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THE VINDICATION OF INTERNATIONAL LAW.

It seems to have become a settled conviction of statesmen and lawyers that the time has arrived, and the opportunity is now before that part of the world which believes in law and order, to vindicate in a striking manner the supremacy of law.

International law has on too many occasions in the past proved a broken reed, for lack of the necessary coercive power to punish a violator of its rules. The maxim that "Kings can do no wrong" has been accepted in the past as if it were an international maxim.

It is a maxim which has its foundation purely in national, but not international, considerations. A king in his own dominions is the fountain of justice, for personal wrongdoing, he cannot be his own judge, and the only remedy is to depose him; but that rule does not and ought not to prevail as an international maxim. We know as a matter of fact that kings can, and actually do, commit wrongs on the people of other nations, and there is nothing against reason or common sense in saying that when such wrongs are committed they ought not to go unpunished.

Civilized society could not exist but for the strong arm of the policeman and the coercive powers of the law: neither can international civilized society exist in security unless the international policeman and the necessary coercive power to punish violators of international law are in some way provided.

For a large and powerful nation to attack another nation without any just cause and to kill and outrage its inhabitants or reduce them to a condition of slavery and rob or destroy their property is about as flagrant an offence against not only the law of nations, but against natural justice, as it is possible to conceive.

If in a civilized community a single person is killed or robbed or maltreated, society has not done its duty until the offender

is duly punished. Can it be reasonably said that when this offence is multiplied a thousandfold it is any less a crime? No one in his senses can pretend that offences of the kind we have mentioned can become any less essentially criminous because the offenders are more numerous.

The world knows what Belgium has been called on to endure. All the world knows that even at the very hour the crime was in process of perpetration a leading German statesman admitted that it was a wrongful act, but, forsooth, one for which reparation would be made! As if men who had been murdered in its perpetration could be recalled to life, or their violated honour restored to outraged women! No more horrible or brutal crime was ever committed by any nation on another than that committed by Germany on Belgium.

This outrage was the result of a deliberate scheme duly thought out and provided for and approved of, long before the war was started, by the ruler of Germany and his military advisers.

Can the civilized world at large ever condone such a grievous and abominable outrage? Can any reason be assigned why those who conceived and carried it into execution should not be brought to the bar of international justice?

There are some who seem to think that the laws of war exonerate the Kaiser and his statesmen and military advisers from personal liability for the acts done in carrying out their schemes—but the laws of war are designed for wars reasonably and legitimately begun and carried on; they can hardly be intended to regulate the acts of criminal violators of the peace of other peoples. The facts are that Germany had, as the German Chancellor admitted, no just ground for entering Belgian territory, and a state of war pretended to be created by the unjust invasion of Belgian territory was in the circumstances not war at all but a wanton outrage similar to that of pirates and robbers, and as far as Belgium was concerned it was simply the concerted inroad into its territory of an organized gang of murderers, thieves and cutthroats, and their acts and deeds were not acts of war or regulated by the laws of war, but by the laws that govern murderers, thieves and cutthroats. Having by unlawful violence invaded

Belgian territory, every act and deed they did there was an unlawful and inexcusable act; they could not make their position lawful merely by their successfully overcoming its inhabitants. They entered as criminals and as criminals they remained, so long as they were there, and every violation of the rights of its inhabitants in person or property was a criminal offence, according to international law.

No one can deny that if a single German had entered Belgium with a view to going to France and the Belgian authorities refused him permission, that if he thereupon proceeded to kill Belgian people he would be guilty of murder, or that if 100 Germans did so it would make no difference in the quality of their act; and if 100,000 or 500,000 do so by orders of their leader what difference can it make, except that in such a case the criminals are multiplied and that not only the individuals who engage in in the act but he who ordered them to do it become equally liable for the crimes committed?

If this be a correct view of the position of the wrongful invaders of Belgium from an international standpoint, then it inevitably follows that the trial and execution of Edith Cavell, and Captain Fryatt, were also wrongful and illegal acts and that those who were parties to their killing were guilty of murder. To pretend that these unfortunate persons were amenable to German law is to assume that the Germans were lawfully in Belgium and competent to make and execute their laws in Belgium; but as we have said, they were wrongfully there, and were no more capable in international law of rightfully making laws in Belgium than would any other gang of thieves and cutthroats.

Great Britain once sent, at great expense, an expeditionary force into the heart of Abyssinia to rescue a single British subject from unlawful imprisonment; and that she will willingly submit to the murderers of two of her people going unpunished is not very likely.

The maxim "*qui facit per alium facit per se*" is not merely a maxim of English law, it is one of those fundamental principles which are of universal application—and, according to that maxim, the ex-Kaiser and his advisers who instigated and carried out the

crime against Belgium are, and ought of right, to be regarded as though they had themselves in their own persons committed all the crimes which were committed by the German army in Belgium.

But there is not only the flagrant crime against humanity involved in the brutal invasion of Belgium and all the infamy with which it was accompanied for which the Kaiser and his principal advisers should be brought to justice, but there is also the fact that he and his advisers wilfully and maliciously promoted and brought about the war and also the many atrocities with which the war was carried on, for which they should also be made to answer. The piratical U-boat methods, the sinking of the *Lusitania* and other passenger vessels, the inhuman treatment of wounded and prisoners, the introduction of poisonous gas, the bombardment of defenceless places, etc.

Grotius lays down that the justifiable causes generally assigned for war are three: defence, indemnity, and punishment; this implies that self-defence, indemnity for loss occasioned, and punishment for wrongs suffered, are legitimate causes of war among civilized nations; but it is needless to say that not a single one of these causes existed to justify Germany levying war on Belgium. Belgium was not in any sense of the word an aggressor on German territory, or German people, it had not inflicted the slightest wrong on Germany or given in any way any just cause of offence whatever, any more than the lamb offered to the wolf. The sole ground of its offence was that it honestly and steadfastly refused to violate the terms of an existing treaty and to give aid and assistance against a nation as to whom it had undertaken to be neutral. In violating itself and attempting to induce Belgium to violate its solemn compact of neutrality, the German rulers were acting unjustly and contrary to the plainest principles of international law. How can those who have committed such an act clothe themselves with the protection of the laws of war, and justify flagitious wrongs, under the claim that they are levying war? Suppose a sovereign of one state sends into the territory of a neighbouring state a gang of murderers for the purpose of assassinating the sovereign of the latter state, and they succeed

in accomplishing their master's order, would it be reasonable to say that the murderer who had instigated and set on foot the crime was entitled to protection from punishment, on the ground either that he could do no wrong, or that he was levying war? Any such pretences ought to be regarded with contempt. He has committed murder, and if he can be brought within the jurisdiction of the law of the state, he should, and by every consideration of justice ought, to suffer like any other criminal for his crime. Would the offence be any the less or any the less amenable to the law if, instead of one man, he sent 50 or 100 to bring about the like result? A multiplicity of criminals may and often does prevent all of them from being brought to punishment, but it does not in the least diminish the guilt of all and each of them concerned. So long as the criminals remain in their own country there may be difficulty in bringing them to justice; but if they flee to other countries their surrender may be justly and rightfully demanded. Grotius very justly observes that kings and those who are possessed of sovereign power have a right to exact punishment, not only for injuries affecting immediately themselves or their own subjects, *but for gross violations of the law of nature and of nations, done to other states and subjects.* According to this view of international war, the Allied powers are well within their rights in seeking to bring to the bar of international justice the authors and promoters of the grievous wrongs and injuries inflicted on Belgium as a nation, contrary to the law of nature and of nations by the German army. The whole German nation cannot be brought to book, but the ringleaders and promoters of the crime are amenable to punishment like any other criminals.

Two or three of the principal offenders have sought asylum in other countries, and it has been suggested that they are entitled to protection as political refugees, but it is ubmitted that such a claim cannot be supported. *Quoad* Belgium they are simply criminals who have committed with force and violence outrageous crimes in Belgium contrary to the laws of Belgium. They entered Belgium unjustly, unlawfully and, contrary to international law, they proceeded to murder, rob and ravish the inhabitants; and from the moment they entered until they departed their status

was that of murderers and thieves and they by whom they were set in motion stand in the same category. The killing of Edith Cavell and Captain Fryatt were not acts of war, in the circumstances in which they were committed, but the murder of two British subjects in no way subject to the jurisdiction of those who caused them to be killed.

