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THE LEGISLATION OF LAST SESSION.

The Ontario statutes passed at the late session of the Legislature have been issued with commendable promptness. The legislative labour has resulted in a volume of 1,000 pages.

Among the noticeable Acts of the session is that relating to the protection of the public interests in the bed of navigable waters (chapter 6), which, however, is not to take effect until proclaimed by His Honour the Lieutenant-Governor. The policy of this Act is to protect the water powers of the country from being monopolized by private individuals to the prejudice of the public, and it has practically reversed the rule of the common law, that the grant of land on the banks of a navigable stream entitles the grantee to the bed of the stream ad medium filum. Some objection has been made to this legislation on the ground of its interference with private rights, but reasonable protection seems to be provided for any existing rights and the Act will prevent the future acquisition of such rights to the prejudice of the public.

As usual we have a Statute Law Amendment Act (chapter 17), a sort of omnibus Act amending sections in many statutes, arranged apparently wherever possible on a sort of crab-like principle, viz., so that you may go backwards instead of forwards. If, for instance, two sections in a statute are to be amended, the latter one is first amended and then the earlier, e.g., to take a few specimens, s. 7 amends s. 21 of 8 Edw. VII. c. 28, and the following section then adds sec. 20a to the same statute; s. 9 (1) amends ss. 73, 141, 154 of 7 Edw. VII. c. 34, then subsecs. 2 and 3 make further amendments in s. 73; s. 15 (2) amends s. 4 of 9 Edw. VII. c. 72; and sec. 16, then amends 9 Edw. VII. c. 70; ss. 20-28 amend various statutes of 10 Edw. VII.; then s. 29 amends an Act of 9 Edw. VII.; s. 31 (3) amends s. 88 of

the Registry Act and sub-s. 4 then amends s. 80 of the same Act, and so it goes all through the Act, jumping from one volume to another, and from one section back to a preceding section in the usual promiscuous way.

A very little trouble would be required to introduce a little order into the annual batch of statute amendments, and the amendments could be so arranged as to begin with the Revised Statutes and proceed in regular order with the various other amendments made to statutes according to the chronological order in which such statutes were passed. This would make the work of keeping track of statute amendments (a by no means easy task), somewhat easier. We again take this opportunity of offering this practical suggestion to those responsible for the arrangement of the provincial statutes, but there seems to be some sort of fascination about the "higgledy piggledy" plan of arrangement, and it really takes so much less trouble, that we despair that a saner method will ever find favour. What sec. 28 of this Act (c. 17) means, is a thing which will puzzle most people to understand; both the section and the marginal notes all appear to be wrong.

Among the other amendments effected by the Statute Law Amendment Act is one respecting the Registry Act, relating to discharges of mortgages. Under the former Act it was held that one of several executors could validly discharge a mortgage: *Re Johnson*, 6 P.R. 225, but under section 62 as now amended, it would seem probable that if there are several executors or administrators, all must join in the discharge.

The amendment to the Execution Act, s. 24 (6), making lands assets for the payment of debts due to the Crown or to subjects, is merely an affirmance of what was already the law of this province, under the Imperial Statute 5 Geo. II. c. 7, which, though repealed (50-51 Vict. c. 59) as regards England, was expressly continued in force as regards Ontario. This Act ought to have been included in the schedule Part IV. of volume 3 of the R.S.O. 1897, but possibly escaped the notice of the compilers of that volume owing to the statute having been repealed in

England. Its omission from that schedule did not, however, in any way affect its operation.

By sec. 36 an amendment is made to the Married Women's Property Act, enabling a married woman who is a bare trustee of land to convey such land without her husband's concurrence.

By section 38, the removal of trustees is excluded from the equitable jurisdiction of County and District Courts.

By section 41 some provisions of the Judicature Act are transferred to the Mercantile Amendment Act. This may perhaps be with a view to a more orderly arrangement, but it will have the inevitable effect of making it hard to find in future, provisions with which the profession has become familiar in the Judicature Act. A useful amendment is made to the Surrogate Courts Act for the summary disposition by judges of those courts of disputed claims against the estates of deceased persons, without action. The clauses of R.S.O. c. 170 relating to the apportionment of periodical payments is revised as a separate statute, and following the method of revision of the statutes which has been going on for sometime past we have in the present volume the following further revisions.

Public Authorities Protection Act (R.S.O. cc. 88, 89, 326). Now 1 Geo. V. c. 22.

Coroners Act (R.S.O. cc. 97, 275 and amendments). Now 1 Geo. V. c. 23.

Fraudulent Conveyances Act (R.S.O. cc. 115, 334). Now 1 Geo. V. c. 24.

Conveyancing and Property Act (R.S.O. c. 119 and ss. 5, 10, 14-23 and 31-33 of c. 330; and clauses 2, 3, 5, 6, 11 of s. 58 of the Judicature Act). Now 1 Geo. V. c. 25.

Trustee Act (R.S.O. cc. 129, 131, 132, 336, ss. 10-20 of c. 337; ss. 63, 64 of c. 59; s. 39 of c. 51; 62 Vict. (2) c. 15; 63 Vict. c. 17, ss. 7 and 18; 1 Edw. VII. c. 14; 3 Edw. VII. c. 7, ss. 26, 27 and 9 Edw. VII. c. 59). Now 1 Geo. V. c. 26. (Not to come into force till 1st June, 1911.)

Custody of Documents Act (R.S.O. c. 137). Now 1 Geo. V. c. 27.

The Land Titles Act (R.S.O. c. 137 and amendments). Now 1 Geo. V. c. 28. (Not to come into force till 1st Sept. 1911.).

The Water Privileges Act (R.S.O. c. 141). Now 1 Geo. V. c. 29.

The Conditional Sales Act (R.S.O. c. 149, and s. 41 of c. 148). Now 1 Geo. V. c. 30. (Not to come into force till 1st July, 1911.)

The Apprentices and Minors Act (R.S.O. c. 161). Now 1 Geo. V. c. 31.

The Marriage Act (R.S.O. c. 162 and amendments). Now 1 Geo. V. c. 32. (Not to come into force till 1st Sept. 1911.)

The Fatal Accidents Act (R.S.O. c. 166). Now 1 Geo. V. c. 33.

The Deserted Wives Maintenance Act (R.S.O. c. 167 and amendments). Now 1 Geo. V. c. 34.

The Infants Act (R.S.O. c. 168 and ss. 2, 3, 12, 18 of c. 340 and par. 12 of s. 58 of Judicature Act). Now 1 Geo. V. c. 35.

The Illegitimate Childrens Act (R.S.O. c. 169). Now 1 Geo. V. c. 36.

The Landlord and Tenants Act (R.S.O. cc. 170, 171 and 342, and ss. 13, 14 of c. 129, and ss. 8-11 of c. 340, and s. 11 of c. 337 and 10 Edw. VII. c. 75). Now 1 Geo. V. c. 37.

The Anatomy Act (R.S.O. c. 177). Now 1 Geo. V. c. 38.

The Dentistry Act (R.S.O. c. 178). Now 1 Geo. V. c. 39.

The Pharmacy Act (R.S.O. c. 179). Now 1 Geo. V. c. 40.

The Land Surveyors Act (R.S.O. c. 180). Now 1 Geo. V. c. 41.

The Surveys Act (R.S.O. c. 181 and amendments). Now 1 Geo. V. c. 42.

The Architects Act (R.S.O. c. 182 and amendments). Now 1 Geo. V. c. 43.

The Stenographic Reporters Act (R.S.O. c. 183). Now 1 Geo. V. c. 44.

The Veterinary Surgeons Act (R.S.O. c. 184). Now 1 Geo. V. c. 45.

The Stationary Engineers Act (6 Edw. VII. c. 26; 7 Edw. VII. c. 32; 9 Edw. VII. c. 35, s. 1; and 10 Edw. VII. c. 26, s. 29). Now 1 Geo. V. c. 46.

The Ontario Cullers Act (R.S.O. c. 186). Now 1 Geo. V. c. 47.

The Chartered Accountants Act (46 Vict. c. 6? and 10 Edw. VII. c. 79). Now 1 Geo. V. c. 48.

The Innkeepers Act (R.S.O. c. 187 and amendments). Now 1 Geo. V. c. 49. (Not in force till 1st July, 1911.)

The Pawnbrokers Act (R.S.O. c. 188 and amendments). Now 1 Geo. V. c. 50.

New provisions are made in regard to local improvements in municipalities by chapter 58, which regulates the works which may be so undertaken, and the procedure in reference thereto, and how the cost is to be borne.

New provisions are also made by chapter 64, in regard to liquor licenses and particularly for increasing the license duties.

By chapter 66 we notice that restrictions are placed on the sale of lethal weapons which it is to be hoped may remove from our Italian immigrants a temptation to cut each other up, which they seem to find hard to resist.

We presume we may now be looking for the speedy publication of a new edition of the Revised Statutes, and having regard to the care which has been taken in really revising the statute law, we confidently expect that it will be found to be a marked improvement on previous efforts of that kind.

