Canada Law Journal

VOL. LVIII. TORONTO, MARCH, 1922. No. 3

THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

One of the products of the upheaval caused by the Great War is the new tribunal known as the Permanent Court of International Justice.

What it will amount to remains to be seen. A Court for the trial of the disputes between citizens of a nation is one thing, and a Court to decide between different nations is another. The former is a recognised and obvious necessity and is therefor permanent, the latter is an experiment and a very doubtful one at that. The former has a police force at its back supported by the strength of the whole nation. The latter has not and never can have any police force and is supported only by the temporary sentiment of perhaps only some of the nations it purports to deal with. One of the litigants, one of the parties to a treaty, whilst the Court is adjusting its spectacles, may jump up and say this treaty is "only a scrap of paper" and promptly declares war against the other fellow. The Permanent Court thereupon also becomes scraps and passes into oblivion. We trust, however, that its permanence and usefulness may long outlive our expectations.

This Court was inaugurated at the Hague last month, and we are told that the President of the Court, Chief Justice Bernard Loder, of Holland, opened the preceedings, and the registrar read congratulations from many of the European Governments, after which all arose and took the oath successively, in the form of a "solemn declaration" in French or English, according to nationality.

Dr. Dacunha in his address, declared that February 15 was one of the great days in the annals of human justice.

"Among the peoples of the young American continent," he said, "the idea of international justice is perhaps stronger and

more alive than elsewhere. Their dearest ideal is accomplished here this day."

After a speech of welcome by the Burgomaster of the Hague, President Loder rose, and, speaking in French, compared the Court to a tender plant, for whose future the soil of Holland was peculiarly suitable.

"The opening of this Court," he declared, "is an event full of promise in the history of civilisation; it marks the dawn of a new era through the collaboration of more than forty nations."

The members present were the President, or Chief Justice, Bernard Cornelius Johannes Loder, of Holland; Dr. Rafael Altamiray Crevea, of Spain; Commandatoro Dionisio Anzilotti, of Italy; Viscount Robert Finlay, of Great Britain; John Bassett Moore, United States; Dr. Max Huber, of Switzerland; Didrik Nyholm, of Denmark; Dr. Yorozu Oda, of Japan; and Dr. Andre Weiss, of France. The other two judges, Dr. Ruy Barbosa, of Brazil, and Dr. Antenio S. de Bustamento, of Cuba, were unable to come to the Hague.

APPEALS TO THE PRIVY COUNCIL.

We much regret that the Attorney-General of Ontario has again brought in a Bill to abolish appeals to the Judicial Committee of the Privy Council so far as that Province is concerned. The profession had supposed that the overwhelming voice of its members as evidenced in so many quarters during the past few years would have sufficed to have set the matter at rest at least for many years to come.

On the one side we have the strong opposition to any change expressed we believe unanimously by the representative bodies of the profession such as the Canadian Bar Association, the Law Society of Upper Canada and others in various parts of the Dominion. We have also the undivided opinion to the same effect of the Bar of Old French Canada, we have also on the same side the same voice that sent the best and bravest of our manhood to defend the solidarity of the Empire and an unbroken British connection and therein to strengthen the

ties which bind together all parts of the great world wide Dominion of which Canada forms a part. We have also those who, though recognising difficulties and inconveniences, have carefully studied the subject, and consider that these difficulties are outweighed by the great advantage of having British law made as uniform as possible for the whole Empire and settled by Judges of greater learning, more varied experience and larger vision than is possible under the conditions surrounding those who are called upon to administer justice in the outlying parts of the Empire.

On the other side we have a small minority who think differently, and there views are before the public and need not be repeated here. The question as to whether or not a Provincial legislature can deprive a citizen of his right to present his petition at the foot of the Throne is as yet undecided.

EFFECT OF THE EXPRESSION "IN TRUST" IN A CONVEYANCE.

In our last issue we published a very interesting article by Mr. F. P. Betts, K.C., on the above subject. Mr. John L. Whiting, K.C., of Kingston, calls our attention to the fact that neither the Court in the case of *Re McKinley and McCullough,* 51 D.L.R. 659, nor Mr. Betts refer to R.S.O. 1914, cap. 126, ss. 95, &c. We referred the matter to our contributor, the writer of the article, and having promptly heard from him we give his views in his own words as follows:—

"The sections of the Act spoken of enact:—

(1) There shall not be entered on the register or be receivable any notice of any trust, express, implied, or constructive.

(2) Describing the owner of any freehold or leasehold land, or any charge as a trustee, whether the beneficiary or object of the trust is or is not mentioned, shall not be deemed a notice of a trust within the meaning of this section, nor shall such description impose upon any person dealing with such owner the duty of making any enquiry as to the power of the owner in respect of the land or charge, or the money secured by the charge, or

otherwise; but, subject to the registration of any caution or inhibition, such owner may deal with the land or charge as if such description had not been inserted.

I take it that these provisions apply only to the Land Titles Act and are enacted in furtherance of the general policy of that act, namely:—that the transfer of land shall be rendered absolutely simple, and shall not be encumbered by anything that would have had the effect of encumbering it under the old system. I do not think the enactment in question can be urged as a sufficient reason for doing away with the obligation to make inquiry which was imposed by the words in question, under the old system.

No doubt on the one hand, it might be argued that by analogy, with the provision in the Land Titles Act, the Court would proceed on the same lines in the case of titles under the old system. On the other hand it might be argued with equal or perhaps greater force, that the Legislature enacted this provision in the case of the Land Titles Act exempting purchasers under that Act from making inquiry as to the trusts, knowing that if they did not do so, the obligation to make inquiry would rest upon the purchaser. In other words, it might, it seems to me, be very forcibly argued that the Legislature in passing the section to which you refer (95, 2) quite admitted that, except in the particular instance they were exempting, namely, a conveyance under The Land Titles Act, the description of the owner of the land under a conveyance as trustee, would undoubtedly impose upon any person dealing with such owner the duty of making inquiry as to the power of the owner in respect of the land, etc.

The point is undoubtedly one of great interest and also of very considerable importance both to the public and to the legal profession and I am much obliged to Mr. Whiting for drawing attention to this section."

*RIGHTS OF PASSENGER—EJECTMENT FROM CAR FOR NON-PAYMENT OF FARE.**

In some of the cases involving the question whether a passenger about to be wrongfully ejected because of his not having a ticket or because of his having a wrong ticket, where his failure to have a ticket or to have a proper ticket results from the negligent or wilful wrong of the carrier, it has sometimes been held that the passenger is under a duty to avoid the damage incident to ejection by paying the wrongfully required fare. The weight of authority is *contra*, but the number of decisions supporting the minority view is sufficient to justify an examination of the question with the purpose of determining the principles involved.

The courts that have decided that the passenger is under a duty to prevent the wrongful expulsion, are simply applying the rule of avoidable consequences to facts to which it can have no proper application, and forgetting to apply one of the most elementary rules of agency—the rule that a principal must answer for the acts of his agent within the scope of the business entrusted to the agent.

We shall first examine some of the cases holding that the passenger is under a duty to avoid wrongful expulsion by paying his fare a second time.

Van Dusen v. *Grand Trunk R. Co.* is a case in which it is held that the passenger was under a duty to pay his fare again in order to avoid his wrongful ejection from the train. The court said: "In the present case the failure of the former conductor to furnish plaintiff a check was evidently a mistake and the plaintiff, without discovering the mistake, had taken his seat in the train from Port Huron to Trenton, he at the time not possessing any evidence of his right to ride. Upon discovering this mistake his remedy was not by insisting upon a further breach of duty or of the rules of the conductor in charge of the Trenton train. On the contrary, it was his duty to leave the train peaceably, or pay his fare and seek his remedy for damages resulting from either necessity as the situation at the time required. But the evidence shows that he had the money with which to pay his fare, and he did so by a later train after

*This article is taken from the Central Law Journal, St. Louis, vol. 34, p. 152.—Ed. C.L.J.

being ejected. As he was not entitled to ride upon the train in question, it is apparent that the damages which he suffered by the fault of the first conductor are covered by a recovery of the amount of fare which he was compelled by his fault to pay." The court proceeds to distinguish this case from one in which the passenger presents a ticket, on its face, apparently good.

In the beginning of the above excerpt, the court speaks of the mistake of the former conductor just as a layman might speak of some error as being trifling and excusable. The court speaks as if it supposed that a wrong done by mistake is not a wrong at all.

Further, when the court says: "His remedy was not by insisting upon a further breach of duty," it seems to refer to the conductor's duty to the company employing him and completely to lose sight of the duty of the carrier to the passenger.

When the court speaks of the "duty" of the passenger to leave the train peaceably or pay his fare, it implies that the carrier, having threatened a wrong, has a right correlative with and commensurate to this duty. As affecting this supposed duty, it is said that the evidence showed that he had the money with which to pay his fare.

If it were an ordinary case in which A threatens B with a tort or with a breach of contract, unless B pays A one dollar, it would be said by any court that the fact that B had one dollar in his pocket was entirely immaterial. B's possession of one dollar would not be an operative fact producing, or contributing to the production of, a duty in B to pay A one dollar.

Another court, in such a case, has quoted the following without citing the source: "It is the duty of a party to protect himself form the injurious consequences of an unlawful act of another if he can do so by ordinary effort and care at a moderate and reasonable expense, and for such reasonable exertion and expense in that behalf expended he may charge the wrongdoer; and where by the use of such means he may limit and prevent further loss he can only recover such loss as could thus be prevented."

