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WAR.

SILENT LEGES INTER ARMA—CICERO.

On August 4th, at the hour of 7 o'clock p.m. war was declared by Great Britain against Germany, after Germany had declared war against us. The text of the declaration is as follows:—.

"Owing to the summary rejection by the German Government of the request made by His Britannic Majesty's Government that the neutrality of Belgium should be respected, His Majesty's Ambassador at Berlin has received his passports, and His Majesty's Government has declared to the German Government that a state of war exists between Great Britain and Germany from 11 o'clock, p.m., August 4."

On the same day martial law was proclaimed in the British Isles, under the signature of His Majesty King George in the words following:

"Whereas the present state of public affairs in Europe is such as to constitute an imminent national danger, we strictly command and enjoin our subjects to obey and conform to all instructions and regulations which may be issued by us or by our Admiralty and Army Council or by any officer of our navy and army, or by any other person acting in our behalf for securing the objects aforesaid; and not to hinder or obstruct, but to afford all the assistance in their power to any person acting in accordance with such instructions, in the execution of any measures taken for securing those objects."

We desire simply to chronicle the fact that on this day began a war, which will probably prove to be the most widespread,

world-embracing contest of all time; and in it this Dominion must necessarily take a part.

This war is not of England's making or seeking. She takes part in it for no selfish purpose whatever, but has been drawn into it to vindicate the national honour, to enforce existing treaties, to defend those who, under such treaties, look to her for protection and support and to uphold her position as the world's greatest exponent of true freedom and Christian and personal liberty.

Treaties entered into by nations (valuable consideration being assumed) are binding upon the nations entering into them in the same way that contracts entered into by individuals are binding upon the parties thereto. And they cannot be violated without the penalties which necessarily and properly ensue when such treaties or contracts are broken. In the case now before the world a treaty was entered into between Great Britain, Germany and other nations to secure, amongst other things, the neutrality of Belgium. The valuable consideration for this contract was the peace of Europe. This contract having been broken by Germany, Great Britain has taken the only available course to enforce the intent of the treaty. The position which Great Britain would occupy if she failed to do so cannot better be expressed than in the words of Mr. Asquith, than whom no man is less likely to depart from the strictest limits of truth in expression. In an address to the House of Commons, when referring to the "infamous proposal" of Germany to give her a free hand to tear up the above treaty, he said:—

"If Great Britain had accepted, what reply could she have made to the Belgians' appeal. She could only have replied that we had bartered away to the power threatening her our obligations to keep our plighted word. What would have been Great Britain's position if she had assented to this infamous proposal, and what was she to get in return? Nothing but a promise given by a power which at the moment was announcing its intention of violating its own treaty.

"We should have covered ourselves with dishonour and betrayed the interests of our country if we had accepted it. We are entitled to say for our country that we have made every effort for peace, and that war has been forced upon our country.

"The Government is confident that the nation is unsheathing the sword in a just cause. We are fighting, firstly, to fulfil international obligations which, if entered into by private individuals no self-respecting man could have repudiated, and, secondly, to vindicate the principle that small nations were not to be crushed in defiance of international good faith at the arbitrary will of a strong and over-mastering power."

The Dominion of Canada joins hands with the other Dominions and dependencies of the Empire, to help the Motherland with men and money. The feeling of this country in that respect may be best expressed by the words of the Governor-General of Canada to the Imperial Government:—

"My advisers, while expressing their most earnest hope that a peaceful solution of existing international difficulties may be achieved and their strong desire to co-operate in every possible way for that purpose, wish to convey to his Majesty's Government the firm assurance that if, unhappily, war should ensue, the Canadian people will be united in a common resolve to put forth every effort and to make every sacrifice necessary to ensure the integrity and maintain the honour of our Empire."

Our King asks his people that in entering into this contest we should be "United, calm, resolute and trusting in God." The words are weighty and well chosen. The attitude of the Empire wherever flies the "Meteor flag of England" shews that his people are responding. We trust our King and he trusts us, and we all trust in "the God of our Fathers and of each succeeding race."

GOD SAVE THE KING.

RIGHT HON. BARON STRATHCONA AND MOUNT ROYAL P.C., G.C.M.G., G.C.V.O., LL.D.

We noted at the time (ante page 58) the death of this great man, but want of space has forbidden until now any more extended reference to his career. A holiday number gives us this opportunity; and if an excuse were wanted, it may be noted that he was an honorary Doctor of Laws of seven of the great Universities of Great Britain and America. History gives to Sir John A. Macdonald the palm of being the greatest native born Canadian, and it will name Lord Strathcona as the greatest of her citizens, not born within her boundaries.

Donald Alexander Smith, first Baron Strathcona, was born in 1820 at Forres, coming of simple Scottish stock. His father was a cottar, living in a small house by the burnside. As a youth Donald Smith went to Aberdeen for a short time, but he had no great taste for tame business life at home. Had his inclinations lain that way he might have entered the Manchester house of his relatives, the Grants, the originals of Dickens's "Cheeryble Brothers." But those were days when young Highlanders dreamed of adventure and fortune in lonely colonial wilds. Such dreams were greatly stimulated by the action of that Earl of Selkirk whose name is territorially perpetuated in the Colony to which he allured so many hardy and enterprising young Scots. Instead, therefore, of settling down at home, Donald Smith obtained, through an uncle, John Stewart, described as a "notable fur trader," a junior clerkship in the service of the Hudson Bay Company. This was in his eighteenth year. So began a romantic career not easily matched, even in the story of the indomitable fight for fortune made by the roving sons of the North.

For thirteen years young Donald Smith was in the rude solitudes of the Labrador. The sort of life has been admirably depicted by Canadian writers, proud of the flavour of romance which it has given to the chequered history of the colony. Donald Smith endured all the risks and hardships of the life,

without yielding to the most formidable temptation which assails a man in such circumstances—the temptation of alcoholic liquor.

In his struggling youth as in his prosperous age, he was abstemious to a degree. This part of his life was lived with factors and trappers, Indians and Eskimos. Cut off from the world, with a mail only twice a year, Donald Smith utilized his solitary leisure for self-culture. He studied books, and he also closely studied men and nature, with results seen in after years, when he was not only able to handle intricate social and political questions, but also to force to a conclusion the execution of a great railway project, whose geographical and financial difficulties appalled other men.

Donald Smith had an abundant endowment of grit. Stories are told of his marvellous fortitude in those early days. Once his sight was endangered by snow blindness, and to see a doctor meant travelling hundreds of miles. Two half-breeds accompanied him as guides. Young Smith reached the doctor, and was cured; the guides succumbed to the hardships of the return journey. Another story tells of the wonderful way in which he carried relief to a distant outpost, travelling on snow-shoes. If Lord Strathcona could have been induced to write his autobiography, he might have told an absorbing tale of those years in Labrador, but he preserved a singular reticence. No even in conversation did he allow himself to be tempted to say much.

