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MECHANICS LIEN ON INCREASED SELLING VALUE.

The case of *Henderson* v. *Morris*, 10 O.W.N. 34, strikes us as a curious decision. The action was apparently by a mortgagee for foreclosure in which a lien holder appears to have come in and proved a lien prior to the plaintiff's mortgage in respect of the increased selling value which was admitted by the parties to be $300. It is difficult to understand how, under a judgment directing a reference as to subsequent incumbrances, which is the usual form, the master had any jurisdiction to add prior incumbrances.—See Rule 470. When a lien holder claiming priority is made a party to an action by a subsequent incumbrancer, his usual course is to move to discharge the order adding him; the well known rule being that a mortgagee is not entitled to bring in prior incumbrancers as defendants except for the purpose of redeeming them. Here it appears the mortgagee claimed that the lien holder was bound to enforce his lien by a sale, and in default was liable to be foreclosed. The learned Judge is reported to have said "The statute does not cast upon the mortgagee the duty of realizing the lien holder's claim. If the lien holder desires to realise, he must take the necessary steps to do so either by asking a direction to proceed with the sale himself, or by paying into Court $80 in the usual way, to have a sale by the mortgagee. The costs incurred in a sale ought not to be charged against the mortgagee's interest, but should come out of the sum admitted as the increased selling value, in this case $300." It would therefore appear that the learned Judge seems to have thought that a prior charge in respect of a mechanic's lien is altogether different from any other prior charge. As regards all other prior charges any subsequent mortgagee must redeem them or be foreclosed, but according to this case where

a prior mechanic's lien is concerned, the prior lien holder is not entitled to say to the mortgagee, redeem me or be foreclosed; but the mortgagee may say to the lienholder, proceed to realize your lien or be foreclosed.

We should have thought, but for this decision, that a prior mechanic's lien is on the same footing as a prior mortgage. If a subsequent incumbrancer does not redeem he may, when a defendant, claim a sale which he may conduct, or may pay $80 into Court and require a plaintiff prior incumbrancer to conduct it; but where there is any provision which throws on a prior chargee any obligation to sell or to pay $80 into Court and require a subsequent incumbrancer to conduct the sale we have not been able to discover. Rules 461 and 462 are based on the supposition that the original or added defendants will be subsequent, not prior, incumbrancers.

It has been perhaps assumed that the lien given by the Mechanics and Wage Earners' Lien Act in priority to mortgagees, is a lien merely on the increased selling value. But we venture to doubt the correctness of that assumption. Sec. 8 shows that the lien is upon the estate or interest of the owner in the property and sub-sec. 3 that where that estate or interest is incumbered by a prior mortgage the lien is to attach on the increased selling value caused by the work or materials for which the lien is claimed in priority to the mortgage. But that does not do away with the first section which expressly declares that the lien is on the land, but it seems to us merely to define the pecuniary extent of the lien. But why should this prior lien be deemed to stand in any different position to any other prior charge? The statute has given the lienholder a prior charge to the extent mentioned, if the subsequent mortagee does not redeem and it becomes necessary to enforce this prior charge by a sale, it is said the costs must be paid out of the increased selling value, that may be all very well if the increased selling value is sufficient to satisfy both the lien and the costs but assuming there is a deficit, why should the lien holder have to bear the expense? Any ordinary prior lienholder is not bound to realize his lien at his own expense, the property subject to the lien and out of

which it is to be realized bears also the costs of realization. The tail follows the hide, and the costs of realization are added to the claim. Why should it be otherwise in regard to mechanics' liens?

TIME OF THE ESSENCE OF THE CONTRACT.

That hard cases sometimes make bad law is a trite saying, and it may perhaps be thought that the case of *Kilmer* v. *British Columbia Orchard Lands* (1913), A.C. 319, is an illustration of its truth. The facts of that case so far as they appear to be material may be thus summarized:—Kilmer, the defendant, entered into contract with the plaintiffs, the British Columbia Orchard Lands Co., to buy a parcel of land from the company for $75,000, the purchase money was to be paid, part down, and the balance in instalments; the contract contained a proviso that it was to be null and void and all payments to be forfeited and the vendors were to be at liberty to resell if default should be made in the payment of any of the instalments at the time named. The second instalment was due on the 14th June, 1910, and on the 11th June, 1910, the purchaser asked for time, and the defendants agreed to draw for the amount by bill of exchange payable on 22nd June, 1910; this bill was accepted by the defendant, but was not paid at maturity, and on 27th June, 1910, Kilmer asked the defendants to hold the bill for 10 days, which they agreed to do. He failed to make arrangements to meet the bill on 7th July, thinking quite erroneously that it was not due till the 10th July; and on 8th July wrote to say that it would be paid on the 12th July. On receipt of this letter the company, on 9th July, notified Kilmer that the deal was off and on 11th July sold the land to another party for $100,000. The bill of exchange remained in the hands of the Canadian Bank of Commerce, to whom it had been indorsed by the company (but whether for value or merely for collection did not appear), until 19th July, when it was returned to Kilmer. On the 19th August, 1910, the instalment in arrears was tendered and refused and the company then brought the action for a

declaration that the contract was at an end, and to cancel Kilmer's application to register it in the Land Titles Office. Kilmer counterclaimed for relief against the forfeiture and also for specific performance of the contract, and this relief was given at the trial and the Judicial Committee of the Privy Council affirmed the judgment. It may be remarked that, by reason of his few days default in payment of the second instalment, Kilmer was, according to the company's contention, liable to lose $25,000, *i.e.*, judging by the price obtained on the resale by the company. This decision has been thought to have a wider operation than it was intended to have. A condition making time of the essence of a contract is one thing, and a condition creating a forfeiture is another, and though sometimes they are blended they are nevertheless perfectly distinct things. While relief may be given against a forfeiture of money, it does not at all follow that the relief of specific performance should also be given to the defaulter, and it was because both these forms of relief were given in the Kilmer case, that the difficulty has apparently arisen in appreciating the proper effect of the decision. The material point in that case was that the stipulation as to time had been waived by the act of the vendors in extending the time for payment of the second instalment in arrear, and although the payment was not made, even within the extended time, the vendors having waived the condition as to that instalment, were held to be no longer in a position to insist on it as a bar to the claim for specific performance, even *quoad* that instalment. At all events, the contract had to be dealt with, and the equitable rights of the parties had to be adjudicated, as if it did not in fact exist. Putting the decision on that basis it is plain that it does not really conflict with the well settled principles of equity, that where time is made of the essence of the contract, in case of default of fulfilling the terms of the contract within the time limited, specific performance will not be decreed. It affirms a self-evident proposition that a condition as to time being of the essence of the contract may be waived like any other condition which is made a term of a contract, but it perhaps may be said to make new law where it affirms that once waived as by an extension of time it can

no longer be insisted on as a binding term of the contract. That this is the true meaning of the *Kilmer* case is shewn by what is said in *Steedman* v. *Drinkley*, 1916 A.C. 275 at p. 280. At all events that is the way the decision in the *Kilmer* case is interpreted by Lord Haldane when he says: "The learned counsel who argued the case for the purchaser contended that where the company submitted to postpone the date of payment *they could not any longer insist that time* was of the essence. Their Lordships appear to have adopted this view and *on that footing alone* decreed specific performance as counterclaimed." But even understanding the decision in that way it does seem to have given to the waiver of the condition a wider effect than has usually been considered to be proper. For instance, in Sugden's Vendors and Purchasers (14th ed.), p. 270, it is said, "it can hardly be contended that, if time be of the essence of the contract, an extension of it by one party for the convenience of the other can be considered operative beyond the further day named," and in Dart on Vendors and Purchasers we read, "mere enlargement of time does not amount to a waiver." Dart, 7th ed., 503, citing *Parkin* v. *Thorold*, 2 Sim. N.S. 1; 16 Beav 59, *Barclay* v. *Messenger*, 30 L.T. 351; but what Lord St. Leonards thought to be hardly arguable has been held in the *Kilmer* case, not only to be arguable but a tenable proposition. But for the single fact that the bill of exchange was not returned there could be no pretence for saying that there had been any extension of time beyond the 7th July. Even if the retention of the bill until the 19th July operated as an extension of time until that date, the fact remains that the money was not tendered even then, nor until another month had elapsed to which time there was no pretence that there was any extension. According to the *Kilmer* case, where time is of the essence of the contract, an extension of time in the case of any particular breach appears to operate, not as Lord St. Leonards thought, only to the further day named, but works a practical waiver of the condition altogether as to that particular breach, leaving the rights of the parties to be adjudicated as if the stipulation did not exist. Looking at the matter from the standpoint of common sense, Lord St. Leonards' view of the law seems to be the preferable one.

G. S. H.

PROVINCIAL STATUTES ONTARIO.

The volume of the Ontario Statutes passed at the last session of the Legislature, which closed on 27th April, has been issued with commendable promptness. It contains over 640 p ges. Not only has great expedition been used in publishing this volume by the first week in June, but it also bears evidence of more than the customary care in compilation. It will be found that as a rule all amendments are arranged in the proper sequence, and the labour of noting the changes in the R.S.O. is thereby greatly facilitated. And, moreover, the substitution of buckram for the cover, in lieu of the former half leather and cloth, bids fair to prove a great improvement and add very much to the durability of the book.

We must demur to the expression "Alcoholic and drug habituates," to be found in chap. 64. This use of the word "habituate" is, we believe, novel and without precedent—Murray's Oxford Dictionary only gives the word as an adjective, and a verb, but not as a noun. This extraordinary use of the word may necessitate another Act to define what is meant by an "alcoholic habituate," as it does not seem to be definable by the ordinary usage of the English language

With regard to the various statutes contained in the volume the most noticeable is probably the Temperance Act, which is to take effect on 16th September next. The Act contains a provision for voting for its repeal, but the clause providing for repeal, we notice, contains a blank which appears to have been overlooked: s. 147 (4), and it consequently reads "such repeal shall take effect at the expiration of months thereafter or at such earlier date as may be fixed" by His Honour in Council by proclamation. How there can be an earlier date than month will be hard to settle.

