the outlaws or the formal legalistic critics of the vigilants who confine their activity to destructive criticism and make no attempt to remedy the underlying causes that have led to popular tribunals, popular justice in 44 of our 49 continental States and Territories.

Dean J. E. Cutler and Judge George C. Holt attempted to ascertain the views of the neighbors and upholders of vigilants by questionnaires, but no answers of value were received.

Hubert Howe Bancroft's Popular Tribunals justifies the two San Francisco vigilance committees (of 1851, also of 1856)

as well as the other responsible vigilance committees of the Pacific Coast and what are now the Rocky Mountain States before the Civil War, on the ground of necessity, because the State and Territorial Governments had alike abdicated their primary duty to preserve life and enforce public order and security, also their duty to punish crime.

Bancroft was the confidant of the leading vigilants and had the free use of their archives and records.

Bancroft says:

"Sixteen executions in thirty years, dating back from 1847, the opening year of Yerba Buena's aspirations. These, with the four hangings by the Vigilance Committee of 1851, and four by that of 1856, comprise the catalogue. Millions of money have been paid by the citizens to keep running criminal courts and police regulations these thirty years, and hundreds of men were all the time at large whom the law pronounced guilty of death, and only sixteen capital punishments! Says the Sacramento *Union* of the 28th of May of the citizens composing the Committee of 1856:

"They have calmly stood by and seen and heard of some fourteen hundred murders in San Francisco in six years, and only three of the murderers hung, under the law, and one of those was a friendless Mexican.

"I have given in this volume many examples of Popular Tribunals, but the half has not been told. It is safe to say that thus far in the history of these Pacific States far more has been done toward righting wrongs and administering justice outside the pale of law than within it.

"Out of five hundred and thirty-five homicides which occurred in California during the year 1855 there were but seven legal executions and forty-nine informal ones. Of the latter, ten occurred in the month of January, not one of which would have been consummated if left to the machinery of law. So it was in Nevada ten years later; to one hundred and fifty homicides there were but two legal executions. It was the Augustan age of murder."

Bancroft quotes the London *Times'* view that if California's lax criminal law enforcement was so serious an evil as to need a

vigilance committee "to supersede the law of the land in open day" to restore public order, it "could have no possible difficulty in amending the administration of this law had they directed their efforts to such purpose instead of dispensing with law altogether."

Strong trial judges of the British Federal type, or a strong California criminal procedure of the English, Canadian or Australian type, which convicts the criminal instead of manumitting or enlarging him, was the last thing the vigilants or the Californians of 1851 to 1856 desired.

William T. Coleman (the president of the 1856 Vigilance Committee) wrote his executive committee:

"Keep all cases in California from judges, but have juries in all cases." (2 Bancroft, 616.)

Bancroft, voicing the vigilant view, says:

"There will be popular tribunals as long as evolution lasts. We are never going back to king worship or law worship." (2 Bancroft, 668.)

"Popular tribunals" and the so called "Right of revolution" were the vigilant ideals. (2 Bancroft Popular Tribunals 668-71, 675, 677-681, 154; Cutler, Lynch Law, 193-8, 226, 29-30, 72-3, 109-10; Royce, California, 421-2, 439-447, 465, 316-324.)

"But here on this coast had been law without order for years, and at last the people were determined to have order, even at the sacrifice, if necessary, of the forms of law. Law had become criminal, and must be put upon trial by the people for dereliction of duty." (2 Bancroft, 145.)

"For some few centuries yet the ironbound dogmatism of ancient societies will continue to condemn the action and principles of popular tribunals. . . . They will continue to see no difference between a mob and a committee of vigilance, between a turbulent, disorderly rabble, hot with passion, breaking the law for vile purposes, and a convention of virtuous, intelligent, and responsible citizens with a coolness of deliberation arresting momentarily the operations of law for the salvation of society. . . .

"But the time will come when intelligent men everywhere will acknowledge the superiority of this principle. . . . It

will then be seen that that government is most stable which is founded on rectitude and independence, which relies for its support on the will of virtue-loving people, and not on tradition or inexorable law. It will then be seen, more clearly than now, that all power vests in the people, whether they chose to use it or to remain bound by superstitious veneration of shadow, that even after law is made and execution provided, the executive has no power except such as is daily and hourly continued to him by the people." (2 Bancroft, 670-1.)

In California the trial judge in jury cases is a mere moderator and is not allowed to advise the jury on any question of fact.

Bancroft points out that Macaulay's prophecy of 1857 as to America's future danger was clearly inspired by San Francisco's two Vigilance Committees:

"Either some Cæsar or Napoleon will seize the reins of government with a strong hand, or your republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman Empire was in the fifth; with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without, and that your Huns and Vandals will have been engendered within your country by your own institutions."

The vital feaures in which the English, Australian and Canadian criminal procedure differs from that of the majority of American criminal courts are the following:

1. The British, Scotch, Canadian, Australian, South African or Indian trial judge is a strong judge, not a mere moderator. He gives the jury the benefit of his experience and skill by advising them in difficult cases respecting the weight and effect of the evidence, what he believes the evidence had shown, but he also informs the jury that they are the sole judges of the facts and are at liberty to disregard his advice. The distinctive feature of Anglo-Saxon jury trials is a strong experienced trial judge aiding and advising the jury, but leaving the ultimate decision of all disputed questions of fact to the jury, instead of acting as a weak and opinionless moderator, as the trial judge must do in three-fourths of our States. In Canada the judge may try most criminal cases without a jury where a jury is waived by defendant.

2. In Great Britain and Australia the trial judge in any criminal case where the defendant elects to stand mute (or fails to testify in his own behalf) may and generally does charge the jury that they may consider the defendant's failure to testify in his own behalf. New Jersey is the only American State where the trial judge may do this.

3. Blanket or joint indictments are allowed where (1) there are several charges against the defendant or defendants for the same act or transaction, (2) for two or more acts or transactions connected together, or (3) for two or more acts or transactions of the same class of crimes or offenses, as in the Federal Courts.

4. Short form simplified indictments merely charging defendant with the commission of any specified indictable offense in the very words of the statute, as for example "murder" or "grand larceny," supplemented by a bill of particulars when details are necessary.

5. Joint trials of all joint indictments are in the court's discretion, instead of separate trials being a matter of right.

6. Decisions of *habeas corpus* are final and conclusive as to the issues there involved. The unlimited number of writs of *habeas corpus* allowed in some American States for the same cause is unheard of anywhere in the British Empire.

7. Exceptions to rulings upon challenges of jurors are unheard of. An English judge's rulings upon the challenge of a juryman for cause are not subject to review as they are here.

8. No trial by newspaper, no publicity bureau work is allowed while any action, whether criminal or civil, is pending; only a true and fair report of evidence and court proceedings is allowed to be published *pendente lite*; sweat box and third degree are unknown alike among the police and public prosecutors. Trial by newspaper and publicity bureau work *pendente lite* are suppressed by vigorous enforcement of the common law practice in relation to contempt of court.

9. Reversals on appeal for harmless technical errors not affecting the result are unheard of. In Great Britain on appeal by defendant a sentence may be increased.