UNLICENSED CONVEYANCERS.

This subject comes up periodically and we publish in this issue a letter from a subscriber in reference to it. The country profession certainly have reason for complaints they make, and a remedy should be found. In the case brought up by our correspondent the Law Society of Upper Canada would seem to have jurisdiction.

The position which the Society has taken in reference to cases such as that referred to is that if the facts therein set forth are found to be correct the same would amount to a contravention of sec. 6 of the Solicitors Act, and likewise of Rules 5 and 46 of the Surrogate Court of the Province of Ontario.

By the Rules of the Law Society, as amended May 21st, 1908, any solicitor having a complaint to make against a solicitor, or any person acting in any of the Courts as a solicitor, without having been duly enrolled as such, may make it to the Secretary of the Law Society (who is to treat as confidential the name of such complainant) and to inquire into and report on the facts to the Chairman of the Discipline Committee, who is thereupon through his Committee (but without disclosing the name of the original complainant) to submit the whole question to Convocation for action. This has been found to work very satisfactorily, and we have reason to think there would be no hesitation on the part of the Law Society in making a prompt and careful investigation. No expense or effort should be spared by the Society in thus protecting the interests of the profession.

INTERNATIONAL ARBITRATION.

The dream of humanitarians that the time is coming when all national disputes will be settled by an International Board of Arbitrators, and that thereby wars shall cease, still dominates the mind of a large portion of the writers on the Continent of Europe and an increasing number of those in North America who discuss this most important subject. Our thoughts have recently been directed to this subject by the production of a work of some pretention and ambition called the "New Code of International Law," published in furtherance of the objects of the American Peace Society, which is referred to in our review columns.

A view of the situation new to most people appears in a very remarkable article by Mr. Harold F. Wyatt, published in

a recent number of the *Nineteenth Century and After*. With a keener and longer sighted vision, with a fuller appreciation of the lessons of history and with a more accurate estimate of human nature (and all nations are composed of units of humanity) this writer forms conclusions which prick many bubbles of the peace advocates and draws attention to views and thoughts which when once carefully considered cannot be ignored and deserve the most profound attention of all lovers of their country,* which article appears under the title of "God's test by war" and is as follows:—

Amidst the chaos of domestic politics and the wavelike surge of contending social desires the biological law of competition still rules the destinies of nations as of individual men. And as the ethical essence of competition is sacrifice, as each generation of plants or of animals perishes in the one case, or toils or dares in the other, that its offspring may survive, so with a nation, the future of the next generation is determined by the self-sacrifice or the absence of self-sacrifice of that which precedes it. The bud flowers and the flower dies, and dying, flings its seeds on the winds to produce, if it may be, a wider re-creation of itself. And in the animal world the sacrificial impulse of maternal love fronts all peril and endures all suffering that its young may live. That impulse, in the latter manifestations of evolution, is the root source of all human families, and of all human morality. And it finds its crown in patriotism, in the sacrifice which a nation makes to fulfil the trust which it has inherited from its fathers, and to hand down that heritage, not diminished but increased, to the generations that succeed.

If the springs of national action fail; if at a crisis when international rivalry is acute a given generation shrinks from the effort and the sacrifice necessary to self-preservation, then that generation is a traitor at once to its past and to its future. It dishonours the dead, who, in their earthly hour, did make that effort and that sacrifice when the time called for these. To those noble dead it is an ingrate, and of its own children it is the fraudulent

*As we write the news comes that the Territorial Army scheme of the British Minister of War shews signs of proving a failure as recruiting for it is almost at a standstill. The significance of this will be better understood after the reading of Mr. Wyatt's article.

betrayer. For what it has, that it has received on the implicit condition that it shall pass it on. The soul is gone out of a people when it recoils from a duty which the claims of its history and of posterity alike impose. Has the soul gone out of England, or does it still inhere?

England is still the heart and core of the aggregation of nations and of races which owe allegiance, not to her, but to the crown of her sovereign—that crown whose influence the ages have extended into the wide spaces of the world. Considered from the standpoint of the true Imperialist, England is but a province; but she is pivotal province, the pivotal province of the British Empire. Upon her shoulders rests the main weight of that Empire's burden. From her long suffering taxpayers is derived by far the major portion of the revenue which supports the British navy and the British army. By her sons those Services are chiefly manned. Withdraw from their support the wealth of England, withdraw from their ranks her men, and the fabric of Empire must fall like a house of cards. . . .

As for the oversea dominions of the King, they are but now beginning to awaken to the realities of the world of competing nations of which they are a part. They have but begun to move in earnest, and, with the exception of New Zealand, they have as yet given no contribution to the common defence in the least proportionate to their financial or their numerical power. If England fell suddenly from her place in the House of the British peoples; if the support of the Flag were left with the oversea dominions, plus "the Keltic fringe," and the lowlands of Scotland, then there would be speedy end of the British Râj.

We may ask again, then, what of England? Is the heart that once was hers still strong to dare and to resolve and to endure? How shall we know? By the test. What test? That which God has given for the trial of peoples—the test of war.

Does this mean that with an insanity of action exceeding even the madness of neglected preparation England is to precipitate the unready Empire into conflict with the prepared and watchful foe? It does not imply any such criminal folly.

What it does imply is that victory is the result of efficiency, and that efficiency is the result of spiritual quality. Self-sacrifice, self-denial, temperance, hardihood, discipline, obedience, order, method, organizing power, intelligence, purity of public life, chastity, industry, resolution, are some only of the national and indi-

vidual attributes which go towards producing the efficiency of modern armaments. And the efficiency or inefficiency of its armaments is the determining factor of a nation's success, or of a nation's failure, at that culminating moment of long processes of commercial and diplomatic rivalry—the moment of war. Thus, then efficiency in war, or rather efficiency for war, is God's test of a nation's soul. By that test it stands, or by that test it falls. This is the ethical content of competition. This is the determining factor of human history. This is the justification of war.

In the realms of sub-human life, in the world of animals, as in the world of men, this law, perhaps so modified that its working would have been to us undis ernible, must still have prevailed. At least the tendency must have persisted that the higher organism should conquer the lower. For if there had been no such tendency, how could the higher organism have constantly emerged?

In the sweep of the ages, in the passage of time, the qualities that make for victory have assumed, gradually, nobler hue. In the confused conflicts of earlier times to detect the secret process by which the higher tended ever to supersede the lower must have been hard indeed. Many are the cases recorded in the annals of mankind when might has struck down right. Many more must be the unrecorded instances when the like occurred. But the course of development of human society depends not on exceptions, however numerous, but on the rule. And the rule was, as analysis shews, not that "might was right," but that *right always tended to create might*. By "right" is here intended no artificial conception, and no imagined claim to territory. For suppositious "rights" of this kind have in history no validity save when based on force. What is meant is a righteousness of national life which included all or most of the qualities enumerated above as producing efficiency in war. This is the only kind of "right" possessed by a people which has enduring value.

As regards the present, the truth of these statements can hardly be doubted by any reasoning mind. As regards the past, the briefest survey of salient facts will establish their correctness. The triumph of the Greeks over the Persians was the triumph of a higher civilization and a nobler manhood. Marathon and Salamis were as the swords that kept the gates of Europe against the barbarian, and they were the direct

fruit of a lofty spirit inhabiting a great race. When, later, the Macedonian phalanx penetrated the East, that penetration represented the victory of the higher intelligence and the greater discipline. The sequent overthrow of Greek by Roman was the result of an austerier morality, of a deeper devotion to national ends and of a more perfect union. Each one of these three events meant the advance of mankind; each was the product of a military efficiency founded on a higher morale.

But if these instances are in themselves striking; if these scenes in the drama of the development of man exhibit the working, through war, of what Matthew Arnold called "A something not ourselves that makes for righteousness"; far more impressive, far more awful, is the tremendous tragedy of which they were the prologue, and which bisects the history of the Western world. Towards the close of the fifth century, says Professor Freeman, "civilization perished in blood and flames." It is a brief phrase. Who is there who can realize its full intent? But the question we ask here is, why this gigantic catastrophe occurred—this disaster which flung back the march of human thought and human science for a thousand years? If there be one thing certain, it is that civilization tends to become stronger than barbarism. How comes it then that civilization fell before barbarism?

The answer to that question is to be found in the decay of the military spirit among the Roman people. That decay again was itself the product of the degeneracy of public and private morality. In other words, civilization perished because its spiritual quality failed. Not all the arts, nor all the literature, nor all the splendour and refinements of the Roman world saved that world from destruction at the hands of Vandals and of Goths. Ruthless, inexorable, the law of the survival of the fittest trampled on the corrupt. Of that law, war is the supreme instrument, and of war, in the long passage of the centuries, the deciding factor in the soul. This is not the doctrine of the market place, or of the political pulpit, or of the Radical Party. In the English-speaking world when the stern virtues which alone lead to national survival are decaying, it is not teaching likely to be popular. But it happens to be the inner truth which analysis of history reveals.

