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THE LAW FROM A PREVENTIVE STANDPOINT.

By Hon. Mr. Justice Hodgins, Ontario.

While the science of the law has its juristic side, the one most characteristic of its qualities, it is also properly described as the conscience of the nation, for in its statutes and customs and in its methods and principles there will be found reflected the conception by its citizens of the relation of the State to the individual, the municipality to the individual and that of each individual to his fellow.

In the Criminal Code and in various other enactments, if we study them with a view of understanding why they became law, we shall ascertain with certainty the standards of morality in its broadest sense set up by the nation, for breaches of which it feels itself entitled to exact a penalty.

In the commercial world, where the tremendous volume of business needs, for its smooth and satisfactory working, a body of law that shall be certain, comprehensive and simple, we find many codifications of the law: the Bank Act, the Bills of Exchange Act, the Sale of Goods Act (not yet in force here), the Bankruptcy Act (just coming into force), the Merchants Shipping Act, and other illustrations which will occur to you. All of these reflect in some way or other what is considered to be reasonable and fair in business transactions, modified by those occasional regulations which are necessary to prevent violations of the rules so laid down, under the guise of right. These are such things as estoppels, *res judicata*, *stare decisis*, and other rules of evidence with which you are more or less familiar.

Our ideas of what a community is, what duties it imposes upon us and what private rights must be curtailed for the benefit of the whole body are to be found in our Municipal Act and cognate statutes.

In the field of industrial legislation and of charitable endeavour as seen from the standpoint of Provincial and Municipal duty, there is a wide range of statutory provisions, and in them will be found the conception which from time to time animates the community in realizing its social and moral duties to those who are either toilers or the poor or afflicted in mind, body or estate.

The whole structure of law viewed in this way as indicating what is the genius of the nation and what are its ideas of right and wrong, of prudence, fair dealing and compassion and of the rights and duties of man, woman and child, is a very interesting one. It has shewn a great deal of development in the past half century. I cannot say, however, that in looking back I have recognized in our profession any thought or desire as professional men to look at the law other than as something to be studied, known and interpreted. It does not seem to have occurred to us that the very fact of our knowledge of, and familiarity with, the law of the land, and the high intellectual gifts demanded by our profession brings with it an obligation to suggest and strive that laws should be made as perfect as it is possible to make them, and that our duty is not wholly done when we have mastered their principles or studied the statute book.

Many fields of reform and hopeful experiment in the endeavour to make life better or more tolerable are open, in which no substantial progress can be made unless there is first laid down a proper and adequate frame-work of law. This back-ground or foundation is absolutely necessary for reasons which are obvious and readily seen in the working of some of our judicial and administrative processes.

Some of my occupations during the past few years have led me to think that no greater aid could be given in certain directions, to the spirit of social betterment, than by putting the attainments of our profession at the service of enlightened and progressive workers who are trying to improve the conditions in both normal and abnormal life.

It may be interesting to take some illustrations and see whether the point I desire to bring home does not make itself manifest, and that point is that law is only the expression of our national con-

ception of our duty to our fellow man and his to us, and that it is worth studying from time to time, whether the duty has not somewhat changed or its expression in our law has not become archaic or fragmentary. We have all witnessed recently the absolute breakdown of the Public Health Act, owing to the fact that when it was framed those who constructed it had not visualized the situation which might occur and which would then demand a remedy. Apart altogether from the merits or demerits of the particular point involved the failure of that legislation to attain its ends was definite and unmistakable.

Let me go over a few of the topics that may appear to need study in the light of new experience and progressive ideas: In the field of Criminal Jurisprudence, the Code has eliminated many problems, but things have moved rapidly since it was passed, and Community work has brought to the surface questions and difficulties not reached by the Code. To anyone looking at the fact that the great mass of crimes and offences are triable by the County Judges and that the City of Toronto, with its vast population, provides more than these judges can do, the idea of a Central Criminal Court with all its advantages naturally suggests itself and, with that, the necessity for a Director of Criminal Prosecutions. I am not now discussing the wisdom of these courses, but merely using them as illustrations to shew that if our profession would study the situation here in regard to these matters, from a juristic, social and economic standpoint instead of assuming that these things must be good because they have been been adopted elsewhere, it would be of great advantage to the community.

Recently, too, attention has been called to the practice in the Police Court and the archaic nature of its proceedings, having in view the complex matters which are continually brought up, to say nothing of their enormous number. That reforms in that branch of procedure are necessary is probably not disputed and a study of them from the outside would be valuable. It is to be regretted, however, that in introducing the matter to public attention, the chief attack was made on our profession as if all its members practised in the Police Courts. Journalists who report the proceedings in that Court should remember that in their own pro-

fession there are journals known as "gutter journals" and that in the profession of law there will be found "black sheep." But these are excrescences on the fair fame of two important and honourable professions, and it is only right, when drawing attention to lapses, to except from their strictures the very large body of honourable and reputable practitioners whose presence serves to keep the Police Court from degenerating into a happy hunting ground for those to whom particular reference was intended to be made. But there are very much larger questions now looming up. One is, whether criminal justice is being administered in the wisest way or whether certain aids to the Court should not be provided, so that it may have before it not merely the crime and the criminal, but information which will aid the Court in determining the severity or leniency of the sentence, and also, and this is most important, the proper destination of the criminal. Another is whether the existing rule of responsibility for crime can be maintained without some relaxation in regard to mental defectives who at present are not recognized as entitled to the protection xtended to the insane.

Dr. Bernard Glueck, a psychologist of note, was detailed to conduct an expert study of the criminals in Sing Sing Prison and his report is replete with valuable and interesting information. In it appears the following:

"To the student of behaviour, a knowledge of the individual back of a given act is considered absolutely essential if a clear understanding of the nature of behaviour is to be had. Nevertheless one cannot escape the conviction that as far as the administration of the problem of crime is concerned, the man back of the act is largely lost sight of, and what is actually administered is the criminal act and not the criminal. Intimate contact with the problem of crime inevitably leads to the opinion that every agency concerned in the administration of this problem sees in its own work an end in itself, and seems to lose sight of the common goal or end, toward which all should be striving, namely, the readjustment of that badly adjusted individual, the criminal.

"That this cannot be expected to be otherwise under the prevailing attitude of the average community towards its problem of crime must be obvious to anyone who takes the trouble to look into the situation more closely. Just as long as a community will

judge the efficiency of its police officers, its prosecuting attorneys, and its judiciary by the volume of crime they are able to detect and punish, rather than by the extent to which they succeed in preventing crime, an unnecessarily large number of what might be termed provoked crimes must be the result."

Dr. Hickson, the Director of the Psycopathic Laboratory of the Chicago Municipal Court, describes the negative tendency of the law regarding this subject:

"The attitude of the Bar has been that the judges, prosecuting and other attorneys were there only to carry out the law and had no part in the securing of new and better laws, to get at the bottom of things, but assigned that duty to the people and their legislators, claiming that they were the ones who were responsible for the laws, and the legal fraternity only for their fulfilment. Theoretically, there may be some justification of this attitude, but practically there is none, for in these days of complex life, when specialization is a matter of necessity, what can the layman know of the whys and wherefores of criminology, and logically, the legal fraternity are the ones who are most familiar with the situation and the ones we must turn to for initiative and advice in the field.

We feel that there is just as great a moral obligation resting on the law in regard to research into the causes and prevention of crime as there is on the medical profession in regard to researchinto the causes and prevention of disease. The fact that two per cent. of the general population are criminals is highly significant, for it means to those familiar with psychological and sociological statistics that we are dealing here with a highly specialized, isolated group of individuals, which of itself should have awakened our curiosity and called for careful investigation. If the percentage has been, say, fifty or sixty per cent. it would lose such significance, as then it would be approaching a more general, average condition."

Dr. Singer, Professor of Psychiatry in the University of Illinois, puts the imperfection on the present system very forcibly. He says:

"The conclusions of the courts as to the proper disposition or treatment of cases can be satisfactorily reached only when the causes of the delinquency, whether structural or environmental, and the habits of adjustment of the individual, with the possibility of their correction or modification, are given as full consideration as the facts concerning the crime itself.

"Such important questions as that of probation or the need for institutional treatment cannot be settled by any routine procedure,

such as 'this is a r.. offence' without running the very great risk of further anti-social conduct, with perhaps more serio.s consequences on the one hand or on the other hand the risk of jeopardizing the chances for recovery of the individual.

"These questions are now being met by the establishment of psychopathic laboratories in connection with courts of which there are several attached to juvenile courts, and at least two, in Chicago and Boston, for the assistance of municipal courts.

"But the establishment of these expert centres will not relieve the lawyer from the need for training in mental hygiene if he is to co-operate intelligently with and use the laboratory, and if his work is to be not only remedial but also preventive. Many lawyers still find it diff..lt to detach themselves from the belief that a criminal who is neither feeble-minded nor insane, is, therefore, 'responsible' and a fit subject for 'punishment.' Nothing but a realization of the causes and nature of behaviour disorders will overcome this.

"To advise adequately in regard to many matters which come rather within civil than criminal practice, such as divorce proceedings, will-making, etc., the same training is of the greatest value."