Even if this general rule as to avoidable consequences be applied to these cases, what would constitute "moderate and reasonable expenses?" It is clear that the difficulty of administering such a rule, in these cases, is very great. It might

seem easy to say that a ten-cent or a two-dollar fare would be only a "moderate and reasonable expense," and it might seem equally easy to say that, under most circumstances, a one-hundred-dollar fare would be larger than a "moderate and reasonable expense;" but where is the line to be drawn?

If such a "duty" exists, how is the situation affected by the fact that the passenger has or has not the amount of the required fare in his pocket. Some judicial opinions, like the one quoted above, affirming the "duty" of the passenger to pay the wrongfully required fare or to leave the train, lay stress upon the fact that the passenger had in his pocket sufficient money to pay such fare. This might be proper, if there were a real duty in the passenger to pay again; but there is no such duty.

The rule that a person who has sustained a wrong cannot stand by and permit the occurrence of injurious consequences that might be avoided by reasonable action on his part and then recover for such consequences, has no proper application here; for it governs only those cases wherein the wrong has already been committed. "It is a universal rule, both in tort and contract, that for such consequences of the wrong or injury as the plaintiff might, with ordinary prudence, have avoided, the defendant cannot be held responsible. The law assumes that a person injured will endeavour to reduce the amount of his loss within as narrow limits as possible, and if he does not do so, the consequences are not the proximate result of the defendant's act, but of his exercising, or neglecting to exercise, his own will."

Strictly, it cannot be said that, even where a wrong has already been committed, the person wronged is under any *duty* to avoid consequences. "It is sometimes said that a person who neglects to prevent the consequences of another's wrong fails in a duty; but since the result of neglecting it falls not on another, but on the person himself in fault, it seems to be one of those self-regarding duties which are outside the domain of the law.

Still less can it be said that a person threatened with a wrong is under any *duty* to the wrongdoer to prevent the doing of a wrongful act of the latter. To say that the person about to be wronged is under such a duty to the wrongdoer is to say that the wrongdoer has a *right* to require that the person about to

be wronged shall act to prevent the wrong; for *right* and *duty* are correlative terms, and, there can be no *duty* where there is no right commensurate therewith.

In a well known case, a street car line had a practice of giving transfer checks to passengers, who, having ridden on one of its lines, desired to ride on another line. The checks differed in language and color according to the line on which they were to be used, and were good only on the line indicated. The plaintiff, a passenger familiar with the practice, received a wrong transfer check, without reading it. The conductor on the second line refused to receive the transfer check. Plaintiff refusing to pay his fare again was ejected. Judgment for the defendant company was affirmed. The court said: "The conductor of a street railway car cannot reasonably be required to take the mere word of a passenger that he is entitled to be carried by reason of having paid a fare to the conductor of another car; or even to receive and decide upon the verbal statements of others as to the fact. The conductor has other duties to perform, and it would often be impossible for him to ascertain and decide upon the right of the passenger, except in the usual, simple and direct way. The checks used upon the defendant's road were transferable, and a proper check, when given, might be lost or stolen, or delivered to some other person. It is no great hardship upon the passenger to put upon him the duty of seeing to it, in the first instance, that he receives and presents to the conductor the proper ticket or check or, if he fails to do this, leave him to his remedy against the company for a breach of its contract. Otherwise, the conductor must investigate and determine the question, as best he can, while the car is on its passage. The circumstances would not be favorable for a correct decision in a doubtful case. A wrong decision in favor of the passenger would usually leave the company without remedy for the fare. The passenger disappears at the end of the trip; and, even if it should be ascertained by subsequent inquiry that he had obtained his passage fraudulently, the legal remedy against him would be futile. A railroad company is not expected to give credit for a single fare. A wrong decision against the passenger, on the other hand, would subject the company to liability in an action at law, and perhaps with substantial damages. The practical result would be, either that the railroad company would find itself obliged in

common prudence to carry every passenger who should claim a right to ride on its cars, and thus to submit to frequent frauds, or else, in order to avoid this wrong, to make such stringent rules as greatly to incommode the public, and deprive them of the facilities of transfer from one line to another, which they now enjoy. It is a reasonable practice to require a passenger to pay his fare, or to show a ticket, check, or pass; and, in view of the difficulties above alluded to, it would be unreasonable to hold that a passenger, without such evidence of his right to be carried, might forcibly retain his seat in a car, upon his mere statement that he is entitled to passage. If the company has agreed to furnish him with a proper ticket, and has failed to do so, he is not at liberty to assert and maintain by force his rights under that contract; he is bound to yield, for the time being, to the reasonable practice and requirements of the company, and enforce his rights in a more appropriate way."

This decision asserts the "duty" of the passenger to act to prevent the positive wrong of the carrier. Though this is a famous case it is a clear instance of a misapplication of the rule of avoidable consequences and a failure to apply the most elementary rules of agency.

This case very well expresses the minority view and assigns reasons which are probably the best so far stated for the minority rule. The real reason for the rule, as strongly indicated by the opinion, is the difficulty in which the carrier finds itself under the majority rule. But it is to be observed that that difficulty has not proven so great in states having the majority rule that legislative action repealing the rule has been deemed necessary. Speaking of difficulties, what about the difficulties under which the passenger finds himself under the minority rule?

Many of the cases often cited as holding that the passenger is under a duty to pay his fare a second time in order to prevent being wrongfully ejected, really hold nothing of the kind. For instance, the following cases, sometimes cited as so holding, do not support the minority rule: *Cincinnati, Hamilton & Dayton R. Co.* v. *Cole,* not squarely in point; *L.N. & G.S.R. Co.* v. *Guinan,* holding merely that exemplary damages cannot be assessed against the carrier, on the facts; *Lake Shore & M.S. Ry. Co.* v. *Pierce,* not strictly in point, because of the peculiar facts in the case.

Pullman etc. Co. v. *Reed,* sometimes cited in support of the minority rule, is not in point, as the decision rested upon another point; and the remarks of Mr. Justice Scholfield do not support the minority rule even as *obiter dicta.*

Sanford v. *Eighth Avenue R. Co.,* was a case in which the conductor, in expelling the passenger, used so much violence that the passenger was killed. The company was held liable for the wrong, and it is clear that remarks of the court on the "duty" of the passenger to pay his fare are very unimportant in determining the decision of the case.

Magee v. *O.R. & N. Co.,* also sometimes cited in support of the minority rule, is far from being in point; for no contract of carriage was proven.

We shall now examine some of the decisions to the effect that a passenger may recover for a wrongful rejection even though he might have prevented it by acceding to the unlawful demand of the carrier.

Plaintiff having a mileage book, but, through the fault of the defendant, not having procured a ticket in exchange for mileage coupons, was wrongfully ejected from defendant's train.' The Supreme Court of North Carolina said: "It was further contended that there was error in allowing substantial damages for the wrong done defendant by reason that plaintiff might have prevented or avoided his chief grievance by paying the small amount of money demanded for his fare, but no such position can be allowed to prevail in this jurisdiction. The court has held, in several recent cases, that where one has been injured by the wrongful conduct of another he must do what can be reasonably done to avoid or lessen the effects of the wrong * * *. But the principle * * * does not arise or apply until after a tort has been committed or contract has been broken. A person is not required to anticipate that another will persist in misdoing until after a tort has been committed or contract has been broken. A person is not required to anticipate that another will persist in his course beforehand so as to avoid its result. On the contrary, he may assume to the last that the wrongdoer will turn from his way or in any even he may stand upon his legal rights and hold the other for the legal damages which may ensue.

In the latter case cited below, speaking to this question, the court said: 'Lenhart paid for and presented a legal ticket. To

the proposition that he could not stand upon his consequences of its threatened breach of contract, to pay his fare again in cash, if he had it, and then sue for its recovery, we do not yield our assent. After a breach of contract has been committed, the injured party is not allowed to aggravate his damages, and is required to use reasonable diligence to minimize them. But, beforehand, one is not forced to abandon his legal right under a contract, and waive the damages that may arise from its breach, in order to induce his adversary not to proceed as he wrongfully claims is his right'."

Plaintiff, a passenger on a stret car of defendant company, having paid his fare and received a transfer check entitling him to continue his trip by the next connecting car on another of the company's lines, took the next car. The conductor collected the transfer check. Without any previous notice to plaintiff, the car, after going only a short distance, was taken from the line, at the power house. Plaintiff, seeing that the car was being taken off and that the conductor had gone, asked the driver of the car what to do. The latter told him to take the next car, then approaching. Plaintiff did so. The conductor demanded fare, which plaintiff refused, stating the facts. Plaintiff was forcibly put off the car. Defendant had judgment by direction. Plaintiff appealed. The Supreme Court of Minnesota said: "The facts thus stated presented a case which would have justified a verdict for the plaintiff. He had paid the proper fare, and was entitled to ride on the cable line, to its end. It is to be kept in mind that the action is not against the conductor for the expulsion. The cause of action set forth in the complaint covers the whole transaction above stated; and the inquiry is whether, upon the whole case, the defendant appears to have neglected or violated its duty towards the plaintiff, to his injury. If it be said that, since the plaintiff could present no proper evidence of his right to ride, it was the duty of the conductor to put him off, it may be answered that the defendant, and not the plaintiff, may well be deemed at fault for that condition of things. That is one of the grounds upon which, in part, the defendant may be held responsible. Even though the conductor, in ejecting the plaintiff, may have done only what was apparently (to him) his duty, it does not follow that the defendant is not responsible therefor. It would be responsible if, by its previous neglect of duty towards the

passenger, it had justified him in assuming to continue his journey on a car from which the conductor, in accordance with the regulations of the defendant, should expel him for non-payment of fare * * *. The case is distinguishable from those where one enters a carriage, knowing that he is without such evidence of the right of passage as the reasonable regulations of the carrier require."