10. The keeping and publication of complete, scientific and

yet laconic judicial statistics, both criminal statistics and civil statistics.

11. Bar discipline is strictly enforced.

Throughout the British Empire there is a universal respect for the courts and the law, especially for the criminal law, which is unknown in this country.

The primary duty of all governments is to preserve life and enforce the public order and security by enforcing the criminal law as well as necessary police regulations. When this duty is locally or partially neglected, unless extra legal vigilance supplements the defective administration of the criminal law, local turbulence, riots and anarchy until suppressed by martial law are probable sooner or later.

When this duty is generally neglected throughout a nation for a sufficient period of time, class conflicts, general strikes, sectional strife, revolution or social war will usually follow unless the local disturbances or general national weakness becomes so great as to cause a foreign nation whose people are disciplined and orderly (though perchance with a lower standard of living, *i.e.*, with more plain living and more high thinking), to send either a punitive expedition to punish and procure indemnity for lawless outrages upon or assassinations of its nationals, or else an invading army to conquer and annex the decadent and anarchical country, as was done in the several partitions of the Polish Commonwealth during the 18th century; in Italy during the 16th century; as well as following the decline of Greece and the Greek cities of Asia Minor and Southern Italy by the Roman Republic.

—*Central Law Journal.*

NOTES FROM THE ENGLISH INNS OF COURT.

The Opening of the Courts.

On Friday October 12 the Michaelmas Sittings were opened with all pomp and circumstance. Headed by Lord Chancellor Finlay the customary procession of judges passed up the Great Hall at the Royal Courts of Justice each judge with his attendant

clerk. They were followed by the Land Officers of the Crown and a large number of His Majesty's Counsel learned in the law. This is the only occasion in the year when the Great Hall serves any purpose connected with the law, although indeed since war began it has been put to strange uses—either as a drill ground for volunteers or as a place of safety during air raids. It only contains one ornament of note—the marble statute. Lord Russell of Killowen, seated in his judical chair, occupies the north-eastern corner of the hall.

Judicial Changes.

Notwithstanding the protests of the lay press, the Lord Chancellor had filled two judicial vacancies. Mr. Clavell Salter, K.C., M.P., has been appointed a judge in the room of Mr. Justice Low who died during the Long Vacation, while Mr. Alexander Adair Roche, K.C., takes the place of Mr. Justice Ridley who has resigned. Both appointments are heartily approved by the legal profession. Mr. Clavell Salter was a lawyer first and a politican afterwards. He was an able advocate both at nisi prius and in banc. His deliberate yet forceful eloquence had a wonderful influence with a jury. In the Court of Appeal it was a pleasure to listen to him. He always chose language in which there was no flaw, and he marshalled his facts and arguments in a perfect sequence. I recall an occasion when he was addressing a court in which the late Sir Richard Henn Collins, M.R., was presiding. Mr. Salter was apparently citing some authority, when the Master of the Rolls intervened:

"What part of the judgment are you reading from now, Mr. Salter?"

"Oh! my lord," said the advocate, "I was not reading anything, I was making my own observations."

"I beg your pardon" said the Master of the Rolls, "but your manner was so very judicial that I thought"—the rest of of the sentence was lost in the laughter which filled the Court.

Another Commercial Judge.

In Mr. Justice Adair Roche we shall welcome to judicial office a lawyer who has made his name in the Commercial Court.

Called to the bar in 1896, he took silk in 1912. He very soon became a leader of the first rank in all those cases where charter parties and bills of lading are subjects of discussion. A man of only 45 years of age and the youngest judge now on the Bench he ought soon to be numbered amongst its brightest ornaments.

His appointment is an illustration of a *dictum* atributed to Lord Mersea (or Sir John Bigham as he may be better known) that when personal and political considerations do not intervene judges are appointed not by the Lord Chancellor but by the people. Mr. Roche's services as an advocate have been so much in request amongst commercial men that he was forced into a position from which the Lord Chancellor was bound to remove him to the Bench.

No one knows what Mr. Roche's politics are; we lawyers only know that his legal attainments fully justify his appointment. Would that personal and political claims were always ruled out whenever judicial vacancies have to be filled!

Humour in the House of Lords.

In the recent case of *Jones* v. *Jones*, [1916] 2 A.C. 481, Lord Sumner made a suggestion which may (or may not) lead to an amendment in the law of slander. A school-master brought suit for slander. It imputed to him that he had been guilty of adultery. The defence was "that the words if spoken (which is denied) did not relate to the plaintiff in his profession as a certificated teacher, nor to him in his office as a head-master, and that the said words are not actionable without proof of special damage." No special damage was alleged. After various vicissitudes the case reached the House of Lords. It is well established that slander is actionable only if either (1) special damage is proved or (2) the imputation is such and the state of facts proved is such that the law presumes or infers damage or (3) the case falls within the Slander of Women Act, 1891. This act specially provides that words imputing unchastity to a woman shall be actionable without proof of special damage. After declaring that the right to sue for word spoken when no damage can be proved ought not to be extended, Lord Sumner said: "If a change of the

law is desired, it is from the legislature as it was in 1891 that relief must be sought. It could be simply obtained either by enacting that "a school-master, etc., should be deemed to be a woman within 54 and 55 Vict., C. 51, s. 1," or that for the purposes of actions of slander imputations of incontinence in a man should be deemed to be imputations of a criminal offence punishable by imprisonment."

The Mayor's Court, London.

The retirement of Sir Albert Bosanquet, who for 17 years has been Common Sergeant, calls attention to an ancient jurisdiction which is peculiar to the City of London. I wonder how many Canadian lawyers are aware that within a few miles of the Royal Courts of Justice, Strand, Middlesex, there is a court in which the old forms of pleading—that is to say the forms in use prior to the Common Law Procedure Act, 1852—are still observed; and in which judicial personages who are not Judges of the High Court of Justice exercise what is to all intents an unlimited jurisdiction. I refer to the Mayor's Court, in which the Recorder (now Sir Forrest Fulton) and the Common Sergeant are the judges. Suit may be brought in the Mayor's Court in respect of any cause of action which has arisen wholly within the city. It is said that a sum of about £1,000,000 was once claimed and recovered in this purely local court. Every case is set down to be tried with a jury. The court sits once a month throughout the year. An appeal lies on matters of law to a Divisional Court of the City of London.

Sir Albert Bosanquet.

In Sir Albert Bosanquet the city will lose a Common Sergeant who was a distinguished lawyer. On October 13th he took farewell of the Judges and counsel assembled at the Central Criminal Court. He said in reply to speeches made by the Recorder and Mr. Muir that "when I received my appointment a newspaper in giving reasons why the appointment was an improper one dwelt on the fact that the person then taking on himself the office was a man of exceeding dullness who had never made a

jest. On the Bench scarcely ever has a jest escaped my mouth. The strain on the faculties in trying to arrive at a right solution of a problem and the overwhelming responsibility of acting as judge in other men's cases seemed to remove from my mind the temptation to jest in a court of justice."

The Recorder and the Common Sergeant.