Ten years were spent by Donald Smith on the shores of Hudson's Bay, and he rose steadily in the estimation of his employers. His industry, ingenuity, and adaptability were found invaluable. So far were they recognized that in 1868, when he had reached his forty-eighth year, he was appointed chief executive officer of the company in North America, being stationed at Montreal. By this time his personal influence was very great. The period was one of exceptional difficulty and anxiety, and Donald Smith was the man for it. By a great transfer of territory to the Government of Canada, the Hud-

son Bay Company had provoked the resentment not only of their own officers, but of the French half-breeds. Louis Riel headed what became known as the Red River Rebellion, and things were so seriously bungled by the authorities that Sir John Macdonald was very much embarrassed. In this situation Donald Smith—"the Hudson Bay man," Sir John Macdonald called him—was appointed a Special Commissioner, in conjunction with one or two others, including a missionary who had spent thirty-seven years in the Red River district. Ostensibly he went as an officer of the Hudson Bay Company, but was provided with a commission from the Canadian Government, to be used if occasion required. His special mission was to endeavour to bring about the dispersion of the half-breeds and the dissolution of their Committee. This was not so easy. Riel placed him under arrest, and threatened his life. But he was not the man to be browbeaten, and the way in which he grappled with the "dictator" and practically saved the situation was one of the most romantic episodes in a life full of romance and adventure. It is true that peace and order were not definitely restored until the despatch of an Imperial force in 1870, under the command of Sir Garnet Wolseley, who had Sir Redvers Buller on his staff, but Donald Smith's services were such as to earn the thanks of the Governor-General in Council, and secured him a permanent status amongst the leaders of Canada.

Donald Smith was a member of the first Executive Council of the North-West Territory; represented Winnipeg and St. John's in the Manitoba Legislatures for several years; sat in the Dominion Parliament for Selkirk (so named because of the Earl of Selkirk already mentioned); and later, from 1877 to 1896, represented Montreal West. He was the last Resident Governor of the Hudson Bay Company as a governing body. His part in the development of Manitoba was very considerable. When the Marquis of Lorne, subsequently Duke of Argyll, was Governor-General of Canada a friendship was founded between the two that lasted throughout life. The

former was immensely impressed with Donald Smith's powerful personality, and made a tour into the "Wild West" practically at his instigation. There seemed to be no limit to the activities of the man. He worked unceasingly himself, and he made others work.

He had a great belief in Sir John Macdonald, but was never a violent partisan. From first to last his proponderating passion was to see Canada expand in population, commerce, and industrial resources. He had the true spirit of the pioneer—restless, enterprising, dauntless; and his faith and the energies were to culminate in the Canadian Pacific Railway, his enduring monument. The determination and courage with which he fought this through were beyond praise. Opposition, timidity, incredulity, derision—all had to be encountered.

His faith in the project was supported by his intimate and peculiar knowledge of Canada, and by his optimistic vision of the future of the country. Backed by his cousin, George Stephen (Lord Mount Stephen), he made his dream a reality. For a long time financiers looked askance at the scheme and even his partners urged him to abandon the project. But Donald Smith never faltered. He hazarded his own money (by this time he was a rich man), and he was unwearied in his efforts to draw in the money of others. At various stages it seemed as if the enterprise might be brought to a standstill for want of cash, but always he managed to save the situation. There is a tradition in Canada that he was so deeply involved himself that he imperilled his very shirt. His conviction was intense that if the railway could be made it would recoup everybody, and he was resolved that it should be made. Dauntless energy of this kind was bound to have its reward, and in November, 1885, it was his pride and gratification to drive in the last spike of the completed railway, amidst the acclamations of an Empire. In the following year he was made a K.C.M.G., later he received the Grand Cross of the same Order, and in the Diamond Jubilee he was raised to the Peerage, taking the title of Lord Strathcona and Mount Royal.

In 1896 Lord Strathcona became High Commissioner for Canada in London, and, despite his advanced years, devoted himself to the work of his office with a sustained energy that kept everybody around him up to the mark. A man of great wealth, with nearly a dozen residences in different parts of the world, possessing splendid art collections, and rejoicing in a host of eminent friends, he yet pursued the simple life, and to the end was a resolute believer in the virtues of hard work. His beverage was soda water; the pleasures of the table he limited to two plain meals a day. His greatest delight was to work for Canada. About himself he spoke little; about Canada he would talk to anybody. It goes without saying that he was an Imperialist. The raising and equipping of Strathcona's Horse in connection with the South African War was a characteristic expression of loyalty and patriotism on his part. But he was most keenly interested in the arts of peace. He regarded the possibilities of Canada as boundless. "Possibilities!" he would exclaim with a shrewd smile. "The country is equal in magnitude to the United States, and though some people do not realise that this is so, Canada contains everything within itself to make it in the future what the States are to-day. It simply wants population, but we are anxious that this should consist of the best elements." So he would talk to friends and visitors, this wonderful octogenarian, with his strong, bearded face, his shaggy eyebrows, and his quick and restless intelligence. He accepted but a limited number of public engagements, having little taste for the average "function," and his appearances in the House of Lords were unostentatious. When he spoke in the Gilded Chamber it was with marked simplicity and directness, and with a perceptible northern accent which had survived his long residence and multifarious activities in distant parts of the world. A stranger listening to this modest old man, with the slight quaver in his voice, might have taken him for a successful trader who had worked his way up the social ladder, and there speculation would have stopped. But face to face with the aged Peer a larger impression of his personality was

gained. There was an occasional gleam in the strong shrewd eye which revealed the Donald Smith of the Canadian wilds and the indomitable man of action, who had triumphed over so many difficulties, natural and artificial.

Lord Strathcona's benefactions were on a scale commensurate with his wealth and material achievements. He gave liberally to educational institutions and charities, both in the Mother Country and in Canada. McGill University profited greatly by his munificence, also Aberdeen University, while hospitals in London, Montreal, and elsewhere never appealed to him in vain. Public honours were showered upon him. He was honorary LL.D. of Cambridge, Victoria (Manchester), Yale, Aberdeen, Glasgow, and Toronto Universities, and a D.C.L. of Oxford. In 1899 Aberdeen University elected him Lord Rector, and in 1903 he became its Chancellor. When the fourth centenary of the university was celebrated he gave a great feast that was the talk of the kingdom. He had residences in London, Glencoe, N.B., Colonsay, N.B., Knebworth (rented from Earl Lytton), Essex, Pictou (Nova Scotia), Winnipeg, and Montreal. At several of these places he gathered almost priceless treasures of art. He was fond of pictures, and particularly fond of Chinese and Japanese curios. The Japanese Government offered immense prices for some of his possessions, but he would not part with them. At Knebworth he dispensed a liberal hospitality, and Canadians visiting London were freely invited to his garden parties. Those of Lord Strathcona's many friends who have had the privilege of being his guests at Knebworth Castle, Debden House, Glencoe, or Grosvenor Square, will never forget the genial and warm-hearted hospitality of Lord and Lady Strathcona and their daughter the Hon. Mrs. Howard. Lord Strathcona was a member of the Athenæum Club, and his hobbies included yachting, in virtue of which he was Hon. Commodore of the Royal St. Lawrence Yacht Club. He was also President of the Quebec Rifle Association.