A very important report by an unusually able Committee was presented to the State of Massachusetts in February, 1919. It touches upon the greatest evil connected with the administration of criminal justice. It says:

"It is still the practice in our courts generally to commit offenders for short terms without permitting an examination and study of the individual himself to determine whether his condition is not such as would cause him unavoidably to become an offender whenever he is at liberty. Society cannot protect itself against the chronic repeater otherwise than by study and classification of offenders as they come before our courts, and such disposition of them, after a finding of guilt, as will take into account their proved inability to adjust themselves to normal conditions of living under law; and by the provision of such ways and means, through custodial detention or oversight, as will guarantee the community against their constant depredations. The only just way of dealing with such an incompetent must be by a plan of kindly custodial oversight based upon a recognition of his condition rather than his offence. That our police departments should go on rounding him up and our courts go on imposing fines and terms of sentence upon him time and again, at great expense to the public and to the great delay of trials for others, is absurd as a business proposition and unjust as a disposition of the rights of our citizens."

It is, as Dr. Healy, famous for his psycopathic work, both in Chicago and Boston, reminds us, fundamental

"that any court handling an offender should have direct jurisdiction over the contributing agencies to his offence. The greatest travesties in justice occur through this omission, found almost everywhere. The failure to do justice to the total situation involved in the case betokens the utter weakness of this branch of social effort. The conveying of a complaint and of evidence to another court, to be tried perhaps weeks hence, without the ultimate knowledge of the facts concerning the primary offender and his case, is psychologically and practically a very weak proceeding.

"There are many other fundamental needs in criminal procedure which members of the legal profession see, but the above are matters of organization where decisive human factors are not taken into account.

"The judge must make the decision as to the precise form of sentence. In making this choice his highest consideration must, of course, be the interest of society as a whole. He must endeavour to select that form of sentence which will most surely prevent a repetition of offences on the part of the convicted delinquent. But to make that choice he must know what kind of an individual he has to deal with, as different types react differently to the various forms of punishment and restraint. What would eminently suit the case of delinquent A. might prove entirely wrong as treatment for B.

"Right here is where psychopathology comes to the assistance of the Court. The precise type of psychosis is exceedingly important in the case of every deficient prisoner. And it should be noted that there is no personal interest on the part of the delinquent which is opposed to the public interest. The judge does not have to choose between duty and sympathy. That decision which best serves the public welfare invariably is best for the individual delinquent. It is not merciful to release a delinquent who stands no chance to wage a successful battle, for he is certain to get into the toils of the law again in a short time. The only consideration is as to the kind of sentence which will best avail to keep him out of trouble, whether it be probation, with effective aid from competent friends and relatives, or incarceration in an institution selected to meet his individual requirements."

Dr. Healy here touches upon a feature of great importance, namely, the futile way in which the Courts deal with those known as "repeaters" or "recidivists", *i. e.*, those who have served one

or more terms of imprisonment. Dr. Hickson emphasizes this view:

"Recidivism is much the crux of the whole criminilogocal situation, while at one and the same time it is the most illuminating and also most discouraging symptom, in that it shews the hopelessness of our present methods of dealing with crime, and that, therefore, there must be something fundamentally wrong because it confirms our findings that the underlying cause of the vast majority of cases is an incurable hereditary constitutional mental defectiveness."

He calls attention, however, to the difficulty arising from the absence of the quality of helpfulness in the Bar in relation to this very point. He says:

"Many of these suggestions may seem to be, or are, in conflict with present laws, but we want to go on record as having the highest respect for the law, and appreciation of its *raison d'être*, especially where it is based on intelligent premises, even though it be not always perfect, so long as the bases on which it is founded are the last word obtainable on the subject. We think one of the big mistakes that is being propagated in the law, especially in the matter of what is known as forensic psychiatry, is that practically all the efforts of committees and individuals that have been working for betterment in this field have made the existing laws basic to their efforts as though they were the most scientific and advanced development in the various correlated sciences that underlie them, as though they were the last word on the subject, the *Ultima Thule*. As a matter of fact, they are quite the contrary, and thus we see them striving and straining, twisting and turning, struggling to square up modern scientific knowledge with the archaic and obsolete encumbrances of spirit and tradition of the ancients, to bring the newer scientific knowledge into harmony with the old alrgely unscientific accumulation, as though men were made for laws and not the laws for men, as though they were above and beyond men and not of and for men."

I cannot refrain from quoting from an enthusiast who has spent much time in the Criminal Courts of a large city in the endeavour to introduce some such reform as I have been discussing. He says:

"Judges, lawyers and policemen—men who have lived long under the conservative influences of law—all come from Missouri. They 'have to be shewn.' And they have to be shewn, not once

or twice, but unto seventy times seven. Of course, once they have been subjected to this labourious process, their hearts are yours unreservedly, and they will stand by you and your 'modern methods' to the bitter end."

Upon the second branch of the subject, Mr. Francis D. Gallatin, of the New York Bar, speaks thus:

"The only test of criminal responsibility recognized by law is whether the defendant knew the nature of the act of which he is accused, and if so, whether he knew it to be wrong. If he so knew, he is to be held responsible, abnormal as he may otherwise be.

"From this state of the law has arisen the idea that there are two kinds of incompetency, the legal and the medical: the one as applied by the courts, and the other as applied by the medical profession. The expression that 'an individual is medically although not legally, insane' is not infrequently heard. This is unfounded, for the law does not foster such absurdities. The confusion has arisen from a misconception.

"The law does not declare that all mentally unsound persons are criminally irresponsible and then proceed to inquire whether the defendant is mentally unsound; but it does declare that persons suffering from mental diseases attended by certain psychological phenomena are criminally irresponsible, and then enquires whether the defendant suffers from such disease and whether such phenomena are present.

"A divergence of view between the two professions as to what constitutes insanity is not indicated when the law declares responsible an individual whom the medical profession has pronounced insane. The question at issue is not whether the defendant is insane, but whether under the law he is responsible.

"To assist the Court in applying the test, the medical expert is called in. The question of the mental condition of the accused, in the abstract, does not concern him. The court will not hear him say in such proceedings, whether the accused is sane or insane, normal or defective, but whether his concepts and perceptions are such as the law declares should render him irresponsible for his acts.

"The law in its attribution of criminal responsibility makes no distinction between the normal individual and the mental defective. Certain low-grade mental defectives, it is true, being ignorant of the nature of their acts or incapable of realizing their wrongfulness, are declared irresponsible by the courts and dealt with in a manner appropriate to their condition. These are the exception and not the rule.

"With the high-grade mental defective this, under the present law, is not possible. He knows the nature of his act and that it is

wrong. To him is attributed criminal responsibility to the same extent as to the mentally sound. No weight is given to the fact that in mentality he is but a child.

"Yet toward the child in years the law assumes a paternal attitude. Up to the age of sixteen, it deems their wrongful acts, with the exception of murder, not crimes, but juvenile delinquencies, and deals with the delinquents themselves on lines not penal, but reformative and educative. They are not punished, but cared for and instructed. They are not viewed as criminals, but unfortunates over whom the State, for their own good, extends its protecting arms. This exceptional treatment is accorded not on account of their youthful age as such, but on account of the undeveloped mentality which accompanies it. Why should it not also be accorded to those unfortunate individuals chronologically adults, but in mentality and adaptability to their surroundings, children? The answer seems obvious."

I should like to sum up my own views and those I have quoted in some such way as this:

To allow young men and women and adults of both sexes to appear before magistrates and judges and to be tried and condemned without any effort being made to ascertain the cause of their downfall, their previous environment, and their mental condition, is, in the light of modern thought, a most unwise and costly mistake. It judges the mentally defective and others as if he or she was entirely responsible and it ignores the costly burden upon the State caused by term sentences which permit, after an interval, the criminal to return to society, to again resume his career of vice. It is the duty of every judge to endeavour to deal with crime so as not only to punish the particular offence, but to give to the condemned person an opportunity to profit by his experience and to reform. At present any effort in the latter direction is completely thwarted by lack of knowledge of the very facts which would determine just what punishment or treatment would accomplish the desired result.

It is no secret that magistrates and judges in an indirect way do endeavour to ascertain something about those upon whom it is their duty to impose punishment, and that they are too often pressed with the knowledge that they have before them but little to guide their decision. The law, represented chiefly by the judges, magistrates, the police, the parole and probation officers,

the juvenile and police courts, and those administering criminal justice, are a force, always at work, which has to deal with many who are not always covered by home and school survey. If there were placed at the disposal of the judges, magistrates, police and lawyers, some adequate and scientific organization for making enquiry and examination into the previous history and mental condition of offenders, there would be a most welcome relief to their responsibility and a radical change in the administration of criminal justice to the great and lasting advantage of the community, both in a social and economic way. The most far-reaching result, however, would be that each case would be dealt with, not merely from the standpoint of benefit to the individual, but from that of the State, and it is obvious that both these advantages would be utilized to the full, for in no case could the welfare of the State fail to coincide with that of the person affected by the ultimate disposition of the case.

Passing now to the question of Industrial legislation, there are two departments of it to which the attention of our profession might well be given with a view of bettering its outlook. One relates to the necessity for seeing that everyone who works has the right not only to certain defined hours beyond which he shall not be expected to labour, but also to conditions not merely of sanitation but also of more or less comfort, convenience and attractiveness. Hitherto the subject has been viewed in legislation merely from the point of view of the safety or physical health of the employee. I suggest that that is not a sufficiently wide aspect in which to look at labour legislation. The Workman's Compensation Act, too, while framed in the most effective and successful way, has yet failed to lead to any measure looking to the rehabilitation of the injured workman and seems to stop at providing him with purely medical attendance. From the large amounts raised by the Board, it ought not to be out of the question to spend a part in putting into force some of the methods employed in rehabilitating returned and injured soldiers. These are intended and do help successfully, not merely in restoring the injured workman to health but in re-educating him for his own particular vocation, if he can return to it, or for some other more suitable for his decreased efficiency.