Let those who dispute this conclusion test the validity of their denial by applying it, not to the past, but to the present. Take away from the Japanese their patriotism, their public

spirit, their discipline, and their vast capacity for self-sacrifice, and, after these withdrawals, what will then remain of their naval and military power? Only the shell without the kernel; only the material without the moving spirit which gives that material life. Truly the question answers itself.

Let a like subtraction be made from the qualities possessed by the German legions, and how much of their present menace to Europe will remain? Take from the nations which have produced these forces their presevering industry and their resolute thoroughness, and then say whether their navies and their armies will retain their potency. Or fill these countries with debauchery, destroy the sanctities of family life, make sexual immorality in its widest sense not the exception, but the rule, and then consider how long either Germany or Japan would retain its place in arms.

But if it be true, as these and like considerations go to prove, that warlike efficiency at the present time is the price of moral and spiritual quality, and perishes if such quality die, then must not similar attributes have tended throughout history to produce similar effect?

The same causes must always have tended towards the same results, but the purpose immanent in the universe becomes more manifest as evolution proceeds. When the processes of war are crude, and when the scale on which it is waged is small, the effects are far less evident of those great underlying causes which in the passage of generations have produced, despite all exceptions, their destined ends. But now when armaments are the epitomes of nations, and when the capacity to bear those armaments sums up the progress of a people, those who have eyes to see can at least divine the ethical content of war. Defeat in war is the fruit of naval and military inefficiency, and that inefficiency is the inevitable sequel to moral decay. Victory in war is the method by which, in the economy of God's providence, the sound nation supersedes the unsound, because in our time such victory is the direct offspring of a higher efficiency, and the higher efficiency is the logical outcome of the higher morale.

At the stage of development which mankind has now reached, those great human families which we call nations still constitute in the main the fundamental divisions of the whole race. These nations possess for the most part an intense organic life of their own. They are in fact individual organisms. Each organism,

while health animates it, feels the same impulse to grow and to compete with its rivals for increased means of subsistence which all knowledge and all experience present to our eyes in the sphere of biology, of which sphere nations in actual fact form a part.

And just as in the earlier and humbler domains of that sphere the higher type ever tended to survive, so in this later period of biological development the higher and the nobler people tends always to secure victory in that culmination of international competition which we call war. Hence it follows that if the dream of short-sighted and superficial sentimentalists could be fulfilled—that is to say, if war could suddenly be rendered henceforth impossible upon earth (which is at present impracticable)—the machinery by which national corruption is punished and national virtue rewarded would be ungeared. The higher would cease to supersede the lower, and the course of human evolution would suffer arrest.

This is a conception of the function of war which (as I venture to believe) has not been hitherto placed directly before the public. It is a conception which will be profoundly repugnant to those that think that they know better than the Power behind phenomena how the affairs of this, and perhaps of other worlds, ought to be arranged. Ceaseless efforts are being made alike in the United Kingdom and in the United States to destroy what remains of the military spirit in the Anglo-Saxon race. War, and the preparation for war, without which it brings defeat, are represented as barbaric survivals which can be abolished by international agreements. With such an object Mr. Carnegie has recently invested two millions sterling in a trust, with, it is said, the sagacious proviso that the balance, after the object has been attained, shall be devoted to some further worthy end. At the present epoch of the world's history, Mr. Carnegie might just as well have created a trust for the abolition of death, with the understanding that after this trifling change in human conditions has been achieved, the remaining funds should be assigned to the endowment of asylums for the imbecile.

For however frightful an evil war may appear, it is at any rate far less fatal to the human race than death, of whose manifestations it is a part. But than the part the whole is greater, and thus is death greater than war. Yet death is essential to human life, as we know it. For if there were no death, how

would the existence of mankind upon this planet be thinkable? At all events, the increase of such life would have had to cease thousands of years before the present era, so that none of those who are now shocked by the idea of war would ever have been born. For if there had been no death since life first stirred, far back in the depths of terrestrial time, then long ago, unless soon the growth of that life had ceased, there would have been no more room for vegetation, or for animals, for fishes or for men. Nay, more—since all life, other than that of vegetation, thrives on other life, ceaseless starvation must have been the lot of all sentient things.

The dream of a planet, traversing space, deep laden with stirless and foodless masses of life, life sentient, life individual, piled in its myriad millions of units into mountains higher than Atlas—life doomed to endure through the æons because it cannot die—this dream exceeds in horror any vision which Dante ever imagined of in the innermost hell. The paradox, therefore, is true that in this globe of ours (as probably in all other worlds throughout space which life inhabits) death is the condition of the increase of life.

But of death war is the scythe. Throughout the periods of biological time war has been the road to food, and since man was developed, war has been the condition of human advance. Men may fear war as they fear death, and shudder as they hear war's footfall (never far removed) encompass the edifice of their house of national being. But as, despite its horrors, death is still essential to mankind, so also is war. Death and war, those grim twin brethren, ride the rush of this world's tide and put the bit in the mouth of man.

If, therefore, we could conceive that, far on in the ages, that which is mortal should become immortal, in a sense not spiritual but material, then, as we have just seen, this immortality will bring another kind of death—the death of physical increase. For in any limited sphere physical immortality and physical increase cannot co-exist. But if in like manner we dared to conceive the cessation of war, then we must also conceive the cessation either of sin or else of human progress. For now defeat in war is the punishment of national unrighteousness, but, then, that punishment would cease. Where there was corruption, that corruption would continue; where there was oppression, that oppression would abide. Though infamy brought weakness, weakness would not bring overthrow. Though

righteous dealing brought national strength, national strength would not bring national victory. Therefore if, while nations remain, war is to be abolished, then unless the degeneracy of peoples can also be prevented, "there shall be no more war" must mean "there shall be no more progress."

But suppose that we seek to conceive some distant date, some day still in the depths of coming time, when, through intermarriage following intercommunication, all nations and all races shall have been merged into a single whole, when, throughout the bounds of our planet, one tongue is spoken, and nations make no more war because there are no more nations, would what is impossible now become possible then? Since in this our day the operative cause of war is international competition, would the removal of that cause remove war also?

Not necessarily, because as civil war has in the past often been waged within an individual nation, so it might be waged then within the one nation of mankind. In generations not very remote wars have been waged for religion, and wars have been waged for ideas. Even now in Africa, in Asia, and in Eastern Europe great numbers of fighting men exist who are ready to die in battle for their creed. (These are they who believe in one God and in Mahomet as His prophet, and their faith is not waning, but increasing). Therefore, though, while nations last, the present cause of conflicts must endure, the abolition of nations would not inevitably involve the abolition of war. In such a distant time as that which we are here contemplating, the inhabitants of this world may have arranged themselves in divisions other than national, and, as now between nations, so then between those divisions, competition may produce war. So long as those conditions lasted, the machinery for securing ethical advance would remain. Because righteousness brings warlike efficiency, therefore in the majority of cases righteousness as now would triumph over its opposite. But if those conditions ended; if the possibility of war absolutely passed away; then, *unless in the meantime human nature had radically changed,* the upward march of human morality would terminate because the terrific punishment which war provides for human degeneracy would be removed. In other words, war will cease to be a necessity only when corruption ceases to be a fact.

If this argument possess validity, then the deduction follows that while human nature remains what it is at present,

war must retain its place beside death as a vital and essential part of the economy of God. The Lord of Hosts has made righteousness the path to victory. In the crash of conflict, in the horrors of battlefields piled with the dead, the dying, and the wounded, a vast ethical intention has still prevailed. Not necessarily in any given case, but absolutely certainly in the majority of cases, the triumph of the victor has been the triumph of the nobler soul of man. Though to this rule history may furnish a thousand exceptions; though in history war has been made a thousand times over the instrument of cruel oppression and of diabolical wrong, yet in that great majority of instances which determines general result the issue of war has made for the ethical advantage of mankind. It must have been so; it could not be otherwise, because ethical quality has tended always to produce military efficiency. With true insight, therefore, did Tennyson write of "The Battle-Thunder of God." He has made of war His instrument wherewith to subdue nations who have broken His laws, but those who would read the processes of His courts in the ages of the past must take for their study, not generations, but centuries, and groups of centuries. They must survey the time as from a mountain summit, and then in the vast horizon they can discern the flashing of His lightning and hear the rolling of that thunder of which the discharge has purified, from epoch to epoch, the atmosphere of the world.

But to those whom the exceptions to this law of God appal; to those who can see in former conflict only confusion and purposeless slaughter and evil often triumphant over good—to these the contemplation of the present working of the same law among mankind, as mankind now is, may well bring comfort and assuaging hope. For, as always with great sequences of cause and effect, the vaster the scale the plainer the connection. As humanity gathers itself into larger divisions, the instances in which in war the unrighteous smite down the righteous must tend ever to become rarer and yet more rare. A small people, a State of limited extent and insignificant resources, even though of high military efficiency, must always have been exposed to overthrow by overwhelming numbers in a conflict with some greater foe or coalition of foes, even though these were of inferior military virtue to its own. But if in place of a small people we have a great one, and, instead of a little State, one of wide extent and immense resources, and if the people of this State possess military virtue of a high kind, then it is manifest that the

probability of their being crushed by the numerical preponderance of inferior antagonists, if not altogether removed, becomes at least far less than in the former case. Moreover, as has been already partly shewn, the relationship between righteousness of national life on the one side, and military efficiency on the other, is incomparably plainer in modern days than in earlier centuries, or, for the sake of example, let us say, eight hundred years ago.