He made a notable addition to the record of his munificence by giving £100,000 in 1909 to McGill University, of which he

was Chancellor. In 1910 he gave most valuable financial assistance to the authorities in Montreal who were struggling with the serious outbreak of typhoid fever which afflicted the city, and in the same year he contributed £10,000 towards the foundation of a professorship at Aberdeen University, of which he was Chancellor.

In 1911 he resigned the High Commissionership for Canada, and the effect upon the great country he had served so well was like the passing of a dynasty. His services in developing the resources and promoting the commerce and industry of Canada and the Empire were further recognized in 1912, when he was awarded the Albert Medal of the Royal Society of Arts.

During his residence in Labrador, Mr. Smith married Elizabeth Sophia, daughter of Richard Hardisty, of the Hudson's Bay Service. She died recently at their residence in Grosvenor Square, London. Through their daughter, the Hon. Mrs. Howard (now Baroness Strathcona) whose husband is Dr. J. B. Howard, formerly of Montreal, their son will on her death succeed to the title.

The barony was created in August, 1897, and an extended limitation was provided for in June, 1900, with special remainder, in default of male issue, to his daughter Mrs. Howard, and her heirs male.

HON. SAMUEL HUME BLAKE, K.C.

One of the great lawyers of Canada, and one of the best known of her sons, passed off the scene as he approached the ripe age of eighty years.

Mr. Blake's life was a strenuous one and full of various activities—a busy life from the time he began his career in the counting house of one of the large mercantile firms of that time, until his death at his residence in Toronto on June 23, 1914.

He was the second son of William Hume Blake, Chancellor of Upper Canada and born in 1835. His elder brother was

Hon. Edward Blake, K.C., the famous lawyer and orator, at one time Minister of Justice and occupying an outstanding position in Canadian politics; but, in the later years of his life, a member of the British House of Commons, sitting for South Longford in the interests of the Irish Nationalist party.

The subject of this notice did not long remain in business, but after an experience of it for four years, entered the office of his uncle the late Mr. Justice Connor, as a student of the law; and it was not long before the wisdom of this change was manifested. His tireless industry, his capacity for acquiring a sound knowledge of legal principles and mastering the technicalities of practice, combined with a remarkably retentive memory, great facility of expression, worded in forceful language, pointed to a man destined to make his mark in the profession in which his elder brother had already taken such a distinguished place. He was called to the Bar in 1860, practising in Toronto in his brother's firm.

It is not unusual in speaking of the career of a successful lawyer to refer to some of the causes celèbres in which he was engaged. In Mr. Blake's case, however, this would be a lengthy and profitless task, for he was sought by one side or another in most of the great legal battles of his day, for he was a successful and masterful advocate, essentially a fighter, and always found in the forefront of the fight. It will, rather, be desirable to endeavour to record for the interest of those who come after him some of the characteristics of perhaps the most forceful and eloquent of the strong men who have adorned the Bar of Canada during the last half century. Whatever his strong points or his failings as an advocate may have been, what he did and said was done and said by one who was strong, fearless and aggressive; often not too gentle, but behind his force and often his sarcasm and severity, there was a generous heart. It seemed strange that a man who was really so kind and lovable could exhibit so much acerbity in controversy. Perhaps this fact can best be accounted for by his extreme earnestness.

In 1872 Mr. Blake (a strong Liberal) was appointed by the

great Conservative leader, Sir John A. Macdonald, Vice-Chancellor of the Court of Chancery of Ontario, an appointment which reflected equal credit on giver and receiver. It cannot be said, however, that Mr. Blake was a great judge. He did not possess what a lawyer understands by the expression, a judicial mind, though he had the strongest and most conscientious desire to arrive at the facts of a case and the rights of the parties, and to adjudge accordingly. His natural place was rather in the arena. To that he returned in May, 1881, leaving the Bench to practise in his old firm.

He was not only a most forceful and eloquent advocate, resourceful, bold and vigilant, but as counsel he was sought for by those who wanted not only to be advised as to their legal position, but who also desired the benefit of his business capacity, his foresight and the energy and enthusiasm which he devoted to his clients' interests. He was a kind and powerful friend as well as a wise counsellor.

A collection of his caustic remarks, his witty sayings, his home thrusts, his bright rejoinders and sparkling repartees, would be most interesting reading; and of his work outside his profession, a volume might be written.

To his tireless energy and his devotion to the Evangelical party in the Church of England, Wycliffe College is an enduring monument. The phenomenal success which has attended that institution is largely to be credited to him.

As a philanthropist and as a promoter and sustainer of the interests of the church establishment to which he belonged, he stood pre-eminent. His gifts to charities and to all causes that appealed to him as worthy were continuous and unstinted. He was never happier than when giving, and probably more of this was done in secret than in public. All his life he devoted much time to Christian work in churches and missions, and his last few years were almost entirely and ceaselessly devoted to spreading abroad a knowledge of the truths of Christianity as set forth in the Book of Books.

AVIATION AND TRESPASS.

The recent case in the French courts where two aviators were mulcted in damages for injury done to property in the course of a flight—or possibly, more correctly, at its termination—calls our attention to our own law on the subject. As yet, no important case has come before our courts to test the rights of the landowner on the one hand and the aviator on the other. This is perhaps a little surprising as the practice of aviation has been in vogue now for some years, and the number of aircraft in use has been steadily increasing. That there are questions of law to be decided is not to be doubted. Circumstances have never previously been such as to call these rights into question. We propose in this article to examine the rules of law by reference to which these rights must eventually be decided—to state, in other words, the landowner's rights as against the aviator, and the aviator's rights as against the landowner.

When an aviator alights in a man's field, the latter in ninety-nine cases out of a hundred is exceedingly pleased with the compliment unintentionally paid him. He usually puts his field at the visitor's disposal. He offers help, petrol, water, information and advice, and everything else which may or may not be of service. The aviator is no trespasser in such circumstances. He is merely a licensee by implication. The owner of the field submits to the consequences of the unexpected arrival, not only without protest, but with pleasure. If the neighbours throng in upon him, his pleasure is not lessened. If a representative of the press insists upon interviewing him, he submits to this consequence without demur. And why? Because aviation is a novelty. There is excitement, interest, and sensation. But the novelty will, in course of time, wear off. It is then that persons will cease to look upon the uninvited guest with the same enthusiasm for the past-time sport or occupation of aviation. The damage done in alighting will receive more attention. The flow of hospitality will be more stinted. There will be the question who is to pay for this, and who is to pay for that? It is no

slur upon the Englishman's sense of fair give-and-take, nor on his hospitality, to predict that in course of time a line of judicial authorities will come into being, defining the rights, obligations, and duties of the aviator in relation to the property of persons over which he flies.

