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RECENT JUDICIAL CHANGES AND APPOINTMENTS.

We have to record several changes in the Bench of the Supreme Court of Ontario, and some new appointments in that province and in the Province of Manitoba.

In Ontario, Chief Justice Meredith has been moved to the Court of Appeal where he takes the place of the late lamented Sir Charles Moss, becoming Chief Justice of Ontario. He has been out of the country since the beginning of September, in connection with the work he has undertaken in reference to proposed legislation on the subject of workmen's compensation for injuries (see ante, p. 602). He is expected to return about the end of this month.

Mr. Justice R. M. Meredith leaves the Court of Appeal, and takes his brother's place as Chief Justice of the Common Pleas Division.

The vacancy this caused has been filled by the appointment of Mr. Frank Egerton Hodgins, K.C. The selection of Mr. Hodgins for the Court of Appeal has received the unanimous approval of his legal brethren. He is an able and well-read lawyer, who has for many years past taken a high place at the Bar of the Province of Ontario, and is also well and favourably known in the Supreme Court and in the Judicial Committee of the Privy Council. He has other qualifications most desirable in a judge, and without which his usefulness would be greatly marred: a courteous, pleasant demeanour, a quiet, judicial calmness, coupled with patience and approachability. The Bar will not find any fault in the new judge in these respects. Mr. Hodgins is the second son of Dr. John George Hodgins, I.S.O., so well known in literary and educational circles. He was born in Toronto in 1854. After his call to the Bar in 1879, he practised alone until he formed a partnership with Mr. Coatsworth,

the late Mr. W. B. McMurrich subsequently becoming the senior member of the firm, and was when appointed at the head of the firm of Hodgins, Heighington and Bastedo.

A recent statute authorizes the appointment of an extra judge to the Supreme Court of Ontario. The position thus made has been filled by the appointment of Mr. James Leitch, K.C., chairman of the Ontario Railway and Municipal Board. This appointment is also a good one. We can well imagine that he will not be sorry to enter the more congenial atmosphere of Osgoode Hall, and leave a position where his critics were not lawyers, but rather newspaper reporters anxious for "copy" to tickle the taste of voters who, in their interest in municipal politics and their ignorance of law, are the easy dupes of others. Mr. Leitch was born in the county of Stormont in June, 1850, was called to the Bar in 1876, and practised in Cornwall with Mr. Pringle. In June, 1906, he was appointed to the Board over which he presided until he became a judge. His experience on the Board will add to his usefulness on the Bench, where he will do equally good work under pleasanter auspices.

Mr. Leitch in performing his recent duties exhibited an independence which was not to the liking of the municipal authorities with whom he was constantly brought in contact. It is to be hoped that his successor, whoever he may be, will exhibit the same independence, and withstand, as did his predecessor, an evil and objectionable pressure coming from municipal bodies, public ownership fanatics, and socialist elements, assisted by a section of the press which seems to be only too willing to aid in the development and expression of such pressure. Above all this, in the Province of Ontario, is the additional pressure of the Hydro-Electric system, which, with the forces above mentioned, so sways the electorate as practically to control the provincial legislature. Unfortunately our provincial governments are all more or less under the same pressure of these various influences, and to gain votes have to pander to it. We shall look with some curiosity as to who will be Mr. Leitch's successor.

In the Province of Manitoba, Mr. Alexander Casimir Galt,

K.C., of Winnipeg, takes the seat vacated by the resignation of Mr. Justice Robson in the Court of King's Bench.

This appointment is an excellent one, and very acceptable to the Bar of that province. Mr. Galt is endowed with the essential qualifications of a judge, having naturally a judicial mind and a clear head with an ambition to perform his duties with absolute fairness and to the best of his ability. He is, moreover, an industrious student of the law and has had a long and varied experience at the Bar.

Mr. Galt is the eldest son of the late Sir Thomas Galt, Chief Justice of the Common Pleas Division of the High Court of Justice for Ontario, and was born in March 1853. He commenced the study of law with Mr. Christopher Robinson, K.C., and Henry O'Brien, K.C., and was called to the Bar in 1875. He practised for some years in Toronto, removing then to British Columbia and subsequently to Winnipeg, where be became a member of the firm of Tupper, Galt, Tupper and McTavish. It must be gratifying to Mr. Justice Galt and his many friends to know that his appointment was not due to any political "pull," for though a Conservative he never took any active part in party politics; and, may we say, we are sure if his father, so beloved by the Bar of Ontario, were alive he would be glad to see his son occupying the same honourable position he did. He received, when he took his seat on the Bench, a very complimentary address from his former brethren of the Bar.

Another excellent appointment is that of Hon. Frederick William Gordon Haultain, K.C., as Chief Justice of the Supreme Court of Saskatchewan. He is the son of Lieut.-Col. F. W. Haultain, and was born in Woolwich, England, in November, 1857. He came to this country, with his father's family, in 1860. He is a B.A. of Toronto University, taking first class honours in classics in 1879. He was called to the bar of Ontario in 1882, and to that of the North-West Territories in 1884. Mr. Haultain is one of the most prominent and respected men in Western Canada. Besides being a lawyer of repute, he was a statesman rather than a politician, and, as such, he took a

high place in the North-West Territories, and was Premier, Attorney-General and Commissioner of Education in his adopted country. Mr. Haultain was also an officer of the volunteer force, and represented the North-West Territories on the occasion of the coronation of King Edward. Having attained such a high position in the councils of his own province, it was thought he might aspire to even a higher position, but he felt the call of his profession, and will now devote his scholarly attainments and his legal erudition to the Bench which will be the gainer thereby. This appointment meets with universal approval.

Mr. John Philpot Curran, K.C., of Brandon has also been elevated to the King's Bench of Manitoba. Though not so well or so widely known as Mr. Justice Galt, he will, it is said, do his new work well and faithfully.

THE NEW PROCEDURE IN ONTARIO.

On the first day of January next Part 1 of the Law Reform Act 1909 (9 Edw. VII. c. 28) is to come into operation, and it behoves solicitors to familiarize themselves with the new practice which it involves.

The Ontario Judicature Act (1881) practically revolutionized our procedure in many respects, and beside the changes then made, those shortly to be inaugurated may appear to be insignificant. It is principally in regard to appeals that the new system will need study, but it will be found to involve changes in other respects.

The scheme of the Act of 1881, was to consolidate the former Courts of Law, Equity, and Appeal, into one Court, but when the details came to be worked out, the theoretical one, Supreme Court of Judicature was found to be merely a name, and not a court at all, as far as any practical work was concerned. That court tried no cases, whether in the first instance, or in appeal. No writs issued in its name, and it pronounced no judgments, for the simple reason that it never sat. It was "vox et præterea nihil." What really resulted from the

change were two courts, the Court of Appeal and the High Court of Justice. One of the objects of the new procedure Act is to carry out more effectively the intention of the original Judicature Act, and to constitute of the two existing courts one court to be styled "the Supreme Court" with two Divisions, viz., the "Appellate Division" and "the High Court Division."

This, however, is merely perpetuating in another way the mistake, if we may so call it, of the Judicature Act. If the court is to be one, and only one, there seems no good reason for perpetuating Divisions—and we should think the best thing the Legislature can do at its next session would be to strike out all provisions which contemplate the existence of separate Divisions which so far from simplifying matters only serves to darken what ought to be quite plain and transparent to everybody, viz., that there is only one court, and that, the Supreme Court of Ontario.

In carrying on the business of the court there will, of course, have to be courts constituted for different kinds of business, *e.g.*, judges sitting singly in court or in chambers, and courts for hearing motions, and courts for trial of actions, and courts of several judges for the hearing of appeals; but there is really no reason why the judges who hear appeals should be judges of a different Division, any more than that the present Divisional courts of the High Court should constitute a distinct Division of the High Court. The Court of Appeal under the new system is virtually to take the place of, and be a substitute for, the present Divisional Courts, as well as the present Court of Appeal, and all appeals now heard before Divisional courts, and the Court of Appeal, are hereafter to be heard before the Appeal Division of the Supreme Court; but, as we have said, there is really no particular reason that we see for describing it as a separate Division—and it would, simplify matters to abolish Divisions.