The Companies Amending Act contains a provision which virtually does away with the differences which the Judicial Committee recently pointed out as existing between the relative capacities of corporations created by charter and those created by statute: see 6 Geo. V, c. 35, s. 6. This enactment, it will be observed, applies to all companies heretofore or hereafter created by statute of the former Province of Canada, or of Ontario.

NOTES FROM THE ENGLISH INNS OF COURT.

War Dangers and the Law of Contract.

Suppose a man is under contract to make a journey to Canada from England, can he plead the danger of attack by submarine as an excuse for non-fulfilment? A case in the King's Bench Division (*Foster's Agency Ltd.* v. *Romaine* (1916) W.N. 115 seems to show that the answer to this question depends to some extent, at least, upon whether the contract was made before or after the war. The facts were that on August 12, 1914, an artiste undertook to go to Australia to give certain performances. The plaintiffs were to have a certain commission on her earnings. The contract provided that in the event of its not being fulfilled owing to the defendants default for any cause other than illness the commission should be paid. The lady having objected to leave England owing to her fear of submarines, the plaintiffs sued for the commission. It was held that they were entitled to succeed. In giving judgment, Avory, J., said: "It cannot be said that a person who makes a contract after the outbreak of war involving a sea voyage did not contemplate some additional risk." Upon the authority of the decided cases the date of the contract made all the difference. In *Liston* v. *Carpathian* (1915) 2 K.B. 42 certain seamen claimed and recovered extra remuneration on account of war risk, over and above the amount agreed under the original contract of service which was made in time of peace.

Sir Edward Carson.

As soon as he resigned the high office of Attorney-General, Sir Edward Carson returned to private practice, to be received with open arms by the judges and his professional brethren. No advocate of our time holds a higher place in the estimation of his fellows. Nor have recent political activities blunted the tools which he wields with such skill in the law courts. He appeared as counsel in the Slingsby case, the fame of which *cause celebre* may have reached Canada by this time. In the course of a

long recital of complicated facts the Master of the Rolls said: "I am amazed at your memory in this case, Sir Edward!" So his powers are not failing. Fearlessness is one of the characteristics of Sir Edward Carson whether as an advocate or in any other capacity.

One or two stories of his courage may be told. It was in the days of the Land League. Numerous prosecutions were being conducted in various parts of Ireland. Mr. Carson, then a stuff gownsman at the Irish Bar, was Crown Prosecutor. The performance of his duty was accompanied by no small risk to life and limb; but the advocate was unperturbed. On one occasion his duties took him to a district where there was much disaffection. He entered a Court which was crowded with sullen and angry spectators, and was proceeding to open his case when a telegram was handed in. He read the message to himself. The burden of it was: "Offer no evidence on the prosecution of——." It purported to be signed by the Crown Solicitor in Dublin. Rightly suspecting that the message was a forgery, Mr. Carson tore up the telegram and calmly proceeded with the case. Thus foiled, the Land Leaguers became so enraged that the police were reluctant to allow the advocate to leave the precincts of the Court until the crowd had cleared and dispersed. But Mr. Carson would have none of this protection. "The King's highway" he said "is free to all." Thereupon he left the building by the front door. The crowd fell back and he walked in safety to the railway station.

Humour in the Law Courts.

About ten years ago objection was taken in the House of Commons to some observation made by a learned judge of the Kings Bench Division in the course of an address to a Grand Jury. The late Sir J. Lawson Walton, who was then Attorney-General defended the judge. He pointed out that his remarks were intended to be humourous and added that it was unwise to attach too much importance to such extra-judicial utterances. "A joke in the Law Courts" he said "scintillates in a murky and gloomy atmosphere." These words should be taken to heart by him who essays to be a wit on the Bench. It is the

solemn surroundings which give point to the judicial joke; and the man who is able to convulse the back benches in his own court generally finds that he is a dismal failure as a mere after-dinner speaker.

A Good Joker—A Bad Judge.

Prima facie the judicial personage who is always seeking to make fun of the case before him makes a bad judge. Be he ever so wise and impartial, his wisdom runs grave risk of being effectively concealed from the anxious litigant whose troubles, either directly or indirectly, are made the sport of the crowd of idlers who hang about the law courts. Did not Lord Chesterfield say: "Humour is the property of those who possess it, and very often the only property they have?"

To be humourous is not the province of a judge. Lord Bacon in his celebrated essay "*Of judicature*" impliedly, if not expressly, exercises humour on the Bench. He wrote: "Patience and gravity of bearing is an essential part of justice, and an over-speaking judge is no well-tuned cymbal. . . . The parts of a judge in hearing are four:—to direct the evidence; to moderate length, repetition or impertinency of speech; to recapitulate, select and collate the material points of that which hath been said; and to give the rule or sentence. Whatsoever is above these is too much, and proceedeth either of glory and willingness to speak, or of impatience to hear or of shortness of memory or want of a stayed and equal attention." If the element of fun must be introduced where questions involving life, liberty, character, or the possession of property are at stake let the fun come from the Bar or the witness. It may well be that some cases deserve to be treated with ridicule, but that ridicule should not come from or be suggested by the judge. The writer once heard a member of his own profession actually laugh a murder case out of court; but that was done in spite and not with the assistance of the presiding judge.

Lighter Touches.

While judges remain human—and hitherto no mechanical equivalent has been found—it were impossible to exclude the ele-

ment of humour altogether from courts of justice. And this is fortunate for those whose daily bread is earned in legal tribunals. The robing room would be a dull place indeed, if the solemnity of the Court were t'- solemnity of a funeral. The lawyer would cease to be *the raconteur* at a dinner party. Yet it is not always the carefully prepared joke of the judge which is recorded in the mind of the practitioner; it is rather the spontaneous incident which occurs in the course of a case which he can so often retail to the delight of his friends.

A Few Examples.

A County Court Judge once told me that he was amazed at the want of sagacity displayed by some of the solicitor advocates practising before him. He said "The other day an attorney, having opened his case, announced that he was going to cite an authority. 'I would refer your Honour' said he 'to the case of Doe on the *decease* of *Wetherall* v. *Bird* (1834) 2 A.&E. 161'" Even a Canadian lawyer may appreciate the humour of the word in italics!

Not long since a case was heard in the High Court in which a solicitor was charged with negligence. The judge appeared to take the view that the charge was made out. He said to counsel for the Solicitor: "Mr. A. B., if your client had only paused to think he would never have done this!"

"My lord," was the reply "I have examined the bill of costs. I see charges for perusing documents, writing letters, etc. etc. But there is no charge for thinking!"

Humour in the Court of Appeal.

Even in the Court of Appeal the lamp of humour is occasionally seen to flicker. It is customary for the Lords Justices to give judgment in order of seniority. In many cases, however, the junior members of the Court are content to express assent to the judgment of the president. On one occasion when the Master of the Rolls was presiding he delivered a long and learned judg-

ment dismissing an appeal. When he came to an end, the junior member of the court, forgetting for the moment, that he was the junior, inadvertently said "I agree." No. 2 then proceeded to give a judgment, coming to the same conclusion as the learned president. There was an audible titter in Court when the junior member, at the conclusion of this second judgment interposed with the remark: "I still agree."

Humour in the Law Reports.

It was Mark Twain who wrote that humour is out of place in a dictionary. Law reporters from time immemorial, appear to have agreed that it is out of place in their writings. It is as if the Recording Angel of the courts always said to the legal jester who seeks a permanent place in the reports: "*Procul O procul este profani!*" Yet there are certain judges whose decisions are sometimes couched in language which is by no means free from humour. Possibly it is dry and formal—only to be understood of lawyers; but who else ever reads the reports? Let him who would see some examples of the writer's meaning examine the "opinions" of Lord Sumner in the House of Lords. All of them are worth reading as specimens of judicial English at its best; many of them "teem with quiet fun."

For an actual example of judicial humour the curious should refer to the judgment of Lord Macnaghten in *Baudains* v. *Richardson* L. Rep. (1906) A.C. 169, at p. 171. No "quips and cranks of wit" will be found in these pages; but they have a general aroma of humour altogether characteristic of the Emerald Isle which numbered the late law Lord amongst its most distinguished sons.

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LORD HALDANE, THE KAISER AND THE CABINET.

An esteemed friend of this journal, writing us recently from England, takes exception to some of the criticisms on Lord Haldane contained in Mr. F. S. Oliver's work of the war known as "Ordeal by Battle," and in a review of it which appeared in our April number. Coming from one so eminent as a writer and jurist his defence of Lord Haldane must be received without question as to the accuracy of his statements.

He denies the suggestion that Lord Haldane was a self-appointed diplomat as he was appointed by the British Cabinet, although according to Mr. Oliver he was sent to Berlin at the Kaiser's request. Our correspondent also takes exception to the insinuation that Lord Haldane was fooled by the Kaiser and also states that he did make a full report to the British Government on his return, though nothing was heard of this report by the public until nearly two years afterwards. We gladly accept as perfectly accurate these assurances of our correspondent and regret if in any way injustice has been done in the premises.

Not having seen the report, we are not in a position to discuss it, but if it sets forth, as it should have done and presumably did, (as the envoy had ample means of forming his judgment on the subject), the true position of affairs and the danger of a conflict, the Government with which he was connected is all the more subject to the severest censure for disregarding the warnings which he surely must have given. This is not the time for enlarging upon the inaction of the British Cabinet, but the time will come when those in power at that time will be called upon to account for a blindness and criminal indifference to warnings, which, if heeded, might have averted the ghastly slaughter, suffering and bereavement which has fallen upon those whose protection they were entrusted with.

REVIEW OF CURRENT ENGLISH CASES.

PRACTICE—WRIT—SERVICE OUT OF JURISDICTION—SEPARATION DEED—COVENANT TO PAY SEPARATE ALLOWANCE DOMICIL —"ORDINARILY RESIDENT WITHIN THE JURISDICTION" CONTRACT WHICH "OUGHT TO BE PERFORMED" WITHIN THE JURISDICTION. RULES 64 (c) (e)—(ONT. RULE 25 (1) c e).