For every Belgian robbed, murdered or ravished the ex-Kaiser is answerable to the Belgian law as a criminal; and for every British subject put to death by Germans in Belgium the ex-Kaiser is also answerable to the Belgian law, and for these causes his extradition may properly be demanded by Belgium. As Grotius observes: "The right of demanding the surrender or punishment of criminals that have fled into other kingdoms has, in most parts of Europe during the present and the immediately preceding centuries, been generally exercised in cases where the crimes were such as affected *the safety of the state or were attended with notorious atrocity*," both of which circumstances exist in the case in hand.

The right of asylum which is extended to some refugees is, as Grotius lays down, for the "protection only of those who are the victims of unmerited persecution, not for those who have committed crimes injurious to mankind and destructive to society." Under this excepted class to some extent come those who in the carrying out of political designs in their own country have resorted to deeds of violence and then escaped to some other country, but even such offenders are not in all cases entitled to protection from extradition.

The question of extradition of criminals is among civilized nations now usually the subject of express treaty stipulations, and between Belgium and Holland we assume such a treaty exists, that it provides for the extradition of murderers, robbers, thieves and the perpetrators of rape we have no doubt, and to this class of criminals the ex-Kaiser and his son now in Holland may properly be assigned, and their extradition may be rightfully claimed by Belgium for their violations of Belgian law.

But the acts of the ex-Kaiser and his advisers have in many other respects been flagrant violations of the laws not only of

nature, but of nations. They have deliberately and of malice aforethought carried on the war as against Great Britain and France in violation of the well understood laws of war, and with the deliberate purpose and intent of making it as frightful as possible, and it may well be that for such offences against humanity an international tribunal should be convened before which the culprits should stand their trial, and receive in their own persons the punishment which that tribunal may see fit to award.

It is not very material to the world whether the ex-Kaiser and his associates are tried as ordinary criminals by the Courts of Belgium or by some special international tribunal to be convened for the purpose. What all civilized humanity is concerned in, is that before some tribunal they shall be arraigned, and receive a just trial, and a just sentence for all the infamy of which they have been guilty.

As far as the personal guilt of the ex-Kaiser is concerned, he seems to have furnished evidence under his own hand in a letter quoted by the French jurists who have been recently investigating the legal aspects of his responsibility. The letter in question was written by the ex-Kaiser to the former Austrian Emperor in the early days of the war, in which he said: "My soul is torn asunder, but everything must be put to fire and blood. The throats of men and women, children and the aged must be cut, not a tree, not a house left standing. With such methods of terror, which alone can strike so degenerate a people as the French, the war will be finished before two months, while, if I use humanitarian methods, it may prolong for years. Despite all my repugnance, I have to choose the first system." How it was actually carried out in Belgium and Northern France, all the world knows, and a halter appears to be the only proper medicine for such a criminal.

SOLICITORS' BILLS OF COSTS.

For some years there has undoubtedly been a growing feeling among the members of the profession that a change in the method of preparing solicitors' bills of costs was necessary to meet modern conditions. It has been felt, as aptly expressed by an eminent

Ontario Judge, that the remuneration of the professional man "can be better estimated by the result attained and the care and skill shewn in what is done, than by any summation of items each attached to an individual move in the game played with living persons." Solicitors have thought that the magnitude of the interests involved for the client should have some bearing on the amount of the charge they are entitled to make. This feeling has been evidenced by the tariffs adopted by various County Law Associations, providing for fees proportionate to the value of the property dealt with, the amount of the capital of companies incorporated, etc. It also appears in the somewhat general practice followed by many solicitors when delivering bills to their clients, of setting out in detail the services rendered and charging at the end of the bill what is called a "lump fee" to cover all. It has, however, been almost universally accepted that the law did not recognize the principle of the County Association tariffs, and the "lump fee" bill, and that if trouble arose between the solicitor and his client necessitating taxation or suit to recover the amount charged, the solicitor, if required, must furnish detailed charges. The very recent decision of the Second Appellate Division of the Supreme Court of Ontario, in the case of *Lynch-Staunton* v. *Somerville*, 15 Ont. W.N. 303, reversing the same case in 43 O.L.R. 282, is one of much interest to the profession at large, and will undoubtedly have a marked bearing on the form taken by bills of costs hereafter delivered by solicitors to their clients. The result of the decision would appear to be that in, at all events, the majority of bills, detailed charges are unnecessary for the purposes either of action or taxation.

When the importance of the question to the profession is considered, it is somewhat surprising that there are not more reported decisions on it than can be found in the reports. The cases where the solicitor has been allowed to charge by way of "lump fee" or on a commission basis are very few. Among the earliest in Ontario are *Re Richardson*, 3 Ch. Ch. R. 144, and *Re Attorneys*, 26 U.C.C.P. 495. The basis of these decisions appeared to be that the percentage principle might be applied where the work done by the solicitor was similar to that of an ordinary

agent acting in connection with the sale of property and the receiving, investing or otherwise disbursing of moneys. It by no means followed that the services of solicitors in business, purely that of a solicitor, could be remunerated according to any such measure.

A break away from the general idea of what was necessary to a proper bill of "costs, charges and disbursements" under the Solicitors' Act, was thought to have been accomplished by the decision of the late Chancellor, affirmed by the King's Bench Divisional Court, in *Re R. L. Johnston*, 3 O.L.R. 1. In that case a lump fee was allowed the solicitor for difficult and complicated negotiations out of Court with various insurance companies, resulting in the collection for the client without litigation of upwards of $70,000. The decision, however, was not altogether satisfactory, and appeared not be applicable in more than a very limited number of cases. The Chancellor in justifying the lump fee allowed, pointed out that "the circumstances surrounding the professional employment were very exceptional, and justified the somewhat liberal allowance ascertained upon the reference." In addition to this, a basis for the judgment of the Divisional Court appeared to be found in the statement that the client himself had issued the order for taxation. It has been held from an early date that the time for a client to object to the form of the solicitor's bill is when the order for taxation is obtained, and not when the matter comes before the taxing officer. Emphasis appears to have been placed on this last feature by the Second Appellate Division in the case of *Gould* v. *Ferguson*, 29 O.L.R. 161. This case was considered by many as in conflict with the *Johnston case*, and a getting back to the necessity of individual items with separate charges. If the two cases were in conflict, the later of course governed. The bill in question in the *Gould* case was wholly for "Conveyancing, attending registry offices, examining deeds, letters, searching executions, etc.," but no point appears to have been made of this in the reasons for the judgment of the Court, which was taken as a general holding, in the words of the headnote to the report, that the requirements of the Solicitors' Act are "not complied with by the delivery of a bill of costs, charges and dis-

bursements, in which the amount for each service is not stated, but a lump sum charged." The doubt as to the effect of the *Gould* case on the *Johnson* case has been done away with by the judgment just delivered. "In *Gould* v. *Ferguson*, we did not—and did not affect to—overrule *Re R. L. Johnston*," *per* Riddell, J.

To understand the present position of the law on the whole question, it is necessary to look at the nature of the services rendered and the form of the bill delivered in the *Staunton* case. The facts as set out in the reasons for judgment of the Hon. Mr. Justice Riddell are that the defendant Somerville had certain property in Hamilton which he sold and his purchaser sold to the Canada Grocers. Somerville claimed that he had the right to re-purchase within a certain time, and he wished to do so. He saw the plaintiff, who wrote the owners, but they denied his alleged right, as did the Dominion Canners, who had an interest with the Canada Grocers. It was determined to issue a writ; the plaintiff told the defendant that he did not practice as a solicitor, and he retained Mr. C. as solicitor who issued a writ. Considerable negotiations took place which resulted in a settlement, whereby Somerville was to have the property for $30,000. This settlement was carried through. The bill as delivered to the client contained "53 items of ordinary law services for which a fee might be charged; 39 of these have a fee charged. Then there are 2 charges of a kind not quite usual, but in no way extraordinary." "Fee on revising deed, examination of title, closing transfer of property, etc., amount paid on settlement $30,000," for which a charge of $165 is made; and "Fee on negotiations as above set out, and recovering property of the value of $60,000, subject to a payment of $30,000, charged at $700. There are 14 items against which no charge is made, and there are also 7 items which merely state receipt of letters and the like, which of course have no charge. On the 14 against which no fee is entered, there are 2 letters, 10 attendances and consultations, etc., one draft proposal and one telephoning, all apparently during the negotiations for settlement and being 'the negotiations above set out,' referred to in the $700 item." Where the solicitor had interviews with the client personally, separate amounts were

charged. The consultations for which no charges were carried out, were consultations with solicitors acting in interests adverse to those of the client.