But whether Divisions are to be continued or not, we think the subsidiary name should not include the word "court." It puzzles the ordinary man to understand how there can be

courts within courts, *e.g.*, a Supreme Court having a "High Court Division" the title "the Appellate Division" is not so bad; and if some corresponding title could be devised for the other Division, it would be preferable to "High Court Division."

It seems to us that "First Division" would be preferable to "High Court Division," but as we have already intimated, we think there should be no Divisions at all in the Supreme Court.

Until that change is made all the ordinary proceedings in an action will be carried on "In the Supreme Court, High Court Division," but as soon as the litigants seek to appeal from an order or decision which, under the present practice, is appealable to the Court of Appeal or a Divisional Court, then the proceedings are to be "In the Supreme Court, Appellate Division."

Other appeals such as can be entertained under the present practice by a single judge will continue to be so heard in the High Court Division.

Then it may be noticed that the present Chancellor and Chief Justices are to retain their present titles, but after the Act takes effect when any vacancies in those offices arise they are to be abolished—and in the future, there is to be only a "Chief Justice of Ontario" and a "Chief Justice of the High Court." This latter title seems rather meaningless when there will be, in fact, no "High Court" of which he can be Chief Justice. However, there is no King's Bench and no Common Pleas now, though we have Chief Justices of both. We may notice that sec. 8, though it provides for abolishing the offices of "Chancellor of Ontario, Chief Justice of the King's Bench, Chief Justice of the Common Pleas, and Chief Justice of the Exchequer Division—does not appear to provide for the appointment of a corresponding number of puisne justices in their stead. We think this is a point needing the attention of the Legislature.

The Act provides that there are to be Divisional Courts of the Appellate Division. Sec. 12 (3) says a Divisional Court *shall*

consist of five judges, but section 16 (1) says appeals to a Divisional Court *may be heard* and disposed of by a court of four judges—which seem somewhat inconsistent provisions.

The Appellate Divisional Courts, of which there are to be at least two, are to sit on alternate weeks: s. 17. The second Divisional Court will have to be composed of judges of the High Court Division who will serve for a year in that capacity. There will, in this way, be an Appeal Division sitting each week, but the same court will not sit two weeks in succession which may prove awkward when a long case is before the court.

After deducting five judges from the staff of the High Court Division, for the second Appellate Divisional Court, the whole of the circuit business, apparently, will have to be discharged by the remaining nine judges, one of whom is at present away on sick leave—which seems likely to prove rather onerous on them. There are to be at least monthly sittings of the Appellate Divisional Courts. By section 18, all statutory provisions, rules of court, practice, and procedure upon, and as to, appeals, motions, and applications to the Court of Appeal are repealed—subject as to appeals under the Controverted Elections Act to the provisions of that Act, and as to appeals or applications for new trial under the Criminal Code, to the provisions of that Act—and hereafter, subject to rules of court, the procedure applicable to applications and appeals to the present Divisional Courts of the High Court are to apply to appeals to the Appellate Division of the Supreme Court. Therefore, unless and until rules are made to the contrary, the printing of appeal books will no longer be necessary; the judgments of the court will no longer be formulated in the shape of certificates, but as judgments and orders have heretofore been framed in the High Court.

Appeals from County Courts and District Courts will be the only, and altogether unnecessary, exception to this rule; and under the County Court Act the judgments on appeal will have still to be issued in the form of certificates.

This change in the practice of appeals from County Courts was one of those ill-advised and ill-considered amendments made to the County Court Act, the effect of which was probably not really appreciated by the Statute Revision Committee, and the sooner it is altered the better.

Practitioners will be careful to note that after the 1st January next, "the High Court of Justice" and "the Court of Appeal" will have disappeared and given place to "the Supreme Court—High Court Division," or "Appellate Division" according to the nature of the proceeding.

SALARIES OF SUPERIOR COURT JUDGES.

A subject which should receive attention at the approaching session of parliament is the inequality of the judicial salary list under the provisions of the Dominion statute, known as the Judges Act, as regards the salaries of the judges of the Superior and Appellate courts. The effect of the present schedule is to discriminate against the judges of those courts in Western Canada, whose jurisdiction includes the powers which in other provinces would be exercised by a separate Court of Appeal.

The Supreme Courts of Alberta and Saskatchewan, are in themselves courts of appeal as regards their sittings en banc at which trial judgments come up for review and the classes of cases which those courts are called upon to decide are of equal importance to the cases in Ontario and Quebec. Nor can it be said, as was the contention some years ago, that the living expenses of the judiciary was or should be much less in those provinces. Is it the case that the Bench in the western provinces is composed of men having lesser attainments than the members of the Bench in Ontario and Quebec? Comparisons are odious, but both in Alberta and in Saskatchewan the judges of the provincial Supreme Courts are men of high erudition and ability, and they should be in receipt of salaries equivalent to those paid the judges in Ontario.

Parliament might well increase the salaries of puisne judges in the two western provinces from the present six thousand dollars per annum to seven thousand dollars which judges (other than Chief Justices) receive in Ontario and Quebec and which the judges of the Courts of Appeal of British Columbia and of Manitoba now receive.

As we have also said, many times before (and propose to keep on saying it), and as every one else says, and as every member of the Dominion Cabinet would say if asked the question—the salaries of the judges of all the Superior Courts should be increased. This, however, only applies in a measure to the judges of the Superior Court of Quebec, whose duties are not onerous, and more akin to those of County Court judges in the other Provinces; in fact, many of them have much less work to do and less important questions to settle.

THE BECKER VERDICT.

The speedy trial and prompt verdict in this flagrant case has properly been very gratifying to all lovers of their country to the south of us. It has not always been possible to speak in glowing terms of the manner in which criminal law is administered in the United States—very much the contrary; but on this occasion we gladly join with a writer in the New York *Evening Post* in the congratulations expressed in the following words:—

"It is obvious that the verdict of the jury in the Becker case came as a surprise to most people. A disagreement was the common and confident prediction. This did not mean that Becker was not generally believed guilty. We suppose that the details of the Rosenthal murder, as they were little by little made public, left no doubt at all in the minds of intelligent men that Becker had a direct connection with that crime which startled a city even as hardened to such things as is New York. It was not his guilt, but the legal proof of it, that was called in question. The feeling was that the long and difficult trial, with the

abhorrent character of so many witnesses, would result, at best, in a hung jury. Hence the general astonishment—which is also an unmistakable feeling of relief—at the verdict of murder in the first degree.

"This must be regarded as a most tonic event. It shews, for one thing, that justice in New York need not always move on leaden feet. The bold assassination of Rosenthal was done on July 16. In less than three months Becker was brought to trial. All the involved processes of first detecting his hidden responsibility for the crime, next of marshalling the evidence on which he was indicted, and then of getting his case before a jury with skill and force sufficient to cause his conviction, were got through successfully with great speed. The sword of the law was not allowed to rust in the scabbard. People had not forgotten what the crime was before punishment had been visited upon it. The net result cannot fail to restore confidence in our methods of criminal prosecution, and to make justice appear more swift and sure than the community had come to think it.

