Canada Law Journal.

VOL. LI. TORONTO, MAY, 1916 No. 5

THE WAR AND THE LAW OF CONTRACT.

It is sometimes said that the history of a country may be found written in its law reports. However true this may be as a general proposition, there can be no question that no account hereafter to be written of the Great War will be complete if it does not include some mention of its effect upon the law—and more particularly the commercial law of England.

The professor of jurisprudence is often heard to say that law is a progressive science. Does he need to fortify precept by example? Then let him advise his students to examine the "war decisions" since August, 1914. Here they will not only find the application of old principles to new conditions, but they will also see, in miniature, a process of development which has been taking place, on a larger scale, throughout the centuries.

It was the late Lord Russell of Killowen who said that the lawyer should be and remain a student to the end of his days; but alas! how few there are amongst the practitioners who can find time to study the law for its own sake! In consideration, therefore, for the many, the writer has endeavoured to make an examination of the more important cases relating to the effect of war upon contracts which have been discovered in the English courts since the war began. Prize law, which is a thing apart, has not been touched upon.

Owing to the activity of the German submarines—now, happily, in some degree lessened by means which it is not necessary or desirable to explain, numerous questions have arisen between owners and charterers of ships.

The risk of war is something which must always be taken into account by those who frame agreements for the hire of

ships. Consequently where, after the outbreak of war, a ship is captured and taken to a hostile port, the ordinary form of charter party answers the question, "Who bears the loss?" simply and clearly.

But "restraint of princes" may mean something more than capture or detention by enemy forces.

So where an English ship or cargo is insured against "taking at sea, arrests, restraints and detainments of all Kings, princes and people of what nation, condition or quality soever" the insured is protected against loss caused by a compliance with the law of his country or the commands of his Government, although he cannot and does not insure himself against a loss caused by a defiance of such laws or demands (*Sunday & Co.* v. *British & Foreign Marine Insurance Co.* (1915) 2 K.B. 781, 31 T.L.R. 194, 374). It should be mentioned, as a matter of interest, that it was argued in the above case that in a British policy restraint by the British Government must always be taken to be excepted. Bailhache, J., who gave judgment in the sense above outlined, said that the point was of importance and was not covered by any decided case which could be said to be conclusive. The insured had diverted certain cargoes of linseed which were on their way to Hamburg, and had sent them to English ports at the request of the Government. In giving judgment on appeal, the Lord Chief Justice said (at p. 375, in the T.L.R.): "The words 'arrests, restraints, etc.,' to my mind imply some intervention of a fortuitous character, some interference out of the ordinary course of events by the governing authorities who have the force of the State behind them to compel submission to their authoritative decrees."

In *Holland Gulf Stoomvart Maatschappiz* v. *Watson* ((1915) 31 T.L.R. 169) the question arose whether the duty to effect war risk insurance was on owners or charterers. A vessel had been chartered by the defendants from the plaintiffs (the owners) on a time charter, which contained the words, "War risk, if any required, for charterers' account." By another clause the

owners were to provide and pay for the ordinary insurance. The charterers did not insure against war risk and the vessel was sunk by a German cruiser. It was held by the Court of Appeal that, while the cost of insurance against war risk must be borne by the charterers, it was the owners' duty to take out the policy if reasonably requisite, and that, therefore, the charterers were not liable for the loss.

"Restraint of princes" will not justify the non-fulfilment of a contract unless it be shewn that it prevents the contract being carried out at all. The mere fact that it hampers the performance of the contract is not sufficient. In *Associated Portland Cement Co.* v. *Cory* (1915) 31 T.L.R. 442, the defendants had agreed to carry cement by sea from the Thames to the Forth during the period 1910 to 1916 at certain rates subject to an exception in the case of (inter alia) "restraint of princes." The rates were low because coal could be taken on the return journey. After war broke out, coal could no longer be carried; a number of the defendants' ships were requisitioned by the Government, and certain restrictions were placed upon ships entering the Forth. In an action for damages for breach of contract for refusing to provide a ship the defendants pleaded the above facts in support of a contention that the contract was suspended, and they also alleged that, owing to the presence of submarines, the voyages had become dangerous. Rowlatt, J., held that as the Government had not prevented the voyage being made *at all*, the exception as to restraint of princes did not apply.

