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## *ATTACHMENT AND COMMITTAL.*

Rule No. 545 of the Consolidated Rules of Practice of the Supreme Court of Ontario provides that, "a judgment requiring any person to do any act other than the payment of money, or to abstain from doing any thing, may be enforced by attachment or committal."

It was said by Chitty, J., in *Callow* v. *Young*, 56 L.T. 147, that "committal was the proper remedy for doing a prohibited act, and attachment was the proper remedy for neglecting to do some act ordered to be done." This distinction if it ever really existed, is now done away with by Rule 545. On what reason the alleged distinction was based was not stated by the learned Judge, and it is not apparent.

It must be admitted, however, that it is not very clear in what circumstances an attachment is now the proper remedy, and in what circumstances a committal should be sought.

A glance at the form of a writ of attachment and an order of committal may perhaps assist in leading to a proper conclusion.

Form No. 120 shews that a writ of attachment requires the sheriff to attach the person named "so as to have him before our Justices . . . then and there to answer to us as well touching a contempt which he, it is alleged, hath committed against us, as also such other matters as shall be then and there laid to his charge."*

The order of committal on the other hand directs that the party in contempt do stand committed to gaol for his contempt (*specifying it*).

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*Compare this with the *ca. re* in a civil action: Tidd's Forms (6th ed.) 42.

It will be seen that while the latter proceeds on a definite adjudication of contempt: the writ of attachment is more in the nature of a summons to shew cause. The party is to be brought before the justices to answer his *alleged* contempt. Should he attempt to answer and fail to make out any defence, then, strictly speaking, an order of committal should be made.

It may be well asked how did these two proceedings come to be in a measure confounded with each other. We can only offer a conjecture. An attachment being issued against a party for contempt and he being in custody, if he desired to shew cause he would have to obtain, according to the ancient procedure, a *habeas corpus cum causa,** and on the return of that writ apply for his discharge by shewing that he had not been guilty of the contempt charged. If, however, he had in fact no cause to shew, there would obviously be no object in incurring the expense of a *habeas corpus,* and he would remain in custody under the attachment as if there had been a formal adjudication made against him. In this way an attachment would come to have the same effect as a committal and the distinction between the two proceedings would be apt to be lost sight of.

Under the former procedure in Chancery, attachments were in some cases issuable on praecipe as of course. These were cases in which the contempt appeared by the records of the Court, as, for instance, where an affidavit was required to be filed, and no affidavit was in fact filed, or the alleged contempt appeared by affidavit filed. There the contempt was *primâ facie* made out and the writ issued as of course, without any formal adjudication. But in such a case it would be competent for the party attached to rebut the *primâ facie* case of contempt, and to shew if he could that he was in fact guiltless. The attachment would not be conclusive evidence of contempt any more than a *ca. re* would be evidence that the defendant was liable to the plaintiff as alleged. But in the case where a party in contempt was not liable to be attached in this summary way and a

*See Tidd's Forms (6th ed.) 130.

formal adjudication of his being in contempt was necessary, then it would appear that the proper proceeding was as it is now to apply to commit him, and on the return of the motion he would have an opportunity to make his defence and if he failed, then the order to commit would not be in the nature of a summons to shew cause, but a definite adjudication that he was in contempt, which would be irrebuttable, and the only remedy would be by way of appeal, if any.

The same line of reasoning would appear to be applicable in cases where it is sought to punish contempts by strangers to a cause as, for instance, for publications interfering with the course of justice, or other contempts committed outside the Court, the proper motion would appear to be to commit and not a motion for attachment—unless the application is for any reason made *ex parte*. Cases might arise where, if a notice of motion were served, the offending party would possibly elude justice and the Court might see fit on an *ex parte* application to grant an attachment, but an attachment would not, in such circumstances, be a conclusive adjudication, whereas an order for committal made on notice would be so.

Seeing, however, that a writ of attachment can no longer in any circumstances be issued without the leave of the Court; it seems to be open to question whether the writ should any longer be in its present form, No. 120, except only where it is issued *ex parte*. When issued after notice, it is issued as the result of an adjudication that the party to be attached is in fact in default, and it ceases therefore to be appropriate to call on him to *answer* his *alleged* contempt and the writ should rather take the form of a committal for a designated contempt.

Some years ago some articles appeared in the *Law Quarterly Review* (see 25 L.Q.R.) in which it was sought to cast doubt on the right of the Court to exercise a summary jurisdiction in cases of contempt, and in which it was suggested that the ancient and proper procedure was by information. But the procedure by attachment would appear to be in strict analogy

to the ancient procedure in civil suits at Common Law. The first proceeding in which was the *capias ad respondendum*. In case of offences against the Court itself, the first proceeding by analogy is to attach the offender and bring him before the Court to *answer*, that is to make his defence, if any.

In case of offences committed in the face of the Court, that is tantamount to a conviction, and an order of committal properly follows.

If what has been said above shews the true distinction between an attachment and committal, the following line of action would appear to result. Where the application against a party in contempt is made *ex parte* for his arrest, it should be for an attachment: where it is made on notice of motion it should be for a committal.

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## *THE LEGAL ASPECT OF MILITARY SERVICE IN CANADA.*

There is apparently some ignorance or misconception in this country as to liability for military service.

The existence, moreover, of the Militia Act as part of the law of the land is unknown to many, and its provisions have, up to the present time, been ignored, whether wisely or not it is not for us to say. It was originally framed in times of stress such as are upon us at present, and was from time to time changed and its scope enlarged to meet new conditions when emergencies seemed to render it wise to do so.

It is not the province of a legal periodical to discuss or analyse the motives or the hidden springs of action which have caused a certain class of journalists and public speakers to denounce what they call "militarism"; but it is our duty to direct attention to what is undoubtedly the law; a law which, if carried out according to the spirit of it would, in the opinion of many, best provide at the present time for the defence of Canada and the protection of Imperial interests.

The Militia Act, chapter 41 of the Revised Statute of Canada, is a re-enactment, with amendments, of the Militia Act passed by the Dominion Parliament in 1867-8 (31 Vict. c. 40). In the old Province of Canada a Militia Act was in force for many years, and eventually became chapter 35 of the Consolidated Statutes of Canada. That Act fully recognized the liability of the population to military service.

By section 75 of that Act military service was limited as follows: The militia, when called out, "may be marched to any part of the province or to any place without the province, but conterminous therewith, where the enemy is." Obviously the service would be confined to North America, and would not extend overseas.

The Act (31 Vict. c. 40) extended the liability; section 61 enacting that "Her Majesty may call out the militia or any part thereof for actual service either within or without the Dominion at any time." Section 69 of R.S.C. (1906) defines the liability as follows: "The Governor-in-Council may place the militia, or any part thereof, on active service anywhere in Canada, and also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency."

So long as Canada remains a part of the British Empire "the defence thereof" may depend, as it depends at present, on the success of military and naval operations carried on far beyond its borders. If the words "for the defence thereof" are to be construed as meaning a defence of the actual land surface of the Dominion, the force of the enactment is practically the same in its limitations as the old Consolidated Statutes of Canada, that is to say, its force would be confined to North America.

The unhappy word "emergency" used in section 69 leaves an opening for discussion as to what constitutes an "emergency." We have seen in our recent history a denial that at that time an emergency did exist. Whether it did or did not is immaterial, as there is clearly an emergency now.

Some may still contend for the narrow construction of the section, while those who claim a larger vision will assert that the operation of the section extends to occurrences beyond an actual attack on our Canadian frontier.

As to the individual liability of our male population for military service section 15 of the present Act their liability to serve shall be divided into four classes: "Class 1, shall comprise those of 18 years and upwards but under 30, unmarried or widowers without children. Class 2, all those of the age of 30 and upwards but under 45, unmarried or widowers without children. Class 3, all those of the age of 18 and upwards but under 45, married or widowers with children. Class 4, all those of 45 and upwards but under 60. The said several classes shall be called upon to serve in the order in which they are referred to in this section."

This is a prudent and sensible classification, but by reason of the volunteer system has up to the present not been acted upon. There may be good reasons for a departure from it owing to special circumstances; but the directions contained in the Act are directory and not permissive.

Section 25 of the Act enacts that "the Governor-in-Council shall from time to time make all regulations necessary for the enrolment of persons liable to military service, and of cadets, and for all procedure in connection therewith, and for determining, subject to the provisions of this Act, the order in which the persons in the classes fixed by this Act shall serve."

The words "the classes fixed by this Act" shew clearly that class 1 shall be exhausted before class 2 is taken, and so on in the order of the Act. During this war very many married men have gone to the front leaving their families to be maintained by the public, while too many of the unmarried men have not enlisted and have remained at home. How far this abstention from service is due to pacificist instruction it is not our province to say. Whatever the cause the result has been a departure from the Act. The volunteer system, admirable in many ways, is to be credited with this departure. It is not for us to

discuss here whether this system has on the whole worked well; but, when the strain comes, as it has come, and the fighting material of the country is called upon, it certainly is worth considering whether the wise provision of the Militia Act should be ignored.

As to the power to enrol men, section 26 of the Dominion Act reads as follows: "When men are required to organize or complete a corps at any time, either for training or for an emergency, and enough men do not volunteer to compiete the quota required, the men liable to serve shall be drafted by ballot. If there are inscribed on the Militia Roll more than one son belonging to the same family residing in the same house, only one of such sons shall be drawn, unless the number of names inscribed is insufficient to complete the required proportion of service men." This section has not been put into force, and the country has depended upon voluntary enlistment. The result has been that very often all the sons of one family feel it their duty to enlist, whilst all the sons of another family stay at home. Surely it is simple justice that the burden of defending their common country should be divided.

The period of service is defined by section 73 of the Dominion Act as follows:—

"73. In time of war no man shall be required to serve in the field continuously for a longer period than one year; provided that,—

"(a) Any man who volunteers to serve for the war, or for a longer period than one year, shall be compelled to fulfil his engagement; and

"(b) The Governor-in-Council may, in cases of unavoidable necessity, of which the Governor-in-Council shall be the sole judge, call upon any militiaman to continue to serve beyond his year's service in the field for any period not exceeding six months.