Following the same general line of reasoning is the following: "No man is bound to submit to even a trifling extortion. If he had a right to be carried for the sum tendered to the conductor, then the expulsion was purely wrongful, and for the consequences thereof the defendant was liable. The plaintiff was under no obligation to purchase even for a trifle the right which was already in his own. The principle is elementary."

Plaintiff bought a ticket from Kokomo to Indianapolis. The conductor took the ticket, but later ordered plaintiff to pay from Noblesville to Indianapolis, saying that the ticket collected had entitled plaintiff to ride only to Noblesville. Plaintiff, refusing to pay the fare as requested, was ejected at a small town. The court said: "It is true that the appellee was offered an opportunity to pay his fare, and continue his journey unmolested, and that he had the money with which to pay, and was advised to settle the matter with the agent at Kokomo, and that he refuesd to do so, and that he refuesd to leave the car until the conductor took hold of him, and that no great violence or injury was done to his person * * *. We do not concur in the doctrine that it was the duty of the appellee to pay the extra fare demanded of him, and afterwards settle the question in dispute with the company or its agents; nor do we think his failure so to do can be considered in mitigation of damages. It is true that the amount demanded was trifling, but the principle involved is the same as if the sum had been a large one. However much we may commend the conduct of that person who yields his rights to avoid a difficulty, it is nevertheless the privilege of every person to stand upon his strict legal rights, and the law does not require him to yield them, or make concessions to avoid trouble * * *. It comes with an ill grace for the appellant, after it had pushed what it believed to be its rights to the last extremity, to say that, because it offered to carry appellee if he would pay his fare, the damages ought to be mitigated."

An Indiana court, in laying down, in another kind of case, the general principle governing these cases, said: "He [the the wrong will be committed, even though it has been threatened person about to be wronged] is not required to anticipate that by the wrongdoer, or to forego the lawful use of his property."

Where an agent of a railroad company, negligently supplies a passenger with a wrong ticket or with no ticket, the neglect of duty is, according to the most elementary principles of the law of principal and agent, an act or an omission committed by the company itself. Such an act or omission is a violation of the carrier's duty to the passenger. Later, when the passenger, as a result of this violation of duty, is facing the conductor with a wrong ticket or with no ticket, he is merely facing a second agent of the company,—another agent whose acts are those of the carrier. If the carrier, through its conductor, wrongfully insists upon payment of fare, whether the conductor be acting in good faith or not, the carrier is insisting upon a thing which it has no right to require, and the carrier's subsequent ejection of the passenger on the ground of non-compliance with the carrier's wrongful request for fare is a positive wrong. The passenger is under no greater legal duty to pay his fare to prevent this wrong than the duty under which he would be to pay a highwayman the contents of his purse in order to prevent his being shot.

LAW OF DIVORCE IN CANADA.

By C. S. McKee, of the Toronto Bar.

1. Early History of Divorce and the Development of English Divorce Law.
2. Jurisdiction. Provinces with Divorce Courts.
3. Jurisdiction. Parliamentary Divorce.
4. Declarations of Nullity.
5. Grounds for Divorce.
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8. Parliamentary or Judicial Divorce?
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1. Early History of Divorce and the Development of English Divorce Law.

An examination of the records of early Babylonia, Egypt, Phoenicia, and Assyria would no doubt reveal the existence of divorce in some form even at such remote a period as 3000 or 4000 B.C. But, since in the writings of the Greeks and Romans and in the Bible, there are not only traces of the most remote antiquity, but also the ideas on which are founded the laws, both moral and legal, by which modern society is controlled, these may be taken as a starting point.

At the time of Plato (430-347 B.C.), the Greeks had given apparently a definitely recognized place in their civilization to the principle of divorce. In his treastise on the laws, Plato states that he would take away from parties interested the license of separation which had theretofore existed, and would place divorce under the control of State authorities. If, he says, through infelicity of character, a man and his wife cannot agree, let the case be put into the hands of 10 impartial guardians of the law, and of 10 of those women to whom the matter of marriage is committed; let them reconcile the parties if they can; if this cannot be done, let them act according to their best ability in providing them with new spouses.

The Romans in even their very earliest days recognized divorce. Plutarch in his Life of Romulus (735 B.C.) narrates: "Romulus also enacted some laws; amongst the rest, that severe one which forbids the wife in any case to leave her husband, but gives the husband power to divorce his wife in case of her poisoning his children, counterfeiting his keys, or being guilty of adultery. But if on any other occasion he put her away, she was to have one moiety of his goods, and the other was to be consecrated to Ceres; and whoever put away his wife was to make an atonement to the gods of the earth." Later in Roman history, it is found that "divortium" ("dis"-apart, and "vertere"-to turn) was closely connected with the idea of "pater familias." The daughter passed to the son-in-law "in manus;" but, at one time, could be taken back even against the wishes of both. The even limited restrictions placed by Romulus on divorce was abolished, and complete freedom restored by the Twelve Tables (450 B.C.). However, public opinion is reported to have restrained the practice—even to the extent that for 500 years, there were no divorces. Divorce must have returned —with both its advantages and its disadvantages—for the "Lex

Julia de adulteriis'' (A.D. 193) recognised divorce both by the husband and the wife; the requirements were a bill (''libellus repudii'') and public registration thereof; the Act was still purely one of the party performing it, no judicial decision being necessary; a pecuniary readjustment was a consequence, whether or not as a restriction on divorce is not clear. Later, the ''Lex Julia'' was extended, limiting the reasons for which divorce could be made without pecuniary forfeiture as well as the right to re-marry. Still later, both these matters were altered again, this time so as to allow greater freedom. It should be borne in mind that all through this period of Roman history marriage was regarded as a mere contract, and hence divorce was possible by mere consent.

During the age referred to in the last paragraph, the Hebrews were developing their theories of divorce. In the twenty-fourth chapter of Deuteronomy (1451 B.C.) it is written:

''1. When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her, then let him write her a bill of divorcement, and give it in her hand, and send her out of his house.

2. And when she is departed out of his house, she may go and be another man's wife.

3. And if the latter husband hate her, and write her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house, or if the latter husband die, which took her to be his wife;

4. Her former husband, which sent her away, may not take her again to be his wife.''

A new view point is introduced by Christ in his sermon on the Mount, when he said: (5 Matthew—A.D. 31).

''31. It hath been said, whosoever shall put away his wife, let him give her a bill of divorcement:

32. But I say unto you, that whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery.''

In 19 Matthew, 3-9, He again expressed the same views, adding that Moses had suffered the people to put away their wives only because of the low moral character of the period. But Christ went even farther than this, for in 10 Mark (A.D.

32) He said:—"12. And if a woman shall put away her husband, and be married to another, she committeth adultery."

After Christianity had exerted its influence over Rome, divorce by consent was forbidden except the husband was impotent, either party desired to enter a monastery, or either was in captivity for a long time. "Let at first by justifiable disrelish for the loose practices of the decaying heathen world, but afterwards hurried on by a passion of asceticism, the professors of the new faith looked with disfavour on a marital tie which was in fact the laxest the western world has seen." (Maine).

By the time the two powers of Roman Law and Christianity had definitely joined forces, and, in the form of the Roman Catholic Church, had started on their conquest of Western Europe, two forms of divorce were quite clearly established—both under the control, not of the State, but of the Church. One was known as divorce "a mensa et thoro," and amounted to what would be known to-day as merely a separation—e.g., there was no bar of dower nor any right to re-marry. The other was called divorce "a vinculo," and either annulled the marriage for causes occurring before the sacrament or dissolved it for causes occurring later. The Church in practice recognized only divorce "a mensa et thoro" and annulment of marriage for causes occurring before or at the time of the ceremony—this latter being not strictly divorce in its modern sense. The causes for annulment were more numerous before than after the Reformation (1500); after this time they were limited to relationship within forbidden degrees, previous marriage, corporeal imbecility, and mental incapacity; and as in these cases it was held that there was in fact no "vinculum," the Church of Rome was able to maintain its stand that marriage was a sacrament and indissoluble. The reformed church, however, refused to regard marriage as purely a sacrament, and in fact recognised it as a civil contract, requiring (in England at least) some religious solemnity. Once the aspect of a civil contract had appeared, the struggle between Church and State over the question of divorce had commenced—the struggle which colors all the later history of British divorce, and which has had much to do with the development of the present status of the question in Canada.