But by far the most important division of this subject is in regard to industrial disputes and their settlement. I know of nothing in which unselfish work might be done so profitably to the community at large, as a tolerant and thorough survey of industrial legislation both here and in every other country in the world, and an endeavour made from a perfectly independent source to suggest to both employees and employers of labour, methods of dealing with what is now an almost insoluble and perpetually thorny problem.

There are some other subjects, the legislation in regard to which needs entire re-casting or very great improvement. One relates to limited companies for mining or other speculative industries. While the subject is difficult, there is no doubt that great scandals have attached to many of what are known as "flotations" in Ontario and a demand has been made for "blue sky laws." Is this not a subject to which much study could be devoted with great utility?

The law, too, of Landlord and Tenant is a survial of conditions which are even now becoming archaic. It has been radically altered in some directions during the War, as has been the law in regard to contracts for the sale of land and as to mortgages of land, and no one has felt particularly aggrieved thereby. The time has come, I think, for a complete revision of the law regarding landlord and tenant so as to secure the tenant greater fixity of tenure and the landlord better protection in the way of dilapidations, which are really injuries to the habitation caused by the abuse and carelessness of the tenant. Ground leases ought to be considered an abomination in this country and abolished. The tendency has always been to put upon the land held on ground lease, poor and cheap buildings which rent for comparatively high amounts and are often allowed to go out of repair. They block civic progress while the return to the ground landlord is comparatively small. The law as to the relations between ground landlord and tenant appear to be based upon the idea of hostility, for forfeiture is the penalty for almost all breaches and it depends upon the good nature of the Court to relieve therefrom. This is unjust and represents an absolute anachronism. Provision should

be made that a transfer of the leasehold interest in these long leases should be done as readily as in the case of land and the responsibility of the tenant should cease when the transfer has taken place, and rent has been paid by the incoming tenant. In case of death, the right to abandon the lease or better still, to transfer it, and end liability upon it should be provided for.

One of the largest, and at the same time most pressing subjects still remains to be mentioned and that is the whole field of benevolent social work, whether taken in hand by the Provincial or Municipal authorities or whether it is left to voluntary workers. It includes reformatories, refuges, industrial farms, hospitals for the insane, housing accommodation, provision for the feeble-minded and epileptic, the care of neglected children, the protection of females, Juvenile Courts, maternity boarding houses and countless other ramifications which are touched or affected by legislation and are the subject of much concern and consideration in these days. Some of these appeal to one class of mind and some to another. For instance the care of neglected children and the operation of Juvenile Courts form a subject unusually attractive to a great many. We know something generally about present conditions, and how poorly equipped the City of Toronto is in both directions but so far no body of men or society, and no profession has come forward and taken hold of the subject with a view to its study and the improvement of those conditions. Our city seems to be singularly lacking in the pride which other cities display in their institutions, if I may except the Canadian National Exhibition. We certainly are not leaders in the way of social reform. What we want at the present moment is a body of interested, competent and observing men and women who will take up the whole subject to which I have just referred and study it so as to discover the weak points either in its executive action or from the standpoint of existing law and make an effort to construct such a framework of law and an administrative mechanism based solidly upon that law, as to make it possible that the work regarding children in Toronto will be something of which every citizen might well be proud.

Another direction in which similar effort is badly needed is in regard to the care of feeble-minded. What legislation at present

exists is based upon the idea that there are only two classes in the community, viz.: those who are normal and those who are out-and-out insane. That there is a middle class is unfortunately only too true, but our laws regarding them are conspicuous by their absence and those who are connected with institutions or conditions which have to reckon with feeble-minded find themselves hampered at every turn. The fact is that there is no law applicable and that they are compelled to treat feeble-minded children and adults as normal. Nor has there been any effort to take advantage of the provisions for special classes in our schools. Consequently normal children in the schools are held back and the work is disorganized by the presence of a few who, if taken out of the ordinary classes and put into special classes would themselves be happy and would leave the rest of the school in peace and quietness. This subject alone is one in which much could be done, and it would be a very worthy act if our profession were to take it up and add to its duties that of securing a body of law capable of allowing the care of the feeble-minded to rest upon the secure basis of prevention rather than of after care.

The law of responsibility for crime, restricted now to the insane, should be studied and its application to mental defectiveness in its various aspects needs careful remodelling and restatement.

Other topics may occur to you, such as the law regarding motors and motor traffic, which is now becoming a very serious and important one, both in regard to the doctrine of criminal and civil negligence, also as to municipal duties, road making and traffic regulation. There is also the sale of goods, divorce, good roads and a host of other interesting topics to find occupations for alert minds. But it is not my purpose so much to dwell in detail upon many of the matters in which we all agree that reforms and alterations are necessary, as to impress upon you the fact that the profession of law stands as a sort of counter-balance in many social and semi-political movements. The members of that profession are educated: they are taught the value of facts and the necessity for accurate information: they are familiar with the need of fair play in all transactions of life and are therefore well equipped to deal with any subject with caution and discretion. They have not,

apparently, in this Province, learned that there are many people and societies who are definitely trying to better their fellow man and woman, sometimes in ways which do not always commend themselves to everybody, but speaking generally in a spirit of devotion and self-sacrifice, and that these people are not trained in the l[illegible]nd sometimes are not endowed with discretion. The inevitable result is that they sometimes outrun public opinion or want something which ought not in justice to the community be granted. But they are entitled to help and their point of view is after all the right one, for it looks to the betterment of social conditions. What I urge on you has been already done by others.

The New York State Bar Association for some years wrestled with the problems of Workman's Compensation, complicated by constitutional difficulties, with the law relating to expert medical testimony and with that relating to the commitment and discharge of the criminal insane. They did this, not as a bare contribution to law, but as citizens bringing their knowledge and experience to bear on matters affecting the body politic and needing only a secure framework of law to rest upon. And that Association also, during the war, organized itself to help and assist in the operation of the draft law and gave great and unselfish service in securing its smooth working and its ultimate success. The local Bar in the various cities and towns in the zones round training camps also organized so as to secure the revision of old laws or the passing of new ones to aid the efforts of the President and Secretary of War in stamping out venereal disease.

All these movements need for their ultimate success, or at all events would be better for the possession of, the sympathy and service of our profession. Besides this the endeavour to understand and solve a problem has always been an interesting thing to a lawyer. Law Associations have done good in the past by taking up and dealing with many things more closely relating to legal procedure and jurisprudence, but have never yet branched out into something broader, with the idea that it could serve the public freely and without reward and in that way give great and lasting aid towards settling many puzzling and agitating questions. It would be a distinct contribution to public order and good govern-

ment if the legal profession could be induced to divert some of its energy into the constructive channel of the prevention of legal difficulties instead of concentrating upon destructive criticism tempered only by the worship of precedent.*

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

The subject of cutting off the right of appeal to the Judicial Committee is frequently mentioned of late, and I have read with great interest the address of Mr. Gagné, K.C., of Montreal, published in your issue of March, 1920.

If Canada were ready to induce the best talent of the various Bars to accept judicial positions, there might be much strength in the contention that we should have our final Court of Appeal in Canada, and the right of appeal to the Judicial Committee confined to constitutional cases. It is significant, however, that the Supreme Court of Canada (with a very few notable exceptions in respect to some of the Judges), has for years been so unsatisfactory that, in the result, an appeal is chiefly taken to that tribunal when, by reason of the amount involved, it cannot be taken to the Judicial Committee.

It is interesting to observe the result of the cases taken by way of appeal from the Supreme Court of Canada to the Judicial Committee, and I take the liberty of quoting from the address of Mr. Gagné in this respect: "From December, 1903, to 1918, putting aside those cases settled by consent, we have had one hundred and ninety-two demands or petitions for leave to appeal from judgments of the Supreme Court.

In ninety-five cases leave to appeal has been refused, on the ground that the appeal was not justified under the above mentioned rules of jurisprudence, leaving ninety-seven appeals. Of this number, forty-three were dismissed on the merits, giving fifty-four cases in which the appeal to the Privy Council was justified, in which the judgment of the Supreme Court was not only modified

* The above is the substance of a paper read by the learned Judge at the last meeting of the Ontario Bar Association.

but reversed and judgments from Provincial Courts maintained."

That the Supreme Court itself has appreciated its weakness is, to my mind, shewn by the rule limiting time of counsel on argument. Doubtless some counsel may be tedious in their arguments and prone to dwell on comparatively unimportant features of the case. The Judicial Committee, by the training and ability of its members, can and does control the length of arguments by properly directing counsel's attention to points on which the real difficulty appears, but no drastic rule such as the above obtains in any English Court. Neither do I believe that it is possible to cite a case in the Judicial Committee where the Committee has sat dumb during the presentation of the appellant's case and, without calling on the respondent's counsel, dismissed the appeal. Yet this has happened in the Supreme Court of Canada. Such a course finds its parallel only in the practice which obtains in a few State Courts in the United States, where counsel, in objecting with reasons to a question being put, is met by the summary ruling: "Objection overruled."

C. S. T.

CHINESE MARRIAGE LAWS AND THE PRIVY COUNCIL

It seems strange to read of a British Court of justice, in another part of the Empire, adjudicating on a practice which in that country is legal, but which would be biganiy in this country.

The case we refer to also brings before us in a marked way the great variety of law which the Judicial Committee of the Privy Council has to deal with, as well as the multitude of races over which our King holds sway, scattered over all parts of the earth's surface.