We shall, in the first place, consider the right of the aviator to fly over the lands of private owners. We shall consider, in other words, the aviator's title to the use of the air.

Before the days of aerial navigation there was little occasion to question the soundness of the old maxim of our law, Cujus est solum ejus est usque ad cœlum. "Land hath, in its legal significance, an indefinite extent upwards as well as downwards," says Blackstone, citing the maxim just quoted; "therefore, no man may erect any building, or the like, to overhang another's land": see Blackstone's Commentaries on the Laws of England, Book 2, p. 18 (1791 ed.). This was a convenient way of looking at things. It suited the exigencies of life when flying was unthought of; but it has the vice of misleading the unwary into the assumption that there is, as it were, a column of territory extending upwards to an indefinite height, which territory cannot be rightfully traversed by another party. As Sir William Brett, when Master of the Rolls, observed in his judgment in the case of *Wandsworth Board of Works* v. *United Telephone Company*, 51 L.T. Rep. 148, 13 Q.B.D. 904, at p. 913, the phrase is a fanciful one, just as fanciful as the old sister maxim, *Cujus est solum ejus est usque ad inferos.*

Now, what was the foundation for the conception? Probably no better explanation can be given than that given by Lord Coke, who cites three cases in the old Year Books in support of the accuracy of the maxim. Coke attributes the rule of law embodied in the two maxims to the preponderant importance of the land's surface over all the other elements. "This element of the earth," he says (Co. Lit. 4*a*), "is preferred before the other elements: first and principally because it is for the habitation and resting place of man; for man cannot rest in any of the other elements, neither in the water, air, or fire." He then

proceeds to liken the earth's surface to the suburbs of Heaven —a simile with which perhaps everyone would not be agreed, although it might be recommended to the attention of some of our politicians. After pointing out that the earth serves man with all his wordly necessities, not only with his food and substance, but with the precious and other metals, and many other things of profit, ornament, and pleasure, he concludes: "And lastly, the earth hath in law a great extent upwards, not only in water, but of air, and all other things even up to Heaven." Whatever may be said of Coke's "crabbed pedantry," it must be admitted that his Lordship, in his treatment of this subject, goes to the very root and basis of the conception. It is the invasion of man's rights of ownership in the earth that the law protects. Land is the subject-matter of the ownership. The air is a mere adjunct.

Trespass is the wrongful physical interference with the subject-matter of another's ownership. Does air above a man's land so partake of the nature of substance that a person traversing it commits a trespass? The answer is clearly in the negative. "I do not think," said Lord Ellenborough in *Pickering* v. *Rudd* (1815), 4 Camp. 219, "it is trespass to interfere with the column of air superincumbent on the close. . . . I am by no means prepared to say that firing across a field *in vacuo*, no part of the contents touching it, amounts to a *clausum fregit*." That was a case where the defendant had nailed to his own wall a board overhanging the plaintiff's close. Referring to the board in question his Lordship said: "If this board overhanging the plaintiff's garden be a trespass, it would follow that an aeronaut is liable to an action of trespass quare clausum fregit at the suit of the occupier of every field over which his balloon passes in the course of his voyage. If any damage arises from the object which overhangs the close, the remedy is by an action on the case."

In the case of *Kenyon* v. *Hart* (1865), 6 B. & S. 249, Lord Blackburn (then Mr. Justice Blackburn) referred to what he described as the old query of Lord Ellenborough as to a man passing over the land of another in a balloon, and to Lord Ellen-

borough's doubts as to whether trespass would lie for it. "I understand," said Lord Blackburn, "the good sense of that doubt, though not the legal reason for it."

It is not proposed to enter into an elaborate discussion of the distinction between trespass, trespass on the case, and nuisance. Such a discussion would involve a discursion into remote antiquity. It may, however, be stated that trespass *quare clausum fregit*, the material form of trespass as regards the infringement of the rights of a landowner, was a wrong committed by interference with the physical possession of land. As was pointed out by Mr. Justice Littledale in the case of *Cubitt* v. *Porter* (1828), 8 B. & C. 257, in trespass the breaking and entering into or upon the land is the whole gist of the action. Actual damage or loss to the owner had nothing to do with the giving of the right of action. It is otherwise in the case of the wrong of private nuisance. In the latter case detriment is of the essence of the action. "An action of nuisance," said Lord Justice Vaughan Williams in the comparatively recent case of *Kine* v. *Jolly*, 92 L.T. Rep. 209, (1905), 1 Ch. 480, at p. 487, "is different from an action of trespass. An action of trespass is the action which was brought where the body or the land of a person had been invaded. An action of nuisance is the action which was brought where there was no invasion of the property of somebody else, but where the wrong of the defendant consisted in using his own land so as to injure his neighbour's."

The reader is, no doubt, familiar with some of the most common forms of private nuisances. The case of the infringement of privileged lights is one. So also is the creation of noxious fumes and gases. Brick-burning on neighbouring land, noises from an adjoining factory, and vibration caused by machinery are all familiar cases of actionable wrongs on the ground of nuisance. In such cases, and, indeed, in ninety-nine out of every hundred cases, the cause of trouble emanates from one property to the detriment of the owner or occupier of an adjoining property. But it by no means follows that two tenements are necessary for

every case of a private nuisance, although the dictum of Mr. Justice Vaughan Williams quoted above, and, indeed, many other dicta on the subject, would lead to that conclusion. No; a private nuisance may be caused where there is only one tenement concerned, viz., the tenement belonging to the aggrieved party.

This proposition, that there may be an actionable private nuisance where there is only one tenement, is established beyond doubt by the case of *Lyons and Sons* v. *Wilkins*, 79 L.T. Rep. 709, (1899), 1 Ch. 255. That was a case where persons watched and beset the premises of the plaintiff company. The Court of Appeal (Lord Lindley then Sir Nathaniel Lindley and Master of the Rolls and Lords Justices Chitty and Vaughan Williams) held that this besetting and watching constituted an actionable nuisance at common law, for which an action on the case would have lain. "The truth is," said Lord Lindley, "that to watch or beset a man's house with a view to compel him to do, or not to do, what is lawful for him not to do, or to do, is wrongful and without lawful authority unless some reasonable justification for it is consistent with the evidence. Such conduct seriously interferes with the ordinary comfort of human existence and ordinary enjoyment of the house beset, and such conduct would support an action on the case for a nuisance at common law." Lord Justice Chitty also gave it as his opinion that the acts of watching and besetting the premises with a view of persuading employees constituted a nuisance at common law. "True it is," said his Lordship, "that every annoyance is not a nuisance; the annoyance must be of a serious character, and of such a degree as to interfere with the ordinary comforts of life." Lord Justice Vaughan Williams said that at common law watching and besetting, apart from the law of conspiracy, might or might not be so conducted as to amount to a nuisance.