This limitation of the cases to which annulment could apply and the recognition of marriage as a contract were the causes of Parliamentary Divorce. It would appear that Parlia-

ment first made itself active in the matter of divorce in the middle of the sixteenth century. Several divorce bills were passed in favour of Henry VIII, but were really declarations of nullity. About the year 1549 the Marquis of Northampton divorced "a mensa et thoro" his wife for adultery, re-married, and had this second marriage confirmed by Parliament—only to have the statute repealed in the next reign on the accession of Mary, a Roman Catholic. However, during the next 50 years, marriage was not as a fact held by the Church—and therefore not by the courts—to be indissoluble; but the first half of the seventeenth century saw the pendulum swing the other way again, saw the old theories of the Church in supremacy, debarring absolute divorce and re-marriage. Lord Roos having obtained a divorce "a mensa et thoro" (1666), an Act was passed permitting him to re-marry, the theory of the indissolubility of marriage being thereby distinctly negatived. The first example of an actual dissolution by Parliament was the *Macclesfield* case (about 1700) where the wife frustrated all attempts to obtain a divorce from the ecclesiastical courts, with the result that a special Act was passed. Up to this time, the few who had applied to Parliament had supported their claim by special reasons—such as the desirability of avoiding bastard children or of continuing the name. The first case in which Parliament was applied to as a matter of course and of right was in 1701, when there was passed "An Act to dissolve the marriage of Ralph Box with Elizabeth Eyre and to enable him to re-marry again," a wording which was followed down to 1858. In 1798 standing orders were framed for the House of Lords—there had first to be a divorce "a mensa et thoro" before the Ecclesiastical Courts, and an action against the adulterer for damages in a Civil Court. The cost of a non-contested application was from £700 to £800.

In 1853 a commission was appointed to examine into the question of divorce, and its report recommended: 1. The transfer of jurisdiction from Parliament to a Court. 2. That the Court should consist of three judges. 3. That the husband should be able to get a divorce merely on the grounds of his wife's adultery, but that this should not be a sufficient ground for the wife to obtain a divorce. 4. That the causes for which a divorce should be allowed to a husband should be adultery, cruelty, or desertion. After several attempts, an Act embodying these recommendations was passed in 1857 (Imp.)

ch. 85. The Court was established as the Court of Divorce and Matrimonial Causes, and by the Judicature Act (1873) the jurisdiction of both this Court and the Ecclesiastical Courts was transferred to the Probate and Divorce Division of the High Court of Justice. The jurisdiction is as follows:

1. Dissolution of marriage. 2. Nullity of marriage. 3. Judicial separation, prior to 1857, in the hands of the Ecclesiastical Courts. 4. Restitution of conjugal rights. 5. Jactitation of marriage. 6. Alimony in certain cases. 7. Custody of children. 8. Application of damages recovered from an adulterer. 9. Settlement of the property of the parties. 10. Protection of the wife's property. 11. Reversal of decree of judicial separation and decree "nisi" for divorce.

Since 1858, cases from Ireland and from colonies not having jurisdiction within Courts of their own have continued to be heard by Parliament—in theory by the whole House of Lords, but in practice by only the law lords. Although the right still exists for people domiciled in England to apply to Parliament for a divorce on grounds not covered by the Act, e.g., insanity —none have done so; and in the case of such an event happening, the attitude of Parliament would in all probability be not to grant the divorce; but, if convinced of the desirability of such an innovation, to amend the existing legislation so as to give the Probate and Divorce Division jurisdiction.

2. Jurisdiction. Provinces With Divorce Courts.

At the commencement of the study of divorce jurisdiction in Canada, it must be borne in mind that prior to Confederation, Canada, as it now is known, did not exist; in its place were several separate colonies. Of these colonies, Prince Edward Island Nova Scotia, New Brunswick, and British Columbia had, and still have, Courts with jurisdiction in divorce cases. In view of recent decisions of the Privy Council, the position of the three Western Provinces is unique and will be dealt with separately.

Until 1857, applications in England for divorce were made to Parliament; it is, therefore, not surprising that a similar situation existed in the colonies named above. An Act passed in 1833 and amended by 5 Wm. IV. ch. 10 P.E.I., (1835—assented to 1836) enacted that in the colony of Prince Edward Island all questions of marriage and divorce should be heard by the Lieutenant-Governor and his Council. Then the Act went further; and, probably in an effort to retain the analogy to the procedure

in the House of Lords where divorces were usually disposed of by only the law lords, provided that the Lieutenant-Governor and five of his Council should constitute a Court for the disposal of divorce applications, and provided that the Governor would depute the Chief Justice of the Supreme Court to act in his place. No provision was made for appeal. Only one divorce has been granted—in 1913. The law of the Province remains as it was in 1836.

The Revised Statutes of Nova Scotia 3rd. Series (1864), ch. 126, established a Court of Marriage and Divorce consisting of the President, Vice President, and members of the Executive Council of the colony, and provided that the Vice-President and any two Councillors were sufficient to constitute the Court. By 1866, (N.S.), ch. 13 the style was changed to the Court for Divorce and Matrimonial Causes, the then Vice President to compose the Court and be called Judge in Ordinary. Any party dissatisfied as to findings of law or fact can within 14 days appeal to the Supreme Court of Nova Scotia, the appeal to be heard by three Judges of that Court and the Judge in Ordinary. This jurisdiction is now contained in R.S.N.S., (1900), vol. 2, p. 862.

1791, (N.B.,) ch. 5, established a similar Court in New Brunswick: all controversies in regard to marriage and divorce were to be determined by the Governor and Council, and the Governor and any 5 or more of the Council were constituted a Court. In 1834, ch. 30 the Council was divided into legislative and executive sections, and the Court made to consist of the Governor, Executive Council, and any Justices of the Supreme Court or Master of the Rolls. In 1860, (N.B.), ch. 37 enacted that all divorce jurisdiction was vested in the Court of Divorce and Matrimonial Causes, one Justice of the Supreme Court being commissioned the Justice of the Court. This jurisdiction is now contained in C.S.N.B. (1903), ch. 115 and 1917, (N.B.), ch. 45.

The establishment in British Columbia of a Divorce Court came about in a different manner. An ordinance passed March 6, 1867, by the Legislature of B.C. enacted that the laws of England as they existed on November 19, 1858, and so far as circumstances permitted should be in force save so far as they had been modified by legislation between 1853-67. Under this, jurisdiction to exercise the relief and powers given under the English Divorce Act (1857 (Imp.), ch. 85) has been assumed by

the Supreme Court of British Columbia and is contained in R.S. B.C. 1911, ch. 67. The jurisdiction of the Supreme Court of B.C. to grant divorce was questioned but upheld in *S.* v *S.* (1887), 1 B.C.R. 25. It was also upheld by the Privy Council in *Watts* v. *Watts*, [1908] A.C. 573, 77 L.J. (P.C.) 121. The cases are tried by one Judge.

Such then was the situation in these 4 colonies when the B.N.A. Act was passed in 1867 (Imp.), ch. 3. The distribution of powers as between Dominion and the Provinces was provided for by secs. 91 and 92. Section 91 reads: "It shall be lawful for the Queen, by and with the advice and consent of the Senate and the House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

26. Marriage and divorce.

27. The criminal law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the classes of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." Section 92 reads: "In each Province the Legislature may exclusively make laws in relation to the matters coming within the classes of subjects next hereinafter enumerated, that is to say,

12. The solemnization of marriage in the Province.

14. The administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those Courts.

16. Generally all matters of a merely local or private nature in the Province. . ."

Considerable discussion has taken place as to the distinction intended between 91-26 and 92-12. Clement, in The Canadian Constitution, points out that 91-26 refers to the question of

status of husband, wife, and issue; and this interpretation would appear to be correct, for Solicitor General Langerrin in his speech during the debates on confederation at the Quebec Conference said: "The word 'marriage' has been placed in the draft of the proposed constitution to invest the Federal Parliament with the right of declaring what marriages shall be held and deemed to be valid, throughout the whole extent of the Confederacy. . . ." The law officers of the Crown in England in 1870 also pointed out that the Provincial Legislatures had power to legislate upon such subjects as the issue of marriage licenses, while the Dominion had power to legislate on all matters relating to the status of marriage—e.g., between what persons and under what circumstances it could be created. The same interpretation is supported by Lefroy in The Canadian Federal System when he points out that the Privy Council have held in *Re Marriage Law of Canada*, 7 D.L.R. 629, [1912] A.C. 880, that 92-12 is by way of exception to 91-26. The jurisdiction of the Dominion Parliament is well illustrated by R.S.C., c. 105, which enacts that a marriage shall not be invalid merely because the woman is the sister of a deceased wife, and by the Criminal Code which defines bigamy and polygamy and constitutes it a crime to solemnise marriage contrary to the provincial law. The question of provincial powers in regard to legislating on marriage will be returned to in the chapter on annulment of marriages.

Another section of the B.N.A. Act indirectly concerned with the subject of divorce is 129: "Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union and all Courts. . . existing therein at the Union, shall continue as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain . . .) to be repealed, abolished or altered by the Parliament of Canada, or by the Legislatures of the respective Provinces, according to the authority of the Parliament or of that Legislature under this Act." It is under this section that the Courts of Nova Scotia and New Brunswick get their authority to continue to deal with cases of divorce, no repeal of their prior authority having been made by the Dominion Parliament, which is clearly (91-26) the body having authority to alter or repeal jurisdiction in regard to divorce.

The last section of the B.N.A. Act which concerns divorce

is section 146, which enacts that Prince Edward Island, British Columbia, Rupert's Land, and the North West Territories may be admitted into the Union upon terms and subject to the provisions of 1867 (Can.) ch. 3 and that the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of Great Britain. Under this section, B.C. was admitted in 1871, and P.E.I. in 1873, the Orders in Council in each case providing for the continuance of the existing Courts with their then jurisdiction which in both cases as has been seen, included divorce.