It would appear that the bill in question covers services similar to those rendered by the solicitors in both the *Johnston* and *Gould* cases—negotiations out of Court leading to a settlement as in the *Johnston* case, and conveyancing work (necessary to carry out the settlement) as in the *Gould* case. It includes, as indicated, a lump fee for the negotiations and also a lump fee for the conveyancing. It was thought by the trial Judge (Masten, J.), that the lump fee for the negotiations could not be justified in view of the decision in *Gould* v. *Ferguson*, but he appears not to have specifically dealt with the lump sum charged for the conveyancing. The Appellate Court, however, has now held that both charges were proper and that the bill as a whole complied with the requirements of the Act. The holding so far as the fee on the negotiations is concerned is in accord with *Re R. L. Johnston*, which must now be taken as settled law.

It is not easy to reconcile the decision on the charge for conveyancing work with the judgment in *Gould* v. *Ferguson*. It is said that "The present bill has no resemblance to the bill in question in *Gould* v. *Ferguson*." That seems true of the bill as a whole, but the charge of $165 to cover "Fee on revising deed, examination of title, closing transfer of property, etc.," would appear to be for work identical to that of the solicitor in the *Gould* case. Can it be that if the last mentioned solicitor had, instead of taking a page and a half to set out what he had done, boiled his charge down to the form given above, the decision of the Appellate Division would have been that his bill was a proper one within the meaning of the Act? Such a proposition would appear to be unthinkable, yet it is submitted it must follow from the decision under consideration.

As shewing how the rule works out, reliance is placed by the Court on *Blake* v. *Hummell*, 51 L.T.N.S. 431. It is said that the bill in that case so far as material read:—

"The Rev. F. H. Hummell to Edwd. F. Blake.

"1881—Oct. and Nov.—Perusing abstract of the title to

Wilcot Lodge, Shanklin. Instructions for requisitions on the title and drawing same and fair copy. Perusing Mr. Harper's replies thereto. Instructions for assignment. Drawing same and fair copy for perusal. Engrossing same, and journey to London to examine the abstract, and completing purchase, including attendances and correspondence with you and Mr. Harper and Messrs. Dean and Taylor, including travelling and hotel expenses.....£38 10s.

"1882—April 1. Yourself ats Urry. Attendances on you in reference to this case on which you were summoned for an assault, and conferring thereon and receiving your instructions to attend the petty sessions on the hearing of the case, and attending accordingly on your behalf, when the magistrates considered an assault had been committed and fined you in the penalty of 2s. 6d. and costs.....£2 2s."

Mr. Justice Denman considered the charge of £2 2s as being sufficiently specific, and a charge that could be fairly taxed by the taxing master. Mr. Justice Riddell points out that there were included in this charge:

1. An attendance on client when retained.
2. Instructions to defend before Magistrate.
3. Attending before Magistrate at the trial.

And he accepts the item of $165 in Mr. Staunton's bill as being "just as specific and as fairly taxable as that passed upon by Denman, J." The charge of £38 10s was held to be insufficient. The learned Judge's reasoning seems difficult to follow, when he selects the item for conveyancing business in the bill before the Court as being similar to the item for criminal business in the *Blake* v. *Hummell* bill instead of treating it as similar to the item in the older bill for what must have been apparently exactly similar conveyancing charges.

It is understood that the *Staunton* case is not likely to go further. It will stand as binding in the Provincial Courts in future cases of solicitors' bills. It is submitted as already indicated that in a large majority of matters, it will not be necessary for solicitors to render detailed bills. A great deal of a solicitor's business consists of negotiations such as are dealt with in the *Johnston*

case; and of conveyancing work. The solicitor will be at liberty in matters of negotiation to charge a lump fee, in the fixing of which there can be taken into consideration the magnitude of the interests involved. In connection with real estate work, sanction is apparently given to the principle underlying the County Association tariffs. When a client brings to a solicitor an agreement to purchase real estate which has been signed by him, for the purpose of having the solicitor put through the transaction, it will apparently not be necessary for the solicitor to render a bill shewing in detail the whole time spent in connection with the matter and each step taken in bringing it to a conclusion. It would seem that it will be sufficient if he renders a bill with one item somewhat as follows:—"Fee to cover searching title, revising deed, and closing purchase of property to the value of $....." This undoubtedly is a great step in advance, so far as the profession at large is concerned. It seems, however, to be a logical result of the recent decision, and, after all, it is results that count.

PUNISHMENT BY FINE.

In the day when the cares of state consisted chiefly in devising new methods of compelling the subject to contribute to the royal revenues, the punishment of crime by fine was deemed a very happy invention. No nice theories of reformation or determent marred the regal satisfaction with the device; it was sufficient that it got the money. By sheer force of tradition this device of impecunious kings has survived to an age in which the raising of revenue is a secondary interest of government. Viewed as a measure of reformation punishment by fine is of course an absurdity.

As a deterrent, it is deprived of most of its value by its inevitable inequality. To the proprietor of a family flivver, the possibility of a twenty dollar fine is an adequate deterrent against speeding. To the class of drivers by whom most of the speeding is done it is no deterrent at all.

As applied to violations against regulations of business, the fining system, unless the fine is so large as to exceed by far the

possible profits of the illegality, becomes in effect a license to commit crime. Take, for example, the fines imposed on dealers who disobeyed the Government price regulations.

If there ever was a crime which deserves capital punishment it is profiteering in the necessities of life during war time. It embodies all the moral elements of treason and springs from a motive more sordid than that which ordinarily animates the traitor. The murderer may kill from passion, the anarchist may plead a real though misguided sympathy with the sufferings of the poor, but the profiteering merchant weakens the resources and the morale of the country for his own financial gain. To a lesser degree, the merchant who in time of peace gives short weight or adulterates a food product is guilty of a crime involving more moral turpitude than most felonies for which men are sent to the penitentiary. Moreover, by a climax of irony, in such cases the fine imposed does not come out of the culprit but out of his victims. Even if it exceeds the past profits of his illegal dealing, which is rarely the case, it merely incites him to more cunning fraud until he can make the ultimate consumer pay the balance. As a general rule, any offence which is adequately punished by a fine does not merit punishment at all. There are some minor offences of which cognizance must be taken for which a sentence of imprisonment is excessive. In such a case the methods of the juvenile court should be adopted, the offender being released on parole and required to report from time to time until he satisfies the Court that there is no likelihood of his repeating the offence. Minor crimes spring from an inadequate sense of social duty and such treatment would do far more to awaker that sense than the imposition of a fine. If it fails and the crime is repeated, imprisonment would then be merited.—*Law Notes.*

SUCCESSION DUTIES ACT.

The issue of Government bonds which are not subject to the duties imposed by the Succession Duties Acts of the various Provinces is a matter which might well engage the attention of our Legislatures, in reference as well as to securing uniformity in our laws as to the objectionable nature of this exemption.

A small loan we are told is required by the Government of the Province of Quebec, sought to be obtained by the sale of 4½% gold bonds issued in the usual way. One of the inducements held out to investors is that these bonds are not subject to the duties imposed by the Province under the Succession Duties Act.

Whilst there are objections to the principle of this tax, and innumerable difficulties and much injustice in its collection, it is generally received as a wise and desirable mode of raising revenue. This being so, there should be nothing done by the Government to neutralize what is claimed to be beneficial by making an exception which militates against the main intent of the tax, for the purpose, or, at least, with the result of benefiting those who can afford to invest large sums of money, and be free from the burden which others have to bear.

It is true that every citizen in a Province derives a benefit from the fact that his Province can borrow money for public purposes at a low rate of interest. This benefit accrues, of course, to all classes alike; but those who can, as we have said, afford to put away and invest in Government bonds, get a direct benefit which does not accrue to those whose means are only sufficient to pay for a reasonable livelihood, or who, perhaps, can put away a few dollars in a savings bank.

We would call attention to another matter. The inducement this exemption holds out is a direct invitation by the Government to the investor, and therefore to the wealthy classes, to avoid the burden of a tax imposed by that same Government, which was imposed for the very purpose of doing something for the general benefit of the community, but which that Government now seeks to nullify. The success which has attended the efforts of the scheme of our Finance Minister for raising money for war purposes from the people of the Dominion of Canada, instead of borrowing elsewhere, is likely to be followed very largely, so that we may expect to see in the future, further and larger Provincial issues to be taken up by our own people. If all these securities are to be free from Succession Duties, we shall see a large reduction in that source of revenue.