"Even more important is it to have the demonstration that the weapons of the law are sharp and strong enough to cut through the network of police collusion with crime. It has been the boast of the 'system' that it could snap its fingers at the criminal code and defy prosecutors and the courts. Nothing would happen. Everything would soon blow over. Even if any man was caught, he would be got off. That was the burden of the talk, as sworn to, between Becker and his hired assassins. The confederation between the police and favoured criminals was represented as too powerful, with too many ramifications, for the District Attorney to break into. But Mr. Whitman has knocked all that into a heap. He has shewn that the resources of criminal investigation and the agencies of the law are adequate to cope with the vilest conspiracies and the most intricate crimes that the 'system' can devise. The strong arm of the law has grappled with the strong-arm squad. We can easily imagine the shock given at midnight to all the corrupt and conniving members of the police force by the news that Becker had been

found guilty. They must have looked at each other with startled eyes, as if asking, 'Who next?' Viewed from any angle, the verdict of the Becker jury is the most terrible blow that the wicked and flaunting alliance between the guardians of the law and the violators of it has ever received."

RESCISSION OF EXECUTORY CONTRACTS.

The *Law Quarterly Review* in its October number contains the first part of a learned and exhaustive article on the subject of the rescission of executory contracts for partial failure in performance. We copy the concluding portion of the writer's remarks, which are as follows:—

"I have pointed out that the right of one party to a contract to rescind for breach, or failure to perform, and the right of such party to resist the enforcement of the contract, in an action on the contract for damages by the party in default, are in effect one and the same thing. With regard to enforcement by action for specific performance, however, there is this distinction, that, while specific performance may be resisted on any ground that would justify rescission, or (what amounts to the same thing) constitute a good defence of failure of consideration to an action on the contract for damages, specific performance is a remedy in the discretion of the Court, and may be refused on grounds that would not justify rescission of the contract, Fry on Specific Performance, 5th ed., 19, 20, 211, 221.

Leaving out of account this latter class of defence to an action for specific performance, one would (since the passing of the Judicature Acts) expect to find in a harmonious system of law a single principle governing—

(*a*) The right to resist the enforcement of a contract, on the ground of failure of consideration, whether such attempted enforcement were by action on the contract for damages, or by action for specific performance.

(*b*) The right to enforce a contract by action for damages or by action for specific performance, with compensation to the

defendant (or damages, as the case may be) for any breach or failure by the plaintiff falling short of such a failure of consideration as would justify rescission.

It is submitted that the decision in *Flight* v. *Booth*, 1 Bing. N.C. 370, and *Bannerman* v. *White*, 10 C.B.N.S. 844, have established such a principle, and that principle not only governs the two classes of cases just referred to, but is, in a negative form, the principle governing the right to rescind for non-fulfilment of a representation or promise dehors the contract itself, but amounting to a material inducement to the making of the contract."

CONFESSIONS.

It is often an important question in the prosecution of criminal cases under what circumstances a confession of a prisoner is admissible in evidence. It might be well, at the outset of our discussion, to define legally the term confession. A confession is a voluntary admission or declaration of a prisoner of his agency or participation in a crime. It is, however, true that some courts include under confessions "all declarations, statements or acts on the part of the accused person which may lead to an inference of guilt." But such a definition seems too broad and it would destroy the distinction between a confession and an admission, the former being acknowledgements of facts incriminating in their nature and limited to the criminal acts itself, the latter being criminating admissions of a single fact or circumstance, without the intention necessarily of confessing guilt.

CONFESSION MUST BE VOLUNTARY.—The essential element to be decided before a confession is admissible, is was it voluntary? Lord Campbell, C.J., says: "It is a trite maxim of the law that a confession of crime to be admissible against the party confession must be voluntary, but this only means that it should not be induced by improper threats or promises, because under such circumstances, the party may have been influenced to say

that which is not true, and the confession cannot be safely acted upon."

Under the title of a confession to be admissible must be voluntary, we will consider (*a*) the effect of a promise of benefit or profit, (*b*) the effect of threats or improper representations. (*a*) It is a well settled rule that a confession elicited by an express promise of benefit or favour or an implied promise to lessen the punishment or secure an acquittal, is inadmissible. Thus, where a prosecutor said to a prisoner, "If you will tell me where the goods are, I will be favourable to you," and the prisoner confessed, the confession was held to be involuntary. Again, where the officer who made the arrest testified that he told the prisoner "that the brothers of the prosecutrix were going to force him to leave the country, and it would be lighter on him, if he would own up" and the prisoner confessed, the confession was held to be involuntary. Again, where the State Fire Marshall told the accused "that if he would tell the truth, he would be allowed to go," the confession consequently was held involuntary. (*b*) It is a well settled rule that a confession induced by threats or improper representation, is inadmissible. The real difficulty, however, lies in determining what is a threat or improper representation.

The best test is laid down by Haroldson, J.:—"The controlling inquiry is whether there has been a threat of such a nature that from fear of it the prisoner was likely to have told an untruth. If so, the confession should not be admitted." Hence, in that case, where the prosecutor said to the prisoner, "Unless you give me a more satisfactory account, I will take you before a magistrate," the subsequent confession was held inadmissible.

In this connection, it might be said that the law does not consider a confession obtained through the infliction of physical pain or torture inadmissible. It has become a custom recently to exaggerate the methods of inquisition used by the police in respect to all matters pertaining to the enforcement of the law, but their methods of inducing a prisoner to confess by "sweat-

ing" and the "third degree" are not only true, but an unwarranted abuse of power. A typical case is presented in Massachusetts, where two officers arrested a thirteen-year-old boy without a warrant, on suspicion of his having committed a crime. In the night, they took him out and questioned him for two hours without warning him of his right not to answer, or affording him an oppotrunity to consult friends or counsel, and yet his confession was held to be voluntary. It would serve no useful purpose to detail the innumerable cases where persons have been starved, kept in solitary confinement and sweated, and if no evidence of a threat or promise was introduced, the confession elicited by the above methods have been held to be voluntary. Of course, some allowance must be made, since gentle methods are of little avail with the criminal class, but, since in the last analysis the reason for the rule that a confession must be voluntary, is that only in such cases, can it be safely acted upon as being true, it would seem that the probabilities of a confession induced by third degree methods being untrue, ought to be sufficient to render it inadmissible.

PROMISE OR THREAT MUST BE FROM ONE IN AUTHORITY.—In considering confessions where fear or favour are involved, it is an essential and well recognized rule that the promise or threat must be made by one in authority, in order to exclude the confession. The reason for this rule is that a confession made in consequence of a threat or promise held out by a person not in authority, is not liable to the suspicion or presumption of its being untrue, since the accused is presumed to know that such a promise or threat could not be carried out.

The most essential question, therefore, to determine, is who is a person in authority? It is clear that the prosecutor, the officer in charge, and in the state courts, and in England, the injured party is considered one in authority, but in the federal courts by force of statute, the District Attorney is the only prosecutor, and hence the injured party is not one in authority. The reason for the rule is that the authority known to be possessed by those persons may well be supposed either to animate

the prisoner's hope or, by inspiring him with awe, to in some degree overpower his mind. There formerly was a great contrariety among the courts whether a confession made to one not in authority on an inducement held out by that person was admissible in evidence by the older English decisions it was inadmissible, but that doctrine is no longer followed; and while some of the states hold that the voluntariness of such a confession is a question of fact and law, yet the prevailing opinion to-day in England and in this country is that a confession, howsoever obtainable by one not in authority, is admissible. But this rule is subject to a well-settled exception, that although the person offering the inducement is not de facto in authority, yet if the prisoner erroneously believes him possessed of authority, that excludes the confession. Although the promise or threat has been made by one in authority, yet it is established rule of law that this can be counteracted by a subsequent warning to the prisoner of his rights.

THREATS DISTINGUISHED FROM ADJURATIONS.—It is well to distinguish between threats *ut sic* and mere adjurations, such as "you had better speak the truth." Although there is a conflict of opinion whether even these words might not be construed as an inducement, the final test seems to be whether the words when construed did or did not imply that the speaker expected a confession or only the truth. But the courts are unanimous that an appeal to the prisoner's moral or religious sentiments by one in authority or a promise of some collateral favour will not invalidate the confession. Thus, the remark, "don't run your soul into sin, but tell the truth," has been held not to make a confession inadmissible.