At this point the question naturally arises of where the power lies to amend the B.N.A. Act. There can be no doubt that the powers of the Canadian Parliament within the Act are plenary—i.e., complete and full—and as long as it keeps within the Act, Parliament can legislate as it sees fit. For example, it can say on what grounds if at all divorce shall be granted. But it could not deprive itself of all legislative jurisdiction over divorce and hand it over to the Provincial Legislatures; such action would amount to an amendment of the Act, and this can be done only by the Imperial Parliament. (*Citizens Insurance Co.* v. *Parsons* (1881), 7 App. Cas. 96.) It is obvious that for Parliament to give to a Court—Provincial or Dominion—jurisdiction to try divorce cases amounts to no such amendment, the legislative control would remain in the proper place.

The Maritime Provinces and British Columbia have had Courts exercising jurisdiction over divorce for many years; the three prairie Provinces have discovered only very recently that they too have this jurisdiction. Until 1917, the practice in these Provinces was to apply for divorce to the Senate. *Walker* v. *Walker* was an application brought in the Court of King's Bench of Manitoba (See (1918), 28 Man. L.R. 495 at p. 496) for a divorce on the grounds of impotency. The case came up for trial before Galt J., who found that the grounds on which the application was founded were sufficient if the Court had jurisdiction. As the case was the first of its kind to come before a Court of the Province, it was dismissed — so that it might be more fully argued by a higher Court. An appeal was made to the Court of Appeal for Manitoba (1918, 39 D.L.R. 731, 28 Man. L.R. 495); the Attorney General of the Province was represented, and a leading King's Counsel was asked to appear as though for the defendant, who up to this stage had not appeared. The appeal was heard in 1918, and allowed, the opin-

ion of the Court being summed up in a very long and exhaustive judgment by Perdue, J.A. From this decision an appeal was made to the Privy Council, where the appeal was dismissed in July, 1919, 48 D.L.R. 1 (annotated), [1919], A.C. 947, it being held that the Provincial Court had jurisdiction. Section 146 of the B.N.A. Act had provided that Rupert's Land and the North West Territories could be admitted to Confederation, and in 1870 an Order in Council admitting them had been passed. Part of the former District of Assiniboia had become the Province of Manitoba. When the Hudson Bay Co. came into existence it had taken over land, and with this had gone the laws as they existed in 1670 and the power to make new laws. The Council of Assiniboia by an ordinance passed in 1851 had provided that for the laws of England as existing in 1670 should be substituted the laws existing at the accession of Queen Victoria, and in 1864 there were substituted for the latter, all such laws of England of a subsequent date as should be applicable. 1869 (Can.), ch. 3, provided that on the admission (then contemplated) of Rupert's Land and the North West Territories, all laws then in force there and not inconsistent with the B.N.A. Act should remain in force until altered. By 1870 (Can.), ch. 3, Manitoba was formed out of part of Rupert's Land and the North West Territories, and to get over doubts which had arisen as to the power of the Dominion to make new Provinces, this was confirmed by 1871 (Imp.), ch. 28. In order to remove doubts which had arisen as the result of the decision in *Sinclair* v. *Mulligan* (1888), 5 Man. L.R. 17, the Dominion Parliament passed, 1888, (Can.), ch. 33. It provided that, with exceptions which do not concern divorce, the laws of England relating to matters within the jurisdiction of the Parliament of Canada, so far as the same existed in 1870, had been and from that date were in force in Manitoba, in so far as applicable to the Province and unrepealed by Imperial or Dominion legislation. On these grounds, especially the Act of 1888, the Judicial Committee of the Privy Council decided that the Court of King's Bench had jurisdiction to hear applications for divorce. The matter seems so very plain that it is surprising that it had not been settled in this way many, many years ago.

The next Province to venture into the new field was Alberta. *Board* v. *Board* (1918) 41 D.L.R. 286, 13 Alta. L.R. 362, affirmed 48 D.L.R. 13, [1919] A.C. 956, was a reference to the Appellate Division by Walsh J. of a motion to quash a petition for

divorce on the ground of lack of jurisdiction. The motion was dismissed, Harvey C. J. dissenting. The opinion of the Court was exhaustively set out by Stuart J. It was pointed out that it was the first case of its kind, and that the mere fact that Parliament had entertained divorce applications from Alberta could not be treated as a legislative interpretation of the meaning of the Act of 1886. The Dominion Parliament by 1886 (Can.), ch. 25, sec. 3 (now sec. 11) had enacted: "Subject to the provisions of the next preceding section, the laws of England relating to civil and criminal matters as the same existed on the fifteenth day of July in the year of our Lord one thousand eight hundred and seventy shall be in force in the Territories . . . and in so far as the same have not been or may not hereafter be repealed, altered, varied, modified, or affected by any Act of the Parliament of the United Kingdom applicable to the Territories or of the Parliament of Canada or by any ordinance of the Lieutenant Governor in Council." The preceding sub-section contains nothing affecting the question involved. At the date mentioned, the Divorce Act was in force in England. Reference was made to *S.* v. *S.*, 1 B.C.R. 25 and to *Walker* v. *Walker*, 39 D.L.R. 731, 28 Man. L.R. 495. It was argued that the sections of the Act dealing with the establishment of the Supreme Court impliedly limit the meaning of sec. 3 because there is an omission of reference to the British Divorce Court in detailing the jurisdiction to be exercised by the Provincial Supreme Court. But, it was held that sec. 3 is perfectly clear, and should be taken to mean exactly what it says; and it was further held that it is a well established British principle that the law can come before the establishment of the Court which is to enforce it. The Alberta Act, 1905 (Can.), ch. 3 had continued the law of the Territories until it should be altered. Lastly, it was pointed out by Stuart J., that all jurisdiction—all law—must come before one or other of His Majesty's Courts; there can be no such thing as a law and no Court to enforce it; and the Supreme Court is the Court with jurisdiction in this case. When the case came before the Judicial Committee of the Privy Council, it was pointed out that an amendment in 1858, (Imp.) ch. 108 to the British Divorce Act provided that all Judges of the three Common Law Courts were to be Judges of the new Divorce Court. The committee also pointed out that the Act of 1907, ch. 3 had set up a Supreme Court, and that it is a rule as regards presumption of jurisdiction in such a Court that as stated by Willis J. in *Mayor, etc., of London* v.

Cox (1867), L.R. 2 H. of L. 239, at p. 259, nothing shall be intended to be out of the jurisdiction of a Superior Court but that which specially appears to be so. As the history of legislation for Saskatchewan runs parallel to that for Alberta, the decision of *Board* v. *Board*, 48 D.L.R. 13, [1919] A.C. 956, is being followed in the former province.

Up to this point, the purpose of this chapter has been to trade the establishment of divorce jurisdiction in the Courts of 7 of the 9 Provinces. A later chapter will deal with procedure. Here, the law for these 7 Provinces in regard to the name of the Court, the number of Judges, trial by jury, and appeals might be summarized. In P.E.I., the Divorce Court is known as the Court of Divorce; in N. S. and N. B., it is the Court of Divorce and Matrimonial Causes; in the 4 Western Provinces, divorce jurisdiction is exercised by the Supreme Court of the Province. The number of Judges required to hear the applications in P. E.I. is 6—not really Judges but members of Council; in the other Provinces applications are heard by one Judge.

In P.E.I., there is no provision for trial by jury. In N.S., questions of fact, except adultery, may be determined by a jury. In N.B., questions of fact, if the Judge deems it proper, may be determined by the verdict of a jury of 7, and either party may apply for a special jury, which consists of 14 chosen by a prescribed process of elimination from an original panel of 28. In the other 4 Provinces, either party may insist on having the contested matters of fact tried by a jury; and if the husband claims damages from the adulterer, these in all cases are to be assessed by a jury. From the Court of the Lt. Governor in Council in P.E.I., there is no appeal. In N.S., any party dissatisfied as to the findings of law or fact may appeal within 14 days to the Supreme Court of the Province, the appeal to be heard by 3 Judges of that Court and the Judge of the Divorce Court. In N.B., the Judge has the usual powers to set aside a verdict and order a new trial, and an appeal lies to the Supreme Court against any judgment allowing or refusing a new trial provided notice of such appeal is given within 20 days after judgment is pronounced. Further, any party dissatisfied with any decision of the Divorce Court may appeal to the Supreme Court of N.B., from whose decision a further appeal may be made direct to the Privy Council. In the other 4 Provinces where divorces are tried by the Supreme Courts of the Provinces, the rules as to appeals are as in other cases.

So far, jurisdiction has been considered only from the standpoint of the body which exercises it. Over whom is this jurisdiction exercised? In the first place, it should be noticed in passing that although the Roman Catholic Church recognises annulment of marriage—on the theory that no real marriage has ever existed—it persistently refuses to recognise divorce of two legally married people; it still clings to the old belief that marriage is a sacrament and indissoluble. So, although the Courts may grant divorces to Roman Catholics, their new legal status will not be recognised by the Church.