"(2) This section shall not apply to the permanent force."

Taking the sections of the Act as we have stated them it is clear that the duty of every man to defend his country is fully

recognized and amply provided for. In times of peace the volunteer force has been accepted as sufficient for all practical purposes and has been in many ways beneficial and supplied a felt want. Whether it is a sufficient substitute for the provisions of the Militia Act in what His Majesty calls a "grave crisis," such as now exists, is another matter.

The Government has, up to the present time (as to whether this has been wise or not it is not for us to discuss), continued the voluntary system, and paid no attention to the Militia Act. Of course it is true that the quickest way to get trained men (or at least partially trained men) to the front was at once to take advantage of the volunteer system as it was; and the work of the militia department was done promptly and efficiently; so that in that regard, in our unprepared condition, we owe much to the volunteers.

The men of class 1 have not responded to the call as they should. Many stand by and look on and shout, but stay at home and see men with wives and children going to the front and feel no shame. The application of the Act would put the burden where it belongs. We want a survival of the fittest and the fittest are those who are willing to leave wife and children, and if necessary to go to their death for the sake of their country. These feel compelled to go because somebody must go and those who ought to go first too often will not. If the young men of class 1 who so far lag behind were compelled to go the married men and others in classes 2, 3, and 4 would not be required, though they would still be ready when their turn came. Recruiting speeches appeal to the patriotic conscience, but they find no response from the slackers and shirkers; whilst the call is an impelling force to a lover of his country, even though he may have a wife and a child.

The Empire is and has been at war since August 4, 1914, and all the British Dominion and dependencies, including Canada, have been and are de jure and de facto at war also. If ever the Militia Act as part of the law of the land is to come into

force it should be now, and there are very many who think the time has come.

The subject is a most difficult one and our duty from a journalistic point of view is done when we have called attention to a statute which is not only unrepealed, but would seem to meet the occasion. The Act is one of the most important on the statute book; and, as the public is not familiar with it, it is most desirable that it should be fully discussed.

## *JUDICIAL CHANGES IN ENGLAND.*

According to our English exchanges the legal world has suffered a great loss by the death of Sir John Farwell, one of the Lords Justices of Appeal, and for a short time a member of the Judicial Committee of the Privy Council. He was highly appreciated as a judge and as a lawyer. His name recalls the famous *Taff Vale* case (1901, A.C. 426), which won for him celebrity in the outside world.

Our exchanges also record with great regret the death of Sir Thomas Bucknill, who recently retired owing to ill-health. He is thus described by one writer: "He was not a great lawyer, and he never pretended to be one. But he was the most human of men, a good sportsman and a most loyal friend; and he displayed on the Bench the same sympathy and kindliness towards witnesses and the public which endeared him to his comrades on circuit and in private life."

## *THE LAWS OF WAR IN ANCIENT AND MODERN TIMES.*

As a matter of history as well as a matter of comparison it is interesting to refer to the rules of war in ancient Greece, before Christianity, and compare them with the practice of war in this 20th century. We make some quotations from a writer on this subject. In an article by Mr. Gustave Glotz in the *Revue de Paris* this learned writer begins by telling us that the conduct of the Greeks in dealing with smaller States was sometimes as barbarous as the treatment by the Germans of the Bel-

gians; but the Athenians had the grace to admit that they were acting in direct opposition to the litera scripta of their own great writers.

Polybius underlines the answer which had already been given by Socrates. Thus writes the friend of Scipio: "A generous people takes up arms against a people even criminal, not to destroy and exterminate them but to redress and cause restitution to be made for wrongs; not to embrace in the same chastisement the guilty and the innocent, but more with the idea of sparing and saving with the first those who do not seem so": Book V., s. 14.

Thucydides had declared that a war, necessary and wise, had for its object the establishment of peace, and Aristotle without qualifications pronounced "war has for its end peace": Politics, IV., ss. 13, 16. The declaration of Polybius has been quoted in the introductory paragraph.

All arms are not lawful, nor are all ruses. Strabo mentions an ancient treaty by which Chalcis and Eretria agreed not to employ certain projectiles: Strabo X., ss. 1, 12. Polybius regrets the time when it was reciprocally agreed not to conceal or to use arms concealed, nor arrows shot from afar when the belligerents were engaged in a hand-to-hand fight, and he concludes that when such deception became a necessity there must have been bad generalship to account for it.

As to the treatment of non-combatants the question was more complicated, though the principles were always the same. The difference between ancient to modern times in this respect largely arose from the practice in those days of making slaves of the conquered. The writer continues: "The old law, however, which placed the property of the enemy at the discretion of the invader did not authorize pillage or sacking. This is how Plato determines the rights of the invader in Greek territory: 'When thy soldiers have Greeks as enemies, do you permit them to devastate the fields or to burn the houses? I would permit neither the one nor the other, except to bring in the year's harvest. As they are themselves Greeks, they do not wish to devastate Greece,

nor to burn the dwellings, nor to treat as enemies the whole population. . . . The conquerors shall content themselves with rescuing the crops for the vanquished, in the hope that they will thereby reconcile them, and that the vanquished will not enter upon war again' ": Plato, Republic, V., s. 16.

Polybius had certainly inspired Plato as to the foregoing, for he had written: "I do not at all approve of those who permit themselves to be carried away against people of the same race, not only in pillaging the annual crops of the enemy, but in destroying the trees and all stock, without shewing any regret."

Polybius elaborates the foregoing when he writes, and he always intends to be pragmatique (vide History, I., ss. 2. 8: "To devastate a country for years is a cruelty; to spare the towns, when their destruction is not absolutely necessary, is a law of humanity": Polybius, XXIII., s. 15, 1, 2.

These laws, however, did not prevent rapacity or ferocity among the victors, and the temples, like cathedrals of our own time, were not immune. But Polybius declared himself in no uncertain language against these acts, which, in his opinion, were contrary to the laws of war.

Not less severe is Polybius on Philip V. of Macedon, when this King by way of reprisals burned the Temple of Thermæ, for he writes: "By the robbery of the offerings he committed sacrilege against the gods, and by the violation of the laws of war he rendered himself guilty before men."

Polybius gives the following résumé of what is permitted and forbidden by the usages of war.

"To take from the enemy and destroy his fortresses, ports, towns, soldiers, vessels, crops—in a word, to do everything which he can to weaken his adversary and to give effect to his own plans and operations—is a thing which the laws and the right of war constrain us to do. But without any hope of augmenting our own forces or of diminishing those of the adversary for the pursuit of wars, to destroy wantonly the temples with the statues, and all other sacred objects, is it not an act of blind passion and maniacal rage?" Polybius, V. ss. 11, 3, 4.

Incidentally M. Glotz mentions that the Greeks possessed a system of international arbitration.

Concluding, M. Glotz asserts that whenever the powers shall meet to draw up a new code of international law, they will find precedents from the Greeks, and even at this moment we can say with Plato: "It is not necessary to prolong the struggle beyond the moment when the wrongdoers shall be compelled by the innocent, weary of suffering, to give satisfaction": Plato, Republic, V., s. 16.

We may well assume that Plato's injunction will be carried out when Germany sues for peace. But it is equally sure that the struggle will be prolonged until the time arrives when the great principles for which the allies are contending has been fully vindicated.

## *LIABILITY FOR SPREAD OF FIRE.*

How far is a man who lights a fire on his own land liable for damage done by the fire spreading to his neighbour's land? It appears not to be settled whether the neighbour can recover damages against the lighter of the fire in the absence of some degree of negligence in the latter. One way of stating the question would be: Is the liability to the injured neighbour an absolute one and within the rule of *Rylands* v. *Fletcher* (1868), L.R. 1 Exch. 265, 3 H.L. 330, or does it depend on proof or presumption of negligence?

The principle of *Rylands* v. *Fletcher* is thus stated in the words of Blackburn, J.: "The person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, is primâ facie answerable for all the damage which is the natural consequence of its escape." *Rylands* v. *Fletcher* had to do with water and the damage done by its escape from a reservoir, and Blackburn, J., gave as instances of the application of the above rule the damage done by escaping cattle, by the influx of filth into a cellar, and by the diffu-

sion of fumes and noisome vapours from alkali works. Singularly enough, fire (a fairly obvious danger to neighbours) is not mentioned. That the rule does apply to fire is shewn by the cases of *Jones* v. *Festiniog Railway Co.* (1868), L.R. 3 Q.B. 733, and *Powell* v. *Fall* (1880), 5 Q.B.D. 597, both relating to the lighting of grass by sparks from an engine. The subject of liability for the escape of fire is, however, dealt with in more than one statute, and occupies rather a place by itself both in statutes and in the common law.

With respect to the common law the better opinion seems to be that the liability for spread of a fire lighted on one's own premises was absolute and did not depend on negligence. In an old case in the Year Books—*Beaulieu* v. *Fingham*, 2 Hen. 4. 18. pl. 5—the custom of the realm is thus stated: Secundum legem et consuetudinem regni nostri Angliæ . . . quilibet de eodem regno ignem suum salvo et secure custodiat, et custodire teneatur, ne per ignem suum damnum aliquod vicinis suis ullo modo eveniat. A statute of Anne dealt with this question, and finally came the Fires Prevention (Metropolis) Act, 1774 (14 Geo. III., c. 78), which, by section 86, enacted that no action should be brought "against any person in whose house, chamber, stable, barn or other building, or on whose estate any fire shall . . . accidently begin, nor shall any recompense be made by such person for any damage suffered thereby."

This enactment has been held not to apply to cases where a fire has been intentionally lighted and has then spread to a neighbour's land: *Filliter* v. *Phippard* (1847), 11 Q.B. 347. Where, therefore, an ordinary occupier of land has himself (or by his servants or agents) lighted the fire, the question whether his liability for damage done to his neighbour is absolute, or qualified by the necessity for proving negligence, must still be governed by the rules of the common law, and by decided cases, independently of statute law. It should be noticed that fires from engine sparks come under the Railway Fires Act, 1905. In *Filliter* v. *Phippard*, supra, it was also held that section 86

of the Act of 1774 does not apply where a fire is caused by negligence, and the plaintiff in that case recovered by reason of negligence on the part of the defendant's servants in lighting and managing the fire. There appears to be no modern case of authority in the English reports, deciding that a man who lights a fire on his own land is liable absolutely to his neighbour for damage done by the spreading of the fire to the latter's land, independently of negligence. There are cases to the contrary in the American reports, and negligence is, in the United States, held to be the gist of the cause of action. The English text books also are divided on the subject.