CONFESSION OBTAINED BY FRAUD.—Though it is necessary for the admissibility of a confession that it should have been voluntary, yet it is not essential that it should be the prisoner's spontaneous act. Hence, fraud and deception are legitimate means of obtaining a confession. Thus, a confession obtained by a detective making the prisoner believe that he was in sympathy with him is no reason for its exclusion. The object of all

the care which taken in regard to the admission of confessions is to exclude testimony not probably true. But, when in consequence of an involuntary confession, the property stolen, or any other material fact is discovered, it is competent to shew that such discovery was made on account of the prisoner's information. In such a case, so much of the confession as strictly relates to the fact discovered, will be received in evidence. Thus, upon an indictment for burglary it was held admissible to shew the act of the accused in conducting the officers to the place where the stolen money had been hidden, and also his declaration while the search was in progress, "keep looking for the money up by the fence, it is there somewhere."

FOUNDATION MUST BE LAID WHEN VOLUNTARINESS OF CONFESSION IS DISPUTED.—We now pass on to consider the application of these principles we have been discussing to a concrete case. When a confession is introduced, must a foundation be laid negativing any improper methods? It is the orthodox rule, and perhaps the prevailing doctrine, that all confessions are presumed to be *primâ facie* involuntary, and satisfactory evidence must be introduced to shew that it was voluntary before it is admissible. In Ohio and in a few states, however, a confession is presumed to be voluntary and free from all fear and favour, but if the preliminary evidence is conflicting, the confession can be submitted to the jury under instructions to disregard it, if satisfied it was involuntary. The question as to whether the confession is voluntary, being in its nature preliminary, belongs to the judicial province alone, and he must decide it before admitting the confession in evidence. The defence with permission of the court, may introduce pertinent evidence in addition to that which results from the preliminary examination, and whether it is to be in the presence of the jury, rests with the judge. But the preliminary examination may be merely formal by the judge, declaring on hearing some witnesses without allowing the defendant's counsel to cross-examine or to introduce contrary evidence, that he is satisfied the confession is voluntary. An example of such an arbitrary ruling

was where X. was upon trial for burglary, the prosecutor offered X.'s confession in evidence and it was objected to on the ground that threats were used in obtaining it. The prosecutor called the officer, who denied the charge. The defence then offered five witnesses, but the court refused to hear them and admitted the confession.

Whenever the defence objects to the admissibility of the confession, it is the duty of the court to determine the question from the evidence of the case before the confession can be admitted. Thus, on defence's objection that the confession was not voluntary, the Court refused defendant leave to make such preliminary examination until after the examination in chief had been concluded and the confession given to the jury. The verdict of the jury was reversed on the ground that such a ruling was error.

It is sometimes said that even when a confession is admitted the jury may still reject it if it appears not voluntary, but, according to the principles of the law, that view is based on a mistaken idea, for the jury have nothing to do with the preliminary question of a confession's admissibility, and if it is admitted they may reject it, not because it was involuntary, but because they do not believe it.

In determining the question of the voluntariness of a confession, the humane doctrine demands that the judge should take into consideration the age, condition, situation and character of the prisoner and the various surrounding circumstances, because, for example, language sufficient to overcome the mind of one may have no effect upon the mind of another. The courts are rather loose on the question of admitting confessions, and very frequently allow a confession to go to the jury with instructions to disregard it, they believe it involuntary. As I before remarked, this is based on a misapprehension of the law and, in my judgment, very prejudicial to the defendant, although the prevailing doctrine is, that even if a confession is admitted, it can be stricken from the record by the court, if, after its admission, he finds that it was not voluntary. But how

can he strike from the minds of the jurors the lasting impression the statements in the involuntary confession have made?

CASES IN WHICH CORPUS DELICTI CAN BE ESTABLISHED BY A CONFESSION.—It is generally admitted that the confession must relate to the offence charged in the indictment; but it is a very important question sometimes in a criminal case whether the confession can be used to prove the *"Corpus Delicti."* In the Roman law such confessions only amounted to a *"semiplena probatio"* upon which alone no verdict could be rendered. In England and in this country the prisoner's confession, when the *"Corpus Delicti"* is not otherwise proven, is insufficient for a conviction. Yet the modern authorities, while still adhering to the rule, have relaxed it considerably, and it is now held that the confession, when the body of the crime is not proven, may be taken and used for that purpose with the other evidence.

ADMISSIBILITY OF JUDICIAL CONFESSIONS.—We have just been considering what are called extra-judicial confessions as distinguished from judicial confessions, which are those made in due course of legal proceedings. How far a confession made before the court will invalidate it, is a question upon which the authorities differ. According to the common law rule in England, prior to the Statute of 11 and 12 Victoria, ch. 42, no caution of a prisoner in a preliminary examination was required and the failure to warn the witness of his rights in no wise affected the confession. In the United States, the courts are not at all in harmony on the question of caution, or how far an examination before a magistrate may prevent the confession from being voluntary. In most states now by statute a caution is required to be given.

It might be interesting to note a few of the decisions of the various courts on the question of the voluntariness of a confession before a magistrate. Professor Greenleaf says: "There is no principle, not the vestige of an argument, for excluding a confession because it was made before an examining magistrate." In a Mississippi case the court said: "The principle is that no statement made upon oath in a judicial investigation

of a crime can ever be used against the party making it in a prosecution of himself for the same crime, because the fact that he is under oath of itself operates upon him to tell the truth, and therefore his statements cannot be regarded as voluntary." In Alabama the confession of a witness who was not charged on examiner before the Coroner was excluded, while in New York an examination before the Coroner of one under suspicion, was admitted Benedict, J., summed up the rule now followed when he said: "To say that the administration of an oath to one under suspicion of crime, will of necessity, cause a mental disturbance that must render unreliable the sworn confession of the crime, and to raise the legal presumption that the confession is untrue is going farther than I can go, unless compelled by authority, and I see no reason which compels the holding that an arrest or a charge of crime, or being sworn, or all three combined are sufficient to exclude a confession that otherwise appears to be freely made without the influence of a threat or promise."

ALL CAPABLE OF COMMITTING A CRIME CAN CONFESS.—It is universally admitted that all persons capable of committing a crime can confess. The question in the cases of infants is not so intricate, since the "*Capax doli*" can generally be determined as a question of fact. In the case of a confession of an intoxicated man, there seems to have arisen some conflict of opinion, but it is generally held that intoxication does not *per se* render the confession inadmissible, but only goes to its sufficiency; yet it was held that the confession of one, under the influence of liquor furnished by the arresting officer, was inadmissible. Neither in the case of a conspiracy when it was over, nor when one of the co-defendants confesses, is the confession admissible against the one not confessing.

INTRODUCTION OF CONFESSION.—We have now discussed the nature and admissibility of a confession. The next question is, how is it to be introduced? The rule as to who may testify to a confession is so general and various that nothing more specific can be laid down than that any competent witness may testify.

It is generally admitted that a person to whom a confession is made, is a competent witness, but various exceptions to this rule are allowed. Thus, a witness was allowed to detail a confession he heard the prisoner make to a third party, although he did not see either party, and only identified the prisoner by his voice.

THE WHOLE CONFESSION MUST BE INTRODUCED.—Fairness and justice demand that everything the prisoner said which would tend to qualify his confession, should be admitted, and this should be adhered to, no matter if what the prisoner said was favourable to his case. Thus, when the prisoner was proven to have sold the goods immediately after they were stolen, but in his confession he said, among other things, that he honestly bought and paid for them. It was held that this part of the confession should be admitted with the rest. This rule as to the introduction of the whole confession did not prevail in the early law. It was usual in state trials then to select arbitrarily from a prisoner's examination, any part that might be prejudicial to him, although the whole examination taken together, might have had a different effect. The salutary rule requiring the whole confession to be introduced does not mean that it should be repeated verbatim, but the substance is always sufficient.