We have no sympathy with destructive Socialism; but desiring to be fair to all, we would suggest a campaign to prevent this objectionable frittering away of which is generally understood to be a desirable tax.

ROYAL MARRIAGES.

In these democratic days, and England being the exponent of the best type of democracy, it is interesting to recall legislation dealing with the above subject. It comes before us in the pleasing incident referred to in the following article in the *Law Times* (Eng.):—

The announcement in the *Court Circular* of the 27th ult. of the betrothal of H.R.H. Princess Victoria Patricia of Connaught to Commander the Hon. Alexander Ramsay, R.N., is accompanied with the statement that the King and Queen have received the "gratifying intelligence," and that the King "has gladly given his consent to the union." The consent of the Crown to this marriage, couched in words which convey the most cordial approbation, is not a mere gracious formality. It is an essential condition precedent to such a marriage under the provisions of the Royal Marriage Act, 1772, which was a measure most strenuously opposed on constitutional grounds and productive of momentous results. On the 24th March, 1772, the Royal Marriage Act was passed; the powers were characterised by Lord Chatham as "tyrannical," while Horace Walpole said "never was an Act passed against which so much and for which so little was said." The Act provides that no descendent of George II. (except the issue of princesses married into foreign families) should be capable of contracting matrimony without the King's previous consent signified under his sign manual and declared in Council, and that any marriage contracted without such consent should be null and void. There is a proviso, however, enabling members of the Royal Family who are twenty-five years of age to marry without the King's consent after having given twelve months' previous notice to the Privy Council, unless in the meantime both Houses of Parliament should signify their disapprobation of the marriage.

Sir Erskine May thus comments on this enactment, [illegible] whose modification the changes produced by the war supply grounds: "The arbitrary character of the Act was conspicuous. It might be reasonable to prescribe certain rules for the marriage of the Royal Family, as that they should not marry a subject, a Roman Catholic, or the member of any Royal House at war with this country, without the consent of the King; but to prescribe no rule at all, save at the absolute will of the King himself, was a violation of all sound principles of legislation. Again, to extend the minority of princes and princesses to twenty-five created a harsh exception to the general law in regard to marriages."

THE ABOLITION OF LAW COURTS.

Those who have read Shakespeare's account of the rebellion of Jack Cade may remember the bloodthirsty proposal of Dick the butcher, a follower of Cade: "The first thing we do, let us kill all the lawyers"; to which Cade replied, "Nay, that I mean to do." Other instances, we are sorry to say, are to be found in history and fiction of this unreasoning dislike of the profession, particularly that of the Emperor Napoleon I., who, no doubt, regarded the Bar as a serious obstacle to the exercise of arbitrary dominion. One of the latest instances is that of the extremists in Russia, who have, it seems, made a decree abolishing all law Courts from the Senate to the County Courts, and have even proceeded to the abolition of the Bar. If, however, the statement of Shylock is true, "You take my life if you do take the means whereby I live," a formal decree for the abolition of the Bar was scarcely necessary, as its existence could not be separated from that of the Courts. And whatever may be the opinion of a fluctuating body of revolutionists, it may be contrasted with that of the English-speaking communities of the world, in all of which the highest political honours have been obtained by members of the Bar. It may be added that the Russian example is hardly likely to be followed in Germany, where there are signs that the revolution will proceed in an orderly manner. And the influence of a long line of dis-

tinguished jurists should count for a good deal, though that is not conclusive, for Russia has names eminent in jurisprudence as well. In any case, the interruption of the normal processes of law, and of the study and practice of the law, can, in a civilized country, only be temporary.—*Solicitors' Journal.*

JUDGES AND COUNSEL.

On the relations between Judges and counsel Mr. Strahan has some good stories to tell, though they suggest perhaps an over-readiness on the part of counsel to keep the Judge in his place. "Gentlemen of the jury," said Curran, who was annoyed at the Judge repeatedly shaking his head to indicate dissent, "you may have noticed his lordship shaking his head. I ask you to pay no attention to it; because if you were as well acquainted with his lordship as I am, you would know that when he shakes his head there is nothing in it." And the stories which Mr. Strahan gives of Lord Russell's treatment of Judges when, as Sir Chrales Russell, they interrupted him needlessly, seems to tell as much against the manners of the Bar as against the fussiness of the Bench. We prefer the more pointed reproof of the late Mr. Oswald, who, when told by an irritated Judge that he could teach him neither law nor manners, blandly answered, "I respectfully agree, my lord; you could teach nobody either." And yet we doubt whether any such retort was ever actually made in the serene atmosphere of the Chancery Division. At any rate, it would be taken as what it was meant for—a somewhat daring jest, and would be accepted the more readily from Mr. Oswald, who was known not only for his "Contempt of Court," but for his quite correct answer to the judicial inquiry, "What brings you here, Mr. Oswald?" "Two and one, my lord," and that settled the matter. For peppery Judges Mr. Strahan makes use of Sir Pepper Arden, afterwards Lord Alvanley, and the comment of the French visitor for whom his name was translated as "*Le Chevalier Poivre Ardent.*" *Parbleu,*" he muttered, "*il est très bien-nommé.*" But the talkative Judge has been rebuked once for all by the great authority, Lord Bacon, to whom we have already referred,

and it is impossible to refer to judical bearing without having the "Essay on Judicature" in mind. "An over-speaking Judge is no well-tuned cymbal. It is no grace to a Judge, first to find that which he might have heard in due time from the Bar, or to shew quickness of deceit in cutting off evidence or counsel too short, or to prevent information by questions though pertinent." All this, however, is outside the real everyday relationship of Bar and Bench, which is one of quiet co-operation in the administration of justice. Mr. Strahan—may we say, as in the "Bidding Prayer," "as in private duty bound"—commends as the best example of this the ordinary relationship of a Chancery Judge and the leaders of his Court, by which business is so much facilitated, "The Judge trusts implicitly to the word of counsel, and his trust is never betrayed;" though neither Mr. Strahan nor ourselves would suggest that this rule of conduct is confined either to the inner Bar or to the Chancery Division.—*Solicitor's Journal.*

COUNSEL AND CLIENTS.

The relation of counsel to their lay clients is always something of a mystery to the latter. The client cannot understand the exertions of his advocate without believing that he takes a special and personal interest in the case. And yet the mastery of the facts is but for a brief period. They are forgotten as soon as learnt. A junior counsel was suddenly brought into a case in which Sir Charles Russell had already appeared in on several occasions. He was surprised that his leader relied on him for the facts. "I know nothing about it," said Sir Charles. "But," replied the junior, "you have argued it three times already." "I tell you I know nothing about it," answered Sir Charles angrily. "If I remembered all the facts in all the cases I have been in, what sort of a thing would my head be now, do you think?" But, as Mr. Strahan says, the superficial knowledge which counsel cram up has "usually vast *lucunæ* in it, which, when discovered, reveal the abysmal ignorance which lies behind"—an ignorance which may well be disastrous when technical knowledge is in

question, as in a patent case. And so we are not surprised at the story of Lord Kelvin (then Sir William Thomson), the great authority on electricity, who agreed with the consecutive questions of counsel, each assuming what seemed a necessary result of the preceding up to a certain point; but at length to a final question, "Wouldn't you say that so-and-so must of necessity follow from that?" he replied, after a pause, "I wud—if I knew nothing about electricity, but I know a deal." And that cross-examination went no further. The idea that an advocate should only take up a cause in which he believes is, according to Mr. Strahan, at the bottom of the popular distrust of lawyer politicians—a distrust which he says is wholly impersonal, and rarely damages individual counsel who take to public life. We have only to glance at the personnel of the political world to see the truth of this remark. But whatever may be the ethics of the lawyer politician, in his professional life his business is to do the best he can for his client. If he wins, so much the better for his client and himself. For success in winning causes is the best passport to success in the profession. But if he loses, he takes the result philosophically. We have, we are afraid, laid Mr. Strahan's article under somewhat heavy contribution, but we are very far from having exhausted either its stories or its interest. —*Solicitor's Journal.*

Are executors justified in going to the expense of a tombstone? This question is discussed in a recent number of the *Law Times* (Eng.), vol. 146, p. 93. The general rule, as laid down in *Stagg* v. *Prenter*, 3 Atk. 119, is to the effect that executors are justified in incurring such expenses in connection with the funeral of the deceased as his estate and degree demand. In a more recent case (*Goldstein* v. *Salvation Army Assurance Society*, 117 L.P. Rep. 63, (1917) 2 K.B. 291) Mr. Justice Rowlatt, while admitting that a tombstone, like mourning, is not generally to be considered as a funeral expense, does not definitely hold that it is not. Under these circumstances it may be desirable to insert a provision in a will authorising executors to go to the necessary expense for that purpose if so desired.