Of these text books it will be sufficient to refer to two. In the 6th edition (1912) of Clerk and Lindsell's Torts, p. 470, it is said: "The making of a fire involves the bringing on land of something not naturally there, and therefore the owner of the fire is bound to keep it in at his peril," and a person who kindles a fire is by the common law "absolutely liable to others whose property was injured by such fire spreading." The contrary opinion will be found expressed in the 3rd edition (1912) of Salmond's Law of Torts, pp. 224-226. The author summarizes his conclusion by saying that the occupier of land from which fire escapes is liable if the escape is due to negligence, but "he is not responsible for the act of a stranger, or for damage which is not caused by negligence on the part of any one."

The divergence in the views of the text writers is reflected in the cases on the subject that are to be found in the Colonial reports. Support can be found in these reports for each view. Under these circumstances the English practitioner may usefully peruse the latest of these oversea cases, in which the Supreme Court of South Australia has expressly decided that the rule of English law now is that the person who lights a fire on his own land does so at his own peril, and must answer for the consequences, unless he can shew something extrinsic analogous to vis major. Thus the position adopted in Clerk and Lindsell's

Torts (supra) is upheld as against the view that negligence constitutes the gist of the action for damage.

The South Australian case referred to is *Young* v. *Tilley* (1913) S.A.R. 87, and a very short summary of the report may be found useful and instructive. The defendant lighted a fire on his own land—a tract of country land covered with grass—and the grass caught fire and spread to the grass on the plaintiff's land. The fire was lighted in an iron receptacle—a proper outdoor fireplace—and it was found as a fact that there was no negligence at all on the defendant's part. The liability of the defendant under these circumstances was argued as a point of law before the Supreme Court of three judges. The arguments for and against the absolute liability of the defendant were dealt with at some length in the leading judgment, and in the result it was held that the defendant was liable, and that the fire was not "accidental" within the meaning of section 86 of the Act of 1774. Most of the English authorities were referred to, and the decision of the South Australian court would probably commend itself to the English courts should a similar question come before them.

Ten years ago the law was laid down to the same effect in New Zealand by the Court of Appeal in *Kelly* v. *Hayes* (1902) 22 N.Z.R. 429, and it was there held "that if a person lights a fire on his own land, he must at his peril prevent it spreading to the land of his neighbours." This case was not referred to in *Young* v. *Tilley*, but a Canadian case (*Furlong* v. *Carroll* (1882) 7 Ont. App. 145) was referred to in argument in support of the view that some degree of negligence is necessary in order to fasten liability on the person lighting the fire. In that case, however, the injured neighbour was able to shew a certain amount of negligence in the defendant's conduct, he having thrown a burning match on to some dry stubble. The New Zealand case and the South Australian case above referred to seem to be the only instances of express decision in modern British courts that the liability of a person lighting a fire is absolute.—*Solicitors' Journal.*

## REVIEW OF CURRENT ENGLISH CASES.

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COSTS—MARRIED WOMAN—LIABILITY OF MARRIED WOMAN TO BE PERSONALLY ORDERED TO PAY COSTS—ABSENCE OF SEPARATE PROPERTY.

*Kennard* v. *Kennard* (1915) P. 194. This was a divorce suit by a wife, who was at the time herself living in adultery. She obtained a decree *nisi* by concealment of facts, which, on the intervention of the King's Proctor, was now rescinded, and the question argued was whether the petitioner could be personally ordered to pay the costs of the King's Proctor, it not appearing that she had separate estate. The Matrimonial Causes Act, 1878, empowers the Court to make such order as to the costs of the King's Proctor as may seem just. Deane, J., was of the opinion that the Court had jurisdiction to order a married woman to pay costs whether it was shewn that she had separate estate or not, and in this case the petitioner having, as the learned Judge puts it, "had the impudence to come and ask for a decree *nisi* when she was habitually committing adultery," he thought it was a proper case to order her to pay the King's Proctor's costs, which he accordingly did.

POWER OF APPOINTMENT—POWER TO A AND B JOINTLY BY DEED, AND SURVIVOR BY WILL—RESERVATION OF POWER OF REVOCATION BY DEED TO APPOINTORS AND THE SURVIVOR—SUBSEQUENT REVOCATION AND NEW APPOINTMENT BY SURVIVOR BY DEED—VALID REVOCATION—INVALID APPOINTMENT.

*In re Weightman Astle* v. *Wainwright* (1915) 2 Ch. 205. By a marriage settlement certain property was settled upon trust for the children of the marriage in such shares as the husband and wife during their joint lives by deed should appoint, with or without power of revocation, and in default of appointment, or so far as such appointment should not extend, then as the survivor by will or codicil should appoint. The husband and wife made a joint deed of appointment reserving a power of revocation in favour of themselves during their joint lives by deed, or the survivor of them by deed. After the death of the husband the wife executed a deed of revocation, and by the same deed purported to make a new appointment. It was not contended that the widow had any power to make a new appointment by deed, but it was argued that as the revocation was made for the purpose of

making the new appointment, as the new appointment was invalid the revocation failed and the original appointment stood. But Joyce, J., held that although the new appointment was invalid the revocation was good.

POWER OF APPOINTMENT—POWER TO APPOINT BY WILL DURING COVERTURE—WILL MADE DURING HUSBAND'S LIFETIME—DEATH OF HUSBAND LEAVING WIFE SURVIVING.

*In re Safford, Davies* v. *Burgess* (1915) 2 Ch. 211. By a marriage settlement made by the wife's father, funds were settled upon the usual trusts during the joint lives of the husband and wife and the life of the survivor, and after the death of the survivor "for the children of the marriage," or, in case there should be no issue, "upon trust for such person or persons as" the wife "shall by will during the continuance of the said intended coverture, direct or appoint," and in default of, and subject to, any such appointment, in trust for the settlor, his executors, administrators and assigns. There was no issue of the marriage. During the coverture the wife made a will appointing the fund. She survived her husband, and died without revoking the will. It was contended, on behalf of the father's representatives, that the wife's appointment was invalid, because the will did not take effect during coverture; but Joyce, J., who tried the action, held that there was no reason for implying a condition that the wife's will should not be a valid appointment unless she also died during coverture. He therefore came to the conclusion that the power had been validly exercised.

WILL—CONSTRUCTION—SUBSTITUTIONAL GIFT—PARENT'S SHARE "SHALL BE PAID" TO CHILDREN—JOINT TENANCY OR TENANCY IN COMMON.

*In re Clarkson, Public Trustee* v. *Clarkson* (1915) 2 Ch. 216. By the will in question in this case the testator bequeathed leaseholds on trust to pay the rents to his grandson for his life, and upon his death to sell and pay the proceeds unto and amongst his nephews and nieces as tenants in common, and in case of the death of any of the nieces or nephews he directed that the children of such deceased nephew or niece "shall be paid a parent's share." The testator died in 1864, and left only one nephew, who died in 1880, and no niece. The grandson died in 1912. The nephew had two sons, one of whom died in 1913. The question, therefore, was whether the surviving son of the nephew was solely entitled, or whether the estate of his deceased brother

was entitled to a half This depended on whether the children of the nephew took as tenants in common or as joint tenants. The representatives of the deceased brother claimed that the words, "shall be paid," imported a severance, and that therefore they took as tenants in common, relying on a dictum of North, J., *In re Atkinson* (1892) 3 Ch. 52 (at p. 54), but Eve, J., considered that this dictum was not well founded, and was opposed to the decision of Knight-Bruce, V.C., in *Gordon* v. *Atkinson*, 1 DeG. & Son 476, and he therefore held that the children of the deceased nephew took as joint tenants, and the survivor of them was therefore now solely entitled.

COMPANY—GUARANTY—LIABILITY OF MEMBERS TO CONTRIBUTE—CALL OF FULL AMOUNT ON TWO MEMBERS ONLY—DELAY IN PAYING PREVIOUS CALLS—INJUNCTION—DECLARATION OF RIGHT.

*Galloway* v. *Hallé Concerts Society* (1915) 2 Ch. 233. The defendant society was an incorporated musical society, limited by guaranty, and the articles provided that each member should be liable to contribute, and should, when demanded, pay to the committee any sum not exceeding £100 (therein called the contribution) in addition to any liability in case of winding up under the guaranty clause in the memorandum, and that the committee might from time to time make calls, as they thought fit, upon each member in respect of all moneys unpaid on his contribution, and that each member shall pay every call so made on him as appointed by the committee. The plaintiffs were two members of the society who had objected to the policy of the committee and had been dilatory in payment of two small calls, and had also omitted to pay a third call of £10 made in June, 1914. The committee, therefore, in March, 1915, passed a resolution calling up the entire uncalled balances of these two members, the reason alleged being their refusal to pay the previous calls, and the trouble and expense thereby incurred by the society. The plaintiffs claimed an injunction, and also a declaration that the resolution of the committee was invalid. Sargant, J., held that, even if the committee had power under the articles, in a proper case, to make calls on certain members without making similar calls on the rest, no sufficient reason had been shewn for so doing as against the plaintiffs, and the resolution was declared to be invalid.

WILL—SOLDIER—ACTUAL MILITARY SERVICE—ATTESTATION OF TWO WITNESSES—GIFT TO ATTESTING WITNESS—WILLS ACT, 1837 (1 VICT. c. 26), ss. 11, 15—(R.S.O. c. 120, ss. 14, 17).