Now, in wars between great peoples, vast and coherent organization is necessary to secure national victory. Now, immense armaments have to be created, and the power to produce and to sustain those armaments, and to inform them with the spirit of life, is the measure of the whole moral and economic capacity of a people. Moreover, such capacity must be developed on the lines on which human evolution is proceeding—that is to say, on the lines on which the Power behind phenomena is working—or else it fails of effect. For no nation which hides its talents in a napkin, no nation which has not energy and ability can either render efficient, or long support, the vast navies and armies of our time. Preparation for war is the enemy of sloth. Preparation for war is the dissolvent of apathy. Victory is the prize not alone of present self-sacrifice and present energy, but also of previous self-sacrifice and previous energy. Briefly, victory is the crown of moral quality, and therefore, while nations wage war on one another, the "survival of the fittest" means the survival of the ethically best.

When in the fourteenth century the archers of England shot death into the ranks of the chivalry of France; when England alone among the peoples of Europe possessed an infantry which had predominant value in war, was not the prowess of those good English yeomen the direct product of a national life superior in its social state and in its moral quality to that of the French, or perhaps of any other European people of that day? If so, Crecy and Poictiers and Agincourt were the direct outcome of a higher military efficiency proceeding from a higher morale. Again, when in Elizabethan days the Puritan mariners of our seaports laid the foundation of empire by vindicating at the cannon's mouth the freedom of the seas, was there not in those men, in their daring, in their initiative, in their stern energy, moral quality of a high kind—of a kind higher than that of the Spaniard whom they vanquished?

These are but instances of that vast and as yet untrodden field of history in which is to be sought the part which moral

quality has played in determining the rise and the decline of nations, the moral impulse that has led to victory, and the moral decay that has preluded defeat.

But if study conducted on these lines would illumine the past, far more would it illumine the present. Why is it that now, when their material resources are greater far than any of which in recorded time any people ever boasted, the whole Anglo-Saxon race, alike in the British Empire and in the United States, is in visible peril of overthrow at the hands of rivals far poorer, in the case of Japan, and in that of Germany of dominions incomparably less rich and less extended? Because their women shrink from motherhood and their men from the practice of arms. And of both avoidances the cause is the same, namely, the absence of that spirit of self-sacrifice which is the very essence of spiritual life. If that spirit dominated England to-day, would Englishmen decline the first duty and the first privilege of all who are not serfs—the duty and the privilege of rendering themselves fit to defend that freedom which their manlier forefathers won for them and left to them? If Englishmen were worthy of that bequest, would they hide, as now, careless of the claims of Empire, behind their ships? And would they, while crouching thus, suffer—with a madness of folly to which history affords few parallels—the relative decline even of the very fleet which is their only safeguard, until, within three years from now, they must have either but a bare equality to Germany in the North Sea—twenty-one British to twenty-one German Dreadnoughts—or else surrender the Mediterranean, and with it Malta, Egypt, and the route to the East, to the mercy of Germany's pledged allies?

The truth is that armaments are the reflection of the national soul. The immense naval and military strength of Germany is the reflex of moral and social conditions better than our own. The excess of her birthrate over ours (and still more over that of France) is in itself the proof of that superiority. For the growth of her population involves not the production of degenerates, but of a sound and vigorous race. Patriotism, public spirit, frugality and industry are the essential moral factors which render possible the vast armed force which Germany wields. And in all these factors it must be admitted, with whatever shame and sorrow, that she surpasses England. Therefore, if in the gigantic process of international competition England fall before Germany—which fate may God avert—then that fall

will follow from no other destiny that the destiny inwoven with the universal law which in this article I have attempted to set forth, the law that the higher morality tends to produce the greater military strength.

If in all these considerations any force be admitted to inhere, then clearly the duty of patriotism and of preparation for war is reinforced ten thousandfold. If what has been here advanced is sound, then from every pulpit in the land the voice of exhortation should be heard, urging every man and every woman to serve God in and through service to their country.

The discovery that Christianity is incompatible with the military spirit is made only among decaying peoples. While a nation is still vigorous, while its population is expanding, while the blood in its veins is strong, then on this head no scruples are felt. But when its energies begin to wither, when self-indulgence takes the place of self-sacrifice, when its sons and its daughters become degenerate, then it is that a spurious and bastard humanitarianism masquerading as religion declares war to be an anachronism and a barbaric sin.

Yet this cry of weakness is sporadic only and alters no world facts. War remains the means by which, as between nations or races, the universal law that the higher shall supersede the lower continues to work. From Great Britain and from the United States, whence the military spirit is passing away, this bleat of feebleness is now proceeding. But it is not heard among the two most energetic and efficient peoples now upon earth. It is not heard in Germany, and it is not heard in Japan. The wolf who has lost his teeth does not wish to fight, but the wolves whose jaws are still strong do not share his pious desire.

Even while this article has been penned, a new and astonishing outburst of sentimentality has been witnessed in the Anglo-Saxon world. President Taft has declared himself, according to report, in favour of the application of the principle of arbitration even to questions involving national honour and national independence. One single interrogation is sufficient to display the utter hollowness of this attitude. Is the President of the United States willing to submit the Munroe doctrine to such arbitrament? And if the award of the Jurists of the Hague Tribunal is given against him, are he and the people of whom he is the official chief willing to see, first the inhabitants of Japan, and, in sequent time, the myriads of China, pour into South America

and Mexico, found States under their own flag, and establish an immense military organization on the land frontiers of unarmed, English-speaking North America? Nay, if the Japanese claimed, and the Court of Arbitration allowed, an unrestricted immigration of the yellow race into the Anglo-Saxon area, is this generation of United States citizens ready passively to submit? If so, then those citizens are potentially slaves already, and they deserve the doom which would inevitably be theirs, for they would be guilty of the greatest act of betrayal, alike of their forefathers and of their posterity, of which the annals of mankind record any trace.

But if, as is of course the fact, the people of the States, even though they appear to have lost all military instinct, are yet not so deeply degraded as to incur this gigantic infamy, then their refusal withdraws an entire continent from arbitral award, it denies to the yellow nations what to them seem their most natural and righteous demands, and it fixes the determination of the latter to achieve by war those great ends which in no other way can they possibly attain.

The real court, the only court, in which this case can and will be tried is the court of God, which is war. This Twentieth Century will see that trial, and in the issue, which may be long in the balance, whichever people shall have in it the greater soul of righteousness will be the victor.

This single instance suffices to shew the unutterable folly of all those in this country, or in the States, who imagine that, in any time to which the eye of living man can see, artificial agreements can arrest national growths.

But the full absurdity of this idea becomes revealed only when we reflect upon the nature of the considerations which alone must guide the Board of Jurists who are to decide the destiny of nations and the distribution of raecs upon earth. They will have to make that decision in accordance with the existing status quo and with bits of paper which are written treaties. But the status quo is the very thing which, in the case of America, the yellow race claims the right to smash. And in face of such a claim, the bits of paper are bits of paper and nothing else.

The Hague Tribunal would say in effect to the Japanese plaintiff: "Three hundred years ago the ancestors of some few of the present denizens of the United States went to America, and in the course of these three subsequent centuries their descendants, or other subsequent immigrants, or the descen-

dants of these, practically extirpated the previous sparse population, overran the country, cultivated it, made roads and railways through it, and built great towns. Therefore, it is theirs to do with as they will, and if they choose to say that they will not suffer the unrestricted entrance of your own population, even as peaceful settlers, you must submit, because nothing short of compulsion by force, which is war, could alter this resolve. Recollect that war is wicked, and abandon accordingly your national ambitions. Moreover, you must remember that some eighty years ago a president of the defendant Republic declared what is called "the Monroe doctrine," by which he asserted the intention of this Republic to prevent any non-American State from acquiring in future one foot of land in any part of the whole American continent. We are sorry that this intention should so completely frustrate your national desires, but it still holds, and it cannot be broken except by war, which the supporters of this Monroe doctrine, like their kinsfolk in England, consider to be wrong and do not want to have. Indeed they are not prepared for it. Therefore, go away, and be good."