Phin v. *Loy* (1920), A. C. 367; 122 Law Times Rep. 593, was an appeal from the Supreme Court of the Straits Settlements, where, in the case of Chinese residents, Chinese law prevails. The Committee had to decide the case according to that law. The question was whether the respondent, since deceased, had been the lawful secondary wife of a deceased Chinaman. The evidence shewed that according to Chinese law a man may have secondary wives, who have the status of wives, and whose children are legitimate. Although some ceremony is usual on taking a secondary

wife, it is not essential. For twenty-six years the deceased respondent had lived with and been maintained and had children by a deceased Chinese merchant in Penang. One child, who survived the father, was referred to in his will as "my daughter" and the name of his secondary wife appeared on his tombstone. The respondent had been recognized by the Chinaman and his primary wife as occupying the position in his household of a secondary wife. The Judicial Committee in these circumstances held that the position of the lady, as a secondary wife, had been established, and, on the death of the husband, so far as he was intestate, she was entitled to share in his estate as a widow.

Small wonder that the Judges, who advise His Majesty on appeals to the foot of the Throne, are remarkable for their breadth of view and general information, trained as they are in such a wide field; and being required to deal swiftly with all sorts of complicated questions.

It is a far cry from Downing Street to the Straits Settlement, but there are events of constant occurrence which bring these matters to one's attention. The most recent is the setting up of a chair of Roman-Dutch Law at the University of Oxford, to which Dr. R. W. Lee, Dean of the Faculty of Law at McGill University, has been appointed. This eminent jurist is known to the profession throughout Canada in connection with the Canadian Bar Association. His paper on Legal Education read at its last meeting, and which appears in another column of this issue, is evidence of this. As our readers are aware, some parts of the Empire, notably South Africa and Ceylon, are under Roman-Dutch Law. Then we have at our own door, French Law founded on the Code Napoleon; and then, across two oceans, we find laws made expressly for the people of our Indian Empire, *cum multis aliis*.

When we consider and appreciate the wide extent of the Empire and the numerous people who are united therein, and who look to our Sovereign Lord the King as the centre and foundation of justice, it behooves us to think Imperially and not to suffer ourselves to be beguiled into the petty parochialism of those who, in the interest of what they call nationalism, would tamper with that great and visible link of unity which is found in His Majesty in Council.

CANADIAN BAR ASSOCIATION.

COMMITTEE ON LEGAL EDUCATION.

The Report of the Sub-Committee on Curriculum will be one of the important matters that will come up for consideration at the next Annual Meeting at Ottawa on September 1st, 2nd and 3rd, and we publish it in advance as the Council feel that, before definite action is taken, it should be carefully studied by Law Lecturers, Benchers and other members of the profession interested in the subject. The Sub-Committee will welcome an expression of views on the part of anyone interested. Provision is being made in the programme of the Annual Meeting for a discussion of the Report; and the Council would be very glad if as many as possible of those interested should arrange to attend the meeting and participate in the discussion. As Dean Lee, who is responsible for the report, has accepted an appointment from Oxford for one year, Dr. D. A. MacRae, Dean of the Faculty of Law at Dalhousie University, Halifax, Vice-Chairman of the Committee, hopes for communications in respect of the subject. These may be directed to him, or to Mr. E. H. Coleman, Acting Secretary and Treasurer of the Association, Winnipeg.

The report of the Committee, as adopted at the Annual Meeting at Winnipeg, August 27, 1919, is as follows:—

"Your Committee further recommends that a special committee be appointed to prepare and submit a standard curriculum for adoption by the various law schools in the common law provinces, and that in such curriculum increased attention should be paid to the training of the students in legal ethics and public speaking.

Early in the Autumn, Dean Lee, as Convener of the Legal Education Committee, got into communication with Sir James Aikins and with the Secretary of the Association with a view to giving effect to this recommendation. Sir James having, been authorized by Council to appoint all committees and sub-committees required by the Association, indicated to Dean Lee his wish that he should nominate the members of this sub-committee. Acting on this authority Dean Lee invited Dean MacRae and others to join him on the sub-committee. Dean MacRae accepted. Subsequently an effort was made to give a representative character to the sub-committee by inviting some of the

Provincial Bar Societies to nominate persons to serve upon it. Mr. T. D. Brown was thereafter appointed to represent the Law Society of Saskatchewan and also that of Manitoba, the Hon. H. A. Robson, who had hoped to be present as the representative of Manitoba, finding himself unable to attend. The result was that the sub-committee was constituted of Dean Lee as Chairman, Dean MacRae from the east, and Dean Brown from the west, and it was thought that such a sub-committee was sufficiently representative of the law schools in Canada to justify it in proceeding to give effect to the terms of reference. Later, Mr. W. F. Kerr of Cobourg joined the sub-committee as representative of the Law Society of Upper Canada.

The Sub-Committee, as originally constituted, met in Montreal on Friday, January 2nd. Dean Brown stated that his instructions from Saskatchewan were to confer and report. As regards Manitoba he had had the advantage of consulting with Judge Robson, with the head of the Manitoba Law School, and with some of the benchers of the Law Society, and was in possession of their views on several points. One aspect of the question which was mentioned as coming from this source was the undesirability of aiming at a rigid uniformity calculated to hamper the initiative of the various provinces or schools. Another point was the importance of maintaining a high standard of attainment and in particular of keeping up the level of the entrance requirements. It was pointed out that students from other provinces seeking to transfer to the Manitoba Law School might experience disappointment if the preliminary requirements of the province in which they had commenced their studies did not come up to the standard exacted by the Law Society of Manitoba from the students of that province, and Dean MacRae drew attention to the Nova Scotia entrance requirements which had for some time past called for a standard equal to the educational standing of a student at the end of the first year of the Arts course. In regard to both these matters the Sub-Committee found itself in cordial agreement with the views expressed.

With regard to the course of procedure of the Sub-Committee, it was felt that its task would not be to frame a rigid curriculum and to recommend it for universal acceptance, but to see if an agreement could be arrived at as to the subjects which could most properly be studied in the first, the second and the third years of the course. If this method of procedure proved successful, the result would be to suggest a skeleton or framework of legal study which it was thought might prove generally acceptable. As regards some of the subjects proper to be included in

the curriculum, there might be difference of opinion as to the year to which they should be assigned. In regard to this, each law school should feel itself free to adopt any course that it might think best. Perhaps in time experience might decide questions which at first would admit of difference of opinion, but at all events if the recommendation of the principal report pointing to free interchange of students between the provinces was to have effect, some considerable uniformity in the practice of the different law schools was obviously essential.

Proceeding therefore upon the principles indicated in the preceding paragraph, the sub-committee took into consideration the subjects prescribed by the curricula of the various Law Societies and law schools, and the place assigned to each in the three years' course. The result of the deliberations of the Committee was to distinguish between subjects which it recommends *should* be studied in each of the three years, and subjects which it suggests *might* be studied in each of the three years. The first list of subjects represents, in the opinion of the Sub-Committee, the minimum of uniformity necessary to the realization of the main principles upon which the report is based.

The recommendations and suggestions are as follows:—

First Year.—The Sub-Committee recommends that the following subjects form part of the first year's carriculum:—

1. Contracts
2. Torts
3. Real Property
4. Constitutional History
5. Criminal Law
6. Practice and Procedure—Civil and Criminal (elementary).

The sub-Committee suggests that the following subjects might also find a place in the first year's curriculum:—

7. History of English law
8. Jurisprudence (if not taken in the third year).

Second Year.—The Sub-Committee recommends that the following subjects form part of the second year's curriculum:—

1. Equity (I)
2. Wills and Administration
3. Evidence (I)
4. Sale of Goods
5. Bills and Notes
6. Agency
7. Partnership
8. Insurance
9. Practice and Procedure.

The Sub-Committee suggests that the following subjects might also find a place in the second year's curriculum:—

10. Personal Property
11. Landlord and Tenant.

Third Year.—The Sub-Committee recommends that the following subjects form part of the third year's curriculum:—

1. Constitutional Law
2. Equity (II)
3. Evidence (II)
4. Practice and Procedure, including criminal procedure
5. Corporations
6. Municipal Law
7. Conflict of Laws
8. Mortgages
9. Suretyship
10. Drafting of Statutes
11. Rules of interpretation and practical statutes
12. Shipping and/or Railway Law.

The Sub-Committee suggests that the following subjects might also find a place in the third year's curriculum according to the varying needs or choice of the different provinces and schools:—

13. Land Titles
14. Public International Law
15. Jurisprudence (if not taken in the first year)
16. Domestic Relations.

It will be realized that this report is a first draft, which will no doubt undergo amendments. By annexing their signatures the undersigned do not commit themselves irrevocably on matters of detail, nor do they commit in any sense their several Law Societies and Law Schools.

All of which is respectfully submitted.

NOTES ON THE ABOVE REPORT
by DEAN LEE.

FIRST YEAR.—(1) *Contracts.*—This forms part of the first year's course in all the provinces.

(2) *Torts.*—This is a subject which can advantageously be studied in the first year. At present it is a first year subject in Saskatchewan, Manitoba, Nova Scotia, and New Brunswick, while in British Columbia, Alberta, and Ontario it is taken in the second year, and in Prince Edward Island only in the third year. In British Columbia, Alberta, Saskatchewan, Manitoba and Ontario it is repeated in the third year.