PROBATIVE WEIGHT OF CONFESSION.—We must now consider the final question in regard to a confession, to wit: its probative force or weight.

It is universally recognized by the courts that an oral confession should be received with great caution. "For, besides the danger of mistakes from the misapprehension of witnesses, the misuse of words, the failure of the party to express his own meaning, the infirmity of memory, and the too zealous effort on the part of those engaged in collecting evidence, to rely on slight grounds of suspicion which are exaggerated into sufficient proof—all these tend to impair that kind of evidence."

It is generally considered, however, that a confession voluntarily made is entitled to the greatest weight. "*Habemus*

optimum testimonium rei." A prisoner's confession involving no question of law is sufficient grounds to warrant a conviction, although there is no corroborating proof of his having committed the offence charged.

This view, however, is very seriously doubted by text writers as not being what the English courts would hold, if the question was directly presented to them, but it clearly is not the American rule. It is well settled in this country, that there must be some corroborating evidence to the confession in order to establish the prisoner's guilt, but if the commission of the offence be established, it is unnecessary to have any corroborating evidence of the prisoner's criminal agency.

It must not be thought when considering confession that once admissible they are irrefutable. A confession is of the same character as an admission, in that it constitutes a waiver of proof rather than proof itself. So far is this carried, that where the prisoner's confession has been reduced to writing and signed, it was held to be error not to admit parole testimony offered by the prisoner to shew that his words were misunderstood.

Such in general, is the law of confessions. While it admits of much abuse, it is, nevertheless, founded upon justice and the principles that the guilty should be punished, but that no one should be made to incriminate himself.—*Central Law Journal.*

[The authorities for the above propositions are given in full in the number for Nov. 8.—Ed. *C.L.J.*]

JUDICIAL LEGISLATION IN EGYPT.

Macedonia has been described as macédoine of nationalities; Egypt might as justly be described as a macédoine of laws and jurisdictions. The Egyptian legal system includes Mixed Codes applicable to foreigners living in the country, and Native Codes exclusively applicable to natives. Questions of personal status for foreigners determining by the law of their nationality, for natives by the law of their particular religious community; while fresh laws may be made for foreigners by decrees approved by a number of powers which have special treaty rights, and for natives by Khedivial decrees. The judicial organization is not less complex: jurisdiction over foreigners is exercised by mixed tribunals consisting of judges appointed by all the greater and some of the minor powers, and in some cases by Consular Courts, while the jurisdiction over natives is divided between civil and criminal courts, composed partly of native and partly of foreign judges, and religious courts which consist of authorities appointed by the religious community. In fact, the system of the personality of law, which was regular in Europe after the invasion of the Roman Empire by the barbarians, still remains in force for European subjects living in Egypt, but it is modified by certain treaties which establish a special law and special courts for all foreigners generally, and for transactions between foreigners and natives. The development of this common law and these common tribunals, which are often called international but are in fact an integral part of the Egyptian system, is described in the book before us of M. Vercamer, who is a member of the mixed Court of Appeal in Alexandria, and who has already written several treatises on Egyptian jurisprudence. The writer is more especially concerned with the legislative functions of the mixed courts, which have recently been the subject of important changes; but, to make the position clear, he traces in outline the history of the institution from its origin to the present day.

The account he gives makes a very interesting chapter of constitutional development. There is no legislature in Egypt with

the power of making laws which bind all the people in the territory. Though the country has passed under English control, the European powers still maintain exceptional privileges for their resident subjects which were conceded by the Ottoman Empire in the Capitulations. At the same time the need for the extension and amendment of this special law which applies to the privileged class is generally admitted; and, therefore, legislative functions have to be exercised by some body. It is the singular feature of Egyptian administration that the judicial and legislative functions, so far as Europeans are concerned, are combined.

It was in 1875 that fourteen foreign powers entered into treaties with the Khedive's government with a view to remedying the state of judicial anarchy which reigned in Egypt, and under these treaties the mixed tribunals were instituted. They were to have exclusive jurisdiction in all civil and commercial actions arising between natives and foreigners or between foreigners of different nationalities, in actions about immovable property even though both parties were foreigners of the same nationality, and in a limited number of penal actions. The courts were to consist of native and foreign judges with a preponderating proportion of the latter; and it was agreed that the foreigners who sat should be representatives of the several states which had Capitulations with Egypt. At the same time six codes were framed (civil, commercial, maritime, penal, civil procedure, and criminal procedure) which the mixed courts were to apply in all cases that came before them. It was further provided that in case of silence, inadequacy or obscurity of the law, the judge should conform to the principles of natural law and equity, and that extensions and modifications of the laws in force should be enacted upon the advice of the "Corps de la Magistrature," i.e., the general body of the judges of the courts. By these provisions it was hoped that the changes of the law which experience might suggest would be regularly brought into effect. But those hopes were futile. The principles of natural law and equity, as has been demonstrated recently in the con-

troversy on the ratification of the Declaration of London and the International Prize-Court Convention, are an uncertain and an unsafe guide for the development of law; and the machinery originally provided for the amendment and extension of the Codes proved unworkable in practice. The jealousies of certain powers rendered it impossible to carry any amendment or change of the law by means of the judiciary. Every proposed modification of the Codes had to be submitted to a commission composed of the accredited diplomatic agents in Egypt, who in turn could submit it to a sub-commission composed mainly of judges of the mixed tribunals. Any point raised by the representative of any country concerned would have to be referred to the fourteen powers who were parties to the treaties, and should one or two hold out, the project could not be carried. Legislation by the diplomatic corps was a hopeless innovation in constitutional experiment. It was the burden of several of Lord Cromer's reports on the condition of Egypt, and notably of his reports for the years 1904 and 1905, that the system of the Capitulations, which secured this right of diplomatic veto on any fresh law applicable to foreigners, was incompatible with the good government of Egypt, and that it was impossible to adapt the laws to the growing needs of the country, so long as the actual system of legislation, embarrassing and unpractical as it was, remained unchanged.

At length, after many years of negotiation, a reform has been instituted which gives effect to the design of the Mixed Code for a legislative autonomy, and enables an Egyptian authority to enact laws binding alike on foreigners and natives without having to submit to outside interference. The extreme of embarrassment which resulted from the old system was reached when certain powers protested against the application to their subjects of decrees dealing with compulsory vaccination and the registration of births and deaths, which had been approved by the general assembly of the mixed courts, but to which they chose for political reasons to take exception. In fact, the reform of the Egyptian law, however desirable in itself, was treated as a pawn in the diplomatic game of European

States, and it was not till the policy of the entente cordiale had replaced "the policy of pin-pricks" which had existed between the two countries most concerned with Egypt, that reform became possible. In 1903, an International Conference was called together by the Egyptian Government to consider legislation on subjects of commercial law; and the opportunity was taken on deliberating on the general question of legislative reform. After long negotiations, agreement was reached upon a modification of the mixed Civil Code, which assures to the mixed Court of Appeal, under certain conditions, the power of amending the law that was deemed to have been given to it in its original constitution, but had been defeated by the obstruction of certain powers.

The new clause of the article provides that extensions and modifications of the mixed legislation shall be decreed on the initiative of the Minister of Justice, following on a deliberation of the general assembly of the mixed Court of Appeal, to which there shall be summoned the senior judge of each nationality whose government adhered to the judicial reforms of 1875, and which is not represented by a member of the court. There must be fifteen members to form a quorum of the assembly, and the project must receive a majority of two-thirds of those present. The initiative in legislation is therefore not accorded to the judiciary, which will constitute only a deliberative assembly; and a further restriction on its powers is introduced by the provision that the projects of law approved by the assembly shall not be published for three months after approval; and on the demand of one or more powers made during the interval, they shall be submitted at the end of the period to a fresh deliberation. A project which at the second vote secures the requisite majority may be published without any further formality. In other words, the powers still retain a limited right of control, analogous in some degree to the limited legislative veto now posessed by the House of Lords under our constitution: and the Egyptian Government is invested with a more powerful veto in virtue of the final provision that, in default of publication

within three months from the time when it might take place, the project shall be deemed to be abandoned, and cannot be resumed unless the provisions of the article are complied with afresh. If, then, the Government is not satisfied with the law in the form in which it is passed by the judicial assembly, it can tacitly allow it to drop.