The Recorder and the Common Sergeant are appointed by the Lord Chancellor, but their substantial salaries are paid by the City of London. Their judicial functions are not confined to the Mayor's Court, for they are always in the Commission of those who try prisoners at the Old Bailey. It will be recalled that the present Recorder was the judge who presided at the trial of Adolph Beck whose conviction more or less directly resulted in the Criminal Appeal Act. Nor are the duties of these two lawyers merely judicial: At every city ceremony one or other of them is generally in attendance on the Lord Mayor, the Chief Burgess of the City visits the Courts on November 9, the address to the judges is always read by the Recorder.

Notwithstanding his resolution to eschew frivolity when on the Bench—a resolution faithfully kept—"Bozy," as our lawyers always called him, was full of fun and humour.

He is an after dinner speaker of the first order. When he was at the Bar where good speakers in every style are to be found, no legal banquet was regarded as complete without a speech from him. How great a boon must he have been in the city where dinners are in general more celebrated for their turtle soup than for their postprandial utterances?

A Ready Retort.

Sir Albert had a power which is characteristic of the really humorous speaker. He possessed and was able to maintain a funereal solemnity when saying the drollest things. This solemnity was in part due to his professional avocations. Immersed as he was in black letter law, he seldom had a case which could be furthered by any exercise of his ready wit. Indeed his style of

advocacy once excited the criticism of the late Sir Frank Lockwood. Mr. Justice Gainsford Bruce was a contemporary of Sir Albert. He, too, when at the bar, was regarded as a very dreary although very able exponent of the law. One day Sir Frank Lockwood said to Mr. Bosanquet, Q.C., "Really, Bozy, I think you are the very dullest man at the Bar!" To which the historic reply: "Have you considered the case against Gainsford Bruce?" But to hear Sir Albert after dinner was—and I believe still is—to rock your sides with laughter.

Dickens and the Law.

Mr. H. F. Dickens, K.C., has been appointed to succeed Sir Albert Bosanquet as Common Sergeant. Thus the sixth son of the author of "Pickwick Papers" takes a high place in the profession of which Charles Dickens always evinced such great knowledge and in which he was the means of bringing about such great reforms. It was largely through his influence—through his satire in "Bleak House," where he held the leisurely proceedings of the old Court of Chancery up to ridicule—that public attention was drawn to delays in our courts of equity. Again it was he who in "Little Dorrit" and "The Pickwick Papers" threw open to the popular gaze the internal arrangements of the debtors' prisons. The new Common Sergeant, one of our Senior King's Counsel, is a popular member of the legal profession.

W. Valentine Ball.

1 Brick Court,
Temple, London.

IS A CHARGE OF DISLOYALTY OR SEDITION LIBELLOUS?

A publication imputing disloyalty may be actionable *per se*, although it does not amount to a charge of a criminal offence. Hence, it is libellous *per se* to publish of one that he is a "man who reviled U.S. flag," "who denounced Old Glory as a dirty rag," a "red-tinted agitator," voicing "constructive sedition and

treason," keeping "beyond the last border of unloyalty and indecency" by "denouncing Old Glory as a dirty rag," and "wantonly insulted the symbol of a patriotic allegiance." *Wells* v. *Times Printing Co.* (1913), 77 Wash. 171, 137 Pac. 547. Such language, the Court said, required no innuendo to construe its meaning as intending to bring the individual of whom it was written into public hatred, contempt, and ridicule, expose him to public hatred, scorn, and shame, and cause him to be shunned and avoided by his fellows.

So also to publish of one that he is a "dangerous, able, and seditious agitator" is libellous *per se*. *Wilkes* v. *Shields* (1895), 62 Minn. 426, 64 N.W. 921. The Court stated that a seditious agitator can be neither a good citizen nor a fit associate for honourable men. The obvious meaning of the words, "a seditious agitator," as they would naturally be understood by ordinary men when published in reference to another, is that he is a disturber of the public peace and order, a subverter of just laws, and a bad citizen; and so the publication of such a charge is clearly libellous and actionable *per se*.

But to charge one with taking part in a revolt or revolution within a foreign government is held not libellous *per se*, in *Chrashley* v. *Press Pub. Co.* (1904), 179 N.Y. 27, 71 N.E. 258, 1 Ann. Cas. 196, in the absence of an allegation of the existence of some statute making such an act a treasonable offence and prescribing pains or penalties for the commission of the crime.—*Case and Comment.*

A letter to the *Times* suggests that during the war all civil actions should be tried by a judge without a jury. This would, it is claimed, and correctly so, save an immense amount of time and money—two important items these days. It would also shorten the length of a case, and, as claimed by the writer, be a death blow to speculative actions. There has been of late years a great encroachment on the old system of trial by jury; and, whatever may be the view taken on the jury system, the suggestion of saving the time of litigants and jurymen in these days of stress is a good one.

REVIEW OF CURRENT ENGLISH CASES.

FIELD GENERAL COURT-MARTIAL—POWER OF COURT-MARTIAL TO SIT IN CAMERA.

The King v. *Governor of Lewes Prison* (1917) 2 K.B. 254. By the defence of the Realm Consolidation Act, 1914 (5 Geo. V. c. 8) s. 1 (4). "For the purpose of the trial of a person for an offence under the regulations by court-martial and the punishment thereof, the person may be proceeded against and dealt with as if he were a person subject to military law and had on active service committed an offence under section five of the Army Act." By Rules of Procedure 1907 and 119 *c.* "The proceedings shall be held in open Court in the presence of the accused, except on any deliberation among the members, when the Court may be closed." A prisoner found subject to trial by a field general court-martial was tried before such a court for participation in the Dublin rebellion. The Commander-in-Chief having come to the conclusion that it was necessary for the public safety and defence of the realm that the Court should sit in camera, he so ordered and the Court was so held. It was objected *inter alia* that this invalidated the conviction; but a Divisional Court (Lord Reading, C.J., and Darling, Avory, Rowlatt, Bailhache, Atkin, and Sankey, JJ.) held that there is an inherent jurisdiction in every Court, including a field general court-martial, to exclude the public from a trial, if it considers it necessary so to do for the administration of justice, and the objection was accordingly overruled.

INSURANCE—FUNERAL EXPENSES—TOMBSTONE.

Goldstein v. *Salvation Army Assurance Socy.* (1917) 2 K.B. 291. The plaintiff had obtained a policy of insurance from the defendants, and like policies from other insurances companies, against the funeral expenses of his mother, which kind of insurance is authorized by the Assurance Companies Act 1909 (9 Edw. VII. c. 49) s. 46. He claimed to have expended in funeral expenses £53 16s., which included £16 8s. 9d. for a tombstone. He had received from other insurance companies £39 and claimed to recover from the defendants £14 16s., the balance. As, however, it was not clear that the plaintiff had actually expended £53 16s., and if he had, that the Judge who tried the action had considered

whether or not the expenditure of £16 8s. 9d. was reasonable in the circumstances, a Divisional Court (Rowlatt and McArdie, JJ.) ordered a new trial.

SOLICITOR—LIEN—DOCUMENTS OBTAINED WITHOUT LITIGATION—BANKRUPTCY—TRUSTEE—DOCUMENTS RECOVERED BY SOLICITOR AFTER BANKRUPTCY—COSTS.