Japan might say in reply: "That the defendant Republic is in present possession of the territory which it claims as its own, or that it has long enjoyed that territory, is no reason why we should be kept out of it now. They have had their turn and we mean to have ours. Let them keep us out if they can. As for their Monroe doctrine, it seems to us the most monstrous claim of which we have ever heard. We are driven to desire new territory by the strongest impulses which can animate a nation. Our population is increasing with prodigious speed. Our men are warriors. They have fighting blood in their veins. We love our country and we desire the increase of its power and its dominion with a passion which you pale Westerns seem no longer able to understand. We have made already great efforts and great sacrifices to secure the ascendency of our race in coming time, and we are ready and eager to make greater efforts and greater sacrifices yet. We will win that ascendency, or we will die. At this very moment we are absolute masters of the waters of the Eastern hemisphere of the globe. The waning fleet of Britain is tied to its own shores by the German menace. The fleet of the United States recently took four months to pass, during peace, from its Atlantic to its Pacific seaboard. It would require time still longer during war, because it could not coal at neutral ports. When it arrived, we think we could

treat it as we treated the Russian fleet in the straits of Tsushima. At any rate, that issue we are prepared to submit—not to you—but to the God of battles.

"Moreover, we have already taken steps and expended substance in order to make sure in advance of victory against the United States. Many thousands of our troops are already established in the guise of settlers in the Pacific slope and in Mexico, and as we could reinforce them to the full extent of our military strength through our complete command of the sea, it is even now beyond the power of the States to expel them. They have been warned of all this by a book called "The Valour of Ignorance," and their War Department has reported to their Congress that an army of 450,000 men is required for either seaboard. But they pay no heed, and therefore our chance is now at hand. Their politicians are ignorant of history and of war. Their men are, like women, untrained to arms. They gather wealth without seeing that wealth undefended is wealth that an enemy may seize. Unless they soon acquire that training, they shall be, ere many years are past, as hewers of wood and drawers of water to the yellow peoples. You tell us that war is wrong. We think it in exact accordance with the nature of man, we are certain that it is in accordance with our own nature, and we will see in it the only means by which a virile nation can supersede a nation that has grown soft. Perish your Hague Tribunal, with its old woman's babble, and let Japan go forward."

This reply is substantially the real answer which is now being made, not in words, but in acts, by Japan to the sentimentalists of England and of the United States.

In a strain not dissimilar is Germany by her acts giving response: "Our population also, like that of Japan, is still growing fast. We need outlets for it, and because the sense of nationality is strong within us, we desire, and we will have, those outlets under our own flag. But when we look forth into the world, we find all those temperate regions wherein our German folk might live and multiply and flourish already occupied by the Anglo-Saxon race, either in the British Empire, or in the United States, or in the rest of the American continent throughout which the Monroe doctrine forbids us to found our Colonies. Like Japan, we seek ascendency, and we seek dominion, and we seek also the material wealth which we think dominion will bring. Moreover, we too are a nation trained to arms, and we too have shewn in the past, and are ready to shew again, that we are capable of sacrifice to fulfil what we deem should be our

national destiny. But the British Isles, and the British Navy based on those Isles, are geographically interposed between us and the attainment of our national ambition. England, with that Navy, is as an armed bastion or outwork of the United States placed far on the East of the Atlantic. We cannot strike at her daughter States, we cannot strike at the great Republic, until we have defeated that Navy, until we have stormed that bastion. Therefore we will remain friends, the best of friends, with the remoter half of Anglo-Saxondom, until we shall have crushed that nearer half of it which lies at our doors. To achieve this end we have been steadily building a great fleet, and we have secured the co-operation of two allies, Austria and Italy, both of whom are now proceeding to build Dreadnoughts. Within three short years the fleets of the Triple Alliance will be a match for that of England, unless in the meantime England awakens to the reality of her situation and makes a great shipbuilding effort. [The writer enlarges on this proposition and then continues]:—

"But now you of the Arbitration Court tell us that war is an infamy. To us it seems the only means of fulfilling national purpose. To us preparation for war seems the first business of a Government. We have not neglected that business. Since England, and if the United States have neglected it, let them pay for their supine folly."

The fleets, the armies, and the diplomacy of Germany are in substance and effect speaking words like these throughout the world. Our forefathers would have heard this warning and met this peril, but now our public men, and many of the organs of our Press, appear incapable of analysis, and bent on nothing but the utterance of popular platitude. In nothing is this mental feebleness more plain than in the prevalent confusion of thought between an Anglo-American alliance, which is indeed a most urgent necessity in the interests of both peoples, and the idea of a universal alliance, precluding future war. This idea is, for the causes given, not only ineffably absurd, but also fraught with the most deadly mischief. Two unmilitary peoples, threatened by the same danger, speaking the same language, and largely even now of the same blood, may well find it expedient to unite such forces as they possess for their common defence against great armed nations. But to infer from the advisability of such a union that the reign of everlasting peace upon earth is about to begin, and that what remains of their military spirit may

therefore soon be suffered to lapse, is the very negation of human reason, and the surest method of securing their common downfall. The whole circumstances of the world prove the direct opposite of such belief. Never was national and racial feeling stronger upon earth than it is now. Never was preparation for war so tremendous and so sustained. Never was striking power so swift and so terribly formidable. What is manifest now is that the Anglo-Saxon world, with all its appurtenant Provinces and States, is in the most direct danger of overthrow final and complete, owing to the decay of its military virtue, and of the noble qualities upon which all military virtue is built. Throughout that world, in churches and in chapels, on the platform, as in the pulpit, in the Press, and on the stage, which is our chief temple now, the voice of every God-fearing man should be raised, through the spoken or through the written word, to kindle anew the spark that is dying, to preach the necessity of self-sacrifice for the country's cause, and to revive that dying military spirit which God gave to our race that it might accomplish His will upon earth.

The shadow of conflict and of displacement greater than any which mankind has known since Attila and his Huns were stayed at Châlons is visibly impending over the world. Almost can the ear of imagination hear the gathering of the legions for the fiery trial of peoples, a sound vast as the trumpet of the Lord of Hosts.

REVIEW OF CURRENT ENGLISH CASES.

SOLICITOR—UNDERTAKING BY SOLICITOR—ENFORCING UNDERTAKING—SUMMARY PROCEEDING.

United Mining and Finance Corporation v. *Becher* (1911) 1 K.B. 840. In this case the solicitor's appeal from a summary order made by Hamilton, J., to pay over money to a person not his client pursuant to his undertaking (1910) 2 K.B. 296 (noted ante, vol. 46, p. 612), was compromised, so that the question of law was not dealt with.

BANK ACT (R.S.C. c. 29), ss. 99-111—AGREEMENT BETWEEN BANKS—TRANSFER OF ASSETS BY ONE BANK TO ANOTHER WITH A VIEW TO LIQUIDATION OF LIABILITIES OF TRANSFERORS—CONSTRUCTION.

McFarland v. *Bank of Montreal* (1911) A.C. 96. This is an appeal from the Court of Appeal for Ontario on the question as to the validity of the agreement made between the Ontario Bank on the eve of its suspension of business, with the Bank of Montreal, whereby the latter bank undertook to assume the control of the business of the Ontario Bank, receiving a transfer of its assets and undertaking to the extent of such assets to discharge the liabilities of the Ontario Bank, that bank agreeing to pay any deficiency. It was contended that the agreement amounted to a sale of its assets by the Ontario Bank and was void because the conditions of the Bank Act, R.S.C. c. 29, ss. 99-111, had not been complied with. The Judicial Committee of the Privy Council (Lords Macnaghten, Atkinson, Shaw, and Mersey) agreed with the courts below that the transaction did not amount to a sale, but was in the nature of a loan, and that the Bank of Montreal were entitled to prove as creditors for what appeared to be due on the footing of their accounts of the assets received, and debts discharged by them, and for their remuneration.

CONVEYANCE OF GAS LEASES AND WELLS—RESERVATION BY VENDORS OF SUFFICIENT GAS TO WORK THEIR PLANT—CONSTRUCTION BREACH—SUBSTITUTED GAS OBTAINED BY VENDORS FREE OF COST—MEASURE OF DAMAGES—NOMINAL DAMAGES.

Erie County Gas Co. v. *Carroll* (1911) A.C. 105. This was an appeal from the Court of Appeal of Ontario. The appeal

turned on the question of what was the proper measure of damages for breach of the contract in question. The plaintiffs carried on an extensive quarry, and were owners of gas wells and gas leases and gas grants which in April, 1891, they sold and assigned to one of two appellant companies, including the right to explore and drill the lands to which they related for natural gas, and set up plant and machinery for its distribution and sale. The vendors, however, reserved "enough gas to supply the plant now operated or to be operated by them on the property." In 1894 the vendees assigned their interest to the other appellant company, and shortly afterwards the assignees cut off the supply of gas to the plaintiffs, and refused further to supply them, and the plaintiffs thereupon procured the gas required for their plant, by acquiring other gas leases and rights and by construction of the necessary works. The plaintiffs sued both companies for damages for deprivation of gas contrary to the reservation. They obtained judgment in 1897 with a reference to the Master to assess the damages, but appeals were brought with varying success, and it was not until 1900 that the judgment was finally affirmed. The plaintiffs did not proceed on the reference until 1905, and the Master made his report in 1907, and it was on an order made on appeal from this report that the present appeal originated. On the reference it appeared that the plaintiffs' expenditure for procuring gas elsewhere had amounted to about $58,297.52, and that they had subsequently, pending the suit, sold their quarry and the gas works for an aggregate sum of $250,000, of which $75,000 was attributable to the gas works. In these circumstances the Judicial Committee held that the plaintiffs were only entitled to nominal damages, and the judgment of the court below for $54,031.82 was, therefore, reversed. See *British Westinghouse Co.* v. *Underground Ry. Co.* (1911) 1 K.B. 575.