The "division of powers" is one of the elementary principles of our political science, and it is palpably disregarded in this legislative arrangement for Egypt, which confers on the judges, meeting in a specially constituted body, the function of discussing and determining changes in the law which they will have later judicially to administer. But normal principles cannot be applied to a country where the conditions are so abnormal as in Egypt. And, as M. Vercamer points out, the new scheme is a great improvement on the old practice.

"It is important to remove the supreme control of the formulation of laws binding on foreigners from the diplomatic agents of the foreign powers, who are naturally inclined to protect the particular interests of their countrymen, and to substitute for it the effective collaboration of an assembly of judges which offers serious guarantees of impartiality, and which is in a better position than foreign diplomatists to safeguard the rights and legitimate interests of the general body of Egyptian inhabitants, whether natives or foreigners, which is already subject to their jurisdiction in cases of litigation." Legislation by the judiciary is better than the denial of legislation by intriguing diplomatists.

It may, however, be doubted whether the new system will be permanent, and whether the confusion of powers it involves may not be avoided later by the constitution of a separate legislative body for amending the law affecting foreigners as well as natives. M. Vercamer points out that the extension of the functions of the judges will have the effect of interfering seriously with the work of the courts, which is already charged with being dilatory. As a legislative body, the judges will have to deal not only with minor amendments of the law but with

large projects of reform, long overdue, which have had to wait for the constitution of an assembly that has a chance of bringing them into being. And this task will involve a grave infraction of their ordinary duties. The difficulty might indeed be met by the increase of the judiciary, and by the constitution of a special section which could devote itself mainly to the legislative part of the work, and would form a kind of Conseil d'État. But if there is to be a special legislative body, then it would seem preferable to separate it more thoroughly from the judiciary. This was the design of Lord Cromer, who in his report in 1906, sketched the formation of a local organization participating in the making of laws applicable to Europeans. This body was to be composed of subjects or protégés of the Treaty Powers, not exceeding twenty-five or thirty in number, of whom the majority would be elected members, and a certain proportion representatives of the Egyptian Government, i.e., European officers in the Egyptian service. The mode of election suggested was the representation of local interests, based either on landed property or commerce, rather than a representation of nationalities or communities. M. Vercamer criticizes Lord Cromer's proposal with considerable effect. The elected members, he argues, might have considerable knowledge of purely economic questions ; they would be incompetent to deliberate on questions of general law or to fashion the legislation to growing needs. And the non-elected members would be an unacceptable introduction of English (official) influence into a sphere where foreign powers are peculiarly jealous of their privileges. He himself favours the creation of a special law-making body (a Council of Legislation) which should consist of distinguished jurists chosen either in Egypt or Europe, but without regard to their nationality, and which should be smaller than Lord Cromer's proposed assembly. It would have the power of consulting with the ministers of the Egyptian Government, and also with the judiciary of the mixed courts, as M. Vercamer proposes that the latter body should have a right of suspensive veto over any legislative act, in place of the

Treaty-Powers, who have that right under the system that has just been adopted.

Whatever plan of legislation is ultimately adopted—whether a representative chamber, or a small body of jurists, or the judges meeting in assembly be the law-making body—two conclusions of M. Vercamer's survey seem to be well founded: (1) that there should be constituted in connection with the Ministry of Justice a permanent committee of legislation charged with the elaboration of new projects of law; (2) that the European judges in some capacity or other must have a place in the scheme. Just as in the early English Parliament the judges were always summoned, as being the wisest men in the land and best able to advise the king, so in an incipient Egyptian Parliament the members of the mixed courts will be consulted as being the body with the largest experience and the sagest appreciation of the needs of the population. In our fully developed democracies it is the lawyer as advocate who takes a principal part in the making of the laws: in countries progressing towards representative Government it is the lawyer as judge who fills that position. At the same time, however, it would be desirable that the judges should rather be consulted by the legislature than be made the legislators themselves.

One other reflection which is suggested by this interesting study of legislative development is that the international judiciary, which already exists sub modo in the permanent arbitration tribunal at the Hague, and which is more completely contemplated by the Convention for an International Prize-Court that still awaits ratification, may provide in time an international legislature, with power to introduce amendments of and additions to the existing law of nations, not only by way of judicial decree but also by direct resolution. The difficulties as to the unsettled questions of prize-law might be met, if the judges of the prize-court, when it is formed, were invested with the function of developing and amending the existing Code.

To those who are interested in the progress of international

legislation, the constitutional evolution of Egypt is of exceptional importance; for Egypt is an international microcosm, and the government there has to face practically the international legislative and judicial problems which in other states are still largely academic. This book, therefore, of M. Vercamer has an application which goes beyond its immediate subject; and lucidly written and excellently documented as it is, it may be recommended to the notice of jurists as well as to those who are concerned with the constitutional progress of the old-new centre of civilization.—*The Law Quarterly.*

EVIDENCE OF PREVIOUS CONVICTIONS.

The Court of Criminal Appeal, this week, in quashing the conviction of an appellant from the London Quarter Sessions, pushed to the fullest extent the doctrine that evidence of the previous conviction of a prisoner may not be given at the trial. In the case in question, the chairman of the sessions had inadvertently asked a question of the prisoner, which resulted in an admission that he had previously been convicted, and, in spite of the fact that he endeavoured as far as possible to counteract the effect of the admission in charging the jury, the court held that the conviction ought to be quashed. There is, of course, a well-known general rule of law, applicable both to civil and criminal cases, that nothing may be given in evidence which does not directly tend to the proof or disproof of the issues raised. Thus in *Makin* v. *Attorney-General for New South Wales,* 17 Cox C.C. 704, the Privy Council laid down that "it is undoubtedly not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely, from his conduct or character, to have committed the offence for which he is tried." This principle was also referred to by Mr. Justice

Channell in delivering the judgment of the Court of Criminal Appeal in *Rex* v. *Fisher*, 102 L.T. Rep. 111. The rule was based upon the ground of the irrelevancy of such evidence, and was subject to certain well-known exceptions, for "the mere fact that evidence adduced tends to shew the commission of other crimes does not render it inadmissible, if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence otherwise open to the accused: *Makin's* case, *sup.* Thus upon an indictment for false pretences it is relevant to shew in some cases that the accused has been guilty of a systematic course of fraud, by proving previous convictions for offences similar to that charged in the indictment: (*Rex v. Fisher, sup.* So, too, where a criminal intent or guilty knowledge has to be proved by the prosecution as being the gist of the offence charged, evidence may be given of other instances in which the prisoner has committed offences similar to that for which he is indicted: *Rex* v. *Bond*, 95 L.T. Rep. 296. Again, where several offences are connected together, so as to form one transaction, upon an indictment for one, in order to shew the character of the transaction, the prosecution may prove the other offences: *Rex* v. *Ellis*, 6 B. & C. 154. The rule has been further encroached upon by statute in several well-known instances. Under the old practice, before the passing of the Criminal Appeal Act, 1907, misreception of such evidence was held to be fatal to a conviction, which could be quashed upon a case stated under the Crown Cases Act, 1848 (*Reg.* v. *Gibson*, 56 L.T. Rep. 367)—that is, if the court consented to state a case. Under the Criminal Appeal Act, 1907, the practice has undergone some alteration. It will be remembered that by sec. 4, sub-sec. 1, of that Act "the Court of Criminal Appeal . . . shall allow the appeal, if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence . . . or that on any ground there was a miscarriage of justice . . .

provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred." Thus, in the case we have referred to, the Court of Criminal Appeal might have dismissed the appeal, had it come to the conclusion that the remarks of the chairman in his summing up to the jury had sufficiently counteracted the effect which the admission of the prisoner might have had upon their minds. The hesitation to exercise the power given to it by the proviso to sec. 4(1) of the Act, which has marked the judgments of the court since its establishment, serve to shew the lenience of our criminal law administration, which always tends to favour the prisoner.—*Law Times.*

WOUNDING IN SELF-DEFENCE.