The form of property most susceptible to a nuisance is a dwelling-house. Hence the great majority of cases wherein the court has laid down definitions of nuisance are cases where discomfort has been caused in the use and enjoyment of buildings, and these definitions reflect this fact by comprising references to

buildings. Indeed, the best definitions contained in our reports all contain some reference to the use and enjoyment of dwelling-houses. Probably no better summary of these definitions can be given than that laid down by Lord Romilly in *Crump* v. *Lambert*, 15 L.T. Rep. 600, L. Rep. 3 Eq. 409, at p. 413. "The real question in all the cases," said his Lordship, "is the question of fact, viz., whether the annoyance is such as materially to interfere with the ordinary comfort of human existence." But it is abundantly clear that a nuisance may be caused by an interference with the enjoyment of land apart from any question of inhabitancy. This is shewn, for instance, by what we may describe as "water cases"—cases of pollution of streams, and the damming back of water, causing flooding, and other inconveniences on the plaintiff's land. To these may be added interference with private rights of way, and the celebrated case of *St. Helen's Smelting Company* v. *Tipping* (1865), 11 H.L. Cas. 642, where the carrying on of copper smelting operations resulting in the injury to a neighbouring owner's hedges, trees, shrubs, fruit and herbage, and in injury to his cattle, was held to be a nuisance.

The legitimate deductions which may be properly drawn from the foregoing observations are as follows: First, the landowner can, in the nature of things, have an ownership of the space above his land and consequently the mere passage of an aeroplane or balloon or other aircraft over land does not and cannot amount to trespass. Secondly, if any wrong be done it must be a question only of nuisance.

Before leaving this branch of the subject some observations ought to be made with regard to the cases touching the question of the ownership of the superincumbent air. As the reader will have already gathered from the foregoing remarks, we take the view that there can be no ownership of the space over a man's land. He may own everything upon it, and, if other persons seek to appropriate it, he may take action on the ground of nuisance, but ownership of mere air space there cannot be. The following cases, which in the main support this view, touch on the

subject, and ought, therefore, to receive some attention, for it must be remembered that most of the subject-matter of this article is necessarily conjectural, so the decisions for and against our views ought to be placed before the reader.

The conception that the space over a man's land usque ad cœlum so partakes of the nature of territory as to be the subject-matter of ownership permeates the judgment of Vice-Chancellor James in *Corbett* v. *Hill*, 22 L. T. Rep. 263, L. Rep. 9 Eq. 671. In that case there were two contiguous houses in the city of London—house A and house B. A first-floor room in house A projected over the ground floor—that is to say, over the ground-floor boundary of the two houses. A vault under the basement floor also projected, so as in part to underlie the basement floor of house B. The two houses had belonged to the plaintiff, who conveyed house B to the defendants. The plan on the conveyance was of the ground floor. The defendants pulled down house B and were about to erect a new house, and they proposed to build above the projecting room house A in accordance with the plan—that is to say, they proposed to enter (as it were) upon the column of air or space above the projecting room. The plaintiff commenced proceedings to restrain them from doing so. The learned Vice-Chancellor dismissed the bill. "The ordinary rule of law is," said his Lordship, "that whoever has got the site is the owner of everything up to the sky and down to the centre of the earth. But that ordinary presumption of law, no doubt, is frequently rebutted, particularly with regard to property in town, by the fact that other adjoining tenements, either from there having been once a joint ownership or from other circumstances, protrude themselves over the site. The question then arises, whether the protrusion is a diminution of so much of the freehold, including the right upwards and downwards, as is defined horizontally by a section of the protrusion; or whether such a portion only is carved out of the freehold as is included between the ceiling of the room at the top and the floor at the bottom. In my opinion the protruding room here affects only a diminution of the last-mentioned character." His Lordship con-

cluded by stating that the order would be that, the court being of opinion that the column of air over so much of the room as projected over the site of the ground floor conveyed to the defendants passed to the latter, the bill should stand dismissed.

In *Laybourn* v. *Gridley* (1892), 2 Ch. 53, Mr. Justice North expressed the view that if a building overhanging adjoining premises was conveyed by the common owner by reference to the ground-floor plan, the grantor would not be entitled to raise the height of the overhanging portion of the building.

In *Finchley Electric Light Company* v. *Finchley Urban District Council,* 88 L.T. Rep. 215, (1903), 1 Ch. 437, Mr. Justice Farwell, taking the view that under the circumstances of the case the fee simple of the soil of a roadway was vested in the highway authority, refused to grant an injunction to restrain that authority from cutting the wires of an electric lighting company which the latter had carried (at a considerable height) across the roadway. "The plaintiffs had no right," said his Lordship, "to take their wires across the portion of the atmosphere which lies above this piece of land belonging to the defendant council." The Court of Appeal, however, reversed this decision on the grounds that the fee simple of the soil was not vested in the highway authority, but that the highway was only vested in them in the usual way, and that as the wires did not interfere with the user of the roadway, as a highway, the authority could not interfere with them. Previously to this decision the Court of Appeal in *Wandsworth Board of Works* v. *United Telephone Company,* sup., had held that a statutory authority in whom a road was vested as a highway could not object to the carrying of a wire, 30 feet above the ground, across the highway.

Up to this we have been considering only the question of the legal aspect of mere passage over another's land. Passing now to the question of alighting where contact actually takes place, it would appear that the uninvited entry of an aeronaut is a trespass in the strictest and most technical sense. As we have already pointed out, the mere shooting across another's land would not, in the opinion of Lord Ellenborough, have constituted

a trespass quare clausum fregit. This was the view his Lordship took in the case of *Pickering* v. *Rudd, sup.* But if the shot fell on the soil of that land, the learned judge thought that trespass would have lain. "I once had occasion," said his Lordship, "to rule upon circuit that a man who, from the outside of a field, discharged a gun into it, so that the shot must have struck the soil, was guilty of breaking and entering it. A very learned judge, who went the circuit with me, at first doubted the decision, but I believe he afterwards approved of it, and that it met with the general concurrence of those to whom it was mentioned."

It seems, indeed, quite clear on general principles that once there is any physical contact with the land, or with the buildings, erections, trees, or herbage standing or growing on the land, there is a trespass. Where there is no physical contact, but the enjoyment of property is interfered with by, for instance, the frightening of horses, or even the frightening of persons of ordinary courage, by the close proximity of aircraft, it cannot be doubted the court's interference could be obtained to restrain annoyance by such causes, and that an action would lie for damages caused by and directly attributable to the flight of an aeroplane over a man's property.

One point may be added in conclusion. At common law the public—that is to say, such members of the public who are afloat—have a right in times of peril to land on the seas' ore irrespective of the question of ownership. That is an ancient right ancillary to the equally ancient public right of navigation, and is paramount to all private rights of ownership. As Lord Hale has said (De Portibus Maris, p. 53), in a case of necessity, either from stress of weather, assault, or pirates or want of provisions, any ship might put into any creek or haven. "All places in the case of necessity are ports": see the judgment of Mr. Justice Holroyd in *Blundell* v. *Catterall* (1821), 5 B. & Ald. 268, at p. 295. It would not be a great stretch of principle were the common law to extend the same protection to those who navigate the air instead of the sea, and find themselves for some unforeseen cause forced to descend as best they can.