Drexel v. *Drexel* (1916) 1 K.B. 251. This was an action by a wife against her husband to recover the amount of a separation allowance payable under a covenant contained in a deed of separation; both parties, although of American origin, had become domiciled in London, but the defendant had recently sold his London house and gone to France, where he had applied for naturalization, his object being to obtain a French divorce. The plaintiff claimed that he was liable to be sued in England (1) because he was ordinarily resident in England and (2) because the contract in question ought to be performed in England, where the plaintiff resided. The defendant entered a conditional appearance and applied to set aside the service of the writ on the ground that he was not ordinarily resident within the jurisdiction, and that there had been no breach within the jurisdiction of any contract on his part which ought to be performed within the jurisdiction. Neville, J., held that the defendant was not now ordinarily resident within the jurisdiction, but that the contract in question was one which ought to be performed within the jurisdiction where the plaintiff resided, and the motion was accordingly dismissed.

ALIEN ENEMY—PRISONER OF WAR —NON-COMBATANT—PREROGATIVE OF CROWN TO IMPRISON—JURISDICTION OF COURT—HABEAS CORPUS.

The King v. *Superintendent of Vine St. Station* (1916) 1 K.B. 268. This was an application for a habeas corpus in the following circumstances. The applicant was a German subject who had obtained his discharge from German nationality, but had not become a British subject, and was under the provisions of German law in a privileged position and had not become entirely divested of the rights belonging to a natural born German. In the exercise of the Royal prerogative he had been interned—as an alien enemy—and he sought by means of a writ of habeas corpus

to be released from detention. Bailhache and Low, JJ., who heard the application, held that the Court had in such circumstances no jurisdiction to interfere with the exercise of the Royal prerogative and refused the motion. The applicant was held to be an alien enemy and as such being resident in the United Kingdom if in the opinion of the Executive Government a person hostile to the welfare of the country he was properly subject to be interned, and might properly be described as a prisoner of war, although neither a combatant, nor a spy. The Court, in arriving at this conclusion, followed a judgment of the Court of Appeal in *Ex parte Weber*, which is reported in a note on p. 280.

ALIEN ENEMY—INTERNED NON-NATURALIZED GERMAN—CONTRACT ENTERED INTO AFTER DECLARATION OF WAR—RIGHT TO ENFORCE CONTRACT MADE AFTER DECLARATION OF WAR BY ALIEN ENEMY.

Schaffenius v. Goldberg (1916) 1 K.B. 284. The plaintiff in this case was a non-naturalized German subject resident in England, and he sought to enforce a contract entered into by him with the defendant after the declaration of war with Germany. After the commencement of the action he had been interned as an alien enemy after registration. The case was thereupon brought on for argument as to whether in such circumstances the plaintiff was entitled to maintain the action. Younger, J., held that the internment of the plaintiff did not operate as revocation of the licence to remain in the United Kingdom which is implied in registration; and that the contract sued on, not being prohibited by any proclamation against trading with the enemy, the plaintiff might maintain the action notwithstanding his internment, and with this conclusion the Court of Appeal (Hon. Cozens-Hardy, M.R., and Bankes and Warrington, L.JJ.) agreed.

CRIMINAL LAW—TRIAL—FOREIGNER—IGNORANCE OF ENGLISH, TRANSLATION OF EVIDENCE—WAIVER BY COUNSEL—PRACTICE.

The King v. *Lee Kun* (1916) 1 K.B. 337. This was an application by the prisoner who had been convicted of murder to quash the conviction on the ground that the evidence given against him at the trial had not been translated, he being a Chinese, and not understanding the English language in which the evidence was given. The prisoner had been represented by Counsel at the trial, who made no demand to have the evidence translated. The evidence given at the trial did not differ from that

given before the magistrate which had been translated. The Court of Criminal Appeal (Lord Reading, C.J., and Scrutton and Low, JJ.) refused the application and in doing so lay down the rule which should be observed in such circumstances, viz., that where the accused is undefended, and is a foreigner ignorant of English, the evidence at the trial must be translated to him and that compliance with this rule cannot be waived by the accused. If, on the other hand, the accused is represented by counsel, the evidence ought also be translated unless the accused or his counsel express a wish to dispense with it, and even then the Judge should not permit the omission, unless he is satisfied that the accused substantially understands the nature of the evidence to be given against him. In this case the Court was satisfied that no substantial miscarriage of justice had taken place.

SLANDER—WORDS IMPUTING MORAL MISCONDUCT—WORDS NOT SPOKEN IN RELATION TO CALLING—HEAD TEACHER OF SCHOOL —SPECIAL DAMAGE NOT ALLEGED OR PROVED.

Jones v. Jones (1916) 1 K.B. 351. This was an action of slander. The words complained of imputed to the plaintiff moral misconduct, but they were not spoken of him in relation to his calling, which was that of head teacher in a school, and no special damage was alleged or proved. The Jury found that they were spoken of plaintiff in the way of his calling, and in such a way as to imperil his retention of his position and that they imputed that he was unfit for his office, and assessed the damages at £10, for which Lush, J., gave judgment in favour of the plaintiff. The Court of Appeal (Eady, Warrington, L.JJ., and Bray, J.) held that the words were not actionable *per se*, and that as special damage was neither alleged nor proved, the action must be dismissed, notwithstanding the findings of the jury for which the Court held as to part there was no evidence as to the others that they were irrelevant.

CHARTER PARTY—"COMMANDEER"—CANCELLATION OF CHARTER PARTY IN CASE OF VESSEL BEING COMMANDEERED.

Capel v. *Souldi* (1916) 1 K.B. 439. This was an action by the plaintiff for a declaration that a charter party made by the defendants was in force and binding on him, and to restrain the defendants from dealing with the vessel otherwise than according to the terms of the charter party. The charter party contained a clause that in the event of the vessel being commandeered the charter party should be cancelled. The vessel was a Greek

vessel and while it was lying at Marseilles discharging her cargo the captain was served with notice from the Greek government ordering him to take the vessel to the Piræus for the purpose of placing the vessel at the disposal of the Greek government. Thereupon the defendant notified the plaintiff that the charter party was cancelled; the vessel had been commandeered. Before the vessel could leave Marseilles, however, the Greek government withdrew their order and released the ship. Atkin, J., who tried the action, held that the vessel had been commandeered within the meaning of the charter party and therefore dismissed the action.

CONTRACT FOR SALE OF GOODS FOR EXPORT—DECLARATION OF WAR—EMBARGO AGAINST EXPORTATION—IMPOSSIBILITY OF PERFORMANCE—TEMPORARY SUSPENSION OF CONTRACT—REASONABLE TIME.

Millar v. *Taylor* (1916) 1 K.B. 402.—The plaintiffs in this case contracted to sell goods to the defendants for exportation to Africa—on the exportation of the goods the plaintiffs were to be entitled to a draw back of duty.—Before the contract could be completely performed, war was declared and an embargo placed on the exportation of *inter alia* goods of the kind in question. This embargo lasted from the 5th to the 20th August, 1914 when it was removed. In the meantime the plaintiffs claimed to treat the contract at an end and brought the action for the goods that had actually been delivered and the defendants counter claimed for damages for breach of the contract. Rowlatt, J. gave judgment for the plaintiff and dismissed the counter claim, but the Court of Appeal (Eady, Warrington, L.JJ., and Bray, J.), reversed his decision holding that the embargo merely caused a temporary suspension of the contract, and as it was removed before a reasonable time for the performance of the contract had taken place, the plaintiffs were not entitled to repudiate it, though it would have been otherwise if the embargo had continued indefinitely and beyond a reasonable time for the performance of the contract.

CRIMINAL LAW—SUMMARY CONVICTION FOR NEGLECTING CHILD IN MANNER LIKE TO CAUSE SUFFERING OR INJURY TO HEALTH—SUBSEQUENT DEATH OF CHILD—INDICTMENT FOR MANSLAUGHTER—INDICTMENT FOR MANSLAUGHTER—AUTREFOIS ACQUIT.

The King v. *Tonks* (1916) 1 K.B. 443. The defendant in this case had been summarily convicted of neglecting her child

in a manner likely to cause suffering or injury to health. Subsequently the child died, and the present prosecution for manslaughter was brought, and the defendant convicted. The question was discussed at the trial whether the summary conviction could be relied on under a plea of *autrefois acquit*, and the presiding Judge came to the conclusion it could not, and no formal plea of *autrefois acquit* was placed on the record. The Judge gave leave to appeal and the Court of Criminal Appeal (Lord Reading, C.J. and Coleridge and Avory, JJ.), held that it could properly entertain an appeal on the question, although no formal plea had been set up. But, on the merits, they came to the conclusion that the plea in the circumstances was not made out.

POLICY OF INSURANCE—GOODS CONSIGNED ABROAD ON TERMS "SALE OR RETURN"—OUTBREAK OF WAR WITH COUNTRY OF CONSIGNEE—PROHIBITION OF CONSIGNEE FROM DEALING WITH GOODS—TOTAL LOSS.

Moore v. *Evans* (1916) 1 K.B. 479, is another of the numerous cases arising out of the war. The plaintiffs sued on a policy of insurance of goods against "loss or damage or misfortune arising to the property from any cause whatever." The goods consisted of jewellery which they had consigned to merchants in Germany on the terms of sale or return. By the custom of the jewellery trades persons receiving goods on these terms have a limited time within which to elect to purchase or return the goods. Before the limited time had elapsed war broke out with Germany and the German merchants were prevented by law from dealing in any way with the jewellery which was the property of British subjects. In these circumstances Rowlatt, J., who tried the action, held that the plaintiffs were entitled to recover as for a total loss.