*In re Limond, Limond* v. *Cunliffe* (1915) 2 Ch. 240. In this

case the validity of a soldier's will of personal estate was in question. At the time of the testator's death he was serving with a regiment in India which was acting as the rear and baggage guard of a column of troops engaged in the delimitation of a frontier after hostilities had been concluded, and was mortally wounded by a fanatic. His will was signed in the presence of, and attested by, two witnesses, to one of whom he made a bequest. Two questions were raised: (1) whether the testator was engaged "in actual military service," and (2) whether the gift to the witness was valid. Sargant, J., answered both questions in the affirmative. With regard to the first point, he said that it had been held in various cases that the commencement of military service is when the mobilization takes place, and that in his opinion the actual military service does not cease until the conclusion of the operations, and in this case he considered the delimitation of the frontier was an operation incident to the war. With regard to the second point, his Lordship was of the opinion that sec. 15 (R.S.O. c. 120, s. 17) applies only to witnesses attesting wills under the preceding provisions of the Wills Act, and particularly the provision requiring wills to be executed in the presence of two witnesses in the presence of each other and in the presence of the testator; and he held that, though the will was sufficiently executed under the Wills Act, yet the testator intended to make a soldier's will, and that it was entitled to the privilege of s. 11 (R.S.O. c. 120, s. 14).

WILL—CHARITABLE GIFTS—GIFT TO GOVERNING BODY OF SCHOOL TO BUILD FIVES COURTS—GIFT TO HEADMASTER OF SCHOOL INCOME TO BE APPLIED FOR ANNUAL PRIZE FOR ATHLETIC SPORTS—STATUTE OF ELIZABETH (43 ELIZ. C. 4)—(R.S.O. C. 103).

*In re Mariette, Mariette* v. *Aldenham School* (1915) 2 Ch. 284. By the will in question in this case the testator left a sum of "£1,000 to the governing body of Aldenham School for the purpose of building five courts (or squash racquet courts), or for some similar purpose that shall be decided by a majority of the house masters at the time of my death:" and "£100 to the headmaster for the time being of Aldenham School, upon trust to use the interest to provide a prize for some event in the school athletic sports every year, agreed upon by the committee of the athletic sports." Aldenham school was founded as a free Grammar school and was admittedly a charity within the Statute of Elizabeth, 43 Eliz. c. 4 (see R.S.O. c. 103, s. 2 (2) (*a*)). There were 208 pupils between the ages of 10 and 19, nearly all of

whom were boarders. It was contended on behalf of residuary legatees that the purposes for which the above two bequests were made, were not charitable, and therefore that they were void, but Eve, J., who tried the action, overruled that contention, being of the opinion that the provision of means for carrying on athletic games was a necessary part of the work of the school, and that both gifts were therefore good, charitable gifts, within the Statute.

WILL—ANNUITIES CHARGED UPON INCOME AND CORPUS OF ESTATE —INSUFFICIENCY OF INCOME—DEFICIENCY PAID OUT OF CORPUS—RECOUPMENT OF CORPUS—TENANT FOR LIFE AND REMAINDERMAN.

*In re Croxon, Ferrers* v. *Croxton* (1915), 2 Ch. 290. By the will in question in this case the testator bequeathed three annuities which he charged on the income and corpus of his residuary estate. The income at first proved insufficient to pay the annuities in full and the deficiency was made good out of the corpus. Owing to the death of one of the annuitants the income had become sufficient to pay the two remaining annuities and leave a surplus, and the question Eve, J., was called on to decide was whether the anticipated surplus as between the tenant for life and remainderman should be applied to recoup the corpus, and the learned Judge held that as the annuities were charged both on income and corpus, the tenant in remainder had no right to insist that the corpus should be recouped.

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* (1915), 2 Ch. 295, deals with one of the vagaries which testators are constantly indulging in at the expense of their beneficiaries. In this case, by his will, the testator disposed of his residuary estate, one-third in trust for the Society for Promoting Christian Knowledge, and the other two-thirds to the vicar of a church for the purposes of his church. Subsequently, ten days before his death, he made a codicil in which, after referring to the will, he continued: "The residue of my estate not bequeathed by the above will I give and bequeath to Mabel Abbie Locock . . . absolutely and I appoint her sole executrix of this codicil." The legatee named in the

codicil contended that the codicil inferentially revoked the residuary bequest in the will, but Eve, J., decided that all that passed by the codicil was such portion of the residue (if any) as might ultimately turn out not to have been effectually disposed of by the will, and that there was no revocation of the clear and unambiguous gift of the residue contained in the will.

WILL—CONSTRUCTION—REAL ESTATE—DEVISE TO A. "OR HIS ISSUE"—ESTATE TAIL—WORDS OF LIMITATION OR SUBSTITUTION.

*In re Clerke, Clowes* v. *Clerke* (1915), 2 Ch. 301. In this case a will was in question whereby the testator devised a remainder in real estate to his brother S. H. Clerke "or his issue." S. H. Clerke survived the testator but predeceased the tenant for life leaving 3 children and 3 grandchildren. The question was whether the words "or issue" were words of substitution or limitation. If they were words of substitution it was conceded the 3 children and 3 grandchildren would take as joint tenants; but if they were words of limitation then S. H. Clerke took as tenant in tail, and his eldest son alone would be entitled. Eve, J., decided that the words were words of limitation and created an estate tail in S. H. Clerke.

DOCK—CONTRACT FOR USE OF DOCK—EXEMPTION CLAUSE—DAMAGE TO SHIP FROM UNFITNESS OF BLOCKS PROVIDED BY DOCKOWNER—LIABILITY OF DOCKOWNER.

*Pyman S.S. Co.* v. *Hull and Barnsley Ry.* (1915) 2 K.B. 729. The Court of Appeal (Lord Reading, C.J., Eady, L.J., and Bray, J.) have affirmed the decision of Bailhache, J. (1914) 2 K.B. 788 (noted *ante* vol. 50, p. 431). It may be remembered that the action was by shipowners against dockowners for damages sustained by the plaintiffs' ship by reason of the insufficiency of the blocks supplied by the defendants, which, by the agreement between the parties, the defendants were to supply. The contract provided that the defendants were not to be liable "for any accident or damage to a vessel going into or out of, or whilst in the dock"; and Bailhache, J., held that this exemption protected the defendants from liability for damages occasioned by the insufficiency of the blocks provided.

CRIMINAL LAW—TRADING WITH THE ENEMY—OBTAINING GOODS FROM ENEMY—TRADING WITH THE ENEMY ACT, 1914 (4-5 GEO. 5, c. 87), s. 1.

*The King* v. *Oppenheimer* (1915) 2 K.B. 755. This was a

prosecution for trading with the enemy contrary to the Imp. Act, 4 & 5 Geo. 5, c. 87, s. 1. The facts were that the accused had business dealings with a German firm of lithographers in Nuremberg, and at the outbreak of the war the German firm had a number of lithographic transfers to which the defendants were entitled. These transfers were prints on grease-proof paper taken from stones, and which could be transferred to other stones by the defendants in England. After the outbreak of the war the defendants procured the delivery of these transfers, and were convicted for committing a breach of the Act above referred to at a trial before Atkin, J., and the conviction was affirmed by the Divisional Court (Lord Reading, C.J., and Bray and Lush, JJ.).

BASTARDY—APPLICATION DISMISSED BY JUSTICES FOR WANT OF CORROBORATION—RENEWAL OF APPLICATION—RES JUDICATA.

*McGregor* v. *Telford* (1915) 3 K.B. 237, was an application by the mother of an illegitimate child against the putative father, under the Bastardy Act. It was objected that a previous application had been made by the mother and dismissed for want of corroborative evidence, and it was contended on behalf of the respondent that this constituted *res judicata*. The Justices overruled the objection, heard the complaint, and ordered the respondent to pay a weekly sum for the support and education of the child. On a case stated, the Divisional Court (Lord Reading, C.J., and Ridley and Scrutton, JJ.) held that the dismissal of the prior application was in the nature of a nonsuit, and did not preclude the renewal of the application on better evidence.

CONTRACT—WRITING—RESCISSION OR VARIATION—SUBSEQUENT PAROL AGREEMENT—EVIDENCE—ADMISSIBILITY—STATUTE OF FRAUDS.

*Williams* v. *Moss' Empires* (1915) 3 K.B. 242. In this case the plaintiff entered into an agreement in writing, which was not to be performed within a year, to perform at the defendants' theatre on certain terms, including the payment of salary at a specified rate. During the currency of the contract, and within less than a year from its termination, the parties verbally agreed to a variation of the plaintiff's salary for a part of the remainder of the engagement. The action was brought to recover the salary earned since the verbal agreement at the rate specified in the original contract. The defendant set up the subsequent verbal agreement. The Judge of the County Court held that, as the original contract was required to be in writing, it could not be

varied by a subsequent parol agreement. But the Divisional Court (Shearman and Sankey, JJ.) held that he was wrong, and that the true principle is that where the agreement varying an agreement, which would be invalid if it were not in writing, is itself of such a character that it is bound to be in writing, then, unless it is in writing it cannot be relied on to vary or rescind the original contract, and must be disregarded. But here the subsequent parol agreement was not required by law to be in writing, and was therefore valid.

INSURANCE—CONSEQUENTIAL LOSS—ASSESSMENT OF LOSS BY INSURED'S AUDITOR—ASSESSMENT BY AUDITOR—CONCLUSIVENESS OF ASSESSMENT.

*Recher* v. *North British & M. Insce. Co.* (1915) 3 K.B. 277. This was a case stated by arbitrators. The plaintiffs were insured by defendants against loss by fire, under a policy which provided that in the event of damage by fire to their property the defendants would pay an agreed percentage on the amount by which the turnover of the plaintiffs' business in each month should be less than the turnover for the corresponding month in the year preceding the fire. And the policy further provided that the amount of all losses covered thereby should be assessed by the insured's auditors. A fire having occurred, the auditors gave certificates stating the difference between the turnover for the months after the fire and the corresponding months in the year preceding the fire, and the precentage payable. An arbitration was held to determine the amount payable under the policy, and the auditors' certificates were put in as evidence. The question submitted to the Court was how far the certificates were conclusive. The Divisional Court (Lord Reading, C.J., and Ridley and Scrutton, JJ.) held that the certificates were conclusive as to the amount payable in respect thereof, except so far as it could be shewn that the auditor had misdirected himself in point of law, or had omitted to take into consideration some material fact; and that the auditor might be cross-examined on those points, and the insurance company might call direct evidence to shew that the auditor had omitted to take into consideration that the losses of turnover were wholly or in part due to other causes than the fire, but not to shew that the auditors' conclusions of fact were erroneous.