Finally, we may add that the principles of our law cannot be easily adapted to the new conditions brought about by the development of aerial navigation. When the number of aircraft have increased, and the novelty has worn off, Parliament will necessarily have to take in hand the codification of the respective rights of the landowner on the one hand and aviator on the other.—*Law Times.*

One of the most remarkable trials of recent years has been that of Madame Caillaux for the murder, in her husband's supposed interest, of a prominent French journalist. Remarkable to Anglo-Saxons from the manner, so curious to us, in which criminal trials are conducted in France, where the judge largely takes charge of the prosecution, and where the rules of evidence are so entirely different to ours, in fact where there seem to be no rules of evidence at all, but where anybody can say pretty much what they like and all is listened to with applause or otherwise as the case may be. The prisoner and her husband on this occasion made impassioned addresses to the court of several hours' duration. The real charge seems to have been practically ignored and the tribunal chiefly concerned itself with the politics of the prisoner's husband. Her acquittal therefore was not unexpected. Presumably the verdict was what we should call justifiable homicide. Strange as all this may seem to us, it appears to suit the French nation, and therefore we have no further comment to make.

REVIEW OF CURRENT ENGLISH CASES.

TRUSTEE AND CESTUI QUE TRUST—ORIGINATING SUMMONS—INQUIRY AS TO WHETHER INVESTMENT SHOULD BE RETAINED—DISCRETION OF TRUSTEES.

In re D'Epinoix D'Epinoix v. *Fettes* (1914) 1 Ch. 890. In this case a tenant for life applied on originating summons against his trustees, for an inquiry as to whether an investment in which part of the trust estate was invested should be continued. It was not claimed that the trustees had committed any breach of trust, and the trustees contended that their discretion in the matter should not be interfered with. The investment in question was a mortgage of an underlease and a mortgage of freeholds, the cestui que trust claiming that they were not of sufficient value. Warrington, J., in the circumstances thought it a proper case to direct an inquiry whether it was advisable in the interests of the persons interested under the settlement, that the investments should be retained. He intimates that he thinks the trustees might well have agreed to call in the investments when doubt had, to a certain extent, been cast on their sufficiency.

COMPANY—ADDITIONAL DIRECTORS—APPOINTMENT OF DIRECTORS BY BOARD OF DIRECTORS—INFORMAL MEETING OF BOARD—IMPOSSIBILITY OF HOLDING MEETING OF BOARD OWING TO DISSENSIONS—POWER OF COMPANY TO APPOINT DIRECTORS AT GENERAL MEETING.

Barron v. *Potter* (1914) 1 Ch. 895. By the articles of association of a limited company, power was given to the board of directors to appoint additional directors. The board consisted of only two directors, Potter and Barron, and owing to dissensions between them a board meeting could not be held. Potter sent notice of a board meeting to Barron, which, however, Barron did not receive. Potter subsequently met Barron at a railway station and then purported to hold a board meeting and proposed additional directors which proposal he declared carried by his casting vote as chairman. Potter subsequently met Barron at the office of the company and went through the same per-

formance. Barron called a general meeting of the company and proposed that the appointment of Potter as director should be terminated and resolving that another person should be appointed an additional director. These resolutions were put to the meeting and carried. Potter declared them illegal because, as he contended, the power rested with the directors, and the action was brought to determine that question, and Warrington, J., held that although informal meetings of a board of directors may be validly held, yet that the casual meeting of two directors even at the company's office cannot be treated as such a meeting, at the option of one against the will of the other. Potter's so-called board meetings were therefore nugatory. He also held that inasmuch as the board were not able owing to the differences between the directors, to hold a meeting to appoint additional directors, the company at a general meeting could itself appoint additional directors, and he therefore held that the resolution passed at the general meeting was valid.

PRACTICE—MOTION FOR JUDGMENT—ADMISSIONS IN THE PLEADINGS "OR OTHERWISE"—ADMISSIONS IN LETTERS—RULES 371, 374, 376 (ONT. RULE 222).

Ellis v. *Allen* (1914) 2 Ch. 904. The English Rule 376 provides that a motion for judgment may be made on admissions, either in the pleadings "or otherwise." In this case the motion was made on admissions contained in a letter of the defendants' solicitor whose authority to write it was not disputed, and Sargant, J., held that the admission was within the Rule and granted judgment. It may be noted that Ont. Rule 222 does not appear to be so wide, and provides only for the case of "admissions of fact in the pleadings, or in the examination of any other party."

TENANT FOR LIFE AND REMAINDERMAN—WILL DIRECTING SALE OF REAL ESTATE—POWER TO POSTPONE SALE—DIRECTION TO PAY "RENTS, PROFITS AND INCOME UNTIL SALE"—RENTS AND ROYALTIES UNDER MINING LEASE—OPEN MINES.

In re Morgan, Vachell v. *Morgan* (1914), 1 Ch. 910. A testator whose estate consisted in part of mines, devised it to trustees for sale, with discretionary power to them to postpone the sale, and he directed that the income of one-fourth part should be paid to Matthew Morgan, and on his death upon trusts for

his children, and the will provided that until sale, the "rents, profits and income" should be paid to the person to whom the income of the fourth part was payable under the will. Sargant, J., held that under this disposition the tenant for life was, until sale of the open mines, entitled to the whole of the rents and royalties derived therefrom, no part being retainable as capital. Mines which were the subject of negotiation for leases in the testator's lifetime and which after his death were leased by the trustee of his will, were held to be open mines at the time of the testator's death.

COMPANY—DEBENTURE—PLACE FIXED FOR PAYMENT OF PRINCIPAL —DEFAULT IN PAYMENT OF INTEREST—DEMAND AT PLACE OF PAYMENT—EXCEEDING LIMIT OF BORROWING POWERS—PLEADING—RULE 210—(ONT. RULE 146).

In re Harris C.M. Co., Sumner v. *The Company* (1914) 1 Ch. 920. This was an action to recover a sum secured by the debenture of a limited company which was issued in the following circumstances. The company's borrowing powers were limited to £3,000. It obtained an overdraft from a bank and when the amount had nearly reached £3,000 the plaintiff and two others who had guaranteed the payment of the loan each gave his cheque for £1,000 which cheques were applied in payment of the overdraft, and at the same time debentures for £1,000 each and interest, were issued by the company to the plaintiff and the two other guarantors. The debentures were subject to conditions making the principal payable inter alia if the holder should serve notice requiring payment of principal and interest and the company should make default for three days in payment of any part thereof and they also provided that the principal should be paid at Lloyd's Bank, Strand. Notice was duly given demanding payment of principal and interest and the company made default for three days, whereupon the action was brought. The principal defence pleaded was that the debenture being given before the overdraft had in fact been discharged, the borrowing limit had been exceeded and therefore the debenture was ultra vires; but Ashbury, J., held that this defence was not tenable because the plaintiffs' cheque was given in exchange for the debenture with the understanding that the cheque was to be applied in reduction of the overdraft. It was also objected at the hearing that the action would not lie because no demand for payment

had been proved at Lloyd's Bank, but Ashbury, J., held that this was a defence which ought to have been pleaded under Rule 210 (see Ont. Rule 146), but even if it had been pleaded, he was of the opinion that it was no defence, because the condition only applied to the principal, and there had been a default in payment of interest, pursuant to the demand, by which default the principal had become payable.