CHARTER PARTY—TANK STEAMSHIP—EMPLOYMENT FOR CARRIAGE OF OIL AS CHARTERERS SHOULD DIRECT—LIBERTY TO SUB-LET ON ADMIRALTY OR OTHER SERVICE—REGISTRATION OF SHIP BY ADMIRALTY — EMPLOYMENT FOR TRANSPORTATION OF TROOPS—EFFECT OF REGISTRATION.

Tamplin S. S. Co. v. *Anglo-Mexican P. P. Co.* (1916) 1 K.B. 485. In this case the question was whether a charter party was put an end to by the vessel being requisitioned by the Admiralty. The vessel was a tank ship and was chartered to be employed in such lawful trades for voyages between any safe ports within certain limits for the carriage of oil as the charterers

or their agents should direct—for which a fixed sum per month was to be paid. The charter party contained an exception (*inter alia*) of arrests and restraint of princes," and the charterers had the privilege of sub-letting the vessel on Admiralty or other service. During the currency of the charter-party the vessel was requisitioned by the Admiralty and altered and used for transport of troops. The charterers had paid and were willing to pay the agreed freight and claimed that the charter-party was still subsisting. The owners on the other hand claimed that there was an implied condition in the charter-party that the vessel should remain fit for the carriage of oil, that by reason of the requisitioning of the vessel the commercial adventure had been put on end to; but Atkin, J., who tried the action, held that there was no such implied condition and that nothing had occurred to prevent the charterers resuming the control of the vessel and completing the charter if and when the government restored the vessel to them, and this decision was affirmed by the Court of Appeal (Lord Cozens-Hardy, M.R., and Bankes and Warrington, L.JJ.).

SALE OF GOODS—C. I. F. CONTRACT—PAYMENT ON TENDER OF SHIPPING DOCUMENTS—OUTBREAK OF WAR BEFORE TENDER—EFFECT OF WAR ON CONTRACT—TRADING WITH ENEMY.

Karberg Co. v. *Blythe* (1916) 1 K.B. 495. This was an appeal from the decision of Scrutton, J., (1915) 2 K.B. 379 (noted ante vol. 51, p. 363), holding that the outbreak of the war had put an end to a c. i. f. contract entered into before the war, the goods in question being shipped on German ships. The Court of Appeal (Eady, Bankes, and Warrington, L.JJ.) affirmed the decision.

BREACH OF PROMISE OF MARRIAGE—ACTION AGAINST EXECUTOR OF PROMISOR—SPECIAL DAMAGE—BUSINESS GIVEN UP IN CONSEQUENCE OF PROMISE TO MARRY—ABATEMENT OF CAUSE OF ACTION—ACTIO PERSONALIS MORITUR CUM PERSONA.

Quirk v. *Thomas* (1916) 1 K.B. 516. This was an appeal from the judgment of Lush, J. (1915) 1 K.B. 798 (noted ante vol. 51, p. 325), holding that an action for breach of promise of marriage would not lie against the executor of the promisor, and that the giving up of business by the plaintiff in consequence of the promise did not constitute a special damage due to the breach of contract. The Court of Appeal (Eady, Phillimore, and Pickford, L.JJ.) have affirmed the decision.

ALIEN ENEMY—CONTRACT BY BRITISH MINE OWNER WITH GERMAN SUBJECT—SALE OF WHOLE PRODUCTION—PROHIBITION AGAINST SELLING TO OTHERS DURING CONTINUANCE OF CONTRACT—OUTBREAK OF WAR—ILLEGALITY OF CONTRACT.

Zuic Corporation v. *Hirsch* (1916) 1 K.B. 541. This was an action for a declaration that a contract made between the plaintiffs and the defendants prior to the war was at an end. The plaintiffs were mine owners and had contracted to sell to the defendants, who were German subjects, the whole output of their mines, not exceeding 95,000 tons a year, for ten years, from 1910 to 1919 inclusive. By a clause of the contract it was provided that in the event of inter alia any strike, suspension of labour, floods, fire, stoppage of water supply, acts of God, force majeure, or any other cause beyond the control of either the sellers or the buyers preventing or delaying the carrying out of the contract "then this agreement shall be suspended during the continuance of any and every such disability." War was not specified as a cause of suspension. It was held by Bray, J., that the proviso above referred to did not by implication include war as a cause of suspension of the contract, and that by the outbreak of the war the defendants became alien enemies with whom it was illegal for the plaintiffs to trade and that consequently the contract became illegal, and was dissolved. The Court of Appeal (Eady, Phillimore, and Pickford, L.JJ.) affirmed the decision, holding that, assuming war was a cause of suspension, the suspension was only of the delivery of the ore and not of the whole contract, and that the effect of the prohibition of selling to other persons was to prevent the plaintiffs from using their resources for the benefit of their own country and therefore the further performance of the contract after the outbreak of the war became illegal as being detrimental to the interests of the country and of assistance to the King's enemies.

CONTRACT—LUMP SUM—IMPERFECT PERFORMANCE OF CONTRACT—QUANTUM MERUIT.

Dakin v. *Lee* (1916) 1 K.B. 566. This was an action by the plaintiffs, who were builders, to recover the price of work done on the defendant's building. Part of the work was done under a contract for a lump sum. His work had been substantially performed, though not in all respects according to the terms of the contract. The defendant contended, as to this part of the claim, that, as the contract had not been performed, the plaintiff was not entitled to recover anything, but Ridley and Sankey, JJ.,

on appeal from an arbitrator, held that the plaintiff was entitled to recover the value of the work done less a sum sufficient to make it complete according to the contract, and this judgment was affirmed by the Court of Appeal (Lord Cozens-Hardy, M.R., and Pickford and Warrington, L.JJ.).

ALIEN—NATURALIZATION—PRIVY COUNCILLOR—ACT OF SETTLEMENT 1700 (12-13 WM. III., C. 2.) S. 3—NATURALIZATION ACT 1870 (33-34 VICT., C. 14) S. 7—BRITSIH NATIONALITY AND STATUS OF ALIENS ACT, 1914 (4-5 GEO. V., C. 17), S. 3.

The King v. *Speyer* (1916) 1 K.B. 595. This case may be briefly referred to because a Divisional Court (Lord Reading, C.J., and Avory and Lush, JJ.) has determined that notwithstanding the Act of Settlement of 1700, which forbids any but natural born British subjects being members of the Privy Council, under the Naturalization Act, above referred to, it is now competent for naturalized aliens to be members of that Council, and that the Act of 1914, above mentioned, has not had the effect of reviving the disability created by the Act of Settlement.

COSTS—JUDICIAL DISCRETION—SUCCESSFUL PARTY ORDERED TO PAY COSTS.

Higgins v. *Higgins* (1916) 1 K.B. 640 shews that, when a party has been successful throughout, it is not a proper exercise of discretion to order him to pay the costs of the opposite party, and the rule is applicable to an arbitrator having a statutory discretion as to costs; so held by the Court of Appeal (Lord Cozens-Hardy, M.R., and Bankes and Warrington, L.JJ.).

LANDLORD AND TENANT—FLAT—LANDLORD RETAINING POSSESSION OF ROOF—LIABILITY TO REPAIR ROOF—NEGLIGENCE.

Hart v. *Rogers* (1916) 1 K.B. 646. The defendant in this case was tenant of a flat, the plaintiffs were the landlords and retained possession of the roof of the building. The defendant's premises were damaged by water owing to a leak in the roof and in consequence the defendant left the premises until the roof was repaired. The action was brought to recover rent. The defendant denied liability, and counterclaimed for damage caused by the leak. Scrutton, J., held that in these circumstances the plaintiffs were bound to keep the roof in repair and that the obligation was not discharged by showing that they took reasonable care to keep it in repair. Judgment was therefore given for the plaintiffs on their claim and for the defendant on her counterclaim.

INTERPLEADER—PRACTICE—RIGHT OF CLAIMANT TO RELY ON TITLE OTHER THAN THAT TRIED ISSUE WAS DIRECTED TO TRY.

Peake v. *Carter* (1916) 1 K.B. 652. This was an interpleader issue. On the application for the issue the claimant based his claim to the goods in question as his own property, whereas at the trial of the issue it appeared that he was jointly entitled as partner with the execution debtor to the goods. Rowlatt, J., who tried the issue, held that the claimant could not rely on a different claim to that made, and which the issue was directed to try: but the Court of Appeal (Eady and Pickford, L.JJ.) reversed his decision, holding that, although the claimant had failed to establish a sole claim to the property, he was nevertheless entitled to rely on the joint title proved; the Partnership Act 1890 preventing the goods in question from being taken in execution under an execution against only one of the partners. The judgment was set aside and a new trial ordered, as the execution creditor desired to dispute the existence of the alleged partnership. Mr. Justice Rowlatt conceived that he was bound by a previous decision of the Court of Appeal in *Flude* v. *Goldberg*, which is printed in a note to this case, and in which the facts were somewhat similar where the Court had held that the claimant could not be allowed to vary from his original claim. In that case, however, the claimant, by his affidavit and in his evidence at the trial, had positively denied the existence of a partnership between himself and the execution debtor, although the jury found that it in fact existed; and on this ground the Court had held that he could not be allowed to rely on his title as partner, and as no new trial was asked for, the Court held that the finding that the claimant was not individually entitled must stand and that the finding as to the partnership should be disregarded.

HUSBAND AND WIFE—ACTION TO RESTRAIN WIFE FROM PURPORTING TO PLEDGE HUSBAND'S CREDIT—MARRIED WOMEN'S PROPERTY ACT 1882 (45-46 VICT. C. 75)—(R.S.O. C. 149).

Webster v. *Webster* (1916) 1 K.B. 714. We are constantly reminded that, although the Married Women's Property Act purports to give married women the status of *femmes soles*, it really has not done so. In this case the plaintiff sued his wife, claiming an injunction to restrain her from purporting to pledge his credit; but for the relationship of husband and wife the action would lie as was decided in *Routh* v. *Webster*, 10 Beav. 561; but

the Married Women's Property Act provides that, except as therein provided, no husband or wife shall be entitled to sue the other for a tort (see R.S.O. c. 149, s. 16), and Rowlatt, J., was of the opinion that the action was based on tort, and not within any exceptions mentioned in the Act, and therefore could not be maintained.