(3) *Real Property.*—All the provinces agree in making this in whole or in part a first year subject. In British Columbia, Alberta, Manitoba, Ontario and Prince Edward Island it is repeated in the second year; in Saskatchewan it is repeated in the third year. In Manitoba and Ontario it is studied in all three years. In the opinion of the Sub-Committee, for lecturing purposes, the whole subject can be adequately treated in the first year.

(4) *Constitutional or Legal History.*—Constitutional Law or History is a first year subject in Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and Prince Edward Island. In New Brunswick the subject is first taken in the second year. In Manitoba and Ontario it is repeated in the second year. In British Columbia it first figures in the third year program. In Alberta and Prince Edward Island it is repeated in the third year. In Manitoba it runs through all three years.

The Sub-Committee considers that some study of Constitutional and Legal History and of such general principles of Constitutional Law as may usefully be learnt in connection with the study of English Constitutional History should find a place in the first year program, but the majority of the Sub-Committee are of opinion that the detailed study of the rules of Constitutional Law and particularly of sections 91 and 92 of the British North America Act, 1867, should be postponed to a later period in the curriculum, preferably the third year. Dean MacRae would define the constitutional and historical studies of the first year as consisting in (1) the history of institutions and of the "environment" of English Law, and (2) the history and growth of English Law.

(5) *Criminal Law.*—This is a first year subject in Saskatchewan, Manitoba, Ontario and Nova Scotia. In Alberta it is first taken in the second year, in Ontario it is repeated in the second year. All the provinces except Ontario and Nova Scotia require it for the final examination. In the opinion of the Sub-Committee the whole subject can be adequately covered by lectures in the first year, with the addition, however, of further lectures on criminal procedure to be given in the third year.

(6) *Practice and Procedure.*—This is a first year subject in Saskatchewan, Manitoba and Ontario. In British Columbia and Alberta it is first taken in the second year. It is repeated in the second year in Saskatchewan, Manitoba and Ontario. In all the provinces it is required for the final examination. In the opinion of the Sub-Committee it should find a place in the first year curriculum, and should be studied in each of the three years.

SECOND YEAR.—(1) *Equity.*—In British Columbia, Alberta, Ontario and Nova Scotia*, this subject is studied in the first year. In Saskatchewan, Manitoba and Prince Edward Island it is first taken in the second year, while Alberta repeats it in the second year. In all the provinces it is comprised in the third year course, being repeated in British Columbia, Saskatchewan, Manitoba and Nova Scotia. In the opinion of the Sub-Committee Equity should not be taken before the second year, and should extend over two years.

(2) *Wills and Administration.*—Nova Scotia (Dalhousie) takes this in the second year. In British Columbia, Alberta, New Brunswick and Prince Edward Island it is a third year subject. The Sub-Committee recommends that it form part of the second year course, as it follows naturally and easily upon the study of Real Property in the first year.

(3) *Evidence.*—All the provinces except New Brunswick prescribe this for the second year course, and all the provinces without exception for the third year course. The Sub-Committee recommends that it be first taken in the second year and also studied in the third.

(4) *Sale of Goods.*—This is prescribed as a separate subject of study for the second year in Manitoba, Ontario, Nova Scotia (Dalhousie), New Brunswick and Prince Edward Island. The Sub-Committee thinks that it follows naturally upon the study of Contracts in the first year course, and should find a place in the program of the second year.

(5), (6) and (7) *Bills and Notes, Agency, Partnership.*—The same remark applies to these three subjects also.

(8) *Insurance.*—This subject appears to have been overlooked in the curricula of most of the provincial law societies. At all events it does not figure as a separate subject. In the opinion of the Sub-Committee it should be treated separately and assigned to the second year.

(9) *Practice and Procedure.*—This will be continued in the second year.

(10) *Personal Property.*—This subject is important, but not of the first importance. A great deal of it is learnt incidentally to other studies. The Sub-Committee is not inclined to insist upon it as an essential item in the program. It is suggested, however, as a suitable subject for admission to the second year course.

(11) If the subject of Landlord and Tenant is taken separately, it should be assigned to the second year.

*L.E., for the Bar examination. At Dalhousie it is taken in the second year.

THIRD YEAR.—The program for this year will include a detailed study of Constitutional Law and also further courses in Equity, Evidence, Practice and Procedure. The subjects introduced for the first time will be Rules of Interpretation and Practical Statutes, Drafting of Statutes, Corporations, including Companies, Conflicts, Municipal Law and Suretyship. In provinces where the Torrens System prevails, the study of this subject will be taken in the third year; in the other provinces the equivalent will be "Land Titles" so far as not previously studied, and more particularly Mortgages.

It will be observed that no recommendation is made as regards "Common Law." In the view of the Sub-Committee, it is unnecessary to prescribe this as a separate subject. It is perhaps to be regretted that a place cannot be found in the program for the study of Roman Law nor for Public International Law except as a suggested subject in the overcrowded third year course. The best solution seems to be to include these important subjects in the fourth year of the Arts course in the universities, so as to afford students who graduate in Arts the opportunity of becoming acquainted with them before proceeding to more technical branches of legal study.

The place to be assigned to the subject of Jurisprudence in a program of law study gives rise to divergent opinions. The Sub-Committee recommends that it should be reserved until the third year. Dean Lee is of opinion that an elementary study of the principles of legal science might very well be included in the first year course. Dean MacRae thinks that the particular should precede the general, and that some knowledge of particular rules is necessary before much benefit can be derived from the study of the general principles of Jurisprudence. Perhaps this difference of opinion points to the second year as the best time for taking up this subject. The majority of the Sub-Committee holds that Jurisprudence should be compulsory at some stage of the course. Dean MacRae would for the present make it optional in the third year. He thinks the ideal place for it is in a fourth year of law.

The instruction of the Sub-Committee includes a direction that in the curriculum to be prepared increased attention should be paid to the training of the students in legal ethics and public speaking. In the opinion of the Sub-Committee, some lectures on legal ethics should be given in the third year. But, while keenly alive to the importance of instruction in public speaking, the Sub-Committee does not at present see its way to making

any recommendation with regard to it. While the object of all the other courses in the program is to communicate ar. stimulate knowledge, a course on public speaking would aim at communicating skill. It would therefore occupy an exceptional position in the curriculum, and could not readily be brought into relation with the other courses of instruction. In view of this fact the Sub-Committee begs leave to reserve this part of the terms of reference for further and independent inquiry, first as to the character of such a course, and secondly, as to the best means of finding a place for it in the curriculum of a law school."

Along with the above report was submitted comparative tables of statistics relating to several matters connected with legal education in the various provinces of Canada. This can be obtained from the Secretary. It is a very interesting compilation, but too long for insertion in our columns.

THE NEXT ANNUAL MEETING,

Will be held at Ottawa, September 1st, 2nd and 3rd, and promises to be one of great interest and importance.

The profession will be glad to know that the President of the Association has secured the attendance of the Right Hon. Viscount Cave, one of the Lords of Appeal, and a member of the Judicial Committee of the Privy Council, who will deliver the chief address on that occasion.

It will be remembered that Lord Cave is one of the great lawyers of England and has occupied a high position there, both at the Bar and as a member of the Government. He was Solicitor-General from 1915 to 1916, and Home Secretary from 1916 to 1919; created a Viscount in 1919 when he was appointed a Lord of Appeal in Ordinary, taking the place of the late Lord Parker of Waddington.

REVIEW OF CURRENT ENGLISH CASES.

(Registered in accordance with the Copyright Act.)

MASTER AND SERVANT—NEGLIGENCE OF MASTER—DEFECTIVE PLANT—IMPROPER LADDER—KNOWLEDGE OF EMPLOYER—VOLENTI NON FIT INJURIA.

Monaghan v. *Rhodes* (1920) 1 K.B. 487. This was an action by a stevedore, a servant of the defendants, to recover damages sustained in the following circumstances: The plaintiff was employed by the defendants to unload a ship. For the purpose of descending into the hold the proper ladder was so blocked up that it could not be used, and as a substitute some other of the defendants' servants obtained from the ship a rope ladder which was fastened at the top and hung loose below. The defendants knew that this ladder was being used, and that it was dangerous, but took no steps to prevent its use; the plaintiff also knew that it was dangerous; in using the ladder the plaintiff got his hand jammed between the ladder and the coaming of the hold and, in endeavouring to release himself, fell to the bottom of the hold, thereby sustaining the injury complained of. The defendants relied on the maxim *volenti non fit injuria*. Greer, J., who tried the action, dismissed it (1) on the ground that under the Shipping Regulations it was the duty of the shipowner and not of the defendants to supply a proper ladder and (2) on the ground that the defendants were not guilty of such negligence as to make them liable to the plaintiff. But the Court of Appeal (Sterndale, M.R., and Atkin and Younger, L.JJ.) though agreeing that the action could not be maintained on the ground of breach of the Shipping Regulations were, nevertheless, unanimous that it was the duty of the defendants to see that a proper ladder was provided, and that their acquiescence in the use of an improper and dangerous one rendered them liable. Their Lordships were of the opinion that the case was distinguishable from *Griffiths* v. *London & St. Catherine's Dock Co.*, 13 Q.B.D. 259, because the present case rested on the personal negligence, in the supervision, of the employers.

CONTRACT—LOAN TO AMERICAN COMPANY—INTEREST PAYABLE IN LONDON—CONTRACT TO BE CONSTRUED BY ENGLISH LAW—RIGHT OF COMPANY TO DEDUCT UNITED STATES INCOME TAX.