Owing to the up-to-date method of dealing with prizes of war—the method of sinking them with all hands—nice questions as to proof of loss under a marine policy of insurance against war risk have arisen. In *General Steam Navigation Co.* v. *Janson* ((1915) 31 T.L.R. 630), it was shewn that the SS. "Oriole" left London on Jan. 29 in a seaworthy condition; that she was last seen off Dungeness on January 30; and that two other steamers were torpedoed off Havre by a German submarine on January 30. On February 6, three of her lifebuoys were picked

up near Hastings, and a bottle containing a G.N.S. Co.'s envelope with the words "Oriole sinking—torpedoed" in pencil, in the handwriting of a seaman on board her, was found on March 20 off the Channel Islands. Bailhache, J., balancing the probabilities, held that the loss was due to submarine attack, and found the defendants liable.

The requisition of a ship by the Government for war service raises the question whether the owner or the charterer is to suffer. In *Tamplin Steamship Co.* v. *Anglo-Mexican Petroleum Co.* ((1915) 31 T.L.R. 540, 3 K.B. 668) Atkin, J., held that, where an oil vessel on time charter, which the charterers had power to sublet, was requisitioned for the conveyance of troops, the charter party was not put an end to, although a clause in the charter party included restraints of princes. The charterers, not the owners, were held entitled to the hire paid by the admiralty.

The requisitions of property necessarily made by the Government for carrying on of the war have led to some interesting cases. In one of these (*Shipton, Anderson & Co.* v. *Harrison Bros. & Co.* (1915) 3 K.B. 376, 31 T.L.R. 598) it appeared that a quantity of wheat lying in a warehouse was sold on Sept. 2, 1914, on the terms of cash against transfer order. On Sept. 4 the sellers gave the buyers a delivery order on the warehouse, but revoked it on the same day, because they heard that the wheat was requisitioned by the Government. The buyers claimed damages for non-delivery. It was held that the property not having passed, and the contract being for the sale of specific goods, the contract was made subject to the condition that, if the Government made delivery impossible, the sellers would be excused. "We are in a state of war," said Darling, J., in giving judgment, "and the requisition was made for the general good. Salus reipublicæ suprema lex is the rule applicable at such a time, and the enforcement of it gives no right of action to any one who may be injured by it."

It is an elementary principle that, on the outbreak of war,

the performance of any contract which enures to the advantage of an enemy subject is excused on the ground of illegality. But a mere embargo does not necessarily make the performance of a contract illegal. In *Smith Coney & Barrett* v. *Becker, Gray & Co.* (1915), 31 T.L.R. 151, the plaintiffs in July, 1914, agreed to buy certain sugar from the defendants f.o.b. Hamburg in August. On July 31 the German Government placed an embargo on the sale of sugar, as a result of which the plaintiffs gave orders to the defendants to sell the sugar, and on August 1 they agreed to buy it from the plaintiffs. All the contracts contained arbitration clauses, and the defendants commenced arbitration proceedings. A war clause which was incorporated with the contracts provided that, if Germany should become involved in war the contract should (unless previously closed) be closed upon certain stated terms. Owing to the war Proclamations, delivery of the sugar became impossible after August 5. The plaintiffs having sought an injunction to restrain arbitration proceedings, Warrington, J., held that the contracts were valid and binding when made, and that therefore the arbitration must proceed. In giving judgment affirming this decision the Master of the Rolls pointed out that the contract provided for war by saying that in that event there should be settlement by a payment in cash. The contingency of war has therefore been provided for. He also pointed out that an embargo did not render a contract *of this kind* illegal: "It was for the buyer to say whether the sugar was to be delivered in a ship at Hamburg or warehouses, and there was nothing to prevent them from saying that as there was an embargo the sugar must be warehoused." In a later case, which also referred to a sugar deal (*Jager* v. *Tolme and Runge* (1915) 31 T. L. R. 381) Sankey, J., laid it down that there was nothing illegal in the parties to a contract providing that a third party should give a binding decision in the event of war making performance of a contract, as originally intended, impossible. He also pointed out that there was no illegality in a man taking steps to protect his pro-

perty abroad (e.g., by arranging to have it warehoused), as distinguished from taking steps to trade with the enemy.