Meguerditchian v. *Lightbound* (1917) 2 K.B. 298. The Court of Appeal (Eady and Bankes, L.JJ., and Bray, J.) have affirmed the judgment of Rowlatt, J. (1917) 1 K.B. 297 (noted ante, p. 175).

INN-KEEPER—GUEST—FIRE—GUEST INJURED IN ATTEMPT TO ESCAPE FIRE—NEGLIGENCE OF INDEPENDENT CONTRACTOR.

Maclenan v. *Segar* (1917) 2 K.B. 325. This was an action by the plaintiff, who had been a guest at the defendant's hotel, to recover damages, by reason of the plaintiff having been seriously injured in her efforts to escape from the hotel after a fire had broken out therein. The fire was occasioned by a defective scheme for conveying the smoke and burning soot from the kitchen chimney. The defendant admitted the defect, but denied knowing of it prior to the fire. The jury found that the premises were not as fit as reasonable care and skill could make them; that the defect was due to the architect or builder of the hotel; and if the plaintiff had made no effort to escape but had remained in her room she would have been uninjured; but the jury found that, in the circumstances in which the plaintiff found herself, she had acted reasonably. McCardie, J., who tried the action, gave judgment for the plaintiff, holding that the defendant impliedly warranted the fitness of the premises, and was responsible for the defect, though he would not be liable for damages arising from defects which could not be discovered by reasonable care or skill on the part of any person concerned with the construction, alteration, repair and maintenance of the premises.

RESTRAINT OF TRADE—TRADE COMBINATION TO CONTROL PRICES—AGREEMENT TO RESTRICT OUTPUT, TO SELL ONLY TO CERTAIN PERSONS AND ON TERMS AND AT PRICES TO BE FIXED BY COMBINATION—AGREEMENT UNLIMITED AS TO TIME—ACCOUNT STATED.

Evens v. *Heathcote* (1917) 2 K.B. 336. This was an action to enforce a trade combination. The plaintiffs, who were manufacturers of iron tubes cased in brass called "cased tubes," were

members along with the defendants, who were manufacturers of the same class of goods, of a trade combination association, by the rules of which the prices of such goods were regulated, and for that purpose each member was bound to restrict his output to a certain fixed percentage of the total output of the members, to be based on the actual output in preceding years. Each member whose output exceeded the stipulated amount agreed to pay the profits thereof into a "pool," while each member whose output was less than that stipulated was to receive a certain sum out of the "pool." The rules provided that the members should sell their cased tubes only on the terms, and at the prices which from time to time should be fixed by the association. No means were provided by which a person who had once joined the association could retire therefrom. By an agreement made between the plaintiffs and defendants, and certain firms, the plaintiffs, in consideration of the defendants fixing their percentage at a certain figure, agreed not to sell their cased tubes to any person other than the said firms. The agreement provided that it should continue in force so long as the association and a certain other society, over whom the plaintiff had no authority, continued to control prices. For several months the plaintiffs' output was less than their percentage, and they became entitled to receive from the association sums of money out of the "pool," and the secretary of the association furnished them each month with an account showing the amount they were entitled to for that month. The action was brought to recover the amount so due. Low, J., who tried the action, however, held that the restraint of trade imposed by the agreement and rules was unreasonable as between the parties, and consequently illegal, and not enforceable; and that the plaintiffs could not recover either under the agreement, or rules, or upon the account stated by the secretary. The claim on the account stated failed because the sole basis for the account was the arrangement which the Court found to be illegal.

CONTRACT—SALE OF GOODS—CONVEYANCE TO BE BY PARTICULAR ROUTE—TRANSMISSION BY DIFFERENT ROUTE FROM THAT AGREED—USAGE AS TO ALTERNATIVE ROUTE—EVIDENCE.

In re Sutro & Heilbut (1917) 2 K.B. 348. The point decided in this case is briefly this: Where a contract is made for the sale of goods to be forwarded by a specified route, evidence of usage authorizing the vendor to adopt an alternative route is inadmissible, because it is inconsistent with the express terms of the contract; and where the vendor transmits the goods by a different route from that contracted for, the purchaser is not bound to accept them.

SHIP—BILL OF LADING—EXCEPTIONS—HARTER ACT—LIMITATION OF LIABILITY—GOODS ABOVE A CERTAIN VALUE—OMISSION TO DECLARE VALUE.

Hordern v. *Commonwealth & Dominion Line* (1917) 2 K.B. 420. This was an action to recover against shipowners damages for non-delivery of goods. The goods in question were shipped under a bill of lading expressed to be subject to all the terms and exceptions of an Act of the U.S. Congress, known as "the Harter Act," which makes it unlawful for the owner of any vessel to insert in any bill of lading any claim relieving him from liability for negligence, or default, or failure in proper loading, storage, custody, care, or proper delivery of merchandise, and makes null and void all clauses of such import in any bill of lading. The bill of lading in this case contained a clause purporting to free the shipowner from liability for any one package which was of more value than £100 unless its value should be declared, and extra freight paid in respect thereof. The shipowner failed to deliver one package worth more than £100. The value thereof had not been declared, and no extra freight paid in respect thereof. The action was tried before Horridge, J., who held that the clause purporting to limit the shipowners' liability was inconsistent with the Harter Act, and was consequently null and void, and that the plaintiffs were entitled to recover.

It would seem from the judgment that the learned Judge was of the opinion that the end the shipowners had in view might be attained by an agreement as to the value of the property carried.

INSURANCE—STATEMENT FORMING BASIS OF CONTRACT—ARBITRATION CLAUSE—DIFFERENCE ARISING OUT OF POLICY—TRUTH OF STATEMENT—VALIDITY OF POLICY—BURDEN OF PROOF.

Stebbing v. *Liverpool & London Insurance Co.* (1917) 2 K.B. 433. This was a special case stated by an arbitrator. The reference arose out of a policy of insurance which contained a clause whereby "all differences arising out of this policy" were to be referred to arbitration. The policy recited that the assured had made a proposal and declaration as the basis of the contract, and contained a clause that compliance by the assured with the conditions indorsed on the policy should be a condition precedent to any liability on the part of the insurers. One condition provided that if any false declaration should be made or used in support of a claim, all benefit under the policy should be forfeited. The insurers claimed that statements in the assured's proposal and declaration were false. The questions for the

Court were whether the truth or untruth of the statements in question could be inquired into by the arbitrator, and if so on whom the burden of proof rested. The Divisional Court (Lord Reading, C.J., and Ridley, and Avory, JJ.) held that the truth or untruth of the statements was a matter covered by the arbitration clause, and that the burden of proof was on the insurance company.

BANKER—CHEQUE—FRAUDULENT RAISING OF AMOUNT OF CHEQUE—NEGLIGENCE IN LEAVING SPACE IN CHEQUE—BILLS OF EXCHANGE ACT, 1882 (45-46 VICT. c. 61) ss. 9 (2), 20—(R.S.C. c. 119, ss. 28 (2), 31).