The second point to note is that the place of the marriage does not make any difference; the status need not have been created within nor according to the law of the jurisdiction. Of course to be a divorce, there must be a legal marriage; and the Court will enquire to see that the parties have complied with the proper law, a question concerned rather with the validity of marriage than with divorce, which starts from the basis of a proper legal marriage. The validity of the marriage will depend on two facts: capacity of the contracting parties, and observance of the necessary formalities. Capacity is the legal power of doing an act which can legally be done by a person. The only logical grounds for incapacity are insanity and infancy, but several others in regard to religion and consanguinity have been added in many countries. By a number of leading cases, it has now been decided that the question of capacity is one to be determined by the *lex actus* together with the *lex domicilii* (as regards essentials as distinct from mere ceremonies in connection with the celebration) of both parties, except where the domicil of one party is British and the incapacity of the other party is not recognised by English Law: *Brook* v. *Brook*, (1861), 9 H. of L. Cas. 193, 11 E. R. 703, 7 Jur. (N.S.) 422, 9 W.R. 461, (prior to Deceased Wife's Sister Act 1907, (Imp.) ch. 47. This was marriage to deceased wife's sister; both parties were domiciled in England; ceremony was performed in Denmark where such a marriage would be valid. Held invalid in England. *Sottomayor* v. *De Barros* (1879), 5 P. & D. 94. Marriage in England of two Portuguese subjects, but domiciled in England. They were first cousins, and therefore incapable of contracting a valid marriage with each other in Portugal. Marriage held valid. *De Wilton* v. *Montefiore*, [1900] 2 Ch. 481, 69 L.J. (Ch.) 717, 48 W. R. 645. Similar to *Brook* v. *Brook*, except that in this case it was a marriage to a niece. *In*

re Bozelli, [1902] 1 Ch. 751, 71 L.J. (Ch.) 505, 50 W. R. 447. In 1871, an Englishwoman domiciled in England married an Italian domiciled in Italy. After the death of her first husband being still domiciled in Italy, she married in 1880 the brother of her deceased husband, also an Italian domiciled in Italy. The required dispensation was obtained from the civil and ecclesiastical authorities, and the ceremony properly celebrated. The marriage was held to be valid in England.

Simonin v. *Mallac* (1860), 29 L.J. (Mat.) 97, 2 Sw. & Ir. 67, 164 E.R. 917, 6 Jur. (N.S.) 561. It was here held that the consents of and notices to parents or others held necessary by many laws to the validity of a marriage are considered merely as part of the form or ceremony of the marriage, and not a question of capacity. Here two French subjects were domiciled in France. The proposed husband could not get the necessary consent of his father to the marriage. The two went to England and were there married. The marriage was held valid by English Courts. *Ogden* v. *Ogden*, [1908] P. 46, 7 L.J. (P.) 34. Consent of father held to be question of form and not of capacity. The observance of the necessary formalities is of course governed by the *lex actus*, with certain exceptions in regard to embassies, uncivilised countries, and as provided for by the British Foreign Marriage Act, 1892, (Imp.) ch. 23. Even though the *lex actus* and *lex dimicilii* have been complied with in all particulars, English law will not recognise, no matter where celebrated, marriages which are criminal or which are essentially of a type not recognised in general by Christendom —e.g., even the first of a series of polygamous marriages will not be recognised, because it is not "the voluntary union for life of one man and one woman to the exclusion of all others." *Hyde* v. *Hyde*, (1866), L.R. 1 P. & D. 130. Here the marriage had been made in Utah, according to Morman rites, but with the intention to contract a Mormon marriage, and the English Divorce Court refused to dissolve it, on the ground that no marriage had ever taken place.

Thirdly, the place of committment of the adultery or other offence is not a determining factor in establishing jurisdiction: *Wilson* v. *Wilson* (1872), L.R. 2 P. & D. 435. Two people were domiciled and married in Scotland. The wife during the continuance of the Scottish domicile committed adultery in Scotland. The husband later acquired an English domicile, and

sued for a divorce in England on the grounds of the adultery committed in Scotland. A decree was granted.

Lastly, the Courts of the various Provinces have jurisdiction to try only divorces of people domiciled at the commencement of the action in the Province concerned: *Le Mesurier* v. *Le Mesurier*, [1895] A.C. 517, 64 L.J. (P.C.) 97. Parties had been married in England, and England was still their domicile, although they were resident in Ceylon. Application for a divorce made by husband to a Court in Ceylon. Held on appeal that as the husband's domicile was not Ceylon, the Court there had no jurisdiction. Domicile is not to be confused here with residence. *Goulder* v. *Goulder*, [1892] P. 240. A husband and wife were domiciled in England, but were residing in France; the wife committed adultery in Paris. It was held that the English Court had jurisdiction to entertain the husband's application for a divorce. Furthermore, jurisdiction is not determined by a person's allegiance—by what is popularly known as his nationality: *Niboyet* v. *Niboyet* (1878), 4 P. D. 1, 48 L.J. (P.) 1, 27 W.R. 203. Two French subjects domiciled in Manchester; held that the Court had jurisdiction. With an exception to be discussed presently, a married woman cannot acquire a domicile separate from her husband; she must therefore bring her application for a divorce in the Province wherein her husband is domiciled. Suppose, however, she brings it in another Province, and the husband consents to the jurisdiction; does this give the Court jurisdiction? Ordinarily such a consent would give jurisdiction, but it has been held that it will not give jurisdiction in cases of divorce: *Armitage* v. *Atty-Gen'l*, [1906] P. 135, 75 L.J. (P.) 42). The husband was domiciled in New York State and the action was brought in South Dakota: the husband entered an appearance and thereby consented to the jurisdiction. It was held by an English Court that this had not given the Dakota Court jurisdiction. Sir Gorell Barnes, Pres. Probate Division at p. 140: "There is a passage in Mr. Dicey's book on domicile . . . where he appears to think that a party by appearing . . . may give the Court jurisdiction. . . That, I think, is not in accordance with the law of this country." The exception to this general rule is given by Dicey on Conflict of Laws at p. 363 as follows: "In the following circumstances, that is to say:—

(1) Where a husband has (a) deserted his wife; or (b) so conducted himself towards her that she is justified in living

apart from him; and (2) That parties have up to the time of such desertion or justification been domiciled in England [the Province]; and (3) The husband has after such time acquired a domicile in a foreign country, but the wife has continued resident in England [the Province]; the Court (*semble*) has on the petition of the wife jurisdiction to grant a divorce." The exception was recognised in *Stathatos* v. *Stathatos*, [1913] P. 46, 82 L.J. (P.) 34. An undefended petition by a wife for divorce on the grounds of adultery and desertion. The petitioner had been married to a Greek in London. She had been deserted, the husband later getting a decree of nullity in Greece, and remarrying there. The grounds for the declaration of nullity were the absence from the marriage of a Greek priest, grounds recognised in Greece, but not in England. It was held that the Court had jurisdiction, it being pointed out that it would be absurd to hold that a deserted wife should be obliged to follow her husband around the world in an endeavor to catch up to him for the purpose of bringing an action for divorce in the jurisdiction of his domicile. Lastly, it should be noted that for a declaration of nullity of marriage, residence less than domicile is sufficient, in fact, jurisdiction then depends on where the marriage has been celebrated or where the respondent is more or less permanently resident. This is only reasonable, for the domicile of the woman may depend on the very point under consideration—the validity of the marriage. *Linke* v. *Van Aerde* (1894), 10 Times L.R. 426. A Dutch couple were married in England. It turned out that the husband had been previously married to another woman still living. After both had ceased to be domiciled in England, the wife sued for a declaration of nullity. Held that the Court had jurisdiction.

3. JURISDICTION. PARLIAMENTARY DIVORCE.

From a study of the previous chapter, it will be apparent that to-day the only parts of Canada where Parliamentary divorce is still a necessity are Ontario and Quebec. Of course, the jurisdiction of Parliament over divorce in general, and it is open to persons domiciled in any Province to apply to Parliament for a divorce; but, in practice, applications have in the past been confined to persons domiciled in Quebec, Ontario, the three prairie provinces, and the Yukon. In the future, such applications will in all probability be confined to Ontario and Quebec.

In the early days, Prince Edward Island had adopted a com-

promise between Parliamentary divorce and a Divorce Court; the reference was to a Court, but one composed not of Judges but of the chief parliamentary dignitaries of the Province; as divorce never became an acute problem, there the matter rested until caught by Confederation. New Brunswick and Nova Scotia adopted similar arrangements; but, with the example of England before them, altered to real Divorce Courts before 1867; the situation has of course remained unaltered since the B.N.A. Act. The western Provinces, at a time after 1857, had adopted for them by the Dominion Parliament (except British Columbia, which did the legislating itself), British legislation; their population prior to Confederation was almost non-existent; and where such a situation exists, it is obvious that divorce is never a pressing problem. The absence of a Divorce Court in Quebec is hardly to be wondered at, when it is remembered that the Province is inhabitated largely by adherents of the Roman Catholic Church, which has always been firm in its stand against divorce under any circumstances—Italy, Spain, and Ireland have no divorce courts. "In Quebec, by virtue of the Quebec Act of 1774, the laws of Canada were made the laws of the Province as to all matters of controversy respecting property and civil rights. The laws of Canada had their basis in the old French law which prevailed in Canada during the French regime; but with the grant of the rights of self government, the former Province of Canada acquired the right to make laws for itself, among other things, within certain limitations, on the subject of marriage; and the Provincial Law of Quebec on the subject of marriage is now to be found in the Code Civil and Provincial Statutes passed since 1774 up to 1867." (Holmested). The laws of England in regard to property and civil rights as existing in 1792 were adopted in Upper Canada, and on the subsequent institution of the Courts of Common Law and Chancery their jurisdiction was limited to that possessed by the corresponding Courts in England, which at that time did not include divorces. Prior to the Act of Union in 1840, there was apparently very little need for the consideration in Upper Canada of the question of divorce, owing to the small population. This idea is supported by the fact that until 1837 there was no equity jurisdiction—e.g., in regard to trusts, specific performance, and foreclosure—that it took 10 years to get this equity jurisdiction established, a dispatch from the Secretary of State for the colonies drawing attention to the increase in the population and