# Reports and Notes of Cases.

## Dominion of Canada.

### SUPREME COURT.

Que.] LAREAU *v.* POIRIER. [June 24.

*Sale of land—Contract—Deferred payment—Omission of date for payment—Completion of contract—Acceptance by purchaser—New term—Instruments of title—Delivery—Acts*, 1025, 1235, 1491-1494, 1533, 1534 C.C.

A contract for the sale of land in the Province of Quebec, by which the date of the deferred payment of an instalment of the price is not fixed, is, nevertheless, according to the law of that province, a completed contract of which specific performance may be enforced. (DUFF and BRODEUR, JJ., dissented.)

In his letter accepting the offer of sale, the purchaser requested the vendor to send the documents of title, and certified abstract of the registrar of deeds affecting the property, to his notary.

*Held, per* FITZPATRICK, C.J., and ANGLIN, J., that, by this request, it was not intended to stipulate a new term to the contract.

*Per* BRODEUR, J.:—Although the vendor is obliged to furnish the purchaser with the documents of title, including the Registrar's certified abstract, yet as, in the present case, it appeared that the vendor made it a condition that the titles and certificate were not to be delivered into the possession of the purchaser, the request in the letter of acceptance was a stipulation of a new term which left the contract incomplete. *La Banque Ville Marie* v. *Kent*, Q.R. 22 S.C. 162, and *Sauvé* v. *Picard*, 20 Rev. de Jur. 142, referred to. Judgment appealed from (Q.R. 23 K.B. 495) affirmed. Appeal dismissed with costs.

*St. Germain*, K.C., and *C. A. Archambault*, for appellant.

*St. Jacques*, for respondent.

## Province of Ontario

### SUPREME COURT.

Meredith, C.J.C.P.] RE CIMONIAN. [23 D.L.R. 363

*Aliens—Naturalization—Alien Enemies.*

An alien enemy is not within the provisions of the Naturalization Act, R.S.C. 1906, ch. 77, and application for naturaliza-

tion under that Act, if it appears that the applicants are alien enemies, may be refused upon the Judge's own initiative, though no opposition has been filed and no objection offered.

*The King* v. *Lynch*, [1903] 1 K.B. 444, and *Porter* v. *Freudenberg*, [1915] 1 K.B. 857, followed; *In re Herzfeld* (1914), 46 Que. S.C. 281, disapproved.

*M. A. Secord*, K.C., for applicants. No one opposed the applicants.

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

A declaration of war by a foreign country against a foreign power imports a prohibition of commercial intercourse with the subjects of that power: *Barrick* v. *Buba*, 2 C.B (N.S.) 563.

The national character of a trader is to be decided, for the purposes of the trade, by the national character of the place in which it is carried on. If a war breaks out, a foreign merchant carrying on trade in a belligerent country has a reasonable time allowed him for transferring himself and his property to another country. If he does not avail himself of the opportunity, he is to be treated, for the purposes of trade, as a subject of the power under whose dominion he carries it on, and as an enemy of those with whom that power is at war: *The Gerasimo*, 11 Moore P.C. 88.

Trading with an enemy without the King's license is illegal; and it is illegal for a subject in time of war, without the King's license, to bring even in a neutral ship goods from an enemy's port, which were purchased by his agents resident in the enemy's country, after the commencement of hostilities, although it may not appear that they were purchased from an enemy: *Potts* v. *Bell*, 2 Esp. 612.

Merchants, subjects of neutral states, resident in the territories of an ally, are, for the purposes of war, considered as domiciled in the territories of an ally, and prohibited from trade with a belligerent: *The San Spiridione*, 2 Jur. (n.s.) 1238.

Commerce by a person resident in an enemy's country, even as a representative of the Crown of this country, is illegal and the subject of prize, however beneficial to this country, unless authorized by license: *Ex p. Baglehole*, 18 Ves. 528; *McConnell* v. *Hector*, 3 Bos. & P. 113.

The character of an alien and a British subject cannot be united in one person: *Reg.* v. *Manning*, 2 Car. & K. 887.

The common law rule strictly limiting an alien enemy in his civil rights is now modified in his favour when he resides in this country by a license or under protection of the Crown: *Topay* v. *Crows Nest Pass Coal Co.*, 18 D.L.R. 784.

PROOF OF ALIENAGE.—To prove that a person was an alien enemy at the time of the action, it is not enough to shew that he was some time before domiciled in a territory which has become hostile, without shewing that he was a native of that territory: *Harman* v. *Kingston*, 3 Camp. 152.

The mere production of a passport found on a prisoner, which is proved

to be granted by the authorities of a foreign state to natural-born subjects only, is not evidence of his being an alien: *Reg.* v. *Burke*, 11 Cox C.C. 138.

To prove a replication of license to a plea of alien enemy, it is not enough to prove that a license was granted to the plaintiff with an allowance to undertake a voyage, which did not terminate until the commencement of hostilities, and that after the termination of the voyage he was at large here without molestation: *Boulton* v. *Dobree*, 2 Camp. 163.

HOSTILE NEUTRALS.—A neutral residing in an enemy's country, as consul of a neutral state, and who also trades there as a merchant, is to be regarded as an enemy: *Sorensen* v. *Reg.*, 11 Moore P.C. 141.

An alien carrying on trade in an enemy's country, though resident there also in the character of consul of a neutral state, is considered an alien enemy, and as such disabled to sue, and liable to confiscation: *Albretcht* v. *Sussman*, 2 Ves. & B. 323.

A native of a neutral state taken in an act of hostility on board of an enemy's ship, and brought to England as a prisoner of war, is not disabled from suing, while in confinement, on a contract entered into as a prisoner of war: *Sparenburgh* v. *Bannatyne*, 1 Bos. & P. 163.

An action may be maintained by a person of an enemy nationality who is neither residing nor carrying on business in an enemy country, but is residing either in an allied or a neutral country and is carrying on business through his partners in that allied country: *Re Mary Duches, etc.*, 31 T.L.R. 248.

TEMPORARY OCCUPATION.—A temporary occupation of a territory by an enemy's force does not, of itself, necessarily convert the territory so occupied into hostile territory or its inhabitants into enemies: *The Gerasimo*, 11 Moore P.C. 88.

In the case of *Société Anonyme Belge, etc.*, v. *Anglo-Belgian Agency*, 31 T.L.R. 624, the plaintiffs were a company incorporated under the laws of Belgium. Their registered office was in Antwerp. Soon after the outbreak of the war, the business of Antwerp was closed and the books were removed to London. The larger part of Belgium, including Antwerp, was in the effective military occupation of Germany. The business of the plaintiff company had since been wholly carried on in London. The company had mines in Portugal, and the whole of the output was being sold in England or in France. It was held, that the plaintiff company was not an enemy within the meaning of any of the Acts or Proclamations relating to trading with the enemy.

CONTRACTS.—A contract with an alien enemy made in time of war cannot be enforced in the Courts here: *Willison* v. *Pattison*, 7 Taunt. 439.

If an alien enemy, a prisoner of war, makes a contract, it may be enforced by the King for the benefit of the Crown. And if the Crown does not enforce it, the prisoner may sue on it after the return of peace: *Maria* v. *Hall*, 1 Taunt. 33n.

The fact that a party to a contract becomes an alien enemy on the outbreak of the war does not necessarily have the effect of abrogating the contract, but will merely suspend all obligations thereunder during its continuance: *Zinc Corporation* v. *Skipworth* (No. 1), 31 T.L.R. 106. But,

in allowing an appeal from this judgment in 31 T.L.R. 107, it was said, that an action by one party to a contract for a declaration as to its construction will not lie in the absence of the other party, where there is no third party whose interests make it necessary to determine its construction.

A c.i.f. contract for the sale of hides entered into between the subjects of an allied state with the subjects of a state afterwards at war with the allied states becomes illegal on the outbreak of the war, and is rendered incapable of breach for which no recovery can be had: *Kreglinger & Co.* v. *Cohen, etc.*, 31 T.L.R. 592.

During the war of England with the United States in 1812, a native of America made several consignments to a British subject in England, who would dispose of them in France and afterwards remit the proceeds. In an action by the American against the assignee in bankruptcy of the estate of the British subject, it was held, that he could only prove as a creditor for the cargoes shipped after the signing of the peace preliminaries at Ghent, but not for the cargoes that arrived during the war: *Ogden* v. *Peele*, 8 D. & R. 1.

BILLS AND NOTES.—An action may be maintained here by a neutral on promissory notes given to him by a British subject in an enemy's country for goods sold there: *Houriet* v. *Morris*, 3 Camp. 303.

Though a bill drawn by a prisoner of war in France upon a person resident in England in favour of an alien enemy could not have been originally enforced, the drawer is liable on a subsequent promise in time of peace: *Duhammel* v. *Pickering*, 2 Stark. 90.

It is no defence to an action to a bill of exchange that the plaintiff sues in trust for an alien enemy: *Daubuz* v. *Morshead*, 6 Taunt. 332.

An alien, to whom a bill, drawn on England by a British subject detained prisoner in France during war with England, payable to another British subject also detained there, is indorsed by the latter, he may sue on it in this country after the return of peace: *Antoine* v. *Morshead*, 6 Taunt. 237.

PARTNERSHIPS.—Where a partnership contract is no longer possible of being carried out according to its terms by reason of war, as where a license to trade as partners on the terms that no payments should be made to or for alien enemies, while some of the very partners are alien enemies, the Court will make an order *ex parte* for the appointment of a receiver and manager of the business carried on by the partnership: *Armitage* v. *Borgman*, [1915] W.N. 21, 59 S.J. 219.

In an action on a bill of exchange and for goods supplied before the war by a firm, of which one of the partners was an alien enemy, but which partnership was dissolved by mutual consent at the outbreak of the war, does not preclude the British partner from recovering thereon by reason of secs. 6 and 7 of the Trading with the Enemy Act: *Wilson* v. *Ragosine & Co.*, 31 T.L.R. 264.