HUSBAND AND WIFE—CONTRACT OF WIFE FOR HUSBAND'S BENEFIT —INDEPENDENT ADVICE—UNDUE INFLUENCE—DUTY OF HUSBAND'S SOLICITOR ACTING FOR WIFE.

Bank of Montreal v. *Stuart* (1911) A.C. 120 is an important case not only on account of the amount involved, but also for the legal questions raised therein. The action was brought by a married woman to set aside a guaranty given by her to the Bank of Montreal for the debt of her husband. The Supreme Court of Canada following its decision in *Cox* v. *Adams*, 35 S.C.R. 393,

held that the transaction was void by reason of the plaintiff not having had independent advice. The Judicial Committee of the Privy Council (Lords Macnaghten, Collins and Shaw, and Sir A. Wilson) affirmed the judgment, but on different grounds, their Lordships dissent from *Cox* v. *Adams*, so far as it affirms that no transaction between husband and wife for the husband's benefit, can be upheld unless it is shewn that the wife had independent advice: but, on the facts, they came to the conclusion that notwithstanding the plaintiff admitted that she knew what she was doing and intended to benefit her husband, yet their Lordships considered she was in fact unduly influenced to enter into the transaction, which was manifestly improvident; and her husband's solicitor having acted in the transaction, and having failed to warn her against what she was doing, it was held that the bank was affected because the husband's solicitor was also acting as solicitor for the bank, and their Lordships held that it was the duty of the solicitor in the circumstances to put before the wife plainly and explicitly the effect of what she was doing, and if she had, as she probably would have done, rejected his intervention, he ought then to have gone to the husband and insisted on the wife being separately advised; and if that was impossible, owing to the implicit confidence placed by the wife in her husband, he should have retired from the business altogether.

Correspondence

UNLICENSED CONVEYANCERS.

DEAR SIR,—Knowing your solicitude for the interests of country practitioners I venture to call your attention to the following case in the hope that you may be able to suggest a remedy.

I enclose the advertising card of a leading real estate and insurance agent of this town and samples of advertisements for creditors in Surrogate matters. This man travels about the country a great deal, and, in the course of his business, solicits people to let him draw their wills. The inducement he holds out is that it costs them only a trifle and that his long experience has qualified him to do the work as well as any lawyer.

Having possession of the will, when the testator dies he undertakes to probate it and wind up the estate. Instead of handing

over the will to a local solicitor for probate, he employs the firm in the county town whose name appears in the advertisements for creditors. He makes no secret of the fact that he does so because he is paid for it and there is no doubt that he gets a share of the solicitors' fees. A further reason may be that he thus runs less chance of losing the business of winding up the estate.

It appears to me that all this is clearly a breach of the Solicitors Act and also of Surrogate Court Rule 46, and that the solicitors are equally guilty with their principal. I may add that this man is a Commissioner for taking affidavits and is by virtue thereof an officer of the court under R.S.O. 1897, c. 74, s. 7, whatever that may amount to.

The Medical Association employs detectives and vigorously prosecutes all parties infringing the provisions of the Medical Act. Why cannot the Law Society, which takes over $26,000 annually from solicitors for certificates to practice, adopt a similar plan?

In small communities where people are closely connected by family ties and business interests it is out of the question for a local solicitor to take action. The Law Society should conduct the prosecution and furnish counsel, etc., out of its own funds. The matter is a serious one for us, as the greater part of our practice consists of the administration of the estates of deceased persons, and this man does nearly as much in this line as all the solicitors in town together.

I hope I am not presuming too much in asking you to give this matter your best consideration as it concerns the profession at large as well as ourselves.

AN OLD SUBSCRIBER.

[The above matter is referred to at length in our editorial columns.—ED. C.L.J.]

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Full Court.] [April 1.

RE GOOD AND JACOB Y. SHANTZ SON & CO. LIMITED.

Company—By-law to restrict the transfer of fully paid up shares—Refusal of directors to allow transfer—Dominion Companies Act.

Appeal by the above company from the judgment of a Divisional Court, 21 O.L.R. 153, dismissing appeal from the order of Teetzel, J., who directed the transfer of certain shares to Good. The appeal in this matter was limited, on the application for special leave, to the one general question, viz., the power of the appellants, a company incorporated under the Dominion Companies Act, R.S.O. (1886), c. 119, to restrict the transfer of fully paid up shares in the company as enacted in their by-law No. 2, clause 17; in other words, whether by virtue of their statutory powers they could pass and enforce such a by-law.

Held, that it was beyond the powers of the company as defined by the Act to prohibit the transfer of paid up shares. Appeal dismissed.

MEREDITH and MAGEE, JJ.A., dissented.

DuVernet, K.C., and *Lefroy*, K.C., for appellants. *S. John*, K.C., and *W. M. Cram*, for respondents.

Full Court.] [April 25.

WADE *v.* ROCHESTER GERMAN FIRE INSURANCE CO.

Fire insurance—Statutory condition—Assignment of policy for benefit of creditors—Assignment not absolute—Policy not void.

This was an appeal by the defendants from the judgment of MIDDLETON, J., who found in favour of the plaintiffs. The sole question presented for discussion was whether an assignment

for the benefit of creditors made by a debtor pursuant to the Act respecting assignments and preferences by insolvent persons of property insured under a policy of insurance effected in Ontario falls within the fourth statutory condition so as to avoid the policy.

This condition reads as follows: "If the property insured is assigned without a written permission endorsed hereon by an agent of the company duly authorized for such purpose, the policy shall thereby become void; but this condition does not apply to any change of title by succession or by the operation of the law or by reason of death."

Held, 1. The broad principle deducible from the decisions is that unless the property is assigned so as to absolutely divest the assignor of all right, title and interest thereto and therein the condition does not take effect and that irrespective of the form of the instrument of assignment. Thus a mortgage created or a transfer to a bare trustee for the transferor are outside of the conditions and the other cases can readily be supposed to which unquestionably the condition would have no application.

2. In the present case though the assignors part with the title to the extent of passing the legal interest to the assignee they do not part with all their right and interest in it and so notwithstanding the form of the instrument the assignors retain an insurable interest in the property and the statutory condition does not come into operation. Appeal dismissed.

Hellmuth, K.C., and *G. L. Smith*, for defendants. *Rowell*, K.C., and *L. G. McCarthy*, K.C., for plaintiffs.

HIGH COURT OF JUSTICE.

Full Court.] [March 30.

JONES *v.* TORONTO AND YORK RADIAL RY. CO.

Street railway—Injury to person crossing track—Negligence —Failure to give warning—Contributory negligence—Rights of foot passengers.

Appeal by the plaintiff from the judgment of Riddell, J., dismissing the action with costs. The facts of the case were that the plaintiff, who was slightly deaf, got out of his waggon, and proceeded to cross Yonge Street on a skew (as he called it) of about 45 or 50, to the street car tracks laid on the west

side of the highway. Before crossing he looked up north and saw the defendants' car at a standstill—he says at Davisville switch, but it may have been closer, so as to be 200 feet, instead of 550, distant—whatever the distance he believed he had time to get across to the house where he was going, before the car could reach the place where he was crossing and he kept on till aroused by the impact of the car, accompanied by shouting and ringing of the gong. He had been seen and shouted to from the approaching car behind him, some 20 yards off, but though he could hear the gong he does not seem to have heard the shouts.

Held, 1. The rule of law which governs this appeal is expressed in the words of Lord Penzance, in *Radley* v. *London and North Western Ry. Co.*, 1 App. Cas. p. 759; "though the plaintiff may have been guilty of negligence and though that negligence may have contributed to the accident, yet if the defendant could, in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him." See also *G.T.R. Co.* v. *Ives*, 144 U.S.R. 429, and *Philadelphia* v. *Kleeth* (1906), 128 Fed. R. 820, where the rule is laid down that, "no one should be relieved from liability from injury inflicted by him on another, by reason of the fact that that other has negligently exposed himself to a danger, if when that situation was or ought to have been apparent to him, he omitted such reasonable precautions as would, if exercised, have avoided the accident.

2. The public have a right to cross the streets and go over the street car tracks for that purpose, and such people have an equal right to be there with the cars. A motorman, who has control of a powerful and propelling force which, if carelessly used might endanger life and limb, must look out for any one in danger or likely to be in danger, and must use a commensurate degree of care to avert such danger. If the motorman sees the exposed condition of the traveller and proceeds without giving warning or using his best endeavour to stop, this negligence is excessive and criminal.