Macmillan v. *London & Joint Stock Bank* (1917) 2 K.B. 439. This was an appeal from the decision of Sankey, J. (1917) 1 K.B. 363 (noted ante, p. 178). It may be remembered that the plaintiffs had issued a cheque for £2, but so filled up that it admitted of alteration, and had in fact been fraudulently altered by their clerk by increasing the amount of it to £120. The defendants contended that under ss. 9 (2) and 20 of the Bills of Exchange Act, 1882 (R.S.C. c. 119, ss. 28 (2) and 31) as against them the cheque was valid and could not be treated as a forgery: but the Court of Appeal (Eady and Scrutton, L.JJ., and Bray, J.) affirmed the decision of Sankey, J., and in effect overrule *Young* v. *Grote* (1827) 4 Bing. 253.

COPYRIGHT—TELEGRAPHIC CODE—"ORIGINAL LITERARY WORK"—COPYRIGHT ACT, 1911 (1-2 GEO. V. c. 46) ss. 1, 35.

Anderson v. *Lieber Code Co.* (1917) 2 K.B. 469. This was an action for damages for an infringement of the plaintiff's copyright in a telegraphic code which was compiled of meaningless words of five letters. It was contended by the defendants that such a work was not "an original literary work" within the meaning of the Copyright Act; but Bailhache, J., who tried the action, negatived that contention, and gave judgment for the plaintiffs for the damages assessed by a jury at £1,250

LANDLORD AND TENANT—NUISANCE—OVERHANGING TREES ON LANDLORD'S PREMISES—LESSOR'S DUTY TO LESSEE.

Cheater v. *Cater* (1917) 2 K.B. 516. The plaintiff in this case was the lessee of the defendant. On the premises of the defendant, adjoining the land demised to the plaintiff, yew trees were growing which overhung the demised premises. The plaintiff's mare ate of the yew trees, and died in consequence. The

action was brought to recover damages for the loss of the mare. The case was tried by a Judge of a County Court who thought the case governed by the dictum of Mellish, J., in *Erskine* v. *Adam* (1873) L.R. 8 Ch. 756, 761, and dismissed the action. The Divisional Court (Lord Coleridge and Rowlatt, JJ.) was divided in opinion. Coleridge, J., agreed with the County Court Judge, but Rowlatt, J., thought the case was within the principle of *Rylands* v. *Fletcher* (1868), 3 H.L. 330, and that the defendant was liable. In the result the appeal failed.

CONTRACT—MARRIAGE—ENGAGEMENT RING—BREACH OF ENGAGEMENT TO MARRY—RIGHT TO RETURN OF RING.

Jacobs v. *Davis* (1917) 2 K.B. 532. This was an action by a disappointed swain to recover from the defendant who had promised to marry him, the engagement ring. The plaintiff swore that the ring had been given to the defendant on the express condition that if the defendant did not marry the plaintiff the ring was to be returned. Sargant, J., who tried the action, seems to have discredited this story; but he held that there is nevertheless an implied condition that a gift of this kind is to be returned if the marriage does not take place, and he gave judgment for the plaintiff.

MARRIAGE—LICENCE—FALSE STATEMENTS IN DECLARATION—NULLITY—DECREE NISI—INTERVENTION OF CHILD.

Plummer v. *Plummer* (1917) P. 163. This was an appeal by an infant from a decree of nullity of marriage of his parents in the following circumstances: The plaintiff and defendant were married by licence before a registrar. In order to keep the marriage secret from her father whose consent was necessary, the defendant being a minor, her true name "Loveday" was not given in the information required to be furnished to the registrar, and she was styled "Findlow." The license was issued and the defendant was married under the name of "Findlow." The husband brought a suit for nullity which was undefended and Deane, J., pronounced a decree nisi. The Court was not informed that there was issue of the marriage. Subsequently an application was made to the Court on behalf of the appellant for leave to intervene and appeal from the decree, which was granted. The Court of Appeal (Lord Cozens-Hardy, M.R., and Bankes, and Warrington, L.JJ.) held that the giving of the false name did not invalidate the marriage in the case of a marriage by licence; though in the case of a marriage by banns, the publication of banns in a false name would invalidate the marriage.

COMPANY—PROSPECTUS—UNTRUE STATEMENTS IN PROSPECTUS—DIRECTOR—DEATH OF DIRECTOR—ACTIO PERSONALIS MORITUR CUM PERSONA.

Giepel v. *Peach* (1917) 2 Ch. 108. This was an action brought against the personal representative of a deceased director of a limited company, to recover damages arising from untrue statements contained in the company's prospectus. Sargant, J., who tried the action, held that in the absence of any evidence shewing that property, or the proceeds or value of property belonging to the plaintiff, had, by reason of the tortious act complained of been added to the deceased director's estate, the maxim *actio personalis moritur cum personâ* applied, and the action would not lie.

WILL—LEGACY—CONDITION THAT LEGATEE SHALL NOT BE A ROMAN CATHOLIC—INFANT—ELECTION OF RELIGION—WHEN TO BE MADE—GIFT OVER.

In re May, Eggar v. *May* (1917) 2 Ch. 126. By her will a testatrix bequeathed two legacies of £5,000 each to two nephews on their attaining 24, conditioned on their not being Roman Catholics, or, being Roman Catholics at the time of her decease, should cease to be so before the expiration of twelve months after the testatrix's death. At the time of the death both legatees were infants. Their father was a Roman Catholic, and both infants had been baptized according to the rites of the Roman Catholic Church. There was a gift over in the event of the condition not being complied with. More than a year had elapsed since the testatrix's death and the legatees continued to be brought up as Roman Catholics, and the question Neville, J., was called upon to decide, was whether or not the gift over had taken effect. He held that so long as the legatees were under the age of 21 they were not bound to make any election as to their religion, and it would be open to them after they attained 21, and before attaining 24, to elect whether or not they would be, or remain Roman Catholics.

WILL—DIRECTION TO PAY ANNUITY "FREE OF ALL DUTIES"—INCOME TAX.

In re Saillard, Pratt v. *Gamble* (1) (1917) 2 Ch. 140. The question in this case was whether an annuity bequeathed to a solicitor as compensation for his trouble in acting as executor "free of all duties," was to be paid free from income tax. Neville, J., decided in the negative.

TRADING WITH THE ENEMY—VENDOR AND PURCHASER—SALE OF LAND BY ATTORNEY OF ALIEN ENEMY.

Tingley v. *Muller* (1917) 2 Ch. 144. This is a case which has been already referred to in this journal. The defendant was a German resident in England. On May 20, 1915, he left England to return to Germany. Prior to his departure he gave an irrevocable power of attorney to his solicitors to sell his house in England; and the attorney after the donor of the power had become an alien enemy, entered into a contract to sell the house to the plaintiff. The plaintiff subsequently discovered that at the time of the contract the vendor was an alien enemy, and he therefore brought the present action to have it declared that the contract was void, and for a return of his deposit. Eve, J., who tried the action, dismissed it on the ground that there was no sufficient evidence that the vendor at the time of the sale was in fact an alien enemy; but on this point the Court of Appeal (Lord Cozens-Hardy, M.R., and Eady, and Bankes, L.JJ.) found that he had erred; but they affirmed his judgment because at the time the power of attorney was given the donor was not an alien enemy, and that it was irrevocable, and might be carried out without further intercourse wth the donor, and with the assistance of the custodian under sec. 4 of the Trading with the Enemy Amendment Act, 1916, to whom so much of the purchase money as the vendor was beneficially entitled could be paid

TRADING WITH THE ENEMY—PAYMENT OF DEBTS DUE BY ENEMY—GERMAN ORDINANCE CANCELLING LIABILITY TO PAY INTEREST ON DEBTS DUE BY GERMANS PENDING THE WAR.