The question of the extent of force which may justifiably be used in self-defence by a person who is attacked or assaulted was recently raised in a prosecution at the Central Criminal Court. The jury acquitted the prisoner, who had with a revolver wounded one of a number of persons who were assaulting him. Within somewhat indefinite limits, the question is nowadays treated as being one of fact for the jury, or the court, to decide. In cases of homicide, the courts have from very early times jealously restricted the conditions under which the defence may be raised, and many nice questions have from time to time arisen as to whether the act of the prisoner amounted to excusable homicide. On the other hand, where death does not result from the assault or act of the prisoner, the defence of se defendendo is always open to him. Thus in justification of a wounding or even a mayhem, the prisoner may always prove that the prosecutor assaulted or attacked him first, and that he committed the alleged battery merely in his own defence: (*Cockcroft* v. *Smith*, 2 Salk. 642). Indeed, the defence may suc-

cessfully be raised even where the act of the prosecutor amounts to a mere assault as distinguished from a battery (*Rex* v. *Deana*, 73 J.P. 255); in which case the prisoner must, of course, satisfy the jury that the act of the prosecutor was such as to cause him to fear an assault. The prosecution, on the other hand, can always rebut the defence of se defendendo by shewing that the first assault or battery was justifiable (*Leewerd* v. *Basilee*, 1 Salk. 407), or that the act of the prisoner was more violent than was necessary for mere defence. It should be noted that the defence may be raised in some cases where the first assault was not made upon the person of the prisoner himself; thus, a husband may justify a battery in defence of his wife, a wife in defence of her husband, a parent in defence of his child, a child in defence of its parent, and a servant in defence of his master. In the case of *Leewerd* v. *Basilee* (*sup.*) the court said that a master could not justify an assault in defence of his servant, because he might have an action quod servitium amisit. This opinion was, apparently, obiter, and is, in any case, contrary to the accepted doctrine as laid down in the older books: (see 2 Rolle's Abr. 546).—*Law Times.*

"THE TALE OF THE TEA HOUSE CAT."

(CLINTON v. J. LYONS & Co., 81 L.J.K.B.D. 923.)

(As told by a learned K.C. in the Province of Ontario.)

I

A London lady of some charms,
Encompassing within her arms
A dog of pedigree and grace—
Of ancient Pomeranian race—
Intending to indulge her bent,
Into defendants' tea shop went
Accompanied by her husband true
To indulge in that delicious brew.

II

Now all unknown to lady fair,
No dog had leave or license there;
And the poor canine could not read
The prohibition of his breed,
Well posted up before his face,
Denying dogs in there a place;
So recklessly about he ran
In blissful ignorance of the ban.

III

Within a store-room off the shop
A pussy cat had raised a crop
Of kittens, fluffy, soft and fair,
And she was lurking in her lair,
When Pomeranian got the scent.
And, though upon no mischief bent,
The dog soon felt the teeth and claws
Of outraged pussy's mouth and paws.

IV

From feline rage, by action brave,
Her doggy dear from harm to save,
Into her husband's arms she shoved
The Pomeranian pup she loved;
When fierce upon her shoulder sprang
The cat with still unsated fang,
And smelling there its ancient foe,
Bit the plump arm in furbelow.

V

These are the facts the lady pled;
That she and her poor doggy bled;
And unto judge and jury came,
Substantial damages to claim;
And having heard the lady's cause,
So full of fur and teeth and claws,
One hundred pounds she was assessed,
And she the judge and jury blessed.

VI

Alas! for lady fair and pup,
The case was taken higher up.
The masters of the vicious cat
Sought K.B.D. to change all that;
And learned lawyers argued long.
That this was right and that was wrong;
Some nineteen precedents were cited,
And finally the cat was righted.

—F. M. F.

[Who, in the various provinces will try a fall with our Ontario poet? We shall be glad to give them space to test their mettle.—ED. *C.L.J.*]

Correspondence.

POLICE COMMISSIONERS.

To the Editor of the CANADA LAW JOURNAL:

DEAR SIR,—There has been, I notice, in the public press, a discussion about reorganization of the Board of Commissioners of Police of the City of Toronto, and I observe that it has been suggested that there should be five Commissioners instead of three. There has been considerable discussion, and I think, some just criticism that the senior Judge of the County Court of the County of York and the Police Magistrate for the City of Toronto should not be members of this Board. The Board, in substance, appoints or selects the members of the Police force, and, in a sense, their judgment or selection is in question when a member of the force is giving testimony in the Courts.

There has been considerable feeling in Toronto that the evidence of a member of the Police force has more weight before the senior County Judge and the Police Magistrate than that of a respectable citizen, and so human nature being what it is there are those who would say that if the Judge or Police Magistrate in giving preference to the weight to be attached to the testi-

mony of a policeman would be doing so to back up or endorse his own judgment in the appointment of such policeman.

These two judicial officials, whose duty it is to dispense justice without partiality, should not be placed in such a false position, and it should not be open either to the litigant or the witness to reflect upon the administration of justice by either of these officials by reason of such unworthy suspicion.

The subject matter has been discussed by the Ontario Bar Association and the feeling of the Council of that Association is strongly against these officials occuping the position of Police Commissioners.

As a probable change is intimated at this time, would it not be well to keep this in view in the re-organization of the board? Let the Mayor of the City be, ex officio, a member of the Board, and then let the Dominion Cabinet select one of the Board of Commissioners and the Ontario Government the other; or, if it is deemed advisable to have five members, then two by the Dominion Government and two by the Ontario Government. It must be remembered that the criminal law is a creature of the Dominion Government, while the administration of that law is within the province of the Ontario Government.

I should be glad if you would call attention to this in your Journal at this opportune moment. In my judgment if the Magistrate of Toronto did not occupy his present position, he would make an excellent member of the Board. What is objected to is the dual position at present occupied by him, as also by the senior County Judge.

Toronto, Ont. W. J. McWHINNEY.

[We are glad our correspondent has called attention to this subject. Police matters have been in the limelight in Toronto lately as well as in New York and the sight has not been edifying. It is said that the condition of affairs in rural districts is even worse than in the city. The illegal use of police constables by the municipal authorities has also been criticised. The subject, however, is too large for discussion in this place.—ED. *C.L.J.*]

REPORTS AND NOTES OF CASES.

Province of Ontario.

HIGH COURT OF JUSTICE.

Divisional Court.] [Oct. 21.

CITY OF TORONTO v. FOSS.

Building restrictions—Store or manufactory—Ladies' tailoring business.

Appeal by the defendants from the judgment of Middleton, J., 3 O.W.N. 1426. This case raised the question as to whether or not a ladies' tailoring business, carried on in a private dwelling, came within the words a "store." The defendant kept no general assortment of goods or commodities nor were his premises fitted with counters or shelving, nor had he any visible sign.

Held, that the premises did not constitute a "store" in the well-understood meaning of that expression as being a place where merchandise was kept for sale. Nor was it a "manufactory" which presumes the employment of a number of operators.

Chisholm, K.C., for defendant. *C. M. Colquhoun*, for plaintiff.

Divisional Court, K.B.] [Oct. 21.

EADIE-DOUGLAS v. HITCH & CO.

Mechanics' lien—Registration after proceedings taken by another lienor—Meaning of "in the meantime."