3. In the present case the situation of danger was apparent and the neglect of the motorman to take prompt steps to avoid the collision was the final act of negligence which gives a right to recover damages in spite of the preliminary fault of the plaintiff in getting close to the tracks.

Judgment reversed and verdict to be entered for $1,200 and costs.

J. MacGregor, for plaintiff. *C. A. Moss*, for defendants.

Divisional Court.] CRONK *v.* CARMAN. [April 12.

Principal and agent—Remuneration of agent—General employment—Implied contract—Quantum meruit.

Appeal by the defendants from the judgment of the County Court of Hastings. The plaintiff, who was formerly foreman of the defendants, sued to recover $250, which he said the defendants agreed to pay him if he procured a purchaser for their printing business, whom he said he did procure, but which assertion the defendants denied. At the trial, judgment was given for the plaintiff for $250, and costs. The legal position as stated by the court was that the defendants employed the plaintiff to sell at $12,000, this he was unable to do, but he procured a purchaser for a smaller price, and they accepted this purchaser at the lower price.

Held, that there was an implied contract to remunerate. As to the amount, the most which plaintiff could recover would not necessarily be the amount named as commission upon the higher price, but he should be awarded on a quantum meruit. Appeal dismissed with costs.

C. Millar and *F. E. O'Flynn,* for defendants. *E. N. Armour,* for plaintiff.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] [April 29.

LANE *v.* DUFF.

Solicitor and client—Retainer—Scope of authority—Payment—Effect of—Successive applications—Estoppel.

Plaintiff was employed by the master and managing owner of a vessel of which defendant was part owner to act as solicitor in connection with proceedings against several seamen for desertion and also in resisting an application for their discharge from imprisonment. After the imprisonment of the seamen the master was removed from his position as managing owner and defendant, who was appointed in his stead, paid a note given by the master for plaintiff's services in securing the conviction of the men and in successfully resisting the application for their

discharge. Subsequently a second application for the discharge of the men was made before another Judge and, in the absence of the master, the papers were brought by a member of his family to plaintiff, who notified defendant and another owner of the application. Plaintiff had no notice of the removal of the master and was merely told by defendant that he had no instructions.

Held, by GRAHAM, E.J., and DRYSDALE, J., affirming the judgment of RUSSELL, J., that if defendant objected to plaintiff opposing the second application he should have told him so, and having failed to do so, and having paid the note given for services given after the removal of the master, the principle of estoppel applied.

Per SIR CHAS. TOWNSHEND, C.J., and MEAGHER, J., dissenting, that the plaintiff's retainer was at an end when he was paid for the services rendered and that he was not justified in opposing the second application without fresh authority.

O'Connor, K.C., for appeal. *Mellish*, K.C., contra.

Full Court.] [April 29.

CATHOLIC CORPORATION OF ANTIGONISH *v.* MUNICIPALITY OF THE COUNTY OF RICHMOND.

Taxation—Exemptions—Construction.

The Assessment Act, R.S.N.S. (1900), c. 73, s. 4, exempts from taxation, "every church and place of worship and the land used in connection therewith and every churchyard and burial ground."

Held, not to extend to and include lands and buildings not being churches or places of worship such as glebe houses and lands, rectories, parsonages, etc., occupied and used by the pastors in actual charge of the churches and not rented or let to third persons or used otherwise than as a means of aiding in the support of such pastors.

J. A. Wall, for plaintiff. *Mellish*, K.C., for defendant.

Full Court.] THE KING *v.* ELDERMAN. [April 29.

Municipal corporation—By-laws—Use of abusive language on street—Word "scab"—Appeal—Point not taken below—Information and conviction—Sufficiency of.

Defendant was convicted by the stipendiary magistrate of the town of Springhill, for a violation of the by-law of the town

in relation to the use on the streets of the town, of abusive, insulting and provoking language to any person thereon. The offence consisted in the use on one of the streets of the town of the words "scab," "damn scab," "born scab," and other like expressions addressed to the informant. The words were uttered at a time when a number of workmen were carrying on a strike and defendant was a sympathiser with the strikers and the informant was a workman employed by the company against whom the strike was directed.

Held, 1. Reversing the judgment of the County Court judge and restoring the conviction with costs that defendant was properly convicted.

2. A point not taken before the magistrate or the judge of the County Court is not open on the appeal.

3. The information, which set out the words used and referred to the by-law, was sufficient omitting the word "abusive" or the words "insulting and provoking."

4. It was not necessary that the by-law should be set out in the conviction.

Mellish, K.C., and *Ralston*, for the appeal. *W. B. A. Ritchie*, K.C., contra.

Province of Manitoba.

KING'S BENCH.

In re London Fence, Limited.

Winding-up company—Winding-up Act, R.S.C. 1906, *c.* 144, *s.* 131—*Contributories—Application to stay proceedings in action by liquidator against contributory—Who may make.*

1. Under section 131 of the Winding-up Act, R.S.C. 1906, c. 144, further proceedings on an issue ordered to be tried between the liquidator of a company being wound up under that Act and a person placed by him on the list of contributories as to the liability of the latter, should be stayed when it is shewn that an overwhelming proportion of both the shareholders and creditors of the company and the liquidator himself desire that the claim against the contributory should be abandoned because of their belief that the proceedings would not be of benefit to them. The order for such stay, however, should contain a pro-

vision that any shareholder or creditor who is opposed to it may use the name of the liquidator or the company in bringing the issue to trial, on giving within a time limited a satisfactory indemnity to the liquidator against costs; in default of which only the issue to be dismissed.

2. To ascertain the wishes of the shareholders and creditors, it is not necessary that there should be a meeting; their consent may be sufficiently expressed by counsel. *Re West Hartlepool*, L.R. 10 Ch. Ap. 618, followed.

3. The application for the stay may be made by a shareholder or a creditor independently of the liquidator. *Re Sarnia Oil Co.*, 14 P.R. 335, followed.

A. B. Hudson, Coyne, and *Armstrong*, for applicants. *Anderson*, K.C., for the liquidator. *Symington*, for company. *O'Connor*, contra.

Macdonald, J.] THE KING *v.* KOLOTYLA. [April 12.

Criminal law—Conviction for vagrancy—Gaming—Living by means of—Sufficiency of evidence—Habeas corpus.

The prisoner was convicted under par. (1) of s. 238 of Crim. Code for that, having no peaceable profession or calling to maintain himself by, he, for the most part, supported himself by gaming and was thereby a loose, idle and disorderly person and a vagrant. There was evidence that, although he was a carpenter by trade, he had not been working at it or any other trade for about seven months prior to his arrest, that he had been making money by taking a rake-off from men resorting to his house, who gambled there and that he had not only paid his rent for several months back, but had also repaid $25 of borrowed money during that period and had supported himself and family in some way.

Held, that the magistrate was justified in finding that the prisoner had for the most part supported himself by gaming, and that the prisoner was not entitled to be discharged upon habeas corpus. *The Queen* v. *Davidson*, 8 M.R. 325, distinguished.

P. E. Hagel, for prisoner. *Patterson*, K.C., Deputy Attorney-General, for the Crown.

Robson, J.] [April 17.

TORONTO CARPET MFG. CO. *v.* IDEAL HOUSE FURNISHERS.

Practice—Commission to take evidence of plaintiffs' chief witness abroad—Application for—Material for, sufficiency of.

A commission to take the evidence in Toronto of the plaintiffs' general manager for use at the trial should be refused when it is shewn that he would be the chief witness for the plaintiffs to meet defences denying the sale of the goods sued for and setting up that the plaintiffs had agreed to accept shares in the defendant company in satisfaction of the debt guaranteed by the individual defendants and that shares had been accordingly allotted to and accepted by the plaintiffs, and when the only material in support of the application was an affidavit of the witness saying that he was a material witness to prove the account and to disprove the various defences, and that it would entail great loss and expense for him to attend a trial at Winnipeg, as his duties as general manager of the plaintiff company required his continued presence in Toronto. *Canadian Railway Co.* v. *Kelly*, 17 M.L.R. 645; *Lawson* v. *Vacuum Brake Co.*, 27 Ch.D. 137, and *Ross* v. *Woodford* (1894), 1 Ch., at p. 42, followed.

Hannesson, for plaintiffs. *Armstrong, Taylor* and *Phillipps*, for various defendants.

Robson, J.] SCHWARTZ *v.* BIELSCHOWSKY. [April 17.

Joint debtors—Release of one by giving time to the other—Release by accepting separate obligation of one joint debtor.

1. Where one of two joint debtors furnished the other with money to pay his half of the debt, his position as to the balance does not become merely that of surety for the other, unless the creditor knew of the facts. *Rouse* v. *Bradford Banking Co.* (1894), 2 Ch. 32, (1894), A.C. 567, followed.

2. When the creditor expressly declares his intention to hold both the joint debtors, he may accept the separate obligation of one for an unpaid balance of the debt and give him time for payment, renewing the obligation several times, without thereby releasing the other from his liability for such balance. *Swire* v. *Redman*, 1 Q.B.D. 536; *Brease* v. *Griffith*, 24 O.R. 492, *Cluff* v. *Norris*, 19 O.L.R. 457, and *Bedford* v. *Deakin et al.*, 2 B. & Ald. 210, followed.