In re Krupp (1917) 2 Ch. 188. Certain assets of a German firm were being administered in England, out of which certain English creditors claimed to be paid. It was conceded that their debts were governed by German law, and that under the ordinary German law they bore interest from maturity at the rate of 5% per annum. But, after the war, an ordinance had been made in Germany cancelling the liability to pay interest on debts due to German enemies. Younger, J., held that this not being part of the ordinary law of Germany would not be recognized by English Courts, and he held that the debts in question bore interest according to the ordinary German law.

SETTLEMENT—REAL ESTATE—NO WORDS OF LIMITATION—EQUITABLE ESTATE.

In re Gillies, Archer v. *Penny* (1917) 2 Ch. 205. The question in this case was whether an equitable estate in fee could pass to a

cestui que trust without words of limitation. The facts were that by a voluntary settlement made in 1869 the settlor (after reciting that he was seized of, or entitled to, hereditaments in fee, and that, in consideration of natural love and affection for his wife and children, he was desirous of conveying the same upon the trusts and subject to the powers thereinafter declared) granted unto trustees therein named their heirs and assigns the lands in question, upon the trusts thereafter declared, viz.: upon certain trusts in favour of the settlor and his wife, during their joint lives, and the life of the survivor, and, subject thereto, upon trust for such one or more of their children as they should by deed jointly appoint, and in default of such appointment as the survivor of them by deed or will should appoint, and, in default of such appointment in trust for all their children who, being sons, should attain 21 or, being daughters, should attain that age or marry, in equal shares. The settler empowered the trustees to apply "the annual income of the share or fortune" to which any child should for the time being become entitled, for his or her maintenance; and further empowered the trustees to sell the trust estate and invest the proceeds upon the trusts thereinbefore declared. The father and mother being dead, and no appointment having been made, the question was raised whether or not the children took equitable estates in fee simple. Eve, J., who heard the case, held that the recitals in the deed were not a sufficient indication that the children were to take a fee, neither was the maintenance clause; neither was the clause empowering the trustees to sell the trust estate: but he was of the opinion that the powers of appointment showed clearly that the donees were authorized to appoint the fee, and were a sufficient indication of the settlor's intention that the children should take in default of appointment as large an estate as might have been appointed to them under the powers.

PRIZE COURT—OUTBREAK OF WAR—DAYS OF GRACE—ENEMY YACHT—HAGUE CONVENTION NO. 6 ARTS. 1, 2.

The Germania (1917) A.C. 375. In this case the simple point to be determined was whether the Hague Convention, allowing days of grace to enemy's vessels in port at the outbreak of a war, applied to pleasure vessels. The President of the Admiralty Division held that it did not, but that it only applied to merchant vessels (1916) P. 5 (noted ante vol. 52, p. 189), and with that conclusion the Judicial Committee of the Privy Council (Lords Parker, Sumner, Parmoor, and Wrenbury, and Sir Arthur Channell), agree.

COMPANY—ANTI-CHRISTIAN OBJECTS—CAPACITY TO RECEIVE GIFTS—BEQUEST TO ANTI-CHRISTIAN COMPANY—VALIDITY OF BEQUEST—BLASPHEMY ACT 1697 (9-10 WM. III., c. 32) (9 WM. III., c. 35 Rev. Stats.).)

Bowman v. *Secular Society* (1917) A.C. 406. This was an appeal from the Court of Appeal (1915) 2 Ch. 447 (noted ante vol. 52, p. 67). The question at issue being whether a bequest to a society incorporated "to promote the principle that human conduct should be based upon natural knowledge, and not upon supernatural belief, and that human welfare in this world is the proper end all thought and action." It was contended that the Society was anti-Christian in its objects and the bequest, therefore, illegal; but the House of Lords (Lord Finlay, L.C., and Lords Dunedin, Parker, Sumner, and Buckmaster) have affirmed the judgment of the Court of Appeal upholding the validity of the bequest, the Lord Chancellor dissenting. This case looks very like an instance of judicial legislation. In arriving at their conclusion the majority of their Lordships are no doubt influenced by the so-called "liberal" tendencies of the age, and the general trend of legislation in favour of more tolerant views than formerly prevailed in regard to religious questions. Jewish Judges may now sit on the Bench of Justice, and if the constitution is so changed as to authorize such a departure from former practice, it is difficult to see how the former legal antagonism to all anti-Christian opinions, can well be maintained with any regard to consistency. The Lord Chancellor takes the view, however, that such changes in the law should be accomplished by legislation and not by judicial decisions.

CONTRACT—CONDITION—SUSPENSION OF DELIVERY—PREVENTING OR HINDERING DELIVERY—WAR—SHORTAGE OF SUPPLY—RISE IN PRICE.

Tennants v. *Wilson* (1917) A.C. 495. This was an appeal from the decision of the Court of Appeal (1917) 1 K.B. 208 (noted ante p. 140) The contract for the sale of goods in question in the action was subject to a condition that it should be suspended pending any contingencies beyond the control of the sellers (such as war) causing a short supply of labour, fuel, raw material, or manufactured produce, preventing or hindering the delivery of the goods in question. The greater part of the goods in question available for the British market came from Germany, which supply was stopped by the war, and caused a substantial shortage of the goods, and a consequent rise in price; and the question

at issue was whether or not in these circumstances the condition as to suspension took effect. The Court of Appeal held that the condition referred to a physical or legal prevention, and not to an economic unprofitableness arising from a rise in price: the House of Lords (Lord Finlay, L.C., and Lords Haldane, Dunedin, Atkinson, Shaw, and Wrenbury), have reversed this decision (Lord Finlay dissenting) being of the opinion that, apart from the question of price, the evidence showed a shortage in the supply of the goods in question which hindered the sellers from fulfilling their obligations under the contract in the ordinary course of their business.

APPEAL TO PRIVY COUNCIL—LIMITATION OF RIGHT OF APPEAL TO HIS MAJESTY IN COUNCIL.

Jones v. *Commonwealth Court of Conciliation* (1917) A.C. 528. By the Australian Constitution Act 1900 (63-64 Vict. c. 12) s. 74, it is provided that no appeal shall lie from a decision of the High Court upon any question, however arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and any State or States unless the High Court shall certify that the question is one which ought to be determined by His Majesty in Council. The Commonwealth constituted a Court for the determination of labour disputes, as empowered to do by the above mentioned Act, which Court made an award as to wages and conditions of labour. The High Court discharged a rule *nisi* for a prohibition, holding that there was an industrial dispute extending beyond the limits of any one State, and, therefore, that the Court below had jurisdiction; and the High Court refused to grant a certificate under s. 74, above referred to. In these circumstances the Judicial Committee of the Privy Council (Lords Loreburn, Haldane, Atkinson, Sumner and Parmoor) held that no appeal lay to the King in Council because "the High Court decided that the frontier of the Commonwealth power reaches in this case into the State, and it therefore followed that the State has not exclusive, if any, power in this case. This appears to their Lordships to be a question as to the limits *inter se* of the several powers, *i.e.*, of the Commonwealth and State, and therefore within the terms of s. 74."