REVIEW OF CURRENT ENGLISH CASES.

(Registered in accordance with the Copyright Act.)

BILL OF EXCHANGE—FORGED BILL OF LADING ATTACHED TO BILL OF EXCHANGE—PRESENTMENT FOR ACCEPTANCE—WARRANTY OF GENUINENESS OF BILL OF LADING ATTACHED—REPRESENTATION—MISTAKE OF FACT—FAILURE OF CONSIDERATION—RIGHT TO RECOVER MONEY PAID BY ACCEPTOR.

Guaranty Trust Co. v. *Hannay* (1918) 2 K.B. 623. This was an appeal from the decision of Bailhache, J. (1918) 1 K.B. 43 (noted ante vol. 54, p. 149). This much litigated case arose out of the fraud of certain cotton brokers in the United States. The defendants were dealers in cotton and purchased 100 bales from Knight Yancey Co. for £1,464 9s., and in payment of the price delivered to the sellers in the United States a bill of exchange drawn on a Liverpool bank for the amount of the price. The plaintiffs, who were dealers in foreign bills of exchange, purchased the bill in good faith, having a bill of lading attached. The bill of exchange on its face shewed that it was given for $\frac{100}{\text{R.S.M.I.}}$ bales of cotton which were the bales referred to in the bill of lading. The bill of exchange, with bill of lading attached, was sent by the plaintiffs to England and there paid on presentation by the drawees, after the defendants' agent had inspected the bill of exchange and bill of lading, and expressed himself satisfied therewith. It subsequently turned out that the bill of lading had been forged by Knight Yancey Co. The defendants thereupon brought an action in New York against the plaintiffs to recover the amount paid on the bill of exchange. In that action the New York Court held that, according to American law, the bill of exchange was not an unconditional undertaking to pay, but was contingent on the bill of lading being genuine; but it was ultimately decided in that action that the case was governed by the law of England. In order to save the expense of getting expert evidence as to the English law the defendants in the New York action brought the present action in order to obtain a declaration as to their rights in the premises, and the defendants counterclaimed for the relief which they had sought in the New York action. Bailhache, J., held that the case was governed by American law, and applying that law as laid down in the New York action dismissed the action and gave judgment for the defendants on their counterclaim. The Court of Appeal (Pickford, Warrington, and Scrutton, L.JJ.) were

of the opinion that the case was governed by English law, and that according to that law there was no implied guaranty by the plaintiffs of the genuineness of the bill of lading, and therefore that they were entitled to the declaration asked and to a dismissal of the counterclaim. Their Lordships also discussed the question from the standpoint of American law, and do not think that the decision of the American Courts on which Bailhache, J., relied, really support his conclusion as to their effect.

PRACTICE—STRIKING OUT PLEADINGS—ACTION AGAINST SERVANT OF CROWN—CONTRACT BY SERVANT OF CROWN ON BEHALF OF CROWN—DECLARATORY JUDGMENT—ACTION OR PETITION OF RIGHT.

Hosier v. *Derby* (1918) 2 K.B. 671. This was an action against a servant of the Crown to obtain a declaratory judgment to the effect that the plaintiffs were entitled to compensation as against the Crown for the acts of the defendant in breach of a contract made by him on behalf of the Crown. The defendant moved to strike out the statement of claim on the ground that the action was not maintainable. The Master, to whom the application was made, granted the order asked, but Coleridge, J., on appeal, set it aside—and this was an appeal from Coleridge, J. The Court of Appeal (Eady, M.R., and Scrutton and Duke, L.JJ.) allowed the appeal. The plaintiffs relied on *Dyson* v. *Attorney-General* (1912) 1 Ch. 158, but Eady, M.R., who delivered the judgment of the Court, said: "I am of opinion that an action can no more be brought against a servant of the Crown for a declaration as to what a contract means than it can be brought for a substantive remedy on the contract." For the defendant it was argued that the plaintiffs' remedy, if any, was by petition of right, and though the Court of Appeal expresses no opinion on that point, it seems probable that that argument is correct.

DEFAMATION—LIBEL—PRIVILEGE—MATTER OF COMMON INTEREST —ABSENCE OF MALICE—LETTER TO FIRM—PUBLICATION TO CLERKS—LOSS OF PRIVILEGE.

Roff v. *British & American Chemical Co.* (1918) 2 K.B. 677. This was an action for a libel which was written and sent in the following circumstances: The defendants had a dispute with a firm named Mann & Cook, which, it was proposed, should be referred to arbitration. Mann & Cook proposed the plaintiff as their arbitrator. The defendants objected to the appointment,

and wrote and sent a letter to Mann & Cook containing the libel in question. The letter was opened in the ordinary course of business by one clerk, and by him handed to another, who handed it to one of the firm. The defendants pleaded privilege. At the trial the jury found the letter was a libel and that there was no malice, and assessed the damages at £50. On these findings Darling, J., gave judgment for the plaintiff, but the Court of Appeal (Fady, M.R., and Scrutton, and Duke, L.JJ.) held that the letter was concerning a matter in which the parties had a common interest and that the occasion was privileged, and that the privilege was not lost by the publication to the clerks of Mann & Cook. The Court thereupon dismissed the action.

DEFAMATION—LIBEL—PUBLICATION OF LIBEL BY PRINCIPAL TO HIS AGENT—DOCUMENT CONTAINING LIBEL MISLAID BY AGENT—DISCOVERY OF LIBEL BY PERSONS LIBELLED—CONSEQUENT RECOVERY OF DAMAGES AGAINST PRINCIPAL—LIABILITY OF AGENT TO PRINCIPAL—PRINCIPAL AND AGENT.

Weld-Blundell v. *Stephens* (1918) 2 K.B. 742. This was an action by principal against his agent to recover damages for alleged neglect of duty in the following circumstances: The plaintiff wrote a letter to the defendant, as his agent, which contained a libel on three persons. The agent handed the letter to his partner and asked him to carry out the instructions contained in it. The defendant's partner left the letter on the table of one of the persons libelled, whereby he and the other two persons became aware of the libel and then brought an action against the plaintiff and recovered damages against him for such libel. The plaintiff claimed to recover against the defendant the damages he had been thus compelled to pay, alleging that the defendant had committed a breach of his duty in thus allowing the letter to come to the knowledge of the parties libelled. The action was tried with a jury who found that it was the duty of the defendant to keep the letter secret, and that he had neglected the duty, and that the actions brought against the plaintiff were so brought in consequence of the defendant's negligence. Notwithstanding these findings, Darling, J., held that the contract between the plaintiff and defendant did not contain any implied term such as alleged by the plaintiff, and that no breach of contract or dereliction of duty had been committed by the defendant, and whether or not this was so, the plaintiff could not recover against the defendant because he had had to make reparation for a wrong committed by himself. The jury seem to have taken the commonsense point of

view that an agent, like a solicitor, is bound to secrecy in regard to communications from his principal, and we are not sure whether the jury's law is not on the whole preferable to that of the Judge.

ARBITRATION—AWARD IN ALTERNATIVE FORM—SPECIAL CASE—FINAL AWARD IF SPECIAL CASE NOT PROSECUTED.

Re Olympia Oil & Cake Co. v. *MacAndrew* (1918) 2. K.B 771. This was an appeal from an order of a Divisional Court dismissing a motion to set aside an award. The award in question was made in an alternative form; it stated a special case and limited a time within which the case should be set down for hearing; and in default it made a final award of the matters in question. The Court of Appeal (Banks, and Scrutton, L.JJ., Pickford, L.J., dissenting) that the arbitrators had not exceeded their jurisdiction and held that the award was not bad on its face and dismissed the appeal.

LANDLORD AND TENANT—LESSEE OF APARTMENTS—FLIGHT OF STEPS FROM STREET—OBLIGATION OF LESSOR TO KEEP STEPS IN REPAIR.