Indian and General Investment Trust v. *Borax Consolidated* (1920) 1 K.B. 539. This is a somewhat important case from a

financial point of view. The plaintiff, an English company, were the holders of the bonds of a railway company incorporated and carrying on business in the United States; the payment of the principal and interest was to be made in London and was secured by a trust deed to which the defendants, an English company, were parties, and where by the defendants guaranteed the payment of the said principal and interest, and it was by the agreement provided that the contract was to be construed according to English law. The railway company in making a half-yearly payment of interest claimed to deduct therefrom an income tax which had been imposed in the United States on all income derived by foreign corporations from interest on bonds of corporations resident in the United States. Sankey, J., who tried the action, held that there was no English statute which allowed payment of income tax to a foreign country to be considered as a discharge of an English contract, and that at common law a contract made in this country was not governed by the law of any other country; and that there could not be read into the contract in question any implied agreement by the plaintiffs that the United States Income Tax Act should be enforceable against them in England; it therefore followed that neither the railway company nor the defendant company were entitled to deduct the United States income tax from the interest agreed to be paid upon the bonds.

BILL OF EXCHANGE—PARTNERSHIP—DISSOLUTION OF PARTNERSHIP—DISHONOUR—NOTICE TO CONTINUING PARTNER—RETIRING PARTNER HOW FAR BOUND—GIVING TIME TO CONTINUING PARTNER BY TAKING NEW BILL—DISCHARGE OF RETIRING PARTNER—BILLS OF EXCHANGE ACT 1882 (45-46 VICT. c. 61) S. 49 (11)—(R.S.C. c. 119, s. 97).

Goldfarb v. *Bartlett* (1920) 1 K.B. 639. This was an action on a bill of exchange and the questions arose whether the defendant had been properly notified of the dishonour of the bill; and whether or not he had been discharged by time being given to his co-indorsee. The bill in question was drawn by a partnership firm consisting of two partners, Bartlett and Kremer, upon and accepted by a French company and indorsed to the plaintiffs and was dated 11 August, 1913. On Aug. 27, 1913, the partnership was dissolved. Bartlett, to whom the assets belonged, continued the business in the old firm name and undertook to indemnify Kremer against the liabilities of the firm. Notice of the fact of the dissolution and that Bartlett would discharge the liabilities was given

to the plaintiffs. The bill of 11 August, 1913, became due on October 11, 1913, but on 1 October, 1913, the plaintiff took from Bartlett another bill for the bill of August 11, which was payable on 31 October, 1913. The bill of 11 August was duly presented and was dishonoured and notice of dishonour was given to Bartlett. The bill of 1 October was not paid and was not presented or protested and no notice of dishonour was given to the defendants. The action was originally brought on the bill of 1 October but by amendment the plaintiff sued on the bill of 11 August, 1914, or alternatively for the debt in respect of which that bill was given. The first point for consideration was whether the notice of dishonour of the bill of 11 August given to Bartlett bound Kremer. McArdie, J., held that it did and was sufficient under the Bills of Exchange Act (45-46 Vict. c. 61.) s. 49 (11) (R.S.C. c. 119, s. 97). The next question was whether the taking of the bill of 1 October had the effect of discharging Kremer and the learned Judge held that it had, because as soon as the plaintiffs received notice of the dissolution of the partnership they also had notice that from thenceforth Kremer was in the position of a surety and the taking of the bill of 1st October had the effect of postponing the plaintiffs' right to sue on the bill of 11 August. And he was also of the opinion that Kremer was discharged from liability on the bill of the 11 August by reason of the plaintiffs' failure to take the proper steps to enable them to recover on the bill of October 1.

SALE OF GOODS—IMPLIED CONDITION AS TO FITNESS—MINERAL WATER IN BOTTLE—BURSTING OF BOTTLE—SALE OR BAILMENT.

Geddling v. *Marsh* (1920) 1 K.B. 668. In this case the plaintiff kept a small shop where she sold among other things mineral waters. She obtained her supplies from the defendant. She was charged for the water and 1d. for the bottle, which 1d. she was entitled to have refunded on returning the bottle in good condition. While serving a customer a bottle burst in her hand causing her severe injury. The County Court Judge who tried the action gave judgment in favour of the plaintiff for £100. On appeal to a Divisional Court (Bray and Bailhache, JJ.) it was contended that the rule applicable to the sale of goods did not apply because the defective bottle was not the subject of sale but only of a bailment and there was no evidence that there was any defect in the contents. But the Divisional Court declined to give effect to that contention. Their Lordships were of the opinion that

both bottles and the contents were supplied under a contract of sale notwithstanding there might be special terms looking to a return of the bottles.

CRIMINAL LAW—LIMITATION OF TIME FOR PROSECUTION—AMENDMENT OF INFORMATION—VERDICT AGAINST OPINION OF JUDGE.

The King v. *Wakeley* (1920) 1 K.B. 688. This was a prosecution for having carnal knowledge of a girl under sixteen. A statute limited the time for prosecution to six months after the commission of the offence. The information was sworn on May 3, 1919, and charged the offence to have been committed between November 6 and 7, 1918. Subsequently the information was amended by changing the date of the alleged offence to November 3 and 8, 1918. The girl gave evidence and swore that the accused had had connection with her on the 4th November, 1918. The jury, against the opinion of the Judge, found the accused guilty and he appealed to the Court of Criminal Appeal (Lord Reading, C.J., and Sankey and Salter, JJ.) and it was contended on his behalf that by reason of the amendment made in the information, it was not in law commenced until 13th May and was therefore out of time: but the Court held that the amendment had not that effect; and notwithstanding the verdict was contrary to the opinion of the Judge at the trial, the Court being unable to say that there was no evidence to support it, refused to quash the verdict.

SALE OF GOODS—CONTRACT TO DELIVER—TIME OF DELIVERY FIXED BY REFERENCE TO ARRIVAL OF SHIP—REPUDIATION OF CONTRACT BY SELLER BEFORE TIME NAMED FOR DELIVERY—MEASURE OF DAMAGES.

Melachrino v. *Nickoll* (1920) 1 K.B. 693. This action was brought to recover damages for breach by the sellers of a contract for the sale of goods which were to be delivered to the buyers on the arrival of the ship by which they were to be sent. Before the ship could arrive the sellers repudiated the contract. At the date of repudiation the market price was in excess of the contract price, but it subsequently fell, and at the period when the ship would have arrived it was actually less than the contract price. The sole question involved was what, in these circumstances, was the proper measure of damages? On a case stated by arbitrators, Bailhache, J., held that immediately on the breach of the contract the buyers might have gone into the market and

bought; or without doing so they might bring their action. If the buyer buys, the damages are fixed by reference to the difference, if any, between the price paid and the contract price; if he does not buy, then the measure of damages is to be fixed by reference to the difference in the market price and the contract price at the time the goods ought to have been delivered under the contract, subject, however, to the rule that it is the duty of a buyer to mitigate damages and that if at an earlier period he could have purchased on more favourable terms it would be his duty to do so. As in this case the buyers had not bought, but had simply claimed damages, in the result the buyers were held to be entitled to only nominal damages.

LEASE—THEATRE—COVENANT BY LESSEE TO MAINTAIN PRICES OF ADMISSION "AS NOW CHARGED"—INCREASE OF PRICES.

In re Dott, Miller v. *Dott* (1920) 1 Ch. 281. This was an application upon an originating notice to determine whether or not a lease had been forfeited. By the lease in question a theatre was leased, and the lessee thereby covenanted to maintain the prices of admission thereto "as now charged." Pending the lease the lessee increased the prices of admission. The lessor claimed this constituted a breach of covenant and served a notice of breach under s. 14 of the Conveyancing Act. (See R.S.O. c. 155, s. 20 (2).) Peterson, J., who heard the motion, held that the covenant only restricted a decrease, but did not restrain an increase in the price of admission.

WILL—LIFE INTEREST "UNTIL HE SHALL ASSIGN OR CHARGE, OR AFFECT TO ASSIGN OR CHARGE"—LUNACY OF TENANT FOR LIFE—APPOINTMENT OF RECEIVER OF LUNATIC'S ESTATE—SUBSEQUENT CHARGE BY LUNATIC—FORFEITURE.

In re Marshall, Marshall v. *Whateley* (1920) 1 Ch. 284. By a will dated in 1912, a testator, who died in 1913, gave his residuary estate to trustees upon trust to raise a fund of £6,000 and hold the same and pay the income thereof to his son during his life or "until he . . . shall assign or charge or affect to assign or charge" the same or any part thereof. On December 12, 1916, an order was made in lunacy appointing a receiver of the son's estate, the whole income being allowed for his maintenance. On May 15, 1919, the son executed an equitable charge on his income under the testator's will and the question arose whether his life interest therein had thereby become forfeited. Eve, J., who heard the motion, held that the appointment of a receiver did

not operate as a forfeiture because the receiver was the statutory agent of the son to receive the income of the trust fund; and that as the document of May, 1919, was executed after the appointment of the receiver it was null and void and could not therefore operate as a forfeiture.

EXECUTOR—PECUNIARY LEGACY—INFANT LEGATEE—APPROPRIATION TO MEET LEGACY—DISTRIBUTION OF RESIDUE.

In re Salomons, Public Trustee v. *Wortley* (1920) 1 Ch. 290. The simple point determined by Eve, J., in the case is—that an executor cannot set apart the amount of a pecuniary legacy to which an infant is entitled and invest the proceeds in which moneys in the control of the Court are allowed to be invested so as to render himself free to distribute the residue of the estate without incurring personal liability in respect of the legacy. The only way to discharge himself is to pay the amount of the legacy into Court under the Trustee Act. In this connection *In re Rivers, Pullen* v. *Rivers, post*, may be referred to.