An action is maintainable by a receiver of a partnership of whom one of the partners is an alien enemy residing in the enemy country, to recover the price of goods sold by the partnership: *Rombach* v. *Gent*, 31 T.L.R. 492.

CORPORATIONS AND COMPANIES.—A limited company registered in this country according to English law is not prevented from suing by the fact

that almost all the shares are held by alien enemies: *Amorduct Mfg. Co.* v. *Defries*, 31 T.L.R. 69.

A company which is registered in England, and carries on business there, but in which the majority of the shares are held by alien enemies, is entitled to sue for the price of goods sold and delivered, if it is not employed to sell the goods as the agent of an alien enemy with the object of remitting the money abroad, inasmuch as the right of such company to trade in England and the right of British subjects to trade with it in England are recognized by the Trading with the Enemy Act, 1914, and the Proclamations issued thereunder: *Continental Tyre, etc.*, v. *Tilling Ltd.*, 31 T.L.R. 77.

Where an action for the infringement of patent, registered in the joint names of an English and an enemy company, is brought nominally in the names of both companies, but in whom the sole right of prosecuting proceedings for the infringement is in the British company, the Court will not entertain an objection to the proceedings because one of the companies is an alien enemy, since to deny the British company the right to prosecute the action would be to deny to a British subject the right to bring an action for his own protection: *Mercedes Daimler Motor Co. et al.* v. *Maudslay Motor Co.*, [1915] W.N. 54, 31 T.L.R. 178.

An officer of an enemy manufacturing company in charge of a manager who had authority to enter into contracts, and to sue and be sued on behalf of the company, is not a "branch" in the sense of sec. 6 of the Trading with the Enemy Proclamation, and that the payment of money after the date of the proclamation, in fulfilment of a previous contract, is not a "transaction," in the sense of that section, so as to be within the exception of transactions by or with the enemy having a branch situated in British territory: *Orenstein, etc.*, v. *Egyptian Phosphate Co.*, [1915] S.C. 55.

BANKS.—In an action by an enemy banking company on a bill it was pleaded that the plaintiffs were alien enemies, and that their license under the Aliens Restriction Act, 1914, did not authorize their London branch to present and receive payment of the bill. It was held, that the transactions permitted by the license were not limited to transactions with the London branch, and that the transaction would in the ordinary course have been carried out in London; nor was the presentment or collection a new transaction, and that they were, therefore, entitled to recover: *Direction Der Disconto-Gesellschaft* v. *Brandt & Co.*, 31 T.L.R. 586.

The Court will not make a vesting order under sec. 4 of the Trading with the Enemy Act of a disputed balance of an enemy bank in an English bank, since that would be placing the custodian in the position of an assignee of a disputed debt: *Re Bank für Handel, etc.*, [1915] W.N. 145.

INSURANCE.—By a Proclamation issued with statutory authority it was declared that, where an enemy had in Britain a branch carrying on insurance business, transactions with the branch should be considered as transactions with the enemy. It was held that the Proclamation was not retrospective, and that, in any case, an action against the enemy insurance company to recover a loss was not a transaction within the meaning of the Proclamation, and that the right of suit in respect of the obligation to pay the loss was not suspended by reason of the war: *Ingle* v. *Mannheim Continental Ins. Co.*, [1915] 1 K.B. 227, 31 T.L.R. 41.

Policies of life insurance pledged with an alien enemy as security for bills cannot be recovered by the trustee in bankruptcy as the custodian under sec. 4 (1) of the Trading with the Enemy Act, 1914, where the alien enemy is beyond the jurisdiction of the Court, and no assignment of the policies had been executed in favour of the enemy; that it is not the object of the Act that the custodian should be used as a medium for recovering for the trustee the bankrupt's property which during the war he could not recover for himself: *Re Reuben*, 31 T.L.R. 562.

RECEIVERS AND TRUSTEES.—The Court will appoint a receiver of a partnership business, of which one of the owners is an alien enemy, if the business is an ordinary commercial enterprise, and not within sec. 3 of the Trading with the Enemy Act, 1914: *Rombach* v. *Rombach*, 59 S.J. 90.

An application for the appointment of a controller of an enemy firm or company under sec. 3 of the Trading with the Enemy Act, 1914, may be made by an originating motion. A controller so appointed may be ordered to furnish the usual security required from a receiver and to account for, and report on, periodically, as to the position of the business and the results of carrying it on: *Re Meister Lucius, etc.*, 59 S.J. 25, 31 T.L.R. 28.

In the case of *Re Bechstein* (No. 1), 58 S.J. 863, a large firm, composed of alien enemies, had a London branch employing a large number of British workmen. The Court appointed the British assistant-manager of that branch to be receiver and manager upon his undertaking (1) not to remit goods or money forming assets of the defendant's business to any hostile country; (2) to endeavour to obtain from the Crown a license to trade.

Under the rules promulgated under the Trading with the Enemy Act, 1914, for the purpose of obtaining an order vesting in the Public Trustee all the property of an enemy company having a branch in England, an originating summons must be issued in pursuance of the rules, and the matter come on first in Chambers, and where the alien enemy is interned in an internment camp, a letter should be sent to him enclosing a copy of the originating summons: *Re Company*, 59 S.J. 217.

PRINCIPAL AND AGENT.—A British subject, acting as an agent for an undisclosed principal who is an alien enemy, is not debarred at common law, apart from the Trading with the Enemy Act, 1914, and the Proclamations issued thereunder, from maintaining an action against British subjects for the price of goods; and, upon his consenting to a stay of execution until a hearing under the Trading with the Enemy Amendment Act, 1914, for the vesting of the moneys in the custodian thereunder, he will be entitled to judgment: *Schmidt* v. *Van Der Veen*, 31 T.L.R. 214.

The agent of a principal who is an alien enemy is not entitled to bring an action against him for a declaration that the agent be entitled to collect debts due the principal, and to pay debts due from the latter, or for the appointment of a receiver of the assets of the principal's business in this country: *Maxwell* v. *Grunhut*, 31 T.L.R. 79, 59 S.J. 104.

In following the case of *Maxwell* v. *Grunhut*, *supra*, it was held that a British manager of an enemy firm with a branch in London, who was remunerated by a salary and commissions on sales, is not a person interested within the purview of the Trading with the Enemy Act, 1914, for the pur-

pose of applying for a receiver to conduct the affairs of the enemy firm: *Re Gaudig & Blum*, [1915] W.N. 34, 31 T.L.R. 153.

MARRIED WOMEN.—In the case of *De Wahl* v. *Braune*, 1 H. & N. 178, it was held that a *femme covert* could not sue alone on a contract made with her before or after marriage, though her husband was an alien enemy.

But in *Thurn & Taxis* v. *Moffitt*, [1915] 1 Ch. 58, 31 T.L.R. 24, it was held that a woman who is an alien enemy and who claims to be the wife of an alien enemy, and who has registered herself as an alien subject of an enemy state under the Aliens Restriction Act, 1914, is entitled, notwithstanding the state of war existing between this country and her own, to sue in the Courts of this country for the purpose of enforcing an individual right not claimed through her husband.

EXECUTORS AND ADMINISTRATORS.—In *Re Estate of Herman Koenig*, [1915] W. N. 24, the executor, the next-of-kin and chief beneficiaries were alien enemies residing in the enemy country, and on a power of attorney by the executor to a British subject an order was made granting letters of administration with the will annexed. But in *Re Estate of Jacob Schiff*, 59 S.J. 303, it was held, not following the *Koenig case*, *supra*, that where the next-of-kin of a deceased intestate are alien enemies, the Public Trustee is the proper person to take the grant of administration to the estate of the deceased.

Distinguishing the case of *Continental Tyre, etc.*, v. *Daimler Co.*, [1915] 1 K.B. 893, and following *Dumenko* v. *Swift Can. Co.*, 32 O.L.R. 87, it was held that an action under the Fatal Accidents Act, R.S.O. 1914, ch. 151, brought by an administrator of the estate of a deceased person, cannot be maintained if brought for the benefit of alien enemies, and that if such action is brought after the commencement of the war, it will be dismissed: *Dangler* v. *Hollinger, etc.*, 23 D.L.R. 384, 34 O.L.R. 78.

ACTIONS.—No action can be maintained either by or in favour of an alien enemy: *Brandon* v. *Nesbitt*, 6 Term. Rep. 23.

War does not suspend an action against an alien enemy, and he may appear and defend either personally or by counsel: *Robinson & Co.* v. *Mannheim Continental Ins. Co.*, [1915]1 K.B. 155, 31 T.L.R. 20.

One is an alien enemy of this country whose sovereign is at enmity with the Crown of England, and one of his disabilities is that he cannot sue in our Courts during war, unless he is here "in protection," the burden of shewing such status being on himself. Therefore, a citizen of a nation at war with this country who institutes a civil action will have his action stayed, unless as a condition precedent to such right he establishes that he is "in protection" in such sense that he is not a person professing himself hostile to this country nor in a state of war against it: *Bassi* v. *Sullivan*, 18 D.L.R. 452, 32 O.L.R. 14.

Thus it was held, that an alien enemy cannot, by the municipal law of this country, sue for the recovery of a right claimed to be acquired by him in actual war: *Anthon* v. *Fisher*, 2 Doug. 649n.

In *Ricord* v. *Bettenham*, 3 Burr. 1734, 1 W.Bl. 563, it was held, that an action was maintainable by an alien enemy upon a ransom bill, even when the hostage given died in prison.

In *Maria* v. *Hall*, 1 Taunt. 32, the right of action of a prisoner of war for work and labour carried on under the protection of the commander of the British forces was upheld.

Following the case of *Topay* v. *Crows Nest, etc.*, 18 D.L.R. 784, but disapproving *Bassi* v. *Sullivan*, 18 D.L.R. 452, it was held, that a person of German or Austro-Hungarian nationality, domiciled in Canada, as to whom there is no reasonable ground for believing that he is engaged in hostile acts or in contravening the law, may, by virtue of the Orders-in-Council (Can.) of August 7 and 15, 1914, maintain an action for negligence against his employer for personal injuries sustained in following his avocation where such action would lie were his country not at war with Great Britain; and that the onus is not upon the alien to prove, on the defendant's motion to stay proceedings in an action brought before war was declared, that he had not contravened the restrictions specified in the Royal Proclamations: *Pescovitch* v. *Western Can. Flour*, 18 D.L.R. 786, 24 Man. L.R. 783.