Reports and Notes of Cases.

Province of Saskatchewan.

SUPREME COURT.

Full Court] [35 D.L.R. 473

ANDERSON v. CANADIAN NORTHERN RY. CO.

Railways—Injury to animals at large—Wilful act—Negligence.

"Wilful" in sec. 294 (4) of the Railway Act, ch. 37 R.S.C. 1916, means "intentional," and an owner who intentionally turns his animals at large cannot recover damages if they stray to a railway right of way and are killed thereon by a train.

G. E. Taylor, for appellants; J. N. Fish, K.C., for respondents.

ANNOTATION ON ABOVE CASE FROM 35 D.L.R.

In *Greenlaw* v. *C.N.R. Co.* (Man.) 12 D.L.R. 402, the plaintiff had purposely turned cattle at large to graze, relying on a municipal by-law which permitted it, and the Court distinctly held his "intentional" act was neither "negligence" nor a "wilful" act within the meaning of sec. 294 (4) of the Railway Act. The latest decision of the Saskatchewan Court, *en banc*, adopts a diametrically opposite view, and, it is submitted, the correct one, upon the meaning of the word "wilful."

In *Early* v. *C.N.R. Co.* (Sask.) 21 D.L.R. 413, the plaintiff was held guilty of a "wilful" act in allowing his cattle to run at large, but Haultain, C.J., intimated plainly that if a by-law had been proven, permitting cattle to run at large, he would have adopted the decision in the *Greenlaw* case. It is worthy of note that he concurred in the judgment of Newlands, J., in *Anderson's* case (*supra*), and it would have been illuminating if he had given his reasons for his latest and soundest view on this point.

In *Koch* v. *G.T.P. Branch Lines Co.*, 32 D.L.R. 393, the plaintiff had done what a prudent man would to keep his cattle in an enclosure, and there was no intentional "turning at large," so that the meaning of "negligence" or "wilful act or omission" did not have to be decided, and the effect of a by-law had not to be considered; but Lamont, J., held, nevertheless, that "it is not negligence to do that which is authorized by law," and in this Newlands, J., concurred. This case has been reported as though the full Court agreed with Lamont and Newlands, JJ., and so it was treated by Elwood, J., in *Anderson's* case (see 33 D.L.R., at p. 421), but, in fact, Brown and McKay, JJ., while agreeing in the result in the *Koch* case, did not express any opinion as to the effect a by-law would have.

It is regrettable, perhaps, that certain of the Saskatchewan Judges in the *Anderson* case should have expressed opinions upon the meaning of "negligence" in sec. 294 (4) of the Railway Act, for the Court was unanimous in its decision that the act of the plaintiff in turning his cattle at large was "wilful," and it was, consequently, unnecessary to define "negligence." The definition was given, however, and was manifestly wrong, we submit.

In the *Greenlaw, Early* and *Anderson* cases the cattle were intentionally turned at large, and, therefore, no question of "negligence" properly arose, for the acts of the plaintiff were clearly "wilful." In the *Koch* case, the animals got at large through a broken gateway, and it was held that the plaintiff had not been remiss in relation thereto. The opinion expressed by Lamont, J., that "where there exists a valid by-law permitting it, an owner cannot be held guilty of negligence in allowing animals to run at large," was, therefore, *obiter;* he repeated it, however, in the above reported judgment, and it was concurred in by all the Judges, except Brown, J.

A Saskatchewan statute says that it shall be lawful to allow animals at large unless the municipality prohibits it. Section 294 (4) of the Railway Act says that no animals shall be permitted to be at large upon any highway, within half a mile of any railway crossing, unless in charge of a competent person. In the *Anderson* case the cattle got from the highway to the railway at a crossing. Assuming the constitutionality of both statutes, surely the Saskatchewan statute, the later of the two, should be read to mean that animals may be at large *where not by law prohibited.* If so, no "valid by-law" or statute permitted Anderson's cattle to be at large upon the highway at the point where they left it to go upon the railway, and consequently Anderson's conduct in allowing them to be there was both negligent and unlawful. The only effective answer which can be made to this is, that sec. 294 (1) is *ultra vires* the Dominion Parliament, and Judges in *Anderson's* case gave indications that they might hold this, if necessary, but they did not do so, and until a decision to that effect has been made the sub-section stands as law. Lamont, J., points out, however (*supra*), that being at large in violation of sec. 294 (1) of the Railway Act is not *per se* the "negligence" meant in sec. 294 (4), for despite the fact that animals were at large in violation of sec. 294 (1) the owner can recover under sec. 294 (4) unless the railway company can show that they were so at large by reason of the owner's "negligence" or "wilful act or omission." But while this is quite true, it is not a good answer for the purpose to which Lamont, J., put it, for he had said that there could be no negligence in letting cattle at large where a *valid* law permitted them to be, and the defendants had replied that no by-law could *validly* permit the cattle to be upon the highway at a railway crossing, unless in charge of competent persons; in other words, sec. 294 (1) was a good answer to the argument that the by-law (or provincial statute) was valid for the purpose of permitting the cattle to be on the highway at the point from which they got upon defendants' property. What Lamont, J., meant was, that breach of the duty imposed by sec. 294 (1) was not *per se* the "negligence" meant by sec. 294 (4); that is, that mere breach of a legal obligation to keep the animals from being at large is not the "negligence" meant. That is quite right, but what Lamont, J., seems not to have realized is, that if "carelessness" is the kind of negligence

meant by sec. 294 (4), it is no answer that when it exists in fact its effect can be escaped by saying its result in enabling the cattle to be at large was permitted by a by-law or provincial statute, for breach of law is not the essence of the "negligence," but lack of care to keep animals from straying.

The "negligence" referred to in sec. 294 (4) of the Railway Act is not a narrow, thin-skinned legal conception; it is negligence in fact, that is, the careless as distinguished from the wilful act or omission of the owner. "Negligence is the absence of the care, skill and diligence which it is the duty of the person to bring to the performance of the work which he is said not to have performed" (*per* Willes J., *Grill* v. *General Iron Colliery Co.*, 35 L.J. C.P. 330). Sec. 294 (4) assumes that—it is the duty of the owner of animals, towards the railway, to prevent them from getting at large by his negligence or his wilful act or omission; it does not say "legally" at large, but at large in fact—and while on the one hand it is no proof of negligence or wilful act or omission, that the animals are in fact at large in violation of sec. 294 (1), it is equally no answer to proof of negligence or wilful act or omission under sec. 294 (4) that any provincial statute or municipal by-law permitted animals to be at large. The owner, in other words, who carelessly or intentionally enables his cattle to get at large, relying upon such a statute or by-law, takes the risk that he cannot recover damages against a railway if his animals are killed upon a right-of-way.