SHIP—TIME CHARTER—RESTRAINT OF PRINCES—REQUISITION BY ADMIRALTY.

Modern Transport Co. v. *Duneric S.S. Co.* (1916) 1 K.B. 726. In this case the plaintiffs chartered the defendants' vessel for a certain time, restraints of princes being mutually excepted. While the charter-party was in force the vessel was requisitioned by the Admiralty for Government service, and a Government charter was sent to the defendants' agents, which was completed by them. The Government paid for the use of the vessel considerably less per month than the plaintiffs had agreed to pay, and the question therefore was, which party had to bear the loss thus occasioned. In short, was the vessel hired by the Government from the owners or the charterers? Sankey, J., who tried the action, held that the charterers must bear the loss and were bound to pay the hire agreed, but were entitled to the sums paid by the Admiralty. A further question was involved, viz., whether the defendants were entitled to withdraw the vessel from the plaintiffs' service for non-payment of hire. It appeared that the parties had agreed to refer the question to arbitration, and therefore the Court held that until the question had been decided by the arbitrators the defendants were not entitled to withdraw the vessel.

ALIEN ENEMY—PARTNER—WAR—DISSOLUTION OF PARTNERSHIP—LEGAL PROCEEDINGS AGAINST ALIEN ENEMIES ACT 1915 (5 GEO. 5, C. 36).

Stevenson v. *Aktiengesellschaft* (1916) 1 K.B. 763. The plaintiffs and defendants were partners; the defendants were alien enemies. The plaintiffs claimed a declaration that by reason of the war the partnership was dissolved, and that the defendants were only entitled to what on taking of the partnership's accounts up to the date of dissolution, might appear to be due to them, and that the defendants were not entitled to any of the profits of the business made after that date or to interest in the balance, if any, to which the defendants, on the taking of the account, might appear to be entitled. Aiken, J., gave judgment to that effect.

PROBATE—PRACTICE—SOLDIER'S WILL—

In re Heywood (1916) P. 47. This was an application for probate of a soldier's will contained in a letter, portions of which the military authorities considered should not be made public. In these circumstances the Court authorized the applicant to offer for probate so much only of the letter as was testamentary or necessary for understanding the testamentary part.

WILL OF SOLDIER OR SAILOR—WILLS ACT 1837 (1 VICT. C. 26), S. 11—(R.S.O. C. 120 S. 14)—MEMBER OF ST. JOHN'S AMBULANCE ASSOCIATION—LETTER WRITTEN AT HOME AFTER ORDER FOR MOBILIZATION.

In re Anderson, Anderson v. *Downes* (1916) P. 49. This was an application for administration in which the defendant set up that the deceased had made a soldier's will which she claimed should be admitted to probate. The deceased was a member of the St. John's ambulance association and being about to start from home under orders to join H. M. S. Pembroke, permanently stationed at Chatham, wrote out on the morning of his departure a document disposing of his property. He remained in barracks at Chatham and did not go on board ship till he joined a transport on August 17, 1914, and was wrecked in her on October 30, 1914. At the time the will was made the deceased was not a soldier in actual military service, nor was he a mariner or seaman "at sea," and therefore Deane, J., held the document in question was not a will within the Act and therefore not entitled to probate.

MORTGAGE OF SHARES IN LIMITED COMPANY—VOTING POWERS RETAINED BY MORTAGOR—MANDATORY INJUNCTION AGAINST MORTGAGOR.

Puddephatt v. *Leith* (1916) 1 Ch. 200. This was an application for a mandatory injunction by a mortgagor of shares in a limited company in respect of which he had retained the voting powers, to compel the mortgagee to vote in respect of such shares in accordance with the wishes of the mortgagor and also to restrain him from voting thereon contrary to the mortgagor's wishes. Sargant, J., held that the plaintiff was entitled to the relief claimed and granted the injunction.

WILL—CODICIL—RESIDUARY BEQUEST IN WILL—BEQUEST IN CODICIL OF "THE RESIDUE OF MY ESTATE NOT BEQUEATHED BY THE ABOVE WILL."

In re Stoodley, Hooson v. *Locock* (1916) 1 Ch. 242, the Court

of Appeal (Lord Cozens-Hardy, M.R., Warrington, L.J., and Bray, J.), have been unable to agree with the judgment of Eve, J. (1915) 2 Ch. 295 (noted ante vol. 57 p. 444). The case turns on the construction of a will and codicil. By the will the testator gave his residuary estate specifically for certain purposes, but by a codicil, made ten days later, he gave to a named legatee all his estate "not bequeathed by the above will." Eve, J., held that the codicil did not revoke the residuary bequest contained in the will; the Court of Appeal, however, held that it did, following *Headwiche* v. *Douglas* (1840) 7 Cl. & F. 795.

COPYRIGHT—INFRINGEMENT—OBSCENE NOVEL—OBSCENE CINEMATOGRAPH FILM—BURLESQUE—IMMORAL TENDENCY.

Glynn v. *Weston Feature Film Co.* (1916) 1 Ch. 261. This was an action for the alleged infringement of an alleged copyright. It appeared that the plaintiff was the authoress of an obscene novel in which she claimed a copyright which she alleged had been infringed by certain burlesque cinematograph films exhibited by the defendants. Younger, J., decided that the plaintiff had no copyright in her filthy publication, and that consequently it could not be infringed by the filthy cinematograph films of the defendant, and he consequently dismissed the action without costs. It is to be regretted that the publishers of such publications are not prosecuted and the offenders made to serve a term in prison, as that would be the duly fitting climax to such litigation.

COMPANY—LEASE TO COMPANY—EQUITABLE MORTGAGE OF DEMISED PREMISES—FORECLOSURE—ORDER DIRECTING ASSIGNMENT—DISSOLUTION OF COMPANY BEFORE ASSIGNMENT—REVERSION OF TERM TO LESSOR—TRUSTEE—VESTING ORDER—TRUSTEE ACT (56-57 VICT. c. 53 s. 25 (1) s. 26. (R.S.O. c. 121 s. 4 (2) s. 6).

Re Albert Rood (1916) 1 Ch. 289. This was an application under the Trustee Act for the appointment of a new trustee, and for a vesting order, in the following circumstances. The Municipal Contract and Construction Co. were lessees of certain parcels of land, which by way of equitable mortgage they mortgaged to the present applicant, who had obtained a judgment of foreclosure against the mortgagors, coupled with a direction that they should assign the leases to the applicant, but before the assignment was made the mortgagor company was dissolved. Having regard to the decision in *Hastings* v. *Lettor* (1908) 1 K.B.

378, to the effect that on the dissolution of a corporation its interest in leasehold is at an end and the reversion of the lessor is accelerated, the lessor was required to be notified, and he consenting, the order was made declaring that the dissolved corporation was trustee and appointing a new trustee in its place and vesting the demised premises in the applicant for all the estate and interest which the corporation had therein at the time of its dissolution.

WILL—CONSTRUCTION—'ISSUE'—'PARENT'.

In re Timson Smiles v. *Timson* (1916) 1 Ch. 293. This case turns upon the construction of a will whereby the testatrix gave her residuary estate, subject to a life interest, to five named nephews and nieces, and directed that if any of them should die in the lifetime of the tenant for life leaving "issue" such issue should take the share which his or her deceased "parent" would have taken if living; but if any of them should die in the lifetime of the tenant for life without leaving "issue" him or her surviving the share of one so dying should be divided amongst the survivors and the issue of him or them so dying and leaving issue. An originating summons was issued to determine, *inter alia*, whether the expression "issue" was restricted to children, or whether it also included remoter descendants, and if so, whether the issue took per capita or per stirpes and whether as joint tenants or tenants in common. Younger, J., who heard the motion, decided that the word "issue" was restricted to children of the nephews and nieces and did not include remoter descendants and that the "issue" took per stirpes as joint tenants.

CONTEMPT OF COURT—LANDLORD AND TENANT—ACTION BY TENANT AGAINST THIRD PARTY TO RESTRAIN TRESPASS—SOLICITOR OF LANDLORD THREATENING TO PUT AN END TO LEASE IF ACTION PERSISTED IN.

Webster v. *Bakewell* (1916) 1 Ch. 300. This was an application to commit a solicitor for alleged contempt of Court in the following circumstances. The plaintiff, a tenant of certain property abutting on a highway, commenced an action against a municipal authority to restain an alleged trespass on the premises. His landlady objected to the bringing and prosecution of the action and her solicitor wrote to the plaintiff threatening that his lease would be put an end to by the landlady if the action was not abandoned. It was contended that this constituted a contempt of Court, as being calculated to deter the plaintiff from prosecuting his legal rights and to prevent the due administration

of justice; but Neville, J., who heard the motion, decided that the contention was not well founded and dismissed the application. In his opinion what had been done merely amounted to this: the landlady considered the prosecution of the action would be injurious to her, and her solicitor had merely intimated to the plaintiff that if he asserted his legal rights to her prejudice, she would assert her legal rights by putting an end to the tenancy.

PRACTICE—SECURITY FOR COSTS—PLAINTIFF SUING AS ADMINISTRATOR—PLAINTIFF AGENT FOR PERSON OUT OF JURISDICTION.

Rainbow v. *Kittoe* (1916) 1 Ch. 313. This was an action brought by an administrator, whose letters of administration had been granted to him as the agent of a person resident out of the jurisdiction. The defendant applied for security for costs, but Sargant, J., refused the application he admitted the case was a difficult one, because the plaintiff was insolvent, but there was no evidence that he had been purposely selected because of his impecuniosity, and on that ground he distinguished the case from *Greener* v. *Kahn* (1906) 2 K.B. 204, and held that being clothed with the office of administrator he could not be said to be suing as a "mere nominee" of his principal.

ORIGINATING SUMMONS—DECLARATION ASKED AS TO FUTURE RIGHTS.