WILL—CONSTRUCTION—GIFT OF RESIDUARY PERSONALTY AND REALTY TO NAMED PERSONS "OR THEIR HEIRS"—WORDS OF PURCHASE OR LIMITATION—SUBSTITUTIONAL GIFT—PERIOD OF ASCERTAINMENT OF HEIRS—WILLS ACT, 1837 (1 VICT. C. 26) S. 28—(R.S.O. C. 120, S. 31).

In re Whitehead, Whitehead v. *Hemoley* (1920) 1 Ch. 298. In this case the construction of a will was in question. By it, the testator, who died in 1895, gave her residuary real and personal estate after the death of an annuitant to her four brothers and a sister "or their heirs in equal shares and proportions." The annuitant died in 1917. One brother predeceased the testatrix having had 10 children but leaving seven who survived the annuitant. Another brother survived the testatrix (but predeceased the annuitant) leaving one child who survived the annuitant, another brother predeceased the testatrix leaving one child who survived the annuitant. The daughter also predeceased the testatrix leaving two children who survived the annuitant. The remaining brother survived the annuitant but had since died leaving 5 children. Sargant, J., who tried the action, held (1) that the will did not convert the realty into personalty (2) that any interest given to the brothers and sisters in the realty was given to them as tenants in common and not as joint tenants, (3) that the words "or their heirs" were as regarded the realty words of substitution and not of limitation, (4) that as regards the person-

alty the persons to take under the gift to heirs were the statutory next of kin, and (5) that as to both realty and personalty the persons to take were to be, as regards the brothers and sister who predeceased the testatrix, the persons to take must be ascertained at the death of the testatrix; and in case of the two brothers who survived the testatrix, at the date of the death of such brother.

CHARITABLE BEQUEST—DISCRETION OF TRUSTEES—"SCHOOLS AND CHARITABLE INSTITUTIONS, AND POOR, AND OTHER OBJECTS OF CHARITY OR ANY OTHER PUBLIC OBJECTS"—VALIDITY—EJUSDEM GENERIS.

In re Bennett, Gibson v. *Attorney-General* (1920) 1 Ch. 305. In this case a will was in question whereby the testatrix bequeathed all her residuary estate to trustees upon trust to apply such parts thereof as were applicable by law for charitable legacies in such manner as her trustees should, in their absolute discretion, think fit, for the benefit of the schools and charitable institutions and poor and other objects of charity or any other public objects in the parish of Faringdon. It was contended that as there was a discretion given to the trustees to apply the fund for public objects which might not be "charitable," the whole gift failed for uncertainty. But Eve, J., who heard the motion, was of the opinion that the word "or" must be construed conjunctively and that "the other public objects" were limited to such others as were *ejusdem generis* with those previously mentioned, and therefore that the gift was a valid charitable gift.

POWER GIVEN IN CASE OF THE HAPPENING OF A CONTINGENCY—EXERCISE OF POWERS BEFORE CONTINGENCY HAPPENS—SUBSEQUENT HAPPENING OF CONTINGENCY—VALIDITY OF APPOINTMENT.

Hanbury v. *Bateman* (1920) 1 Ch. 313. The point involved in this case was whether or not a power had been well executed. The power in question was contained in a settlement whereby it was provided that if, during the settlor's life, his wife should become entitled in possession to certain property in which she had at the time of the settlement a contingent interest, the settlor should have power to charge the settled estates with the sum of £10,000 and interest at 4½ per cent. Before the contingency had happened the settlor executed the power; subsequently, during the lifetime of the donee of the power, his wife became entitled in possession to the estates in which she had the contingent interest. It was contended that the power had been prema-

turely executed and therefore that the execution was invalid; but Sargant, J., who tried the action, was of the opinion that it was well settled that a power, presently given to a designated person for his benefit to be exercised on a contingency when the exercise of it does not depend upon the happening of the contingency can be well exercised before the contingency happens, and will be valid and binding on the contingency subsequently happening: and he therefore held that the power in this case had been well executed.

ADMINISTRATION—APPROPRIATION OF CONSOLS BY EXECUTOR TO ANSWER REVERSIONARY LEGACY—DISTRIBUTION OF ESTATE—ORDERS OF COURT—LEGATEE NOT PARTY—INSUFFICIENCY OF FUND APPROPRIATED TO MEET LEGACY—RIGHT OF LEGATEE—LIABILITY OF RESIDUARY LEGATEE TO REFUND.

In re Rivers, Pullen v. *Rivers* (1920) 1 Ch. 320. The facts in this case were as follows: A testator who died in 1863 gave certain life annuities including one of £8 to the mother of the plaintiff; and after her death he bequeathed £200 to her children equally. The interest of his residuary estate was given to the testator's daughter for life, and the capital to her children. In an action to administer the estate in 1873, to which the plaintiff was not a party, it was ordered that a sum of £266 13s. 4d. consols should be carried to a separate account to answer the annuity of £8. By subsequent orders made in 1885 and 1904 of which no notice was given to the annuitant or her children various sums were directed to be paid out to the residuary legatees. On the death of the plaintiff's mother in 1917 the sum of consols proved insufficient to satisfy in full the legacy of £200 to her children. The present action was therefore instituted against the representatives of one of the residuary legatees to compel them to refund sufficient to pay the legacy of £200 in full: and it was held by Eve, J., that, the consols having been set aside merely to answer the annuity, the plaintiff was entitled to follow the assets in the hands of the residuary legatees to make good the deficiency, as she was not bound by orders of which she had no notice.

LANDLORD AND TENANT—COVENANT AT END OF TERM TO LEAVE IN GOOD REPAIR ALL FIXED MACHINERY—SALE DURING TERM OF FIXED MACHINERY—RIGHT OF LANDLORD TO PROCEEDS OF SALE.

In re British Red Ash Collieries (1920) 1 Ch. 326. This was a contest between a landlord and certain debenture holders of the company which was the lessee. By a mining lease made in

1905 to the predecessors in title of the company the lessees covenanted that at the end or sooner determination of the term all erections, fences and fixed machinery in the demised seams or on the surface of the said premises shall be left in good repair and condition by the lessees. The company which became assignees of the lease worked the mine, but it proved unremunerative and certain debenture holders of the company brought an action to enforce their security and therein obtained the appointment of a receiver who by the order of the Court was directed, pending the term, to sell the machinery and plant upon the premises; which was accordingly done, and the proceeds were paid into Court. The lessor now claimed a declaration that certain articles sold by the receiver were fixed machinery or erections within the above-mentioned covenant and that under the covenant the proceeds were payable to the lessor. Astbury, J., who tried the action, was of the opinion that the articles in question were "fixed machinery" and formed part of the tenants' trade fixtures, and in the absence of very clear evidence to the contrary were removable by the lessees, and that the covenant did not preclude removal during the term; but only prohibited the removal of such fixed machinery as was in fact fixed and *in situ* at the end of the term. The Court of Appeal (Eady, M.R., and Scrutton, L.J., and Eve, J.) however, was unable to agree to that view and held that the covenant was sufficiently explicit to prevent any trade fixtures once affixed from being thereafter removed by the lessees at any time

WILL—CONSTRUCTION—JOINT TENANCY OR TENANCY IN COMMON —EXPRESS MAINTENANCE CLAUSE—INCOME ARISING FROM "SHARE OR SHARES" OF PROPERTY.

In re Ward, Partridge v. *Hoare-Ward* (1920) 1 Ch. 334. In this case the point to be decided was whether certain infant beneficiaries under a will took as joint tenants, or tenants in common. The will contained a clause empowering the trustees to apply the income of the share or shares of any minor or minors in or towards the maintenance, education and support of such minor or minors; and it was held by Astbury, J., that this clause sufficiently indicated that the beneficiaries were intended to take as tenants in common. Those who supported the view that a joint estate was given contended that a gift of maintenance out of the income did not necessarily shew that the testatrix intended the children to take the capital in common, or involve any actual or notional segregation of the capital: but Astbury, J., though admitting the case was not free from doubt, thought that in order to apply the income of the share to which a minor was entitled there must be an actual or notional segregation.

WILL—UNDUE INFLUENCE—HUSBAND INSTRUMENTAL IN PREPARING WIFE'S WILL—HUSBAND SOLE BENEFICIARY—ONUS OF PROOF.

Craig v. *Lamureux* (1920) A.C. 349. This was an appeal from the Supreme Court of Canada 49 S.C.R. 305. The action was brought to set aside a will on the ground that it had been procured by undue influence. The will was made by a married woman two days before her death and her husband was the sole beneficiary named therein, and he was instrumental in having the will prepared. The course of the action occasioned a great variety of opinion. Bruneau, J., who tried the action, set the will aside, on the ground that a prior will which the testatrix signed illegibly expressed her true testamentary intentions; and that she was induced to sign the will impeached on the representation that the prior will was invalid on account of the illegible signature. On appeal the Court of King's Bench dismissed the action. The Supreme Court of Canada (Fitzpatrick, C.J., dissenting) reversed the judgment of the Court of King's Bench, and set aside the will. The Judicial Committee of the Privy Council (Lord Haldane, Buckmaster and Dunedin) were unable to agree with any of the Courts below, and upheld the will on the ground that having been proved to have been duly executed by a person of apparently competent understanding and a free agent, the burden of proving that it was executed under undue influence rested on the person who so alleged, and that burden in this case had not been discharged by the plaintiff.