As to the effect of a temporary embargo, reference may be made to *Andrew Millar & Co. Ltd.* v. *Taylor* ((1915) W.N. 116; in the court of Appeal, W.N. 408). In July, 1914, the plaintiffs contracted to sell certain confectionery to the defendants for export to Mogador. On August 10, 1914, the export of confectionery being made illegal by a Royal Proclamation, the sellers gave notice cancelling the order. The embargo was withdrawn on August 20. The buyers claimed (by counterclaim) damages for non-delivery. Rowlatt, J., held that faced by the prohibition the sellers were entitled to treat the contract as being at an end, but the Court of Appeal (Swinfen, Eady and Warrington, L.JJ., and Bray, J.) held that the contracts not having been annulled but only suspended, the interruption caused by the Proclamation had not been such that the contracts could not be carried out within a reasonable time. The sellers have not waited a reasonable time.

In *Mitsui & Co.* v. *Mumford* ((1914) 31 T.L.R. 144) the plaintiffs who were a Japanese company took out a Lloyd's non-marine insurance policy covering "loss or damage to timber at Antwerp directly caused . . . war . . . military or usurper power . . . during the period commencing August 4, 1914, and ending with November 3, 1914, both inclusive." The policy provided that no claim was to attach for delay, deterioration and for loss of market. On October 9, 1914, Antwerp was seized by the German army and remained in their possession on the date of the action. The plaintiffs sought to recover for a loss under the policy. The timber was in the custody and control of the plaintiffs' agent during the continuance of the policy, and it was still in the same warehouse at the date of the hearing. They alleged that the timber had become à total or constructive total loss, and that they had given the defendants notice of abandonment. Bailhache, J., held that although "constructive total loss" was a thing unknown out-

side policies of marine insurance, it would be right to take into account considerations similar to those which would be taken into account in determining a question of constructive total loss under a marine policy. He held, nevertheless, that, as the timber had not been confiscated by the Germans during the currency of the policy, there had in fact been no loss. He pointed out, in the course of his judgment that what the plaintiffs had lost was not the timber itself but the power of dealing with it, and that the defendants were not liable for mere loss of market. As to an argument that the timber was lost because the Germans had seized Antwerp, his Lordship said: "If confiscated it will of course be lost; if commandeered it will be represented only by a receipt of more than doubtful value. Now goods of private persons on shore are by the law of nations not liable to confiscation; and I ought not judicially to assume the Germans will commit a breach of international law. *Query*, whether in the light of subsequent events, and the conduct of the German armies of occupation in Belgium and elsewhere, the learned judge might not now be entitled to make this assumption?

The meaning of a clause which is commonly inserted in contracts for the sale of flour was considered in *Ford* v. *Leetham* ((1915) 31 T.L.R. 524). In July, 1914, the defendants, who were millers at York contracted to deliver certain flour to the plaintiffs, who were bakers at Oldham. The contract contained a clause of which the material parts were: "In case of prohibition of export . . . preventing shipment or delivery of wheat to this country . . . the sellers shall have the option of cancelling this contract. . . ." After some of the flour had been delivered, the sellers gave notice to cancel, and in an action for damages, they justified their conduct under the above clause. It appeared that after the war began, all the belligerent and many neutral countries had prohibited the export of wheat, while England had declared the importation of wheat from any enemy country to be illegal. Bailhache, J., in deciding for the defendants, refused to accept the contention that absolute prevention was necessary. He said: "I think the words mean a

prohibition of export which shuts up a substantial source of supply of wheat, and when I find prohibition shutting up such important sources of supply such as Russia and Egypt, I think that the clause applies, and that I ought not to read the clause as meaning a total prohibition of wheat to this country."