the necessity for greater jurisdiction having been sent to the Lieutenant-Governor of Upper Canada in 1827. The first record of divorce in the annals of the Province was in 1833, when a bill was introduced to provide for the establishment of a divorce court, but was later dropped. Two petitions for bills of divorce were presented in 1836, but no action appears to have been taken on them. The first divorce recorded is that of John Stuart which was passed by the Legislative Assembly of U. C. in 1839, a judgment having first been obtained against the adulterer for £671-14-3. Two more applications made in 1840 to the Legislature of the new United Canada were abandoned. From 1840 to Confederation, Ontario was joined to Quebec; and, as their object was to live and develop peaceably together rather than to quarrel over a semi-religious question, it is little wonder that a divorce court was not established. In 1845 the *Harris* case was heard; by the time the bill had passed, both parties had left the country, so the bill was disallowed by Her Majesty. Between 1845 and 1867, only three divorce bills were passed. In 1845 a motion to appoint a committee to draft a bill providing for a Divorce Court was defeated, as was a similar motion the next year. In 1859 a communication wes received from the Imperial Parliament recommending the establishment of a Divorce Court, but no action was taken on it. The result of a petition from the City of Quebec in 1860 was the same. Numerous times—1870, 1875, 1888, and 1919, at least—the question of establishing a Divorce Court has come up in Parliament, but never with the result of having a bill passed.

(*To be continued in April issue.*)

HOME RULE FOR IRELAND.

We are apparently after all to have a Dominion Sister in South Ireland but she prefers to be called after the South African fashion the Free State of South Ireland. We and others of the Dominion Class may feel complimented by a former partner of the Royal firm of Great Britain and Ireland descending from his high estate and becoming like ourselves, one of the Branch Houses of that regal firm.

REVIEW OF CURRENT ENGLISH CASES.

MATRIMONIAL HOME—RIGHT OF WIFE TO RESIDE IN MATRIMONIAL HOME PENDING SUIT.

Wilmott v. Wilmott (1921), P. 143. This was an action for restitution of conjugal rights. The husband had left his wife alone in the matrimonial home and had refused to live with her on account of her persistent drunken habits. He offered her a weekly allowance and to find her accommodation elsewhere which she refused. The house was the husband's, and the wife moved for an injunction to restrain her husband from preventing her living in the matrimonial home pending the suit. Hill, J., held that she had no such right and refused the motion.

NEGLIGENCE—DANGEROUS WORK—DUTY TO EXERCISE CARE—BENZOL—MOTOR GARAGE—MASTER AND SERVANT—SMOKING—SCOPE OF EMPLOYMENT.

Jefferson v. Derbyshire Farmers (1921), 2 K.B. 281. The plaintiffs were the lessors and lessees of a motor garage of which the lessees had agreed with the defendants to give them the use, as a garage for motor lorries. A youth employed by the defendant in the garage, while drawing benzol from a drum into a tin struck a match and lit a cigarette, and then after the manner of smokers, threw the match on the floor. This set light to some oil and petrol lying on the floor, the fire spread to the benzol flowing from the drum, and the garage and its contents were destroyed. Horridge, J., who tried the action held that the youth in lighting a cigarette and throwing the match on the floor was not acting within the scope of his employment and therefore the defendants were not liable on that ground; but he held they were liable on the ground that the bringing of benzol into the garage and filling tins there, was a breach of the defendants' agreement not to store spirit in the garage, and on that ground he held the defendants were

liable for the loss. The defendants appealed on the ground that the lessor was not a party to the agreement as to storage and could get no benefit from a contract to which he was not a party; and also that the lessor could not recover because the bringing of a drum of spirit on the premises was not a storing of it on the premises within the contract. The Court of Appeal (Bankes, Warrington and Atkin, L.JJ.) agreed with the defendants' contention, but, nevertheless, without calling on the plaintiffs affirmed the judgment on the ground that the defendants' servant in filling the tin was acting within the scope of his employment and was bound to exercise reasonable care, and that the lighting of a match and throwing it on the floor while engaged in the work was a neglect to exercise reasonable care for which the defendants were liable.

GAMING—PARTNERSHIP FOR CARRYING ON BETTING BUSINESS—LEGALITY OF BUSINESS.

Jeffrey v. *Bamford* (1921), 2 K.B. 351. This was an action by a firm of bookmakers to recover certain moneys paid by them to the indorsees of cheques given her in respect of bets won by her on horse races. The defendant set up that bookmaking was an illegal business and the plaintiffs had no right of action. In other transactions the defendant had lost but had not paid certain bets. The action was brought under the Gaming Act 1835 s. 2 (see R.S.O. C. 217, s. 3). Notwithstanding the dictum of Moulton, L.J., in *Hyams* v. *King* (1908), 2 K.R. 696, 718, and the opinion of Darling, J., in *O'Connor* v. *Ralston* (1920), 3 K.B. 451, McCardie, J., held that the carrying on of a betting business is not *per se* illegal and that the defendants were entitled to recover.

CRIMINAL LAW—INDICTMENT—UNCERTAINTY.

Rex v. *Molloy* (1921), 2 K.B. 364. The Court of Criminal Appeal (Darling, Avory and Sankey, JJ.) held that an indictment charging two separate felonies in the alternative is bad for uncertainty, *e.g.*, in this case the indictment charged that the prisoner "stole, or with intent to steal, ripped and severed or broke" certain fixtures. The form in Archbold's Criminal Law (25th ed.) was held to be incorrect.

SALE OF GOODS—CONTRACT FOR DELIVERY AT FIXED TIME—DELIVERY WITHIN REASONABLE TIME—MEASURE OF DAMAGES—SALE OF GOODS ACT 1893 (56-57 VICT. c. 71), s. 51 (3)—(10-11 GEO. V. c. 40, s. 49 (3) ONT.)

Millett v. *Van Heek & Co.* (1921) 2 K.B. 369. In 1916 the plaintiffs entered into a contract for the sale and delivery to the defendants of cotton waste. The contracts provided that shipment of the cotton was to be subject to the permission of the Government. When the contracts were entered into cotton waste could only be exported by permission of the Government, but in 1917 its export was absolutely prohibited. A correspondence then took place between the parties, as a result of which as Greer, J., who tried the action, found the parties entered into a new and binding agreement whereby the deliveries were suspended until the removal of the embargo the defendants being willing to accept the balance of the goods after the removal of the embargo, but in August, 1918, the plaintiffs repudiated the contract. In January, 1919, the embargo was removed. The plaintiffs claimed a declaration that the contracts had been put an end to; but this relief was refused and the only question was as to damages to which the defendants were entitled by reason of the plaintiffs' repudiation of the contract in 1918, and the main point was whether the latter part of sec. 51 (3) of the Sale of Goods Act (see 10-11 Geo. V. c. 40, sec. 49 (3) Ont.) applied to an anticipatory breach of contract arising from repudiation. On the reference to assess the damages the Master assumed that it did apply and the damages were assessed with reference to the market price of the goods at the date of the repudiation of the contract by the plaintiff. The Divisional Court (Bray and Sankey, JJ.) held that this was erroneous and that *prima facie* the damages should be the difference in price between the contract price and the market price at the time at which the goods should have been delivered according to the terms of the new contract, and as the deliveries were to be made at different times, the rule must apply to each delivery, but if it could be shown that a reasonable course for minimising the damages could have been taken then that would have to be taken into account in estimating the damages. With this conclusion the Court of Appeal (Bankes, Warrington and Atkins, L.JJ.) agreed.

RAILWAY—CLOAK ROOM—DEPOSIT OF ARTICLE—DEPOSIT TICKET—CONDITION ON TICKET—NON COMPLIANCE BY BAILOR WITH CONDITIONS—NEGLIGENCE IN CUSTODY OF BAILMENT.

Gibaud v. *Great Eastern Ry. Co.* (1921), 2 K. B. 426. This was an appeal from the judgment of a Divisional Court (1920) 3 K.B. 680 (noted ante vol. 57, p. 180), and the Court of Appeal (Lord Sterndale, M.R., and Scrutton and Younger, L.JJ.) have affirmed the decision, that Court holding that the omission by the defendants' servant to put the bicycle in the cloak room did not entitle the plaintiff to recover having regard to the condition on the deposit ticket.

NEGLIGENCE—DEATH OF CHILD FOUR YEARS OLD—DAMAGES—FATAL ACCIDENTS ACT, 1846 (9-10 VICT. C. 93), SS. 1, 2—(R.S.O. 151, SS. 2, 3)—EVIDENCE.