Dunster v. *Hollis* (1918) 2 K.B. 795. The plaintiff in this case was the lessee of two rooms in a house; the lessor retained control of the rest of the house and of the front steps. These steps had been suffered to fall into disrepair and the plaintiff, in using them, fell and was injured. Lush, J., held that the defendant was under an obligation to the plaintiff, as his tenant, to take reasonable care to keep the steps reasonably safe, and that he had failed in this duty and was liable to the plaintiff for damages for the injury thus occasioned.

LANDLORD AND TENANT—NOTICE TO QUIT ACCOMPANIED BY LETTER THAT IT WAS TO TAKE EFFECT UNLESS IN MEANTIME THE LESSORS SAW FIT TO CHANGE THEIR OPINION.

Norfolk v. *Child* (1918) 2 K.B. 805. This was an appeal from the order of a Divisional Court (1918) 2 K.B. 351 (noted *ante* p. 24). The question was to the sufficiency of a notice to quit, accompanied by a letter, to the effect that it was to take effect unless in the meantime the lessors saw fit to change their opinion. The Divisional Court upheld it and the Court of Appeal (Bankes and Scrutton, L.JJ., and Eve, J.) affirmed the decision.

HIRE-PURCHASE AGREEMENT—OPTION TO PURCHASE—SALE BY HIRER—ASSIGNABILITY OF CONTRACT—DETINUE—CONVERSION—MEASURE OF DAMAGES.

Whiteley v. *Hill* (1918) 2 K.B. 808. We are glad to find that the Court of Appeal (Eady, M.R., and Warrington, and Duke, L.JJ.) have seen their way to reversing the judgment of a Divisional Court (Salter and Roche, JJ.) in this case (1918) 2 K.B. 115 (noted *ante* vol. 54, p. 432). The action arose out of a hire-purchase agreement made in regard to a piano by the plaintiff with Miss Nolan. Under the agreement the hirer had an option to purchase the piano paying the price in instalments and until the price was fully paid she was to be bailee of the piano for the plaintiff. Before the price was paid Miss Nolan sold the piano to the defendant. The plaintiffs brought the present action for detinue and conversion and claimed to recover possession of the piano or its full value. The defendant paid into Court the full amount of the balance due on the price and the Judge of the County Court, who tried the action, dismissed it. The Divisional Court held that the sale by Miss Nolan amounted to a repudiation of the agreement and therefore that the plaintiffs were entitled to recover possession of the piano or its full value. The Court of Appeal, however, held that the Judge of the County Court was right and restored the judgment pronounced by him.

INSURANCE—FIRE CAUSED BY "WAR BOMBARDMENT, MILITARY OR USURPED POWER"—REBELLION IN IRELAND—WARFARE BETWEEN FORCES OF CROWN AND "USURPED POWER"—BOMBARDMENT BY CROWN FORCES—DAMAGE TO INSURED PREMISES.

Curtis v. *Mathews* (1918) 2 K.B. 825. This was an action on a policy of fire insurance to recover for loss by fire occasioned by bombardment of premises by forces of the Crown to quell Irish rebellion. The policy covered loss by fire "directly caused by war bombardment, military or usurped power," whether originating on the premises or elsewhere. The policy, however, also contained a proviso that no claim was to attach for "destruction by the Government of the country in which the property is situated. During the currency of the policy certain persons styling themselves a Provisional Government proclaimed an Irish Republic and occupied with armed forces the Post Office and other public buildings in Dublin. The Post Office was bombarded by the Crown forces and as a result caught fire which spread and de-

stroyed the insured premises. Roche, J., who tried the action, held that the loss was covered by the policy, and that the proviso only related to an intentional destruction of property by the Government.

GUARANTY—SURETY—PAYMENT ON DEMAND—NECESSITY OF DEMAND—STATUTE OF LIMITATIONS—NOVATION.

Bradford Old Bank v. *Sutcliffe* (1918) 2 K.B. 833. This was an action to enforce a guaranty in the following circumstances: In 1894 the plaintiff agreed to make a loan of £3,600 to a company, and to allow the company to make an overdraft of £2,500 upon the security of £6,100 of debentures and the guaranty of the defendants, two of the directors. The debentures were deposited and the defendants gave the plaintiffs a guaranty to pay them on demand all sums owing by the company not exceeding £6,100 and interest from time of default by the company. In 1898 one of the defendants became insane, and of this the plaintiffs had notice in 1899. The Company continued to bank with the plaintiff until 1907 when the plaintiff became amalgamated with another bank, selling to the new bank all its debts and the benefits of all securities, and guarantees, the company's account was transferred to the new bank and the company paid interest to the new bank. In 1912 the plaintiffs demanded payment from the company of the amounts owing, and then commenced an action to enforce the debentures in which they realised part of the amount due to them; and in 1915 the present action was commenced against the defendant as committee of the lunatic guarantor for the balance due from the company after deducting the amount realised on the debentures. Lawrence, J., who tried the action, held that so far as the lunatic guarantor was concerned his guaranty ceased as a continuing guaranty in 1899 when the plaintiffs had notice of his lunacy, though his liability for the amount then due continued; that the amount then due on current account had been satisfied by subsequent payments; but that the defendant was liable for the amount due on the loan account. The defendant appealed and the Court of Appeal (Pickford, Bankes, and Scrutton, L.JJ.) held (1) that the loan account and current account could not be treated as one account, and therefore that subsequent payments into the current account could not properly be applied as satisfying the loan account; (2) that the plaintiffs' claim was not barred by the statute, because no cause of action arose until demand had been made by the plaintiffs and no demand was made until 1912; (3) that the transactions arising out of the amalgamation of the plaintiffs with

the new bank and the dealing with the accounts of the company consequent thereon even if they could be said to amount to a novation did not discharge the surety and therefore (4) that the defendant was liable for the amount due in respect of the loan, and the appeal was therefore dismissed.

The report states that the action was brought against the committee of the lunatic, but from the discussion which took place as to costs it would appear that the lunatic himself was also a party because the Court gave costs against the lunatic but refused to make a personal order against his committee.

CRIMINAL LAW—CHARGE OF GROSS INDECENCY WITH BOY—EVIDENCE OF POSSESSION OF INDECENT PHOTOGRAPHS OF BOYS—ADMISSIBILITY—JURY PENDING ADJOURNMENT CONVERSING WITH WITNESS—MATERIALITY.

The King v. *Twiss* (1918) 2 K.B. 853. This was a prosecution for committing acts of gross indecency with a boy. At the trial the Crown tendered evidence of the possession by prisoner of a number of indecent photographs of boys. Pending an adjournment of the trial two of the jurors had conversed with witnesses for the prosecution. On the matter being drawn to the attention of Coleridge, J., the presiding Judge, he called on the jurors for an explanation, and on their statements he was satisfied that the accused had been in no way prejudiced. The prisoner was convicted, and he appealed to a Divisional Court (Avory and Lush, JJ.) on the ground of the improper reception of evidence and the jurors having conversed with witnesses, relying on the latter ground on the case of *Rex* v. *Ketheridge* (1915), 1 K.B. 467 (noted *ante* vol. 51, p. 246). The Divisional Court, however, held that the evidence objected to was admissible on the principle that the possession of burglars' tools by a person accused of burglary is admissible; and they distinguished the *Ketheridge* case because there the action complained of had taken place after the trial had closed and the Judge had charged the jury, whereas in the present case the irregularity had taken place pending the trial and as the Judge had found had in nowise prejudiced the prisoner.

SHIP—SHIP REQUISITIONED BY ADMIRALTY—CHARTERPARTY—ABSENCE OF LIGHTS IN PURSUANCE OF ADMIRALTY INSTRUCTIONS — COLLISION — "CONSEQUENCE OF WARLIKE OPERATIONS"—"CAUSE ARISING AS A SEA RISK."

British and Foreign S.S. Co. v. *The King* (1918) 2 K.B. 879. This was an appeal from the decision of Rowlatt, J. (1917) 2 K.B.