Trading with the enemy being illegal, delivery of goods to a German port cannot be insisted upon during the war. Thus in *Duncan Fox & Co.* v. *Schrimpft* ((1915) 1 K.B. 365, 31 T.L.R. 491) the claimants by a contract made before the war sold to the respondents certain Chilean honey to be shipped to Hamburg, payment to be made against shipping documents. The honey was shipped on June 28, and the documents were tendered after the war had broken out, e.g., on August 5. It was held that the respondents were entitled to refuse the documents. (See also *Arnhold Karberg* v. *Blythe Green & Co.* (1915) 2 K.B. 379; 31 T.L.R. 351.)

As regards c.i.f. contracts generally it is to be noted that war risk is the buyers' concern, and although at the time of the tender of documents the goods have been lost, he must still pay for them (*Groom* v. *Barker* (1915) 1 K.B. 316, 31 T.L.R. 66).

The courts are inclined to take a somewhat broad view of clauses which provide for what is to happen in war. In *Ebbw Vale Steel Co.* v. *McLeod* (1915), 31 T.L.R. 604, by certain contracts made in July and November, 1914, the defendants agreed to sell certain ore in a Spanish mine to the plaintiffs. It was provided by a clause in the contract that "in the event of war . . . affecting the mine or the . . . ships by which the ore is to be conveyed" the contract might be suspended at the option of the party affected. The defendants having given a notice of suspension, the plaintiffs sought a declaration that the contract still subsisted. It was shewn that before the war ore from the mine had been sold in large quantities to the German market, the loss of which had caused it to be shut down. It was also shewn that freights had nearly doubled, the ore-carrying

vessels having been specially requisitioned by the Government. Bailhache, J., found that the contract was suspended. "In a case of this kind," he said, "pedantic strictness must be avoided on the one hand and looseness of construction on the other. . . The war shut out by far the largest and most profitable customer of the mine owner and in consequence the mine cannot be worked at a profit. This is clearly a case of the war affecting the mine." As regards the ships he intimated (although it was unnecessary to decide the point) that the clause only related to ships actually chartered.

It is surprising what a number of contracts between English and German firms must have existed at the outbreak of war. An examination of the terms of some of them sheds much light upon the methods by which Germany was seeking to peacefully penetrate the British commercial empire. The facts in the case of *Zinc Corporation* v. *Hirsch* (1915) 32 T.L.R. 7, illustrate one of the methods by which the Germans had endeavoured to secure the world's supply of the base metals. Its importance was such that a special sitting of the Commercial Court was held in the Long Vacation; an appeal was expedited, and it is believed that, whatever the decision of the Court of Appeal may be, it will eventually reach the House of Lords. Shortly the facts were these. The defendants, a German company, had a contract with the plaintiffs, an English company owning Australian mines, under which the English company were bound to sell zinc concentrates to the German company *and to no one else* for a stated period. This contract provided that "in the event of any cause beyond the control of either the sellers or the buyers preventing or delaying the carrying out of this agreement," it should be suspended during such disability. After the outbreak of war the plaintiffs sought a declaration that the contract was dissolved, contending that its continuance would involve them in illegal trading with the enemy. The defendants relied on the suspensory clause, saying that it suspended deliveries and therefore prevented trading

with the enemy. Bray, J., held that apart from deliveries there still remained rights the exercise of which would be illegal after the outbreak of war, and that the contract was dissolved. As this decision is under review, comment upon it would be inexpedient.

We may conclude our reference to cases on contract as affected by war by a reference to a decision in which it was held where, owing to the incidence of war, seamen are exposed to risks not contemplated when they signed on for a voyage, the master has implied authority to give them a reasonable increase of wages. (*Liston* v. *Owners of SS. Carpathian* (1915) 2 K.B. 42, 31 T.L.R. 226.)

With the various Proclamations, Orders in Council, and emergency statutes which have come into force since the war it is not proposed to deal in this place. There is, however, a group of decisions concerning the rights of alien enemies as litigants, an epitome of which may be useful to persons who have current contracts with subjects of the Kaiser or the Dual Monarchy.