Barnett v. *Cohen* (1921), 2 K.B. 461. This was an action under the Fatal Accidents Act to recover damages for the death of a child four years old in which two points are discussed. First whether depositions taken at a coroner's inquest together with the verdict and rider of the jury can be used in an action subsequently brought in respect of the death of the deceased which was the subject of the inquest as proof of the negligence of the defendant, and McCardie, J., held they could not. Second the question of damages and on this point the learned Judge held that a mere speculative possibility of pecuniary benefit did not constitute any ground of damages, and in order to recover the plaintiff must establish that he lost a reasonable probability of pecuniary advantage. The action for want of this evidence therefore failed.

WILL—SOLDIER—REVOCATION—WILL EXECUTED IN ACCORDANCE WITH WILLS ACT—LETTER BY TESTATOR REQUESTING WILL TO BE BURNT—WILL BURNT NOT IN PRESENCE OF TESTATOR—WILLS ACT 1837 (1 VICT. C. 20) SECS. 9, 10, 11—(R.S.O. 120, S. 14, 23).

In Re Gossage, Wood v. *Gossage*, 1921, P. 194. This was a probate action and the question at issue was whether a will duly executed by the testator in accordance with the Wills Act could be subsequently revoked on the testator going on active

military service by a letter requesting its destruction, and its destruction as requested though not in the p sence of the testator. Bailache, J., held that it could, and the Court of Appeal (Lord Sterndale, M.R., and Warrington and Younger, L.JJ.) affirmed his decision.

DIVORCE—DOMICIL—MATRIMONIAL JURISDICTION OF INDIAN COURTS—BRITISH SUBJECTS RESIDENT, BUT NOT DOMICILED IN INDIA.

Keyes v. Keyes, 1921, P. 204. In thi, case the validity of a divorce granted by an Indian Court in a case in which the parties were British subjects who were resident but not domiciled in India, was in question. The marriage was solemnized in India and the acts of adultery in respect of which the divorce proceedings were instituted were also committed there, but Duke, P.P.D., held that the Indian Courts had no jurisdiction over British subjects not domiciled there. The same rule would be applicable we presume to divorces granted by Canadian Courts to persons not domiciled within the territorial limits of such Courts, but with regard to Canadian Parliamentary divorces it is possible the case might be otherwise.

ADMIRALTY—NECESSARIES—ACTION IN REM.

The Mogileff (1921), P. 236. This was an action *in rem* for necessaries supplied to a foreign ship. The claim was not disputed, but it was contended on behalf of the owners that an action *in rem* would not lie, and that the plaintiffs' only remedy was by an ordinary action *in personam*, but Hill, J., after an elaborate review of the cases, came to the con clusion that the action was well brought, and though it might be inferred from the course of business that the plaintiffs had agreed to look to the personal liability of the owners, and that the advances made by the plaintiffs must be treated as items of a mercantile account to be adjusted in accordance with the terms of the agency agreement existing between them; yet the mere fact that the plaintiffs were the shipowners' regular agents did not deprive them of their rights *in rem* under the Admiralty Courts Acts, 1840 and 1861.

COPYRIGHT—AGREEMENT BY AUTHOR TO GIVE PUBLISHERS OFFER OF NEXT THREE BOOKS—OPTION TO ACQUIRE INTEREST IN COPYRIGHT—NOTICE—INJUNCTION TO RESTRAIN BREACH OF AGREEMENT.

Macdonald v. *Eyles* (1921), 1 Ch. 631. The plaintiffs who were publishers entered into an agrement with the defendant Eyles whereby she agreed to give the plaintiffs an option to publish "her next three books" on royalty terms. In violation of the agreement, without giving the plaintiffs an option to publish one of her "next books," she made arrangements with her co-defendants to publish, they having notice of the agreement with the plaintiff. This action was brought to restrain both defendants from publishing the book in question, and Peterson, J., granted the injunction, he holding that the contract was not a contract of personal service but a contract by the defendant Eyles to sell the product of her labour which could be specifically enforced by injunction.

RESTRAINT OF TRADE — AUCTIONEERS AND ESTATE AGENTS—CLERK—CONTRACT OF SERVICE—RESTRICTIVE COVENANT.

Bowler v. *Lovegrove* (1921), 1 Ch. 642. This was an action to enforce a restrictive covenant, whereby the defendant, who had been a clerk in the plaintiff's employ, bound himself that after he had ceased to be in their employment he would not for the term of one year carry on or be interested in carrying on the business of an estate agent and auctioneer within the borough of Portsmouth or in the town of Gosport, the places where the plaintiffs carried on their business. The plaintiffs' business was that of auctioneers and estate agents and the defendant's duty, while in the plaintiff's employ, was to interview people and to obtain for the plaintiffs buyers or sellers, or intending lessors or lessees of house property. The plaintiffs duly terminated the defendant's employment in September, 1920, and on leaving their service the defendant at once set up business as an estate agent within the prohibited area, but he did not take out an auctioneer's licence or do business as an auctioneer—although he used the initials A.A.I., meaning Associate of the Auctioneers' Institute. Lawrence, J. who tried the action, held that the covenant in question was not void for uncertainty, but that the defendant in carrying on the

business of an estate agent only had not violated it, nor had he by using the initials A.A.I. held himself out to be an auctioneer. He was also of the opinion that the clause being intended *per se* to prevent competition was wider than was reasonably necessary for the protection of the plaintiff's business.

CHARITY—HOSPITAL FOR SICK AND WOUNDED SOLDIERS—HOSPITAL CLOSED — SURPLUS ASSETS — RESULTING TRUST—GENERAL CHARITABLE INTENTION—CY-PRES.

Re Welsh Hospital, Thomas v. *Attorney-General* (1921), 1 Ch. 655. This was a summary application to determine what should be done with certain funds which had been subscribed for the establishment of a hospital for soldiers, and which had been closed leaving a surplus of £9000. Lawrence, J., who tried the motion, held on the evidence that there was no resulting trust in favour of the subscribers, but a general charitable intention for sick and wounded Welshmen which enabled the Court to apply the surplus cy-pres.

Book Reviews

Handbook of the Law of the Sale of Goods. By JOHN DELATRE FALCONBRIDGE, M.A., LL.B., of Osgoode Hall, Barrister-at-Law, Lecturer to the Law Society of Upper Canada. Toronto: Canada Law Book Company, Limited. 1921.

It is pleasant to notice that good legal literature produced in Canada is appreciated in other parts of this wonderful Empire that we are proud to belong to. It is, moreover, a further proof of the solidarity of that Empire and the spirit of comradeship which prevails among its members.

This is drawn to our attention by reading in the South African Law Journal a review of Mr. Falconbridge's book on the law of the sale of goods. We presume most of our readers are familiar with this volume, if not they ought to be.

It is interesting in this connection to remember that the law of South Africa is based on the old Roman Dutch law. And our readers are perhaps aware that this branch of the Civil law

is particularly rich in the legal lore appertaining to the sale of goods.

In view of what we have said, we are glad to give in our columns the criticism of Mr. Falconbridge's work as it appears in our South African contemporary.

It reads as follows:—

The learned author of this work is doing yeoman service in providing text-books on Canadian Law. He has already published books on "Banking and Bills of Exchange" and "The Law of Mortgages of Real Estates."

In Canada, except for the Province of Quebec, the English Sale of Goods Act, 1893, is now in universal application, and in this book the arrangement of that Act is fairly closely followed.

The difference between the Sale of Goods Act and the Uniform Sales Act now in force in many parts of the United States are carefully indicated. There is an excellent index and a lengthy table of cases. The Roman-Dutch Law of Sale of Goods, of course, differs in some respects from that laid down by the Sale of Goods Act, but there are many points of resemblance, and these English cases are frequently quoted in our Courts. In addition, as commerce increases it is necessary to have some acquaintance with the laws of those with whom the majority of our commercial transactions take place. As a clear statement of the subject this book reaches a very high level, and it can be heartily recommended as a concise exposition of the law of Canada and the majority of the British Dominions, Colonies, and Possessions on the subject. The law in force in the United States is also clearly stated. The book contains less than two hundred pages, but room has been found for a large number of references to English authorities. When reviewing the author's work on Mortgages we are able to congratulate ourselves on the equity and simplicity of the Roman-Dutch system. Modern development in commercial matters have made it necessary to supplement much of the Roman-Dutch Law on the subject of the Sale of Goods, and though the underlying principles are as sound as ever, this process of supplementation has not always proceeded on sound lines, and as a result difficulties have arisen and occasionally principles appear to be brought into conflict. It becomes necessary, therefore, to see what is done under foreign systems of laws and look to these for guidance in cases of difficulty.

Bench and Bar

Viscount Bryce.

Rt. Hon. Viscount Bryce, P.C., O.M., G.C.V.O., F.R.S., D.C.L., died at Sidmouth, February 22nd, in his 84th year. He was the son of James Bryce, LL.D., of Blantyre, Glasgow.

This is a great loss to the legal profession and to the public. Our limited space would fail to tell adequately of his brilliant career. He was known the world over as one of the greatest authorities on constitutional law and general jurisprudence. One of the most illuminating works ever written is his "American Commonwealth," and by which he will be best remembered.

Appointments to Office.

Robert Grant Fisher, of the City of London, Ontario, K.C., to be a Judge of the Supreme Court of Ontario and a member of the High Court and Appellate Division. (February 15.)

James Arthur Mulligan, of the town of Sudbury, Ontario, K.C., to be Judge of the County Court of the County of Carleton. (February 15.)

Peter Charles Larkin, of the City of Toronto, Esquire, to be High Commissioner for Canada in Canada, and to be a member of the King's Privy Council for Canada. (March 1.)