As to right of subject of nation at war with Great Britain to bring an action for damages, see *Oskey* v. *City of Kingston*, 20 D.L.R. 959, 31 O.L.R. 190. It was there held, that a workman's widow and children, although of a nation with which Great Britain is at war, so long as they reside in the province and do not contravene the regulations contained in the Proclamations, are entitled, notwithstanding their status as alien enemies, to proceed with their action instituted before the declaration of war, seeking to recover damages under Lord Campbell's Act.

In *Dame Mathilda Johansdotter* v. *C.P.R. Co.*, 47 Que. S.C. 76, it was held, that the absence of a dependant or beneficiary in a foreign country is a justification for not filing a claim within the delay fixed by the Workmen's Compensation Act.

The plaintiffs, subjects of Austria and residing in that country, began their action before the outbreak of war with Great Britain and were ordered to give security for costs. Their solicitor, not being able to communicate with them after the war began, and no further proceedings having been taken, applied for an extension of time and for a stay of proceedings, in order to avoid the dismissal of the action which follows upon failure to give security, and which was refused. It was held, following *Brandon* v. *Nesbitt*, 6 T.R. 23, and *Le Bret* v. *Papillon*, 4 East 502, that the plaintiffs having become alien enemies, are barred from further proceedings, and the action must be dismissed, but that the dismissal will not be a bar to a subsequent action after the termination of the war: *Dumenko* v. *Swift Can. Co.*, 32 O.L.R. 87.

APPEALS.—An alien enemy, unless with special license or authorization of the Crown, has no right to sue during the war, his right being suspended during the progress of hostilities and until after the restoration of peace. He may, however, be sued during the war in the King's Courts, and he may appear to be heard in his defence. He has the same right of appeal as any other defendant, but, if he be a plaintiff, his right of appeal is suspended until after the restoration of peace: *Porter* v. *Freudenberg*, C.A., [1915] W.N. 43, 31 T.L.R. 162.

In an appeal by an alien enemy, who was the registered owner of a patent, from an order for the revocation of the patent, it was held, that the appellant must be regarded as in the same position as a defendant who appeals from a judgment given against him, and that, accordingly, the appellants were entitled to appear and to be heard on the motion and to have the appeal heard in the ordinary course, and that the hearing of the appeal should not be suspended during the war: *Re Merten's Patent*, [1915] W.N. 43, 32 R.P.C. 109.

An appeal in an action for the infringement of patent prosecuted by a domestic company and an enemy corporation of whom the patent had been claimed by assignment, the Court will not strike out the enemy corporation as co-plaintiff where the action could not otherwise be proceeded with separately, particularly where there is no request to that effect by the co-plaintiff, but will suspend the proceedings until after the termination of the war: *Actien-Gesellschaft, etc.*, v. *Levinstein, Ltd.* (1915), 50 L.J. 105, 31 T.L.R. 225.

PLEADING.—In a plea of alienage, the defendant must state that the plaintiff was born in a foreign country, at enmity with this country, and that he came here without letters of safe conduct from the King: *Casseres* v. *Bell*, 8 Term. Rep. 166.

A plea that the plaintiff was an alien enemy residing in the country without the license, safe conduct, or permission of the Sovereign is good, although it does not expressly negative a certificate of the Secretaries of State under 7 & 8 Vict. ch. 66, ss. 6, 8: *Alcenius* v. *Nygren*, 4 El. & Bl. 217.

A British agent effecting a policy on behalf of alien enemies, who became such after the happening of the loss but before the commencement of the action, is entitled to recover against the underwriter, who had only pleaded the general issue; for such temporary suspension during the war of the assured's right of suit upon a contract, legal at the time, and liable to be enforced upon the return of peace, cannot be taken advantage of under a plea of perpetual bar, there being no legal disability on the plaintiff on the record to sue: *Flindt* v. *Waters*, 15 East 260.

In an action on a policy of insurance, it is no defence under the general issue that the persons interested, who were neutrals when the policy was effected and the loss happened, had become alien enemies before the action: *Harman* v. *Kingston*, 3 Camp. 152.

A plea of alienage to an action on a policy, brought in the name of an English agent for his alien principal, whose interest appears on the record, is a good plea; and a replication to such plea, that the alien is indebted to the agent in more money than the value of the property insured, cannot be supported: *Brandon* v. *Nesbitt*, 6 Term. Rep. 23.

When an alien enemy, at the time of the action brought, became an alien enemy after the plea pleaded, a plea of the defendant that the plaintiff ought not to have or maintain his action because he was before, at the time of exhibiting the bill, and that he now is, an alien enemy, is badly pleaded. But, notwithstanding the imperfection, the Court, if satisfied from the whole record that the plaintiff is in point of fact an alien enemy, it will give judgment accordingly: *LeBret* v. *Papillon*, 4 East. 502.

COSTS.—If the plaintiff is domiciled in a country in a state of war with England, he cannot, so long as that state of war lasts, be required to furnish security; but the Court must suspend all proceedings in the case until peace is restored: *Re Rozarijouk* v. *B. & A. Asbestos Co.*, 16 Que. P.R. 213.

It was questioned, in the case of *Robinson & Co.* v. *Mannheim Continental Ins. Co.*, [1915] 1 K.B. 155, 31 T.L.R. 20, whether, if an alien enemy is successful, he is entitled to an order for the payment of costs. In the judgment, Bailhache, J., remarked: "I mention this point now because, in considering my judgment, it occurred to me as a possible difficulty in the way of allowing the action to proceed. I think, however, the difficulty, if it arises, is sufficiently met by suspending the defendant's right to issue execution."

ARBITRATION.—In the case of *Smith, etc.*, v. *Becker, etc.*, 31 T.L.R. 59, the right of an alien enemy to proceed with an arbitration under the arbitration clauses in a contract made before the outbreak of the war was upheld.

NATURALIZATION.—According to the principles of public international law recognized in England in time of war, the subjects are enemies as are the states, *"jus standi in judicio"*; but if the subjects of a belligerent state are allowed to remain in this country, they are relieved from their disabilities. The proclamation of August 15, 1914, which confirmed to the Germans and Austro-Hungarians residing in Canada the enjoyment of all rights which the law had accorded them in the past, upon condition of their good conduct, is in conformity with art. 23*b* of the Hague Conference, and, consequently, such aliens who live in this country during the war preserve their civil rights, and particularly that of applying for naturalization: *Re Herzfeld*, 46 Que. S.C. 281.

The *Herzfeld* case, *supra*, was not followed in *Re Cimonian*, 23 D.L.R. *ante*, 34 O.L.R. 129, and it was held, following *King* v. *Lynch*, [1903] 1 K.B. 444, and *Porter* v. *Freudenberg*, [1915] 1 K.B. 857, that an alien enemy has no right to naturalization, and his application therefor will be dismissed by the Court of its own initiative.

ARREST AND DETENTION.—In performing the duty of arresting and detaining persons of a nationality at war with Great Britain who attempt to leave Canada, and in regard to whom there is reasonable ground to believe that their attempted departure is with a view of assisting the enemy, a wide discretion is left to the military commanding officers, which will not ordinarily be reviewed or interfered with by the Courts under a *habeas corpus* process: *Re Chamryk*, 19 D.L.R. 236, 25 Man. L.R. 50.

# Province of Nova Scotia.

## SUPREME COURT.

Drysdale, J.] [October 22, 1915.

REX *v.* HENRY, ALIAS REID.

*Prisoner in custody awaiting sentence—Practice on other pending criminal charges against her.*

The defendant was convicted on October 19th, 1915, on summary trial by the Stipendiary Magistrate of the City of Halifax for uttering a forged cheque and remanded to jail at Halifax till November 16th, 1915, to be then brought up for sentence. The Deputy Sheriff had sworn out a warrant to arrest, issued and dated September 13th, 1915, against the defendant for uttering another forged cheque. A material witness for the prosecution was about to leave the Province. On the above facts an application was made ex parte under Nova Scotia Crown Rule 157, on October 22nd, 1915, for a writ of habeas corpus ad respondendum to bring the prisoner before a justice for preliminary examination.

*Held*, following *Ex p. Griffiths*, 5 B. & A. 730, and the practice as laid down in Archbold's Crown Practice (1884), pp. 347-8, that the writ should be granted as asked for.

*Power*, K.C., for the prosecutor, for the motion.

[NOTE.—The prisoner was brought before the Justice and after preliminary examination was committed for trial.]

# Book Reviews.

*The Principles of Bankruptcy.* Embodying the Bankruptcy Act together with the unrepealed sections of previous Acts. By RICHARD RINGWOOD, M.A., 12th edition. London: Stevens & Haynes, Temple Bar. 1915.

Mr. Ringwood is well known to the profession as the author of "Outlines of the law of Torts" and "Outlines of Banking Law."

The book before us, being now in its 12th edition, is so well known as not to need any detailed reference to its contents. But it may be said generally that it covers all legislation in England

touching insolvency, bills of sale, deeds of arrangements, bankruptcy rules, etc., and also refers to the leading cases on bankruptcy and bills of sale. Its value in this country would be very considerable if we had, as we hope to have "when this cruel war is over" a well considered bankruptcy law for the whole Dominion.

*Illustrations in Advocacy.* By RICHARD HARRIS, K.C. 5th edition, with a foreword by George Elliott, K.C. London: Stevens & Haynes, Bell Yard. 1915.

The author, amongst other interesting information, gives an analysis of the speeches of Mr. Hawkins, K.C. (Lord Brampton), in the Titchborne prosecution for perjury. Perhaps the most instructive part of these short but suggestive studies in advocacy is the analysis above referred to. It recalls to one's memory that historical trial which put the finishing touch to the reputation of Mr. Hawkins, whose masterly cross-examination of the claimant exposed the fraud which the prisoner endeavoured to perpetrate. If space permitted we would gladly give numerous extracts from these amusing as well as helpful illustrations; but the best thing our readers can do is to buy the book and keep it on hand to wile away the present tedious hours until business revives, hoping for something more arduous and lucrative in the near future.