769 (noted *ante* vol. 54, p. 108). The plaintiffs, in a petition of right, claimed to recover for the loss of a ship requisitioned by the Admiralty. The requisition was subject to the terms of a charter-party whereby it was provided that the Admiralty should not be held liable if the vessel be lost in consequence of any cause arising as a sea risk, but the Admiralty took the risk of "all consequences of hostilities or warlike operations." The vessel was engaged in evacuating troops from the Gallipoli; by instructions of the Admiralty, she was forbidden to shew any lights. In consequence of the absence of lights a collision with a French battleship took place, and the vessel was lost. Rowlatt, J., in these circumstances, held that the Admiralty was liable, and the Court of Appeal (Eady, M.R., and Scrutton, and Duke, L.JJ.) agreed with his decision.

JUDICIAL DISCRETION— MODE IN WHICH JUDICIAL DISCRETION IS TO BE EXERCISED.

Hines v. *Hines* (1918) P. 364. Although a divorce case deserves attention for the fact that therein is discussed the way in which a judicial discretion ought to be exercised. The application was to grant a decree absolute for divorce notwithstanding the petitioner had himself committed adultery. Although, under the Divorce Act, the judge has an absolute discretion yet McCardie, J., held that discretion must not be exercised capriciously or in accordance with the private views of the Judge, but subject to the authorities and considerations of public morality therein laid down and in the exercise of such discretion he refused the application.

COMPANY—DEBENTURES—TRUST DEED—SHARES IN ANOTHER COMPANY TRANSFERRED TO TRUSTEE—RIGHT OF TRUSTEE TO VOTE ON SHARES HELD AS TRUSTEE FOR DEBENTURE HOLDERS —INTERLOCUTORY APPLICATION.

Siemens v. *Burns* (1918) 2 Ch. 324. This was an appeal from Ashbury, J. The questions involved concerned the rights of trustees for debenture holders as against the company issuing the debentures. In this case certain shares in another company had been transferred to trustees for debenture holders. The debentures were not in default and the trustees claimed to vote as shareholders in respect of the shares so transferred; the company, on the other hand, claimed the right to say how they should vote; but Astbury, J., held that the trustees had the right to vote as they saw fit, and in the exercise of that right were not subject to the direction or control of the transferor company, and the Court of Appeal (Eady, M.R., and Scrutton, and Duke, L.JJ.) affirmed

his decision on this point. Astbury, J., had also, on an interlocutory application of the trustees, Burns, & Hogg, ordered the company to transfer half the shares standing in their names into the joint names of Burns & Hambro. The Court of Appeal, however, considered that such an order could not be properly made on an interlocutory application and it was therefore rescinded.

CHARITY—CHARITABLE PURPOSES—BEQUEST FOR MASSES FOR SOUL OF TESTATOR—SUPERSTITIOUS USES—1 EDW. VI. C. 14.

In re Egan Keane v. *Hoare* (1918) 2 Ch. 90. A pecuniary bequest for masses for the repose of the soul of the testator was held by the Court of Appeal (Eady, M.R., and Warrington, and Duke, L.JJ.) affirming the decision of Eve, J., to be null and void as a superstitious use within the meaning of the statute, 1 Edw. VI. c. 14. In this Province such a bequest is held to be valid: *Elmsley* v. *Madden*, 18 Gr. 386; *Re Zeagman*, 37 O.L.R. 536, as the act of Edw. VI. is considered not to be in force in Ontario.

REVENUE—ESTATE DUTY—SETTLED LEGACY—DEATH OF TENANT FOR LIFE WITHIN TWELVE MONTHS FROM TESTATOR'S DEATH (SUCCESSION DUTY ACT, R.S.O. C. 24, S. 13).

In re Harrison Johnstone v. *Blackburn* (1918) 2 Ch. 374. In this case the simple question was whether or not the interest of a tenant for life in a settled legacy was liable to estate duty, he having died within twelve months after the testator's death, and therefore never having had any enjoyment of the legacy. Sargant, J., held that the interest of the life tenant was in such circumstances not dutiable: (See R.S.O. c. 24, s. 13).

COMPANY—DEBENTURE HOLDERS' ACTION—WINDING-UP—CONTRIBUTORS TO NEWSPAPER—"CLERK OR SERVANT"—PREFERENTIAL CLAIM—COMPANIES CONSOLIDATION ACT, 1908 (8 EDW. VII C. 69), SS. 107, 109—(R.S.C. C. 144, S. 70; R.S.O. C. 178, S. 98).

In re Ashley Ashley v. *The Company* (1918) 2 Ch. 378. In this action, which was brought to enforce the securities of holders of debentures of a newspaper company, an inquiry was directed to inquire as to creditors entitled to preferential payment, and claims were preferred by two persons who had acted as paid correspondents of the company in different localities for the purpose of gathering and supplying sporting news from time to time. They performed the work as they pleased and did not work under

the control of the company. These persons were paid certain specific sums for their services, but were not treated or regarded as permanent employees of the company and were at liberty to terminate their engagements with the company at any time without notice; and it was held by Sargant, J., that neither of them came within the category of "clerk or servant" within the meaning of the Companies Consolidation Act, 1908 (8 Edw. VII. c. 69), ss. 107, 209 (and see R.S.C. c. 144, s. 70; R.S.O. c. 178, s. 98).

POWER OF APPOINTMENT BY WILL—MARRIAGE SETTLEMENT—ENGLISH WIFE—FRENCH HUSBAND—CONSTRUCTION OF SETTLEMENT ACCORDING TO ENGLISH LAW—FRENCH DOMICIL—UNATTESTED FRENCH HOLOGRAPH WILL—VALID EXERCISE OF POWER—EXTENT OF PROPERTY APPOINTED—FRENCH LAW—WILLS ACT 1837 (1 Vict. c. 26), s. 27—(R.S.O. c. 120, ss. 11, 13, 30).

In re Lewal Gould v. *Lewal* (1918) 2 Ch. 391. The question in this case was whether, and to what extent, a testamentary power had been well executed. The power was contained in the marriage settlement of an English lady married to a Frenchman domiciled in France. By the terms of the settlement it was to be construed according to English law. The lady was a minor and of the age of 19 at the time of the making of the will, which was an unattested holograph will made in France, whereby she appointed her husband her "legataire universel." The will was a valid will according to the law of France to the extent of one-half of the property of the testatrix, as she was under 21. Peterson, J., held that the provision requiring the settlement to be construed according to English law did not have the effect of restricting the testamentary capacity of the wife to full age according to the law of England and that the will, being a valid will according to the law of France, was within the contemplation of the settlement as an instrument by which the power could be exercised, and that s. 27 of the Wills Act, 1837 (see R.S.O. c. 120, s. 30) could be invoked for the purpose of interpreting the French will and that the power had, under that section, been effectually exercised, but as the will was only valid according to the French law to the extent of one-half to the testatrix's property it only operated on one-half of the property subject to the power, and as to the other half it went as in default of appointment.

MORTGAGE—CHARGE TO SECURE FURTHER ADVANCES—COLLATERAL SECURITIES DEPOSITED BY MORTGAGEES WITH MORTGAGORS TO SECURE LOAN TO MORTGAGOR—SALE BY BANK—PROCEEDS APPLIED ON LOAN ACCOUNT.

In re Smith Lawrence v. *Kitson* (1918) 2 Ch. 405. By memoranda of charge a testator had charged in favour of his two sisters an estate in Dominica to secure certain stated sums, and such further sums as they or either of them should advance to him. Subsequently the two sisters from time to time deposited with the testator's bank by way of collateral securities for the testator's loan account with the bank. These securities the bank ultimately realised and applied the proceeds towards payment of the loan. In the administration of the testator's estate, the sisters claimed that the amount realised by the bank from the securities so deposited by them were further advances, and as such secured by the charge above referred to; and Peterson, J., upheld that claim.

Correspondence.

CANADIAN BAR ASSOCIATION.

To the Editor, CANADA LAW JOURNAL.

Dear Sir:—I have read with a great deal of interest your editorial on the Canadian Bar Association and the Administration of Justice in the last issue of the *Journal*. So far as I can see, every one of the commendations set out should receive the unqualified support of every practitioner in Canada. The Canadian Bar Association has justified its existence, did it do nothing further than express in concrete form the opinions that individual practitioners have possessed on these propositions for many years. These commendations can only be effective and the subject of action if they are followed up and the duty rests upon the whole Bar to become active in that connection. Insofar as the Canadian Bar Association is concerned, would it not be possible, by the different bodies of Benchers co-operating, for every practitioner in Canada to be a member of the Association; say, by constituting the Association through the different provincial bodies so that each member of good standing in each Province would be a member of the Canadian Bar Association, the fees of such individual members to be paid by the Benchers of the Province to which they belonged.