In re Staples, Owen v. *Owen* (1916) 1 Ch. 322. This was an application of certain persons entitled as devisees in remainder, by originating summons, to obtain a declaration of their rights under the will. Sargant, J., considered that the Court ought not, in the exercise of a proper discretion, to decide the questions raised while the interests of the applicants were still in remainder, and the application was ordered to stand over.

INFANT—MARRIAGE SETTLEMENT—REPUDIATION AFTER EIGHTEEN YEARS—REASONABLE TIME—IGNORANCE OF RIGHT TO REPUDIATE.

Carnell v. *Harrison* (1916) 1 Ch. 328. This was an action by a married woman to set aside her marriage settlement made, in 1895, when she was twenty years of age. The action was commenced in 1914, and the interests affected by the settlement were reversionary and had not yet come into possession, and there was evidence that the plaintiff was ignorant that she had any right to repudiate the settlement until shortly before action.

Neville, J., who tried the action, held that repudiation could only be made within a reasonable time after the plaintiff came of age, and that the time which had elapsed since then was beyond a reasonable time, and that the action therefore was too late and could not now be entertained, and that the time within which the settlement could be repudiated was not extended by reason of the reversionary interests affected by the settlement not having fallen into possession, and with this conclusion the Court of Appeal (Lord Cozens-Hardy, M.R. and Phillimore and Warrington, L.JJ.) agreed.

TRUSTEE IN DEFAULT—SETOFF OR RETAINER—BENEFICIAL INTEREST OF DEFAULTING TRUSTEE IN TRUST ESTATE.

In re Dacre, Whitaker v. *Dacre* (1916) 1 Ch. 344. The Court of Appeal (Lord Cozens-Hardy, M.R., and Phillimore, and Warrington, L.JJ.) have affirmed the decision of Sargant, J., noted ante p. 68.

LANDLORD AND TENANT—COVENANT TO REPAIR—NOTICE OF BREACH—SPECIFICATION OF BREACH OF COVENANT—ADDITION OF GENERAL CLAUSE—SUFFICIENCY OF NOTICE—CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (44-45 VICT. c. 41) s. 14 (1).—(R.S.O. c. 155 s. 20 (2)).

Fox v. *Jolly* (1916) A.C. 1. This was a case known in the Court below as *Jolly* v. *Brown* (1914) 2 K.B. 100, (noted ante vol. 50, p. 341) in which the House of Lords (Lord Buckmaster, L.C., and Lords Atkinson, Parker, Waddington, Sumner and Parmoor) have affirmed the decision of the Court of Appeal. The case turns on the sufficiency of a notice to repair given by a landlord to his tenant under the Conveyancing and Property Act 1881, s. 14 (1) (see. R.S.O. c. 155 s. 20 (2)) and their Lordships held that the addition to a notice, specifying certain repairs required, of the words "and note that the completion of the items comprised in this schedule does not excuse the execution of other repairs if found necessary" did not invalidate the notice.

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Rway. Com.] [May 2.

TORONTO RAILWAY CO. v. CITY OF TORONTO AND CANADIAN PACIFIC RWAY. CO.

Board of Railway Commissioners—Jurisdiction—Provincial crossing—Dominion railway—Change of grade—Elimination of crossing—Substitution of subway—Public protection and safety—Power to order provincial railway to share in payment of cost—"Railway Act," ss. 8a, 59, 288.

The provisions of the Railway Act empowering the Board of Railway Commissioners to apportion among the persons interested the cost of works or constructions which it orders to be done or made are *intra vires*. On Avenue Road, Toronto, the tracks of the Toronto Ry. Co. crossed those of the C. P. Ry. Co. at rail level. On report of its chief engineer that this crossing was dangerous the Board, of its own motion, ordered that the street be carried under the C. P. Ry. tracks. This change of grade relieved the Toronto Ry. Co. from the expense of maintaining an interlocking plant and benefited it otherwise.

Held, that the order was made for the protection, safety and convenience of the public; that the Toronto Ry. Co. was a "company interested or affected by such order"; and that the Board had jurisdiction to direct that it should pay a portion of the cost of the subway. *British Columbia Electric Rway. Co.* v. *Vancouver, Victoria and Eastern Ry. Co.* ((1914), A.C. 1067) distinguished.

The agreement between the Toronto Ry. Co. and the City of Toronto by which the former was given the right to lay its tracks on certain streets including Avenue Road, did not affect the power of the Board to make said order.

Appeal dismissed with costs.

D. L. McCarthy, K.C., for appellants. *W. N. Tilley*, K.C., for respondent, Can. Pac. Ry. Co. *Calhoun*, for respondent, City of Toronto.

Province of New Brunswick.

SUPREME COURT

White, Barry and Grimmer, JJ.] [27 D. L. R. 2

REX v. FOLKINS; EX PARTE MCADAM.

Obstructing Justice—"Summary Conviction," or "Summ al" —Jurisdiction.

The offence of obstructing a peace officer in the execution of his duty (Cr. Code, sec. 169), is one which may be prosecuted under the "summary convictions" procedure of Part XV. of the Code, or under the "summary trials" procedure of Part XVI., if taken before a magistrate having jurisdiction under both procedures; if the procedure of Part XVI. is followed his jurisdiction will be subject to the consent provided for in Cr. Code, sec. 778, in a province where consent is not dispensed with; but if the procedure of Part XV. (summary convictions), is followed throughout, the magistrate has jurisdiction to try the case and impose the punishment applicable to a "summary conviction," without asking the consent of the accused under Cr. Code, sec. 778.

R. v. *Crossen*, 3 Can. Cr. Cas. 152, *R.* v. *Carmichael*, 7 Can. Cr. Cas. 167, and *R.* v. *Van Koolberger*, 16 Can. Cr. 228, dissented from; *R.* v. *Nelson*, 4 Can. Cr. Cas. 461, and *R.* v. *Jack*, 5 Can. Cr. Cas. 304, considered.

ANNOTATION ON ABOVE CASE FROM D.L.R.

The decision in *Ex parte McAdam*, *supra*, adds another case to the many conflicting decisions as to summary proceedings applicable to the offence of obstructing a peace officer when the prosecution is not taken by way of indictment or by way of the "formal charge" which takes the place of an indictment in Alberta and Saskatchewan. The offence is declared by sec. 169 of the Criminal Code, and is made punishable either on indictment (which includes the "formal charge" before mentioned) or on summary conviction. In addition to this, sec. 773 declares that whenever any person is charged before a magistrate with obstructing a peace officer engaged in the execution of his duty or any person acting in aid of such officer, the magistrate may, subject to the subsequent provisions of Pt. XVI., hear and determine the charge in a summary way. The language of sec. 773 corresponds in this respect with sub-sec. (*a*) of sec. 169. Section 773 includes *inter alia* the offence of assaulting a peace officer in the execution of his duty, which offence is not included in

sec. 169, but in sec. 296. The assault is one of those specially designated as "aggravated assaults," and is indictable but not punishable on summary conviction, as is the wilful obstruction of the officer. Furthermore, sec. 169 includes as an offence punishable either on indictment or on summary conviction the wilful obstruction of any person in the lawful execution of any process against any lands or goods or in making any lawful distress or seizure. That offence is not included in sub-sec. (*e*) of sec. 773 as one of the subjects of a summary trial under Pt. XVI. apart from the extended jurisdiction of sec. 777.

In order to find the procedure to be followed where a summary conviction is sought, reference has to be made to Pt. XV. of the Code, and by sec. 706 Pt. XV. was to apply to every case in which a person committed an offence for which he was liable to be punished on summary conviction, but the application of Pt. XV. was subject to any special provision otherwise enacted with respect of such offence. The question then arose whether sec. 773 should be treated as regards offences which might be punished on summary conviction as subsidiary to the provisions of Pt. XV. or as an independent method of procedure. The weight of authority seems now to be in favour of the latter theory. It is also supported by sec. 798, which declares that, with certain exceptions not material to this question, Pt. XV. shall not apply to any proceedings under Pt. XVI. The list of offences now specified in sec. 773 is one of indictable offences, and there is, consequently, no inconsistency in viewing the procedure of summary trial under Pt. XVI. as an alternative for the procedure by indictment. This was not always the case, as prior to the amendment of 1909, sec. 773 included under sub-sec. (*f*) certain vagrancy offences which were declared the subject of summary conviction, and which were not to be indictable, such as being an inmate or habitual frequenter of a disorderly house. Sub-sec. (*f*) was amended in 1909, and later, in 1915, with the result that no offence is now included in sec. 773 which is not indictable. The officials authorized to hold a summary trial under Pt. XVI. are generally qualified also to hold a "summary conviction hearing" under Pt. XV., and, except where the accused has been asked whether he elects summary trial or not in the terms of sec. 778, in which case the record would shew a consent, if given, it is not easy to ascertain whether the magistrate intended to try a charge of obstructing a peace officer under the procedure of Pt. XV. or that of Pt. XVI. In some of the provinces the jurisdiction of summary trial for the offence was absolute without the consent of the accused: see Criminal Code sec. 776, as to British

Columbia, Prince Edward Island, Saskatchewan, Alberta, North-West Territories and the Yukon.

The forms of summary conviction are Code forms 31, 32 and 33, and the forms of conviction on summary trial are Code forms 55 and 56. The distinction between the two classes of forms is that the latter recite that the accused is "charged" before the magistrate; an expression which does not appear in the summary conviction forms. Of course, where the consent is necessary to summary trial, the bracketed words in forms 55 and 56 indicating that the consent had been given will also appear on a conviction under Pt. XVI. as for the indictable offence.

The question of procedure is made important because of the varying limits of punishment applicable to the different methods of trial. If the accused is convicted on indictment, the punishment may be two years' imprisonment. The term "indictment" includes a formal charge, which under sec. 873A initiates a criminal prosecution in the Supreme Courts of Alberta and Saskatchewan respectively, and takes the place of a true bill found by the grand jury in other provinces.