COMPANY—DEBENTURE PAYABLE ON SPECIFIED DAY—WINDING UP OF COMPANY BEFORE DEBENTURE DUE—DEBENTURE HOLDERS' ACTION—RECEIVER.

In re Crompton, Player v. *Crompton* (1914) 1 Ch. 954. This was a debenture holders' action. By the terms of the debentures they were made payable at a certain day which had not arrived; but the company had sold its undertaking to another company, and passed a resolution for its voluntary winding up for the purposes of reconstruction. In these circumstances Warrington, J., held that when the business of the company came to an end by the winding up, the debentures ceased to be a floating security of the company, that they then became payable and the security therefor enforceable, and consequently that the plaintiffs were entitled to the appointment of a receiver as claimed.

PLEADING—CHARACTER IN WHICH PLAINTIFF SUES—ACTION BY LUNATIC—LUNACY NOT ADMITTED—RELEVANT ISSUE—STRIKING OUT SO MUCH OF DEFENCE AS DID NOT ADMIT LUNACY OF PLAINTIFF—RULE 288—(ONT. RULES 124, 137).

Richmond v. *Branson* (1914) 1 Ch. 968. This was an action by the plaintiff described as "a person of unsound mind not so found" by his next friend. The defendants by their defence did not admit that the plaintiff was of unsound mind, and they alleged that the plaintiff was in fact of sound mind. The plaintiff moved to strike out this part of the defence as raising an irrelevant issue and for judgment on the admissions in the defence. Warrington, J., held that the defence in effect set up what was an irrelevant issue, viz., whether the plaintiff's solicitor had proper authority to institute the action. This he held could not be done by pleading, as it was no answer to the claim and that the proper way to raise that question was by motion to stay the proceedings. He, therefore, struck out that part of the defence objected to and gave judgment for the plaintiff on the defendant's admissions, with costs.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

N.S.] BURT *v.* CITY OF SYDNEY. [May 18.

Right of action—Protection of railway crossings—Construction of subway — Order in council — Apportionment of cost — Land damages—Injurious affection—Nova Scotia Railway Act, R.S.N.S. (1900), *ss.* 178 *and* 179.

In the City of Sydney the Dominion Iron & Steel Co. and the Dominion Coal Co. owned railways passing along a public highway and intersected by the tracks of the Cape Breton Electric Ry. Co. Under the provisions of secs. 178 and 179 of the Railway Act (R.S.N.S. (1900), ch. 99) an order in council was passed directing that the highway be carried under the said railway tracks, the Dominion Iron & Steel Co. to execute the work and the cost to be paid in a specific proportion by the city and the three companies and "that all the land damages be paid by the City of Sydney." B. owned land opposite the railway tracks and by the construction of the subway the sidewalk in front thereof was narrowed and altered and access to it changed. Claiming that his property was greatly depreciated in value thereby he brought an action against the City of Sydney for compensation therefor.

Held, that the "land damages" which the city was to pay would include damages for injurious affection such as B. claimed. But

Held, Fitzpatrick, C.J., and Idington, J., dissenting, that the city was not liable for such damages, B.'s only recourse being against the company which executed the work.

Judgment of the Supreme Court of Nova Scotia (47 N.S. Rep. 480) affirmed, Fitzpatrick, C.J., and Idington, J., dissenting.

Appeal dismissed with costs.

Mellish, K.C., for appellant. *Findlay McDonald*, for respondent.

IN RE STRATFORD FUEL, ICE, CARTAGE AND CONSTRUCTION CO.

Ont.] BROWN, LIQUIDATOR *v.* COUGHLIN. [June 1.

Principal and surety—Insolvency of debtor—Action by liquidator against principal creditor—Compromise—Agreement not to rank—Payment by sureties—Right of sureties to rank.

By a contract of suretyship C. and others guaranteed payment to a bank of advances to a company by discount of negotiable securities and otherwise, the contract providing that it was to be a continuing guarantee to cover any number of transactions, the bank being authorized to deal or compound with any parties to said negotiable securities and the doctrines of law and equity in favour of a surety not to apply to its dealings. The company became insolvent and its liquidator brought action against the bank to set aside some of its securities, which action was compromised, the bank receiving a certain amount, reserving its rights against the sureties and agreeing not to rank on the insolvent estate. The sureties were obliged to pay the bank and sought to rank for the amount.

Held, affirming the judgment of the Appellate Division (28 Ont. L.R. 481) that they were not debarred by the compromise of said action from so ranking. Appeal dismissed with costs.

Sir George Gibbons, K.C., and *Harding*, for appellants. *Hellmuth*, K.C., and *R. S. Robertson*, for respondents.

Ont.] MATTHEWSON *v.* BURNS. [June 19.

Specific performance — Leave — Option to purchase—New lease —Acceptance by lessee—Waiver of option.

A lease of land for a specific period gave the lessee an option to purchase during its continuance.

Before it expired the lessee agreed to accept a new lease to begin on its expiration.

Held, reversing the judgment of the Appellate Division (30 Ont. L.R. 186), Anglin and Brodeur, JJ., dissenting, that the option was not waived or abandoned by such acceptance.

Appeal allowed with costs.

G. F. Henderson, K.C., for appellant. *W. C. McCarthy*, for respondent.

Province of Ontario

SUPREME COURT.

Latchford, J.] REID *v.* AULL. [16 D.L.R. 766.

1. *Trial—Publicity—Hearing in camera.*

An order for a trial in camera should not be made in an action for annulment of marriage.

Scott v. *Scott,* [1913] A.C. 417; *Daubney* v. *Cooper* (1829), 10 B. & C. 237, 109 Eng. R. 438, applied.

G. H. Watson, K.C., for plaintiff. The defendant was not represented.

ANNOTATION ON THE ABOVE CASE FROM DOMINION LAW REPORTS.

The case of *Reid* v. *Aull, supra,* stands squarely on the case of *Scott* v. *Scott,* [1913] A.C. 417, in refusing a motion for a secret hearing to annul a marriage.

Although the *Scott* case treats of two interesting principles of the law of England, namely, (*a*) the open Court, and (*b*) the right to publish the Court's doings, the purpose of this annotation is to define and discuss the open Court only.

The open Court is as clearly and jealously guarded a right as is the independent Parliament. The following quotation from the historian Hallam is approved by Lord Shaw in the *Scott* case:—

"Civil liberty in this kingdom has two direct guarantees: (*a*) the open administration of justice according to known laws truly interpreted and fair constructions of evidence, and (*b*) the right of Parliament, without let or interruption, to inquire into and obtain redress of public grievances. Of these, the first is by far the more indispensable; nor can the subjects of any state be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise: [1913] A.C. 477.