The amount of such fees to carry on the work of the Bar Association would be very small indeed, and, in fact, might not result in any increase in the yearly fees paid provincially. With such an organization the Bar Association could become a power that need not merely commend such matters as that referred to in your editorial but could demand these reforms to be brought about and would be in a position to enforce such a demand. There is no reason why the standing of the Canadian Bar should not be as high as that of the English Bar in ethics and in its standard of proficiency. No effort should be withheld that would tend towards that end and the Canadian Bar Association could do most effective work in that direction. It could also correct the anomalies that exist and be of most material aid to legislation that will be for the benefit of the whole Dominion. If these views meet with your own, perhaps through the medium of your journal you could bring them to the attention of the members of the profession.

Yours,

W. H. D. LADNER.

[We are glad to publish the above communication. It is of interest to the profession and contains food for thought which may in due time develop into beneficial action. All organizations such as the Canadian Bar Association require time for development and to secure the confidence and support of the profession. The suggestion made by our correspondent was also made some time ago by some members of the Manitoba Bar, and we believe also in Saskatchewan. Their suggestion was that there should be in each of the Provinces a small sum added to the annual fees of members of the Provincial Law Societies which would automatically make them members of the Canadian Bar Association. We should be glad to hear from any of our readers on this subject. EDITOR, C.L.J.]

RE THE ONTARIO TEMPERANCE ACT.

To The Editor, CANADA LAW JOURNAL:

Sir:—I wish to call your attention to the tyrannical and un-British character of the so-called Ontario Temperance Act. If you read the same you will be struck with many of its provisions, which are utterly at variance with all principles of British law and liberty. At present, I will call your attention to subsection (3) of section 55 which provides in short, as per marginal note, that a person found intoxicated is compellable to disclose name of persons

from whom liquor was obtained. The penalty for non-disclosure is imprisonment for an indefinite length of time. Section 79: A witness refusing to answer a question may be committed by the presiding Justice or Justices to the common jail of the county or to a lock-up there to remain until he consents to answer. That may be imprisonment for life, nothing less. Section 83: The effect of this section is that it is not necessary to prove that an offence has been committed but the Magistrate or Justice or Justices of the Peace may make a conviction if he or they think that the defendant is guilty; no actual proof is necessary. Under such laws no man is sure of his liberty or freedom. He is charged with an offence under the Act and no proof is necessary to convict him. The much and justly abused Spanish Inquisition was no worse than the O.T.A. How long are Britishers, if there are any in Ontario, going to put up with such laws? Kindly insert this in the JOURNAL and perform a kind action for the Goddess of Liberty, who appears at present to be suffering from Spanish "Flu."

Yours in L. B. & C.,

Jan. 4, 1919. LEX.

[The cruel treatment which might result from the enactments above referred to is unlikely. Our temperance friends would probably say that those provisions are intended to operate *in terrorem;* but, as such, and also being inquisitorial are objectionable.

It has often been said, and we fear with some truth, that Temperance advocates too often mar their good work by intemperance in words and acts.]

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Man.] [Dec. 9, 1918.

NORTH AMERICAN ACCIDENT INSURANCE CO. v. NEWTON.

Accident insurance—Employer's indemnity—Assignment by insured —Right of assignment against insurer—Payment of claim— Money advanced by outside party—Measure of damages.

By an Employer's Liability Policy, N. was insured against loss from liability an account of bodily injuries to, or death of, an employee. N. incurred such liability but made an assignment for benefit of his creditors before he paid his employee's claim. With money advanced by a third party the assignee paid it and brought action against the insurer to be reimbursed.

Held, that the Insurance Company was liable; that the right of N. to pay his employee and collect the amount from the Insurance Company passed to his assignee; that payment to the employee before the assignment was not essential; that the insurer could not inquire into the source from which the money came to make the payment; and that the insurer's liability was not limited to the amount which the insolvent estate realized to pay the creditors.

Appeal dismissed with costs.

Chrysler, K.C., for appellant. *E. K. Williams*, for respondent.

Ont.] [Dec. 12, 1918.

DINGLE v. WORLD NEWSPAPER CO.

Pleading—Libel—Action against newspayer company—Advantage of want of notice—Averment in plea—Denial—R.S.O. [1914] c. 71, s. 8 (1) and 15 (15).

By sec., 15 subsec. 1 of the Libel and Slander Act (R.S.O. [1914] ch. 71) the defendant in an action against a newspaper company is not entitled to take advantage of the want of notice required by sec. 8 unless the name of the proprietor and publisher is stated at a specified place in the paper. In a case in which there was no proof that the name was so stated:—

Held, reversing the judgment of the Appellate Division (43 Ont. L.R. 218) that the failure of the plaintiff to allege non-compliance with the requirements of sec. 15 (1) in his reply to a plea

setting up want of notice is not an admission of the fact of such compliance.

Held also, that under the practice in Ontario, even if the defendant by his plea alleges such compliance, the same is not admitted by the absence of denial in the application.

Appeal allowed with costs.

D. J. Coffey, for appellant; *Kenneth Mackenzie*, for respondents.

Bench and Bar

JUDICIAL CHANGES IN ENGLAND.

These changes have been of frequent occurrence during the last few years, and it is difficult to keep track of the personnel of the English judiciary. Lord Findlay, who not very long ago was promoted to the eminent position of Lord High Chancellor of England, has resigned. He was a man highly thought of by his brethren in England as a sound lawyer of wide experience and learning and personally popular. He was well known to the profession in the overseas Dominions and was retained in numberless appeals to the Privy Council. He is succeeded by Sir F. E. Smith, the Attorney-General, who, as such, has a traditional right to the reversion to the Wool-sack. We had the pleasure on a recent occasion of seeing and hearing the new Chancellor in this country. We congratulate him on his promotion.

Sir George Howat, who was Solicitor-General, now becomes Attorney-General, and in his turn is succeeded by Sir Ernest Pollock. Both these new Law Officers of the Crown have done excellent work for their country during the late war.

The vacancy in the Chancery Division, caused by the death of Mr. Justice Neville, has been filled by the appointment of Mr. R. O. Lawrence, K.C.

The appointment of Sir George Cave to the office of a Lord of Appeal, rendered vacant by the death of Lord Parker, meets with the approval of the profession. He had a large practice as a junior, which was well maintained after he took silk in 1904. It will be remembered that he was for a short time Solicitor-General, and subsequently Home Secretary, in which positions he is said to have given good service.

Flotsam and Jetsam.

THE PUNISHMENT OF ATROCIOUS GERMAN CRIMINALS.

The British Government with commendable promptitude appointed a Board of Commissioners to act with the Law Officers of the Crown, and in liaison with our Allies to inquire and report upon the individuals who have been guilty of atrocities during the past four years, with the purpose of making them personally responsible for such acts. The names are as follows:—

Chairman:—Sir John Macdonell, K.C., C.B.

Vice-Chairman:—Professor J. H. Morgan.

Members:—Sir Frederick Pollock, Bt., Sir Ernest Pollock, K.C., M.P., Sir Alfred Hopkinson, K.C., Sir John Butcher, K.C. M.P., Mr. C. F. McGill, K.C., Mr. H. F. Manisty, K.C., Mr. C. A. Russell, K.C., and Dr. A. Pearce Higgins, together with representatives from the War Office, the Foreign Office and the Admiralty. Their duty will be to report (1) As to the breaches of the law, and customs of the war, committed by the forces of the German Empire and their allies. (2) The degree of responsibility for these offences attaching to particular members of the German or other enemy forces, including members of the general staff, or other highly placed individuals. (3) The construction and procedure of a tribunal appropriate to the trial of these offences. (4) Any other matters cognate or ancillary to the above, which may arise in the course of inquiry.

The whole position was summed up by the Lord Chancellor at the Guildhall banquet, in the following words:—"We are face to face with the fact that the forces of our enemy have collapsed, and the duty now rests on us of seeing that international right is restored, and that the outrages that have been committed upon it are stamped with the disapproval which can only be adequately expressed by the punishment of those responsible."

Since the above was written it is announced that a large volume of evidence has been collected and a preliminary report is being prepared. This is engaging it is said the personal attention of the Attorney General of England. It is also stated that among the numerous criminals who are to be indicted are those of the Ex-Kaiser, Fritz, Turpitz, Generals Stein, Boehm, etc. The Belgians and French have their own lists as well.