In reality, neither a violation of sec. 294 (1), nor permission accorded by by-law or provincial statute, has anything whatever to do with "negligence or wilful act or omission" under sec. 294 (4). The former prohibits under a penalty, and the provincial statute permitting animals at large merely means that being at large is not unlawful *per se*. The statute (ch. 32, Sask.) expressly says that nothing therein shall "in any wise affect rights or remedies at common law or otherwise for the recovery of damages *by any animals*." Surely it was equally not meant to affect liability to the owner of animals at large. If this be so, what in the world has this statute to do with the question whether an owner has been guilty of "negligence" in allowing his animals to get at large?

Lamont, J., says that sec. 294 of the Railway Act is to be construed as saying that if an owner deliberately (*i.e.*, intentionally) allows his animals to be at large, and they are killed, he has no remedy. That is good law; is it not equally so to say that if his carelessness enables them to get at large he has no remedy? How can it reasonably be said that sec. 294 (4) penalizes "intention" and not "inattention?"

In the *Koch* case (32 D.L.R., at p. 394), Lamont, J., very concisely said: "Negligence (in sec. 294 (4)) means that the plaintiff did not take the precautions to prevent his animals getting at large which an ordinarily cautious and prudent man would," but later in the same case he says (p. 396): "Where there exists a valid by-law permitting animals to run at large, an owner cannot be held guilty of negligence in permitting them to so run." In relation to the duty the owner of animals owes to the railway, or, to put it another way, in relation to the basis of the railway liability (*i.e.*, that the animals shall not have got on the railway by default or act of the owner), what difference does it make that the owner's default or act was the exercise of a legal privilege?

The counterclaim for trespass was dismissed on the ground that the animals were at large lawfully (under the provincial statute), and that the defendants had not fenced their track. Here is where the constitutionality of sec. 294 (1) should have been considered, for if it is *intra vires* legislation, Anderson's cattle were not at large lawfully upon the highway at the point from which they escaped to the railway, and the whole argument drawn from *Tillett* v. *Ward*, 10 Q.B.D. 17, fell to the ground. That case was cited in support of the principle that if cattle are lawfully using a highway, their owner is not liable for their escape to adjoining lands. That is not the essence of that case. There the cattle were in charge of competent persons, and their escape was accidental. It is lawful to put your cattle on your own pasture, but you are liable if they escape therefrom to your neighbour's land, through your carelessness. Driving cattle along a road is necessary, and escape may be unavoidable; if it has been, you are not liable. But *Tillett* v. *Ward* did not mean that if the cattle there had been in the care of children, for instance, the owner would not have been liable. The Saskatchewan statute says that cattle may be permitted to be at large, but does not say that if they be, their owner is not liable for damages they commit on the property of other persons. On the contrary, it says that nothing in the Act shall affect the rights of other persons than the owner for damages for trespass on property. At common law, Anderson would have been liable in trespass for the entry of his animals on the railway. How then in face of the very words of sec. 2 of the provincial statute can it be said that he was not liable because the statute legalized the running at large by the cattle, and the railway was bound to protect its property by fencing its tracks?

All through this series of cattle cases the effect of local surroundings is seen in the interpretations placed by the Judges upon the statutes. To allow cattle at large, and to hold railways liable, is in the very air of the west.

The proper way to do that, if advisable, is by a new Dominion statute, not by fantastic interpretations of perfectly plain existing provisions.

ALFRED B. MORINE.

War Notes.

His Majesty The King has issued and called upon all his subjects to observe the sixth day of January, 1918, as a special day of prayer in connection with the war. His proclamation is as follows:

"The world-wide struggle for the triumph of right and liberty is entering upon it's last and most difficult phase. The enemy is striving by desperate assault and submarine intrigue to perpetuate the wrong already committed, and to stem the tide of a free civilization. We have yet to complete the great task to which more than three years ago we dedicated ourselves.

"At such a time I would call upon you to devote a special day to prayer, that we may have the clear-sightedness and strength necessary to the victory of our cause."

We venture to express the hope that all who have the interest of the Enpire at heart will observe the day with due solemnity and in the right spirit.

An English contemporary congratulates the country upon the fact that the convictions for drunkenness in England and Wales are on the decrease. The total for 1916 was 84,191, as compared with 135,811 in 1915—a decrease of 38 per cent., following a decrease of 26 per cent. in the preceding year. This is gratifying, but the number is still very much too great, expecially in these days when all grain is wanted for food. The drink habit in the Motherland is not only a national waste of food products, but is also a national sin which should be repented of.

If, as all thoughtful people believe, the awful carnage and misery of the present day are a judgment upon nations for national sins and for a turning away from God, it would be well that all should know it and act accordingly.

A WAR SONNET.

The Principal of the Law School of Ontario, Dr. N. W. Hoyles, D. Ch., K.C., in his report for the Law School term of 1916-17, draws attention to a sonnet written by Major J. Langstaff, one of the most distinguished of the graduates of the School, who was killed in action last February (see ante p. 119). These beautiful lines were scribbled on a sheet of paper found among his effects returned to Canada. They are as follows:—

"I never thought that strange, romantic War
Would shape my life and plan my destiny,
Though in my childhood's dreams I've seen his car
And grisly steeds flash grimly thwart the sky.
Yet now behold a vaster, mightier strife
Than echoed on the plains of sounding Troy,
Defeats and triumphs, death, wounds, laughter, life
All mingled in a strange complex alloy.
I view the panorama in a trance
Of awe, yet colored with a secret joy,
For I have breathed in epic and romance,
Have lived the dreams that thrilled me as a boy!
How sound the ancient saying is, forsooth!
How weak is Fancy's gloss of Fact's stern truth!

J.M.L."

SOLDIERS' WILLS.

The indomitable Britisher when in the midst of all the horrors of war will not be deprieved of his joke, and even, when in contemplation of his possible death, will give a jocular tone to his testamentary directions. This has been manifested in the wills of private soldiers written in their army pay books which each one carries about with him. Here for instance is the will of a private written while on duty at a listening post in "No man's land:"

"I haven't a sweetheart, I haven't a mother,
I've only one sister, not even a brother;
My sister Susan is all I've got.
So of ought that's mine she can have the lot."

This will went through the courts without question, despite its unusual form. Another will in rhyme, leaving the money to the "first comer," is the following:

"Whoever first sets eyes on this
Gets everything I leave.
For my kith and kin are dead and gone.
And I've not a friend to grieve.
There's a tidy bit in the bank you'll find.
And my army pay, though small.
So stranger, breathe one sigh for me.
You're welcome to it all."

This will was forwarded to England by the young sergeant who found it and he shortly afterwards received notification that the "tidy bit," which turned out to be a substantial sum of money, had been deposited to his account.

THE LIVING AGE. Weekly. Boston, U.S.A.—We again call our readers' attention to this valued periodical. It is a collection of interesting articles from the best of our magazines and quarterlies, enlivened by fiction. The war news, so interesting and always so saddening, of course, largely fills our vision. There are those, however, who desire reading of another character to relieve the strain. This they will find in the pages of this excellent serial.