*Notes on the Remedies of Vendors and Purchasers of Real Estate.* With special reference to Instalment-plan Agreements. Rescission, Determination and Relief against Forfeiture. Second edition. By C. C. McCAUL, B.A., K.C., of Osgoode Hall, and of the Bars of Alberta, Saskatchewan, and British Columbia. Toronto: The Carswell Company, Limited, 1915. London: Sweet & Maxwell, Limited.

The first edition of this interesting and useful book was published in 1910 and was so well received by the profession that a second edition has been called for. The book before us brings down the cases to the date of publication. The work is eminently practical as may be seen from the Table of Contents: Chap. I. Introductory; II. Vendor's Remedies—Contract affirmed, covering actions for purchase money and damages, to enforce vendor's liens, specific performance, etc.; III. Vendor's remedies—Con-

tract disaffirmed, covering rescission and re-sale; IV. Vendor's remedies—Special stipulations, covering a number of miscellaneous subjects. V. Determination apart from special stipulation. VI. Purchaser's remedies, explanatory of and giving further details as to the information given in chapters II. and III.; VII. Notice—Waiver—Delay; VIII. Election of remedies.

In the citation of cases the author gives generally, as far as possible, the words of the court in reference to the point under discussion. The style of the author is clear and concise. The book is specially useful as it collects the law as to and deals with various matters not easily found without much research.

## Bench and Bar.

### Judicial Appointments.

Cornelius Arthur Masten, of the City of Toronto, in the Province of Ontario, K.C., to be a Judge of the Supreme Court of Ontario and a member of the High Court Division of the said Court and ex-officio a member of the Appellate Division of the said Court, vice Mr. Justice Teetzel, who has resigned the said office. (Oct. 30.)

### Mr. Justice Masten.

The vacancy in the Supreme Court of Ontario, caused by the retirement of Hon. Mr. Justice Teetzel through ill health, has been filled by the appointment of Mr. Cornelius A. Masten, K.C.

Mr. Masten was born at Lacolle, in the Province of Quebec, and was called to the Bar in the year 1881 and received silk in 1908. He was appointed a Bencher of the Law Society of Upper Canada at the last election, and practised law in Toronto for thirty-four years, first in partnership in the firm of Watson, Smoke and Masten and subsequently in the firm of Masten, Starr and Spence. Mr. Masten was well and favourably known as a barrister outside his own city and carried on a substantial law practice up to the time of his appointment. On Monday, November 1st, at the Non-jury Sittings, he received the congratulations of the Ontario Bar. We hear on all sides that Mr. Justice Masten is able, learned, impartial, amiable and dignified. It is safe to predict he will be a useful Judge and persona grata to the Bar.

## The Canadian Bar Association.

A meeting of the Ontario Executive of the Canadian Bar Association was held at the office of the Associate-Secretary on October 15th ultimo. There were present: E. F. B. Johnston, K.C., Vice-President; M. H. Ludwig, K.C.; N. B. Gash, K.C.; F. M. Field, K.C.; C. A. Moss, Esq.; and W. J. McWhinney, K.C., Associate Secretary.

Mr. Nichol Jeffrey of Guelph, a member of the Association, was elected to serve on the above committee to fill the vacancy caused by the death of the late Mr. J. J. Drew, K.C., of Guelph.

Mr. Ludwig, convener of the sub-committee appointed to consider the question of the uniformity of Insurance Laws, reported that he had given the subject considerable study, but found it was so vast that he felt the members of the Committee could not give the necessary time to do the preliminary work necessary to enable them to make the first report thereon. He accordingly suggested that some competent member who could afford the time, should be employed and paid to do the preliminary work; and this being done, the sub-committee would give all necessary assistance to the member so employed. No action was taken on this report.

## Sittings of the Courts.

*Ontario.*—Mr. Justice Masten has announced his intention of holding the Weekly Court, when he is sitting, at half past ten a.m., instead of the ordinary hour of 11 a.m. Chief Justice Falconbridge sits at 10 a.m.; at present no other judge, that we are aware of, has decided to sit at any other hour than 11. It would, of course, be within the verge of possibility that each judge should select a different hour for commencing business. At the same time it is quite obvious that such a course would be very inconvenient to the profession, who often have no means of knowing until the court opens which judge is going to sit. Besides, it must be remembered that the officers who attend the sittings of the court are also the officers deputed to countersign cheques, and the hour before the opening of the court is the only time they may be able to devote to that purpose, and if that hour is taken away it means that the business of the accountant's office will be more or less blocked. The plan of judges selecting different hours for sitting is to be deprecated. If the judges who desire to commence business at an earlier

hour than 11 a.m. cannot persuade the rest of their brethren to conform to their wishes, so that there may be a uniform rule, then it does not seem too much to suggest that the minority in this, as in other matters, should conform to the practice of the majority and not seek to be a "law unto themselves."

## War Notes.

MESSAGE FROM THE KING.

The following is the message from His Majesty The King calling for more men to fight the battles of the Empire:—

"To My People.—At this grave moment in the struggle between my people and a highly organized enemy who has transgressed the laws of nations and changed the ordinance that binds civilized Europe together, I appeal to you.

"I rejoice in my Empire's effort and I feel pride in the voluntary response from my subjects all over the world who have sacrificed home and fortune and life itself in order that another may not inherit the free Empire which their ancestors and mine have built.

"I ask you to make good these sacrifices. The end is not in sight. More men and yet more are wanted to keep my armies in the field and through them to secure victory and enduring peace. In ancient days the darkest moment has ever produced in men of our race the sternest resolve. I ask you men of all classes to come forward voluntarily and take your share in the fight. In freely responding to my appeal you will be giving your support to our brothers who for long months have nobly upheld Britain's past traditions and the glory of her arms.

"GEORGE, R.I."

This appeal must surely stir the hearts even of "slackers." Some of these are "degenerates" and are not wanted. Others are not, and still hold back. If the King's call does not stir them, perhaps a perusal of the account of the dastardly murder of the heroic nurse, Miss Cavell, might breed indignation and a desire to punish her German butchers. Loyalty and righteous anger should be strong incentives.

War was declared by Great Britain against Bulgaria from October 15th, at 10 o'clock p.m.

There has been a warm and hearty response to the appeal of the English Red Cross referred to in the Royal Proclamation (ante p. 421). As the returns are not all in, the amount cannot be stated definitely, but at present it is considerably in excess of one and half million dollars. It will probably be increased to two millions, or more.

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Another member of the Bar takes command of a regiment. Captain Arthur Clement Machin of Kenora, will be the Lieut.-Colonel of the new regiment composed of units from Port Arthur, Kenora, Fort William and Rainy River regions. It is an excellent appointment. Captain Machin was at one time in the South African Constabulary and took part in the war in South Africa.

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The following extract from an article of Sir Frederick Pollock, in the "United Empire Journal," is worth noting at the present time:—

"The present war has so marvellously consolidated the Empire that it is sometimes difficult for those whose memory does not carry them back beyond a couple of decades or so to realise how slender was the bond, and how few the common interests, at a time within fairly recent memory. It was only in 1887 that the first Imperial (then designated Colonial) Conference was held, and it did little more than express a pious hope for closer Imperial relations. An advance was made in 1898, by the establishment of Imperial Penny Postage, towards greater communication between all parts of the Empire and hence greater knowledge. But it required the Boer War to bring to the average individualistic Briton the realisation of Imperial co-partnership. It was during the dark days of the Boer War that the League of the Empire came into being. It was felt that the linking together of the children of the Empire would do something towards maintaining its future stability, and the Comrade Correspondence Branch was formed, a tiny but unbreakable strand in the web of Empire, and one destined to exercise a strong and ever-growing influence."

## Flotsam and Jetsam.

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Lord Halsbury, who long ago earned the title of the "Grand Old Man" of the Law, will complete his ninetieth year on Friday, having been born on September 3, 1825. Every member

of the profession, proud of his extraordinary record of unabated vigour, will cordially wish him many happy returns of the day. It is sixty-five years since he began his distinguished career at the Bar, and thirty years since he began his unusually long tenure of the Woolsack. So sure has been his possession of the secret of perennial youth that, notwithstanding his approach to the nonagenarian stage, he has remained one of the youngest men in the profession. When ten years ago, Mr. Choate was entertained by the Bench and Bar of England on his retirement from the office of American Ambassador, he made a very felicitous allusion to the irrepressible vitality of Lord Halsbury, who, as chairman of the gathering, had proposed his health. Quoting the familiar lines, "time, like an ever-rolling stream, bears all its sons away," Mr. Choate observed: "But the Lord Chancellor seems to stem the tide of time. Instead of retreating like the rest of us before its advancing waves, that happily he is actually working his way up stream" is scarcely less true to-day than it was ten years ago. Two other Chancellors of the Victorian era lived to be nonagenarians; Lord Lyndhurst was ninety-one when he passed away, and Lord St. Leonards reached the age of ninety-three. The "Lyndhurst of our day," as Sir Edward Clarke has aptly called him, continues to display a mental and physical vigour which encourages the hope that his years will exceed those of any of his predecessors.—*Law Journal.*

John Doe, having taken a recent bar examination, was asked by his friend Richard Roe, how he came out, to which Doe replied: "Well, I wrote Little on Mortgages and Trust Deeds, Moore on Facts, and Long on Domestic Relations. I Fell on Guaranty and Suretyship and was Fuld on Police Administration, but Keener on Corporations. I got Wise on American Citizenship, but was Poor on Referees under the Code System. My Spelling on Trusts and Monopolies ranked me High on Injunctions and May on Insurance. I took a Knapp on Partition, was Tarde on Penal Philosophy, but started the Ball on National Banks and did my Best on Evidence. I was Hale on Torts, turned Gray on the Rule against Perpetuities, got Dropsie on Roman law of Testaments and pulled through by a Hare on Contracts."—*Case and Comment.*