If the trial takes place under Pt. XVI. before a "summary trials" magistrate acting under sec. 773, the accused is liable on conviction to imprisonment for six months or a fine not exceeding, with the costs in the case, $200, or to both fine and imprisonment: sec. 781, as amended, 1913, Canada Statutes, ch. 13, sec. 27.

If the defendant is found guilty on a summary conviction made under the procedure of Pt. XV., the penalty may be six months' imprisonment or a fine which must not exceed $100, but there is no power to impose both imprisonment and fine. The justices making the summary conviction have, under sec. 735, a discretion to order payment of costs by the defendant to the complainant.

Section 707 provides that where there is no direction as to the number of justices necessary to try the case under Pt. XV., in the law under which the complaint is laid, one justice may do so; but every complaint is to be tried by one justice or two or more justices, as directed by the Act or law upon which the information is framed.

Section 169 makes special provision that a summary conviction under it shall be before two justices, and by sec. 708 such justices shall be present and acting together during the holding and determination of the case. The definition of a "justice" in Code sec. 2, sub-sec. 18, gives it the singular or plural meaning in Pt. XV., according as one or more justices may be necessary

to the jurisdiction in a particular case. Furthermore, it is declared to include also a police magistrate, a stipendiary magistrate, and any person "having the power or authority of two or more justices of the peace." Certain police magistrates and other functionaries are empowered by provincial authority to do alone what the law assigns to be done by two justices, and the power so conferred is what is here referred to and which is adopted in sec. 604 for the purposes of the Criminal Code.

As to these magistrates, section sec. 604, contained in Pt. XII. of the Code, provides, *inter alia*, that every police magistrate, every district magistrate and every stipendiary magistrate appointed for any territorial division may do alone whatever is authorized by the Code to be done by any two or more justices. Similar power is conferred upon every magistrate authorized by the law of the province in which he acts to perform acts usually required to be done by two or more justices.

These provisions of sec. 604 bring within the jurisdiction of a police or stipendiary magistrate offences as to which Pt. XV. is applicable, whether directed to be tried by one justice or by two justices. As to certain offences, any two justices sitting together constitute the statutory tribunal for a summary trial under Pt. XVI.: see sec. 771, sub sec. (*a* 7), and sec. 773, sub-secs. (*a*) and (*f*). Any two justices sitting together have a general power of summary trial in the provinces of British Columbia, Prince Edward Island, Saskatchewan, Alberta, North-West Territories and the Yukon Territory; but in Ontario, Quebec, Manitoba, Nova Scotia and New Brunswick two justices, sitting together, have power of summary trial under Pt. XVI. only in respect of the offences of theft or receiving not exceeding $10 and with disorderly house cases under sub-secs. (*a*) and (*f*) respectively of sec. 773.

As to other offences subject to summary trial in those provinces, the authority is conferred upon police magistrates, district magistrates and other tribunals invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices. Certain functionaries are specially empowered in addition to this provision, such as a Recorder in the province of Quebec, a Judge of a county Court in Ontario, Manitoba, Nova Scotia and New Brunswick. The entire proceedings would have to be looked at to determine in any particular case whether the police magistrate or similar functionary had proceeded under Pt. XV. or under Pt. XVI. upon a charge brought under sec. 169. The inclusion of the words "charged before me," which belong pecu-

liarly to convictions under Pt. XVI., would probably not be conclusive that Part XVI. had been followed; and if it appeared that the summary convictions clauses of Pt. XV. had been invoked in the first instance and their procedure followed, the words "charged before me" might be treated as surplusage.

The better opinion seems to be that Pt. XVI. in no way affects the jurisdiction or the procedure upon a charge which is being prosecuted by a complainant as for an offence punishable on summary conviction, although the same offence might be prosecuted under sec. 773 by way of summary trial before the same official.

In *Rex* v. *West*, 24 Can. Cr. Cas. 249, at 250, 9 O.W.N. 9, Mr. Justice Middleton says:—

"Section 169 creates the offence, and gives to the Crown the right either to try summarily, when a less severe punishment may be inflicted, or, if the Crown thinks the offence is serious enough to warrant an indictment, then, at the Crown's election, the accused may be prosecuted as for an indictable offence, with the result that he has the right of election afforded by sec. 778, and with the consequence that, upon conviction, more serious punishment may follow. The right to choose the mode of prosecution is a right given to the Crown, and not the right of the accused. His sole right is to select the tribunal to try him if the Crown elects to prosecute for an indictable offence.

"The only colour that is lent to the argument for the accused is the mention in sec. 773 (*e*) of this particular crime in the catalogue of indictable offences for which persons may be tried summarily. This, I think does not help the argument, for the whole of Pt. XVI. of the Code, secs. 771 to 799, relates solely to the trial of indictable offences, and sec. 773 (*e*) must relate to cases where the charge against an accused is laid as an indictable offence."

That decision was affirmed by the Appellate Division in *R.* v. *West* (No. 2), 35 O.L.R. 95.

In *Rex* v. *Nelson* (1901), 4 Can. Cr. Cas. 361, Mr. Justice Drake held that the accused could be tried for obstructing a peace officer under Pt. XV., although the charge happened to be brought before a police magistrate having authority under Pt. XVI. To the same effect was the decision of Mr. Justice Walkem, in *R.* v. *Jack*, 5 Can. Cr. Cas. 304, 9 B.C.R. 19, in which he said that there was no ground for upholding the contention that what is now sec. 169 should be controlled by what is now sec. 773. Both of these decisions were in British Columbia,

in which, under sec. 776, the jurisdiction under Pt. XVI. for this offence is absolute without the consent of the party charged. In *R.* v. *Jack* the sentence was six months' imprisonment, and this would be authorized either on a summary conviction or on a summary trial.

In the opinion of Walkem, J., the punishment on summary conviction is limited to that specified in sec. 169. Section 781, providing a different punishment on a trial before a magistrate with the consent of the accused, would have no application where the procedure under the summary convictions clauses was followed. *Semble*, if the charge were for an assault of the officer in the performance of his duty, secs. 773 and 781 would then apply, and not sec. 169, if the magistrate was one having jurisdiction only under sec. 773 and not authorized to act under sec. 777. Where a police magistrate has authority under sec. 777, the limitation of sec. 781 is expressly excluded by sub-sec. (3) of sec. 777.

The theory that sec. 773 limits the power of summary conviction under sec. 169 is supported by a Manitoba case, *R.* v. *Crossen* (1899), 3 Can. Cr. Cas. 152, and was followed by Judge Weatherbe, of the Nova Scotia Supreme Court, in *R.* v. *Carmichael* (1902), 7 Can. Cr. Cas. 167. Both of these cases are disapproved in *Ex parte McAdam*, *supra*. The theory of the *Crossen* case appears to have been that, if it happened that the charge under sec. 169 came on for hearing before an official qualified as a "magistrate" under sec. 771, the procedure of Pt. XVI. became obligatory as regards such magistrate, and was limitative in its effect upon the jurisdiction to make a summary conviction for the offence. In Manitoba, as appears from the reference above made to sec. 771, two justices of the peace, sitting together, had no power of summary trial in respect of this offence, their power of summary trial being limited by sec. 771, sub-sec. (*a* 7), to offences under sub-sec. (*a*) and (*f*) of sec. 773, while the offence here dealt with, of obstructing a peace officer, is contained in sub-sec. (*e*) of sec. 773. Two justices in Manitoba, sitting together, would, by the express terms of sec. 169, have power to make a summary conviction, but would not have any general power of summary trial under Pt. XVI. The Court of Queen's Bench of Manitoba said, in effect, that, no matter what two justices might be able to do under sec. 169, a police magistrate or other functionary who was a summary trials magistrate under sec. 771, did not necessarily have the same power, and that upon a person being charged before him with an offence under sec. 169, sec. 773 at once applied to compel him in hearing

the charge "in a summary way" to do so subject to the subsequent provisions of Pt. XVI., and consequently to take the consent of the accused under sec. 778.

Still another theory was advanced in *R.* v. *Van Koolberger*, 16 Can. Cr. Cas. 228, 19 Que. K.B. 240, in which it was held that the procedure of Pt. XVI., including the provision of sec. 778 for the defendant's election or consent to be tried summarily, applied to a charge under sec. 169 brought before two justices in the province of Quebec who would have no power of summary trial for an indictable offence except under sub-sec. (*a* 7) of sec. 771 for theft not exceeding $10 and in respect of certain disorderly house cases. Mr. Justice Cross there held that as authority is given to two justices to try such charge by Code sec. 169, and the offence is specifically named in Code sec. 773 (*e*), the accused is "charged before a magistrate" within the terms of sec. 773, although two justices in Quebec province are not constituted a statutory magistrate under Code sec. 771, except as to certain other offences named in sec. 773, paragraphs (*a*) and (*f*). He further held that the decision of the two justices in such a case is a "summary conviction," and subject to appeal as such, although the procedure of Part XVI. (Summary Trials) is applicable under Code sec. 706 as a "special provision otherwise enacted with respect to such offence": *R.* v. *Van Koolberger, Van Koolberger* (appellant) v. *Lapointe* (respondent), 16 Can. Cr. Cas. 228, 19 Que. K.B. 240.

As pointed out in *Ex parte McAdam*, *supra*, and in Daly's Criminal Procedure, 2nd ed., 386, the decision in *R.* v. *Crossen* may have been influenced by the circumstance that, for some reason not disclosed, the Crown was not seeking to sustain the conviction in that case.

It is submitted with deference that the most consistent theory amongst the various opinions referred to in these conflicting cases is the one to which effect is given in *R.* v. *West*, 24 Can. Cr. Cas. 249, 9 O.W.N. 9 (affirmed on appeal), and in *Ex parte McAdam*, *supra*, by Mr. Justice White of the New Brunswick Court.