Hoskin, K.C., and *Montague*, for plaintiff. *Andrews*, K.C., and *F. M. Burbidge*, for McDermott. *Hannesson*, for Bielchowsky.

Robson, J.] THE KING *v.* MONVOISIN. [April 21.

Criminal law—Bail for prisoner committed to trial for murder —Justifiable homicide—Self-defence.

When the depositions taken at the preliminary hearing of a charge of murder clearly shew that the deceased died by the hand of the prisoner and are such as to justify his commitment for trial, and sufficient to establish a case to go to the jury, bail should be refused, although it also appears from the depositions that the prisoner might be able to convince the jury at the trial that his act was done in self-defence. *Rex* v. *Greenacre*, 8 C. & P. 594; *Rex* v. *Lathe*, 19 O.L.R. 386, and *Queen* v. *Mullady*, 4 P.R. 314, followed.

Bonnar, K.C., for prisoner. *Graham*, for the crown.

Province of British Columbia.

SUPREME COURT.

Gregory, J. [May 10.

EMERSON *v.* FORD-MCCONNELL.

Libel—Damages—Verdict for five cents—Costs.

In an action for libel, whether the plaintiff recovered only five cents damages, it was held that he was entitled to costs, there being no evidence of any misconduct on his part or any reason shewn to deprive him of costs other than the smallness of the verdict.

A. D. Taylor, K.C., for plaintiff. *S. S. Taylor*, K.C., for defendant.

COURT OF APPEAL.

Full Court.] [April 10.

HOLMES *v.* LEE HO AND LON POY.

Principal and agent—Listing—Net price—Commission—Change in terms—Revocation of agency.

Plaintiff and one of the defendants, after a conversation, arranged on the selling price of a piece of real estate at $6,000. There was a conflict in the evidence as to whether that was to

be a net price, but this difficulty was got over, by the fact that on the occasion the parties next met, a few days later, the defendant in question said, "property is gone up now, and I shall want $6,000 net." Plaintiff, on the same day, the second occasion (but before the change in price), brought the property to the notice of a purchaser, and told the defendant about him, Plaintiff also changed his advertisement to read $6,500, as the selling price. The purchaser refused to pay more than the $6,000, and eventually bought direct from the owners at that price.

Held, on appeal, (affirming the finding of LAMPMAN, Co. J.), that the plaintiff's agency, if he had any, was revoked before the plaintiff had put himself in a position to claim a commission.

Tait, for plaintiff. *A. D. Crease*, for defendant.

Full Court.] ROWLANDS *v.* LANGLEY. [April 10.

Principal and agent—Sale of land—Commission—Procuring purchaser—Net price.

Plaintiff at one time obtained an option on defendant's ranch with the idea of promoting a syndicate to purchase it. In this he was unsuccessful, and then undertook the sale of the ranch on a commission basis, $100,000, being the purchase price, and his commission or profit to be made by adding $5,000 thereto. He endeavoured to effect a sale in various quarters and ultimately introduced H. to the defendant, telling the former that the price was $105,000, and taking the latter to protect him at that price. H. stayed for some days on the ranch inspecting it, and, having concluded to purchase, asked defendant his price and was told $100,000, which he paid.

Held, on appeal, affirming the verdict of the jury at the trial (GALLIHER, J.A., dissenting), that plaintiff was entitled to recover his commission of $5,000 from the defendant (vendor).

S. S. Taylor, K.C., for appellant (defendant). *Davis*, K.C., for respondent (plaintiff).

Book Reviews.

The New Code of International Law. By JEROME INTERNOSCIA, of Montreal, member of the Bar of Quebec. The International Code Company of New York, Publishers. 1910.

This is a remarkable work and from its title and from the fact that it is published in parallel columns in three different languages, English, French and Italian, it necessarily forms a very bulky volume of over one thousand pages, the size being 9 x 11½.

The object of the author is to aid in the praiseworthy effort of putting an end not only to war, but to something which he thinks it is almost as bad, ruinous peace. By this Code he desires to educate the public in a science not well known and at present of limited application, and which he claims must be thoroughly explained, both scientifically and theoretically, before any approach to the desired end could be expected.

There comes with the book, as tending to explain its origin, a pamphlet entitled "A World Treaty of Arbitration" by James L. Tryon, Ph.D., Assistant Secretary of the American Peace Society. This paper gives a sketch of what has been done at the Hague Conference and by various nations in reference to world arbitration for the pacific settlement of international disputes.

This writer points out that as a result of the movement for arbitration of late years an attempt was made at the first Hague Conference to establish a universal system of obligatory arbitration. This was, however, resisted by Germany, and arbitration, though approved of as a theory, was left on a voluntary basis. Since then a number of the nations have agreed among themselves by treaties to refer all their disputes to arbitration, but these separate treaties, made by them in pairs, would not be of much practical use in the desired direction, nor would they accomplish what might be expected from a single world treaty including all the nations. If this latter were possible, a great step would have been gained; but so long as human nature remains as it is, even that would not put an end to war, or do away with armed peace; for, as seems to be generally admitted, nothing more could be expected than that it should be left optional with the signatory powers to decide for themselves whether a given dispute involved their vital interests, honour or independence and could legally be excepted from obligatory arbitration.

Apart from all this, however, we are among those who believe that until the millenium comes there will be wars, no matter what philanthropists and statesman may say or do to prevent them; at the same time every possible effort in that direction is worthy of all encouragement.

As to the Code before us it is evidently a work which has involved an immense labour and research, and would seem to cover if not all at least the great majority of the questions, which, judging from the experience of the past, would be likely to be the occasion of disputes between nations, and which, but for peaceful arbitration, would naturally lead to the arbitrament of force. For the use of those who look forward to a time of peace as the result of these praiseworthy efforts and labours of love the digested information this Code contains would be of the greatest value in helping to put into practical concrete shape a system of international law, to be further developed and enlarged as experience might dictate.

Oswald's Contempt of Court, Committal, Attachment and Arrest Upon Civil Process. With an appendix of forms. 3rd ed. By GEORGE STUART ROBERTSON, M.A. With reference to the cases decided by the various Provincial Courts of the Dominion, the Supreme Court of Canada and the Supreme Court of the United States. By A. C. FORSTER BOULTON. London: Butterworth & Co., 16 Bell Yard; Toronto: Canada Law Book Co., Limited. Philadephia: Cromarty Law Book Co. 1911.

The fact that this edition has been revised and substantially altered by Mr. Robertson, the learned author of "Civil Proceedings by and against the Crown" is a sufficient guarantee to the profession that the work has been well and thoroughly done. He has included a chapter on attachments and committals on the Crown's side of the King's Bench Division and in bankruptcy; also a new chapter on attachments in civil proceedings by the Crown. This will add largely to the value of the work. Its usefulness, especially in this country, is largely increased by the presence of the leading cases on the various subjects decided on this side of the Atlantic collected by Mr. Boulton. These appear under the heading of "Canadian Notes" following the various chapters composing the work.

The Commercial Code of Japan. By YANG YIN HANG, graduate in law of the Waseda University, Tokyo, Japan; Master of Law, University of Pennsylvania. Boston Book Co. 1911.

The commercial code of Japan is founded mainly on the commercial code of Germany, and contains also elements from the codes of other continental countries, with, of course, some administrative provisions due to Japanese conditions. It is an interesting book to have in one's library in these days of Oriental progress.

Topham's Real Property. An introductory explanation of the law relating to land. 2nd ed. By ALFRED F. TOPHAM, LL.M. Barrister-at-law. London: Butterworth & Co., Bell Yard. 1911.

This book is intended for students, giving an outline of the law sufficient for ordinary examinations on real property. Test questions for the use of students have been prepared by F. Porter Fawcett, B.A., Barrister-at-law, which will be helpful for students in preparing for examination, giving them some idea of what they may expect on that nervous occasion.

Flotsam and Jetsam.

Mr. Mason, of New England, was cross-examining a witness who had previously testified to having heard Mr. Mason's client make a certain statement, and it was upon the evidence of that statement that the adversary's case was based. Mr. Mason led the witness round to his statement, and again it was repeated *verbatim*. Then, without warning, he walked to the stand, and pointing straight at the witness said, in his high, impassioned voice, "Let's see that paper you've got in your waistcoat pocket!" Taken completely by surprise, the witness mechanically drew a paper from the pocket indicated, and handed it to Mr. Mason. The lawyer slowly read the exact words of the witness in regard to the statement, and called attention to the fact that they were in the handwriting of the lawyer on the other side. "Mr. Mason, how under the sun did you know that paper was there?" asked a brother lawyer. "Well," replied Mr. Mason, "I thought he gave that part of his testimony just as if he had heard it, and I noticed every time he repeated it he put his hand to his waistcoat pocket, and then let it fall again."