An alien enemy has no right to sue in an English court during the war unless with the special licence or authority of the Crown (*Porter* v. *Freudenberg* (1915) 31 T.L.R. 162); but an action may be brought or a petition presented against an alien enemy in the English courts during the war and he has a right to appear and be heard in his defence and to appeal (ib.). Where a judgment has been given against a plaintiff who becomes an alien enemy by reason of war, the hearing of an appeal by him must be suspended during the war (ib.). Similarity, if one of two co-plaintiffs is an alien enemy, and notice of appeal was given before the outbreak of war, the appeal must be suspended during the war (*Actien Gesellschaft für Aniline* v. *Levinstein*, 31 T.L.R. 225). The test being "Where does the plaintiff carry on business," an alien enemy residing in an allied or a neutral country and carrying on business there through his partners is entitled to sue (*Bechoff David & Co.* v. *Butna* ((1915) 31 T.L.R. 248).

Where a patent is vested in an English and also in an enemy firm, the English firm having the right to sue and to join the enemy firm as co-plaintiffs, an action by the English firm will not be suspended during the war (*Mercedes, etc., Co.* v. *Mandslay Motor Co.* (1915), 31 T.L.R. 178).

Where the cause of action is unexceptionable, though the person interested is an enemy—as where the claim accrued before he became an enemy, a person entitled to sue upon it in his own name may do so, although it is for the benefit of the enemy: but having regard to the trading with the enemy of the Act, 1914, and the Proclamation of Sept. 9, which made it a criminal offence to remit money to an enemy, a judgment will not be pronounced having that effect. In such a case there will be a stay of execution until an arrangement can be made for handing over the money to the custodian of enemy property (*Schmidt* v. *Van der Veen* (1915) 31 T.L.R. 214).

A subject of an enemy state who is interned as a prisoner of war in England may bring actions (*Schaffenins* v. *Goldberg* (1915) 32 T.L.R. 31, 133).

In *R.* v. *London County Council* (1915), 31 T.L.R. 249, three judges of the King's Bench Division left open the question whether a proxy issued by an alien enemy shareholder during the war to a British subject to vote in this country for the alien enemy was not against the law and therefore null and void. In a later case (*Robson* v. *Premier Oil & Pipe Line* (1915) 31 T.L.R. 385), Sargant, J., expressly held that no such proxy could issue.

In *Halsey* v. *Lowenfeld* (*Leigh & Curzon* third parties) ((1915) W.N. 400) it was held that the rule that an alien enemy may be sued in the King's Courts is not confined to causes of action accruing before the commencement of war, and that an alien enemy could not take third party proceedings, for in doing so he was an actor who was invoking the assistance of the court in support of an independent claim, and not merely setting up matter of defence to the claim of plaintiffs.

The case of *Zinc Corporation & Romaine* v. *Skipwith & Os.* (1914) 31 T.L.R. 107, illustrates the extraordinary difficulty of a domestic tribunal doing justice where alien enemies are concerned. Before the war an English company had contracted to supply large quantities of zinc concentrates to Hirsch & Son, who became alien enemies when war broke out. The directors, who desired to know their position thereupon proceeded to enter into contracts on the footing that the contracts were abrogated and not merely suspended by the war. In an action for an injunction to restrain the defendants from so acting, Sargant, J., held that the contracts were merely suspended, and that the defendants were not entitled to act as if they were abrogated. The full Court of Appeal reversed this judgment on the ground (as succinctly stated by Buckley, L.J.) that "an action does not lie where it is sought to obtain, in the presence of A. and the absence of B., a declaration as to the construction of an agreement between A. and B., where there are no third parties whose interests make it necessary to determine the construction."

W. VALENTINE BALL.

1 Brick Court,
Temple, London.

DIVISIONAL COURT LAW IN ONTARIO.