Appeal by the plaintiff from an order of the Local Master at Ottawa, allowing claimant, G. W. King, to prove his claim to a lien under this Mechanics' Lien Act. Reference was made to the expression "in the meantime," in s. 24, of 10 Edw. VII. c. 69.

Held, that "in the meantime" has the primary signification of during or within the time which intervenes between one specified period or event and another. In strictness there is in contemplation a *terminus a quo*, as well as a *terminus ad quem*—

a date or event with which the period begins as well as a date or event with which it ends. But in some instances the *terminus a quo* is not in mind at all but it is the *terminus ad quem* which is the only date in contemplation. In such a case the words are equivalent to before such an event, date or period. The result is that any proceedings taken during the existence of the lien are taken "in the meantime" within the meaning of s. 24, if taken before the expiration of the period therein mentioned. The proceedings taken by the plaintiff were such proceedings in point of time.

J. E. Caldwell, for the appellants. *F. A. Magee*, for the claimant.

Province of Nova Scotia.

SUPREME COURT.

Ritchie, J.] [Aug. 10.

THE UNITED STATES OF AMERICA *v.* HARRY AND CAPEL WEBBER.

Extradition—Offence against United States Bankruptcy Act—Fraudulent concealment of property—Arrest and re-arrest—Telegram—Sufficiency of information—Foreign statute—Expert evidence—Extradition commissioner—Jurisdiction.

On application to a judge of the Supreme Court for the release under habeas corpus of defendants, who were arrested following the receipt of a telegram from the Assistant District Attorney at Boston, Mass., to the chief of police, setting out the finding of an indictment by the grand jury of the state for the fraudulent concealment of property in violation of the United States Bankruptcy Act, s. 29 B, it was

Held, 1. A telegram is not a sufficient answer to an application for habeas corpus, but there must be a complaint or information on oath. Such complaint or information need not be based upon personal knowledge, a telegraphic communication being sufficient, and a warrrant based upon such information is good.

On the day following the first arrest a warrant was issued by the judge of the County Court acting as Extradition Com-

missioner, under the Extradition Act R.S. (Can.), c. 155, s. 10, under which the prisoners while still in custody were re-arrested.

Held, that this warrant having been issued on information disclosing an offence which if committed in Canada would have been indictable under the Criminal Code, s. 417, was a good answer to the application for discharge. *R. v. Stone* (No. 2), 17 C.C.C. 377, followed.

2. Where the original arrest or imprisonment has been illegal it is not necessary that the prisoners should be discharged from custody in order to hold them under good process subsequently issued. *R. v. Richards*, 5 Q.B. 926.

3. The effect of a statute passed in a foreign jurisdiction is a question of fact and not a question of law, and although the opinion of the court may be against the construction contended for, i.e., that the statute covered an offence committed before the date of appointment of the trustee in bankruptcy, the evidence of an expert as to the effect given to the statute in the foreign state will be accepted.

4. Where it appears to the court that the Extradition Commissioner had jurisdiction under the evidence before him to make an order committing the prisoners an application for their release under habeas corpus will not be granted.

Mellish, K.C., and *Kenny*, for the prisoners. *O'Hara*, for the United States.

Drysdale, J.] REX v. ACKERSON. [Nov. 2.

Statutory officer—Jurisdiction—Rev. Stat. N.S. 1900, *c.* 100 *First offence—Appeal—Commitment by County Court Judge.*

Motion on notice to the prosecutor, Chief Inspector of Licences for the city of Halifax, to discharge the defendant, under habeas corpus, from custody under a warrant of commitment in execution made on October 31st, 1912, by the judge of the County Court for District No. 1, at Halifax.

The defendant was convicted under the Liquor Licence Act, R.S.N.S. 1900, c. 100, s.s. 86, 135 by the stipendiary magistrate of the city of Halifax on July 2nd, for unlawfully selling liquor in the city of Halifax by retail without a licence, within six months previous to the date of the laying of the information on June 22nd, 1912, and was fined $50.00 and costs and in default,

etc., sixty days at hard labour. He appealed under ss. 149 and 150 of the Act to the County Court at Halifax, and the appeal was dismissed, the conviction affirmed, and it was adjudged "that process of this honourable court should issue for the enforcement of the said conviction." The appeal judge then made the warrant above referred to under s. 150 (*e*) of the Act, which recited the steps leading to and the conviction made by the stipendiary magistrate, and directed enforcement according to its terms:—

Held, that the judge, on appeal, being a statutory officer was limited strictly to the authority conferred on him by the statute, and as s. 150 (*e*) of the Act related to a conviction made in the first instance for a term of imprisonment absolute as distinguished from imprisonment to enforce payment of a penalty, his warrant was bad and without jurisdiction, and the prisoner held under it was entitled to be discharged. *Christie* v. *Unwin*, 11 A. & E., p. 379, and *Ex parte Abell*, 33 C.L.J., 626, referred to.

J. J. Power, K.C., for prisoner. *J. R. Johnston*, for Inspector.

Bench and Bar.

JUDICIAL APPOINTMENTS TO OFFICE.

John Philpot Curran, K.C., to be a puisne justice of the Court of King's Bench of Manitoba. (Oct. 24.)

Frederick William Gordon Haultain, K.C., to be Chief Justice of the Supreme Court of Saskatchewan, vice Edward Ludlow Wetmore, resigned. (Oct. 29.)

Hon. Sir William Ralph Meredith, Knt., Chief Justice of the Common Pleas, to be Chief Justice of the Court of Appeal for Ontario, with title of Chief Justice of Ontario, vice Sir Charles Moss, Knt., deceased. (Nov. 1.)

Hon. Richard Martin Meredith, a Justice of Appeal of the Court of Appeal for Ontario, to be Chief Justice of the Common Pleas Division of the High Court of Justice for Ontario, with title of Chief Justice of the Common Pleas, vice Sir William Ralph Meredith, Knt., promoted to be Chief Justice of Ontario. (Nov. 1.)

Frank Egerton Hodgins, of the city of Toronto, Ontario, K.C., to be a judge of the Supreme Court of Judicature for Ontario, and a judge of the Court of Appeal for Ontario, vice Hon. Richard Martin Meredith, promoted to be Chief Justice of the Common Pleas. (Nov. 1.)

James Leitch, of the city of Toronto, in the province of Ontario, K.C., to be a judge of the Supreme Court of Judicature for Ontario, and a Justice of the High Court of Justice for Ontario. (Nov. 1.)

Flotsam and Jetsam.

Uncle Mose was a chronic thief, who usually managed to keep within the petty larceny limit. One time he miscalculated, however, and was sent to trial on a charge of grand larceny.

"Have you a lawyer, Mose?" asked the court.

"No, sah."

"Well, to be perfectly fair, I'll appoint a couple. Mr. Jones and Mr. Brown will act as counsel."

"What's dat?"

"Act as your lawyers—consult with them and prepare to tell me whether you are guilty or not guilty."

"Yas, sah."

Mose talked to his attorneys for a few moments in husky whispers. The judge caught only the several times repeated word alibi. Then Mose arose, scratched his head, and addressed the court:

"Jedge, yoh Honah," he said. "C'ouse I'se only an ign'ant niggah, an' Ah don' want toh'bothah yoh Honah, but Ah would suttinly like toh trade, yoh Honah, one ob dese yeah lawyers foh a witness."—*Kansas City Journal.*

His Bank.—While an Aberdeen pawnbroker was endeavouring to dispose of an old silk hat, states the *London Standard*, she discovered in the lining, bank deposit receipts of $3,000. Fortunately the pawnbroker knew that the hat had belonged to a local gentleman who had died three years ago, and on communicating with his representatives she was informed that the missing securities had been the subject of prolonged search and litigation. Their discovery cleared the deceased's lawyers of a suspicion of carelessness. The deceased had been in the habit of using his hat as a bank.