PROCEDURE—PARTIES—ATTORNEY-GENERAL JOINED AS A DEFENDANT—ACTION WHICH MAY AFFECT RIGHTS OF CROWN.

Esquimalt & Nanaimo Ry v. *Wilson* (1920) A.C. 358. This was an appeal from the Court of Appeal of British Columbia reversing an order of MacDonald, J., directing the Attorney General to be added as a party defendant. The action was brought to impeach the validity of a Crown grant of land made to the defendants subsequent to a prior grant of the same land to the plaintiffs, and which subsequent grant contained reservations in favour of the Crown. The defendants objected that the Crown was a necessary party and it was in consequence of this contention that the Attorney-General was ordered to be added. On the appeal they contended that he should not have been added and that the plaintiffs' proper procedure against the Crown was by petition of right, and that if the case was not one for a petition of right then no relief could be granted against the Crown

and the Attorney-General was an unnecessary party. Their Lordships were of the opinion that in the circumstances the Attorney-General was both a proper and a necessary party, as if the impeached grant were set aside then the reservations contained therein in favour of the Crown would become nugatory. The order of MacDonald, J., was therefore restored.

SHIPPING—COLLISION—PROCEEDS OF SALE OF SHIP TO BLAME—ABSENCE OF PROCEEDINGS TO LIMIT LIABILITY—LOSS OF LIFE AND PROPERTY—DIVISION BETWEEN CLAIMANTS—MERCHANT SHIPPING ACT, 1894 (57-58 VICT. c. 60, IMP.)ss. 503, 504.

Canadian Pacific Ry. v. *S.S. Storstad* (1920) A.C. 397. This is a case which arose out of the loss of the Empress of Ireland through a collision with the Storstad in the St. Lawrence. The Storstad was found to have caused the collision and she was sold under the order of the Court and the division of the proceeds, $175,000, was now the question at issue. The claims proved amounted in the aggregate to $3,069,483.94, of which $469,467.57 was for loss of life and the residue for loss of property. The claimants for loss of life contended that in distributing the proceeds the Court must have regard to ss. 503, 504 of the Imperial Merchant Shipping Act, 1894 (57-58 Vict. c. 60) and that they were, under s. 503, entitled to a preference in respect of 7/15 of the proceeds over the claimants for loss of property. The Supreme Court of Canada gave effect to this contention; but the judicial Committee of the Privy Council (Lords Haldane, Dunedin, Atkinson and Sumner) were of the opinion that this was erroneous, and that in the absence of any proceedings on the part of the owners of the vessel sold to limit their liability, the proceeds were divisible *pro rata* among all claimants.

JUDICIAL COMMITTEE OF PRIVY COUNCIL—SPECIAL LEAVE TO APPEAL—FAILURE TO MENTION MATERIAL STATUTE—RESCISSION OF ORDER.

Emmerson-Brantingham Co. v. *Schofield* (1920) A.C. 415. In this case special leave had been granted by the Judicial Committee of the Privy Council to appeal from a judgment of the Supreme Court of Canada. On the application the applicants neglected to call the attention of the Committee to an Act of the Province of Saskatchewan passed after the commencement of the action, which was material to the question whether leave should be granted. Counsel for the petitioners did not know of this statute, but

the appellants from the nature of their business must have been aware of it. The respondents, after the appeal was on the list for hearing, petitioned to rescind the order allowing leave to appeal. Their Lordships (Lords Finlay, Cave, Shaw, and Parmoor) in these circumstances rescinded the order giving leave to appeal and dismissed the appeal with costs.

CANADA—RAILWAYS—DOMINION RAILWAY BOARD—LEGISLATIVE POWER OF DOMINION—STATUS OF DOMINION RAILWAY BOARD—CARRYING HIGHWAY OVER DOMINION AND PROVINCIAL RAILWAYS—APPORTIONMENT OF COST—APPEAL FROM RAILWAY BOARD TO PRIVY COUNCIL—PETITION FOR SPECIAL LEAVE—R.S.C. (1906) c. 37, ss. 46, 59, 237, 238—8-9 EDW. 7, c. 32 (D), s. 5—B.N.A. ACT, ss. 91, 92.

Toronto Railway Co. v. *Toronto* (1920) A.C. 426. This was an appeal by the Toronto Railway from the order of the Dominion Railway Board apportioning the cost of the construction of a bridge over a highway intersected by the appellants' provincial railway, and two Dominion railways. The preliminary objection was taken that no appeal lay from the Dominion Railway Board to the Privy Council, but their Lordships (Lords Finlay, Cave, Sumner, and Parmoor) overruled the objection and held that the Board was a Court of record from whose decisions it was competent for the Committee to allow an appeal though such leave should be granted only under special circumstances. It was also urged that, on the application for leave to appeal, the reasons for delay were inaccurately stated. Without actually deciding the point their Lordships intimated that if it had been necessary they would probably have given effect to it: but having heard the case discussed on the merits they dismissed the appeal on the ground that the order objected to was mandatory, and not merely permissive as the appellants contended that the powers conferred on the Board in relation to the matters in question were within the legislative powers of the Dominion, and that s. 46 of the Dominion Railway Act (R.S.C. c. 37) under which the order of the Board was made a rule of the Supreme Court of Ontario was *intra vires*.

CANADA—LEGISLATIVE POWERS OF PROVINCE—PROVINCIAL RAILWAY BOARD—ENFORCEMENT OF ORDERS OF RAILWAY BOARD—ONTARIO RAILWAY ACT (R.S.O. 1914, c. 185), s. 260A—B.N.A. ACT (30-31 VICT. c. 30, IMP.), s. 92 (15).

Toronto Ry. v. *Toronto* (1920) A.C. 446. This was an appeal from the Supreme Court of Ontario (44 O.L.R. 381) affirming

an order of the Ontario Railway and Municipal Board imposing a penalty on the Toronto Railway for not complying with an order of the Board requiring the railway to furnish 100 additional cars for its railway by 1 January, 1918. The order requiring the railway to furnish the additional cars was made on 27 February, 1917; subsequent to the making of that order a provincial statute (8 Geo. V. c. 30, s. 4) was passed in 1918 authorizing the Board to impose a penalty of $1,000 a day in order to enforce compliance with its orders. The Board, without giving the railway any further time to comply with its order of February, 1917, on 19 April, 1918, imposed a penalty of $24,000 for non-compliance with that order. On the argument of the appeal several points of importance were raised. First it was contended that the Act of 1918 was *ultra vires* of the Provincial Legislature as dealing in effect with a criminal matter. This was overruled, the Judicial Committee (Lords Haldane, Cave and Shaw) being of the opinion that it was merely the exercise of the power to enforce a Provincial law, and therefore covered by B.N.A. Act, s. 92 (15). Then it was urged that the Act of 1918 was directed simply to enforcing compliance with the order of the Board, and not for punishing a past breach of an order, but the Committee also overruled this objection; but their Lordships agreed with the contention that the Act contemplated that the penalty should not be imposed for past disobedience without first giving the railway a further opportunity to comply with the order, and on this ground allowed the appeal. One other objection was taken as to the status of the provincial Railway Board, viz.: that it being a Superior Court of Record, its members could only be validly appointed by the Dominion Government, but on this point their Lordships merely remark that it was fully considered by the Supreme Court of Ontario and decided against the appellants, but that it was not argued before their Lordships and not considered by them in consequence of the appeal being disposed of on other ground.

STREET RAILWAY—REMOVAL OF SNOW—BREACH OF STATUTORY DUTY—POWERS OF ONTARIO RAILWAY AND MUNICIPAL BOARD—NON-EXCLUSION OF COMMON LAW ACTION—ONTARIO RAILWAY ACT (R.S.O. 1914, c. 185) s. 260.

Toronto Ry. v. *Toronto* (1920) A.C. 455. This was an appeal from a decision of the Appellate Division of the Supreme Court of Ontario (44 O.L.R. 308). The principal ground of appeal was, that the Court had no jurisdiction to entertain the action which was brought by the City of Toronto to recover damages from the

Toronto Railway for breach of a statutory duty imposed on it not to deposit the snow removed from their railway tracks, otherwise than out of the city, without the consent of the city's engineer. It was contended that such duties must be enforced through the Railway and Municipal Board which it was claimed had exclusive jurisdiction in such matters. The Judicial Committee (Lords Finlay, Cave, and Shaw) however, were of the opinion that the jurisdiction of the Railway and Municipal Board did not exclude the jurisdiction of the Courts—and they at the same time intimate that in their view there is nothing in the Act constituting the Board giving it jurisdiction to award damages for a tort or breach of contract. On the merits their Lordships were clear that the railway company had violated the Act and the appeal was therefore dismissed.

Flotsam and Jetsam.

A concatenation of ideas brought to our mind multitudinous Bills introduced into the Legislature of one of the Provinces of this Dominion now in session; and then there arose the hope that we might be able to record the fact of there having been much prevented legislation in that Assembly. If one half of the proposed Acts should become law, it is a fair presumption that the statute law of that Province is in a sadly defective condition. But we had forgotten that every member from a rural constituency must make some effort to shew that he has done something to earn his salary by bringing in a Bill "To amend the Municipal Law," or such like. Happily most of these Bills die in infancy. All this however costs money, which brought another reflection, namely: Would it not be advisable, as well as economical, in the public interest, to return to the good old days when members of Parliament and aldermen thought the honor of being such was sufficient remuneration for their services? There is no doubt that the temptation of a salary brings to the front too many of those who become politicians for what there is in it, and not from any patriotic motive, and not because anybody wants them there except themselves.