"The three seeming exceptions which are acknowledged to the application of the rule prescribing the publicity of Courts of justice are

(*a*) in suits affecting wards;

(*b*) in lunacy proceedings;

(*c*) in those cases where secrecy (as in trade-secret trials) is of the essence of the cause": [1913] A.C. 482.

The first two depend upon the principle that the jurisdiction over wards and lunatics is exercised by the Judges as representing the sovereign as *parens patriæ,* and the transactions are truly *intra familiam.*

The third case—that of secret processes, inventions, documents, or the like—depends upon this: that the rights of the subject are bound up with the preservation of the secret. To divulge that to the world, under the excuse of a report of proceedings in a Court of law, would be to destroy that very protection which the subject seeks at the Court's hands. It has long been undoubted that the right to have judicial proceedings in public does not extend to a violation of that secret which the Court may judicially determine to be of patrimonial value and to maintain: [1913] A.C. 483.

Lord Shaw in the *Scott* case, [1913] A.C. at 485, said: "The cases of positive indecency remain: but they remain exactly where statute has put them. Rules and regulations can be framed under the statute by the Judges to deal with gross and highly exceptional cases. Until that has been done, or until Parliament itself interferes, as it has done in recent years by the Punishment of Incest Act and also the Children Act, both of the year 1908, Courts of justice must stand by constitutional rule. The policy of widening the area of secrecy is always a serious one; but this is for Parliament, and those to whom the subject has been consigned by Parliament, to consider."

The attempts sometimes essayed by trial Judges to treat the old Ecclesiastical Courts as secret are combatted in the masterly exposition of the law present and past, rendered in the *Scott* case.

In the early stages of the suit, the Ecclesiastical Court, charging itself with the interests of both parties, took upon itself the inquiring into the facts, not *in foro contentioso* nor *in foro aperto*, but by way of obtaining, first from the one side, and then, if there was a denial or a counter-case, from the other side, and from each apart from the other, the testimony of witnesses, this testimony to lie *in retentis* until, according to modern ideas, the real trial of the case should begin: *Scott* v. *Scott*, [1913] A.C. 470.

The official precognition, by hearing each side separately, never invaded nor could invade the publication stage at which the trial proper began. The Ecclesiastical Courts Commissioners in 1832 stated the procedure applicable to matrimonial causes as follows: "The evidence on both sides being published, the cause was set down for hearing. All causes are heard publicly in open Court; and on the day appointed for the hearing, the cause is opened by the counsel on both sides, who state the points of law and fact which they mean to maintain in argument; the evidence is then read, unless the Judge signifies that he has already read it, and even then particular parts are read again, if necessary, and the whole case is argued and discussed by the counsel. The judgment of the Court is then pronounced upon the law and facts of the case; and in discharging this very responsible duty, the Judge publicly, in open Court, assigns the reasons for his decisions, stating the principles and authorities on which he decides the matters of law and reciting or adverting to the various parts of the evidence from which he deduces his conclusions of fact; and thus the matters in controversy between the parties become adjudged.

It will be noted that the common law exceptions which have been invoked for the secret trial of causes are of two general classes, (*a*) as to wards and lunatics coming under paternal administration, and (*b*) trade secrets where the essence of the cause demands secrecy.

It will also be noted that the constitutional right to an open Court is deemed so essential to liberty that it is not taken away, either by the ordinary exercise of judicial discretion, or by consent of parties, or both. Even in purely private litigation, where parties consent, the Judge can exclude the public only when he demits his capacity as a Judge and sits as an arbitrator to determine the rights of the parties on such consent: [1913] A.C. 436, 481.

The *Canada Law Journal* contains able articles on "Trials in camera" to be found at p. 597 of vol. 25 (1889), and at p. 98 of vol. 26 (1890). The former related to the case of *Smart* v. *Smart*, 25 C.L.J. 597, afterwards appealed to the Privy Council (*Smart* v. *Smart*, [1892] A.C. 425). This case involved a dispute between the separated spouses as to the custody of the infant children. It is noted that Ferguson, J., had at the hearing excluded the newspaper reporters and the general public, and had tried the case with closed doors.

Book Reviews.

Phipson's Manual of the Law of Evidence, for the use of students. By SIDNEY L. PHIPSON, M.A., Barrister-at-Law; 2nd edition. London: Stevens & Haynes, Limited, law publishers, Bell Yard, Temple Bar. 1914.

This is an abridgement of the 5th edition of the author's larger treatise upon the same subject. Presumably no one knows the contents of Mr. Phipson's valuable treatise better than himself; and, this manual having been prepared by him, may naturally be expected to give the pith of the larger volume in the form best suited for the use of students.

A New Guide to the Bar. By M.A. and LL.B., Barrister-at-Law; 4th edition. London: Sweet & Maxwell, Ltd., 3 Chancery Lane. 1914.

This may be useful for reference here; but it is intended specially for those desiring to know how to enter the profession in the Mother Country, containing as it does, the most recent regulations, specimen examination papers and a critical essay on the present condition of the Bar of England. The introductory chapter is of interest to students in this country.

Sweet & Maxwell's Guide to the Legal Profession, London, LL.B., and to law books for students with suggested courses of reading. London: Sweet & Maxwell, Ltd., 3 Chancery Lane. 1914.

This little book, published at the price of one shilling, should be in the hands of all law students. Students know, or should know, that the next best thing to knowing the law is to know where to find it, and this guide does that and gives them many valuable hints.

Bench and Bar

Judicial Appointments.

Maitland Stewart McCarthy, of the City of Calgary, in the Province of Alberta, K.C., to be a Puisne Judge of the Supreme Court of Alberta. (July 11, 1914.)

William Carlos Ives, of the City of Lethbridge, in the Province of Alberta, Esquire, Barrister-at-Law, to be a Puisne Judge of the Supreme Court of Alberta. (July 11, 1914.)

James Duncan Hyndman, of the City of Edmonton, in the Province of Alberta, Esquire, Barrister-at-Law, to be a Puisne Judge of the Supreme Court of Alberta. (July 11, 1914.)

William S. Stewart, of the City of Charlottetown, in the Province of Prince Edward Island, K.C., to be Judge of the County Court of Queen's County, in the said Province, vice His Honour Judge McDonald, deceased. (July 22, 1914.)

Cecil Howard Bell, of the city of Regina, in the Province of Saskatchewan, Barrister-at-Law: to be the Judge of the District Court of the Judicial District of Wynard, in the said Province. (August 1.)

Edmund Richard Wylie, of Moosomin, in the Province of Saskatchewan, K.C.: to be the Judge of the District Court of the Judicial District of Estevan, in the said Province. (August 1.)

Joseph Oscar Baldwin, of the Swift Current, in the Province of Saskatchewan, Barrister-at-Law: to be the Judge of the District of the Judicial District of Kindersley, in the said Province. (August 1.)