The provision as to summary trial by a police magistrate for the offences stated in sec. 773 with the defendant's consent is one which originated in Ontario, and was extended, with various limitations as to the functionary upon whom this judicial power was conferred, to the other provinces of Canada. The summary trials provisions of sec. 773 are to be viewed as entirely independent of the power of summary conviction. While, prior to the amendment of 1909, some offences were specified which

were not indictable, the general scope of Pt. XVI. was always for the trial of minor indictable offences, and in its present form it embodies no offences but those which are indictable. The system of summary trial under Pt. XVI. bears the general heading "Summary trial of indictable offences," and its provisions are to be entirely disregarded in pursuing a prosecution as for an offence punishable on summary conviction. Prosecutions for indictable offences are matters peculiarly under the control of the Crown authorities, but where anindictable offence is also made punishable on summary conviction as an alternative method of procedure, a private prosecutor is enabled not only to initiate a charge, but to carry the same forward to its ultimate hearing and disposition. He is the plaintiff in the proceedings, and has a status to be awarded his costs of the prosecution as against the defendant in case the latter is convicted.

It will be seen from this that the application of Pt. XVI. in limitation of the power of two justices or of a police magistrate to make a summary conviction would have the effect of depriving a private prosecutor of a substantial remedy which he has under Pt. XV. in advancing his own cause of complaint against the defendant for an infraction of the criminal law under sec. 169. It may, of course, be that his prosecution might be superseded by the action of the Crown authorities in intervening in his proceedings under Pt. XV., but that is quite a different matter from being dependent entirely upon the Crown authorities to prosecute his sworn information before a magistrate, as he would be dependent in many jurisdictions in Canada if Pt. XVI. has the limitative effect indicated in the *Crossen* case.

If the only information before the magistrate is one laid by the peace officer or other party aggrieved in which he expressly asks a trial under the Summary Convictions Act (Code Part XV.), being satisfied to have the lesser punishment imposed which is applicable to that procedure, it may be doubted whether the magistrate would have any authority to turn the case into a "summary trial" under Part XVI. without the prosecutor's consent, or to proceed with a preliminary enquiry and committal for trial without a fresh information. See *Ex parte Duffy*, 8 Can. Cr. Cas. 277; *Re McMullen*, 20 Can. Cr. Cas. 334, 8 D.L.R. 550; *R.* v. *Mines* (1894), 1 Can. Cr. Cas. 217, 25 Ont. R. 577, *R.* v. *Lee*, 2 Can. Cr. Cas. 233; *R.* v. *Shaw*, 23 U.C.Q.B. 616; *R.* v. *Dungey*, 5 Can. Cr. Cas. 38, 2 O.L.R. 223.

SUPREME COURT OF CANADA.

ALTA.] SOUTHERN ALBERTA LAND CO. v. RURAL MUNICIPALITY OF MCLEAN. [May 2.

Municipal corporation—Assessment and taxation—Exemptions—Crown lands—Allotment for irrigation purposes—Ungranted concession—Construction of statute—Constitutional law—Words and phrases—"Land"—"Owner"—"Occupant"—B.N.A.Act, 1867, s. 125—Alberta Rural Municipality Act, 3 Geo. V., c. 3.—Irrigation Act, R.S.C., 1906, c. 61.

Under sections 249, 250 and 251 of the Alberta Rural Municipality Act, 3 Geo. V., chap. 3, as amended by section 30 of the statutes of Alberta, 4 Geo. V., chap. 7, the allottee of lands for irrigation purposes, under the Irrigation Act, R.S.C., 1906, chap. 61, which continue to be Crown lands of the Dominion of Canada, is an "occupant" of "lands" within the meaning of those terms as defined by the interpretation clauses of the Rural Municipality Act and has therein a beneficial and equitable interest in respect of which municipal taxation may be imposed and levied. Such interest is not exempt from taxation under sub-section 1 of section 250 of the Rural Municipality Act, nor under section 125 of the British North America Act, 1867. *Calgary and Edmonton Land Co.* v. *Atty. General of Alberta*, 45 S.C.R. 170, and *Smith* v. *Rural Municipality of Vermilion Hills*, 49 S.C.R. 563, applied.

The Chief Justice and Duff, J., dissented.

Per Fitzpatrick, C.J.—Sections 250 and 251 of the Alberta Rural Municipality Act make no provision for the assessment and taxation of an interest held in lands exempted from taxation.

Per Anglin, J.—The provisions of the Alberta Rural Municipality Act relating to assessment and taxation which could affect such lands as those in question deal only with interests therein other than that of the Crown and their value.

Judgment appealed from, 23 D.L.R. 88; 31, West. L.R. 725, affirmed, Fitzpatrick, C.J., and Duff, J., dissenting.

I. C. Rand, for appellants. *Chrysler*, K.C., for respondent.

Book Reviews.

The Grotius Society. Problems of the War. Papers read before the Society in the year 1915. London: Sweet and Maxwell. 3 Chancery Lane, 1916.

Judging from the lucid and learned papers that appear in this volume, we may well expect that the Society will be a valuable exponent of the principles of International Law when the nations now at war are settled down to a consideration of such matters. At present theories do not interest us.

This Society was formed last year, and the book before us is the first volume of its proceedings. The object of the Society, as set forth in the introduction, is to afford opportunity to those interested in International Law to discuss from a cosmopolitan point of view the acts of the belligerents and neutral States, in the present war and the problems to which it is almost daily giving birth. The President is Lord Reay, K.T.; the Secretaries being H. H. L. Bellott, B.C.L., and Malcolm Carter.

A treatise on the Modern Law of Evidence. By C. F. CHAMBERLAYNE, Volume 5. Albany, N. Y.: Matthew Bender & Co. 1915.

This volume is devoted to that branch of the law styled "Media of proof." The author desires to indicate the means by which evidence is brought to the attention of a tribunal, such as through public documents, judicial records, private documents and writings, etc.; dealing also with attendance of witnesses and their competency, privileged communications, etc. It concludes this important contribution to the law of evidence by a Table of Cases cited, and an Index covering the whole five volumes.

Modern French Legal Philosophy. By GIORGIO DEL VECCHIO, translated by JOHN LISLE, with an editorial preface by Joseph H. DRAKE. Boston: The Boston Book Company, 1914.

We cannot pretend in these strenuous times to devote the attention which it deserves to such a learned work as this. The first part is one that at present will probably interest our readers most, as it reviews the general characteristics of French legal thought. The gallant race that is now holding back the barbarian border is, of course, much in our thoughts at the present time; but it is to their activities on the field of battle and not to their philosophy that we now render homage. When the war is over this volume will find its appropriate place.

War Notes.

LAWYERS AT THE FRONT.

The following additions are to be made to lists already published:—

ONTARIO.

Students:—Lieut. T. S. H. Stone, Sault Ste Marie, 119th Battalion; Lieut. R. Bethune, Toronto; B. K. Johnston, Toronto, 12th Brigade; Lieut. P.H. Chrysler, Ottawa, Ammunition Column; Lieut. Goldwin Gregory, Toronto, A. S. C. Imperial Army; R. L. Taylor, London, No. 10 Stationary Hospital; G. A. Johnston, Toronto, 67th Battery C.F.A.; Sub-Lieut. B. V. McCrimmon, Toronto, Auxiliary Patrol M.B.S.

Barristers:—Lieut. Hugh C. Cameron, St. Thomas, 91st Battalion; Lieut.-Col. P. T. Rowland, Sault Ste. Marie, 119th Battalion: W. E. Brown and E. A. McMillan, 227th Battalion; Major E. P. Brown, Toronto, 123rd Battalion; John Creighton, Toronto, Sergeant, 139th Battalion.

SASKATCHEWAN.

Lieut. J. E. F. Stewart, Edmonton, 177th Battalion.

KILLED IN ACTION.

Major-Gen. Malcolm S. Mercer, Toronto.—We much regret to note this name among those who have given their lives for King and Country. He left Canada in command of the 1st Ontario Brigade and was subsequently appointed to command a Division. He was one of the very best and most highly trained officers representing Canada at the front. He was killed in the fighting at Sanctuary Wood on June 2.

H. E. B. Platt, Toronto, Student; May, 1916.

A. N. P. Morgan, New Liskeard, Barrister; May 24, 1915.

T. E. Kelly, Toronto, Student; July, 1915.

Herbert B. Daw, Hamilton, Barrister.

T. Seton Gordon, Owen Sound, Student. Died of wounds, Jan. 22, 1916.

Lieut. G. L. B. MacKenzie, 3rd Battalion, Student; June 7. He was the son of Geo. A. MacKenzie, Barrister, Toronto.

"When England can look out on the future with numbless eyes and a prayer on her lips, then we can begin to count the days towards the end."—Vice-Admiral Sir David Beatty, K.C.B.

Bench and Bar

HIS HONOUR JUDGE WILLS.

Judge Wills presided for the first time at the Belleville Division Court to-day and disposed of a substantial docket of cases. At the opening of the Court, Colonel W. N. Ponton, K.C., offered, on behalf of the Bar, hearty congratulations to his Honour, and expressed the belief that with mutual confidence and co-operation, and an understanding born of old friendship and association, the relationship between the Judiciary and the Bar would be most pleasant, and the dignified and prompt administration of justice would be assured. He suggested that, as the soldier was the "man behind the gun," so the Judge was the "man behind the flag" and that the flag should fly on the Court-house during all sittings of Division Courts, as during the sessions of the High Court. Mr. F. E. O'Flynn and Mr. E. J. Butler also spoke along similar lines, expressing their anticipation of a continuation of the pleasant conditions that prevailed while his Honour was practising with his brethren of the Bar. Judge Wills made a most felicitous reply, thanking the Bar for their good wishes and confidence expressed and assuring them that he would administer justice with the same integrity which he hoped had characterized the practice of his profession in the past. He would leave nothing undone which a Judge should do, and would bring his best efforts to bear, with the members of the Bar, to carry out the principles of justice and equity in the Courts. He quite approved of the suggestion of Col. Ponton as to the flag, and would direct that in future it should fly on the Court-house as the symbol of the law as well as the power of the Empire.—*Belleville Intelligencer.*