The accuracy of the recent decision of a Divisional Court of the Province of Ontario in the case of *Cut Rate Plate Glass Company* v. *Solodinski*, 34 O.L.R. 604, seems open to question. The facts are somewhat meagrely reported, but we gather from what is said that one Solodinski was the owner of the land in question, subject *inter alia* to certain mortgages held by the defendant Margaret Hyslop on which it would appear the whole amount had not been advanced before the lien of the T. Eaton Company, under contract made by them with Solodinski, was registered. The date of this contract is not stated in the report, but no question

appears to have been made as to the registration of the lien. After Solodinski had made the contract for work and materials with the T. Eaton Co. and their lien therefor had attached, he sold the premises to one Blanchard and, on settling up with him, Solodinski made a statutory declaration falsely declaring that he had paid for all labour and material.

The deed to Blanchard appears to have been registered in April, but the final adjustments were not made with the purchaser Blanchard until August 7th, 1914. Whether this means that the purchase money was not paid till then it is hard to say. At all events, before the sale was completed the lien was registered.

The T. Eaton Company's last work appears to have been done in the preceding July, and Blanchard appears to have purchased without actual notice of the T. Eaton Company's claim. Mrs. Hyslop had advanced on her mortgage $11,275.10, but the referee, in effect, found that the T. Eaton Company were entitled to priority over her as regards any advances made by her subsequent to the registration of the T. Eaton Company's lien, and he directed that the mortgages be sold and the proceeds applied first in satisfaction of Mrs. Hyslop's claim to the extent of $11,275.10 and then towards payment of the lien. He also held that Blanchard's interest in the land was subject to the T. Eaton Company's lien.

On an appeal by Blanchard and Hyslop the Divisional Court held that neither Blanchard, nor Hyslop, were "Owners" within the meaning of sec. 2 of the Mechanics and Wage Earners' Lien Act, and consequently that the interest of neither of them was bound by the lien of the T. Eaton Company and therefore allowed their appeals.

In arriving at this conclusion the Court says:—

"The lien given by sec. 6 of the Act attaches to the estate or interest of the owner as 'owner' is defined by sec. 2, sub. sec. (c), and Blanchard does not fall within that definition." With great respect for that opinion, we venture to think that Blanchard clearly did come within the definition referred to. Solodinski had undoubtedly ordered the work, the lien for which it would seem

had attached, certainly before the sale to Blanchard was completed, and Blanchard was undoubtedly a person "claiming under" Solodinski, and therefore within the express terms of the section referred to. The fact that Blanchard was misled by the fraudulent statement of Solodinski ought not to have affected the T. Eaton Company who were not parties in any way to the fraud. The lien, we may observe, attaches as soon as the work is done, or materials provided, (see sec. 6); registration of the claim is not necessary in order to create the lien, but merely to keep it effective, (see secs. 23-25). The Registry Act is not pleadable by a purchaser after a lien has attached, unless there is default in registering the lien within the time prescribed by the Act, see sec. 21. So far, therefore, as Blanchard was concerned, even though he purchased without actual notice, purchasing, as he appears to have done, after the lien of the T. Eaton Company attached, and they being in no default as regards the registration, Blanchard could only take subject to the lien. The Court has by its decision incorporated into the definition of "owner" in sec. 2 (*c*) an exception for which there is really no foundation save in the Registry Act, which by sec. 21 is excluded.

With regard to the claim of Margaret Hyslop the Court says:—

"The mortgagee does not, in the circumstances of the case, come within the definition of 'owner,' nor is there any finding tha the selling value of the land or materials incumbered by the mortgages to Mrs. Hyslop was increased by the work of the T. Eaton Company, a prerequisite to the attachment of a lien under sec. 8 upon such increased selling value in priority to the interest of the mortgagee"; but it does appear from a prior statement in the judgment that the Referee had adjudged that the company was entitled to a lien on the interest of Mrs. Hyslop under certain mortgages upon the land subject to a first charge in her favour for $11,275.10, the amount advanced prior to the registration of the company's lien. This was undoubtedly technically an erroneous finding; if the Eaton Company had a lien at all, it was not on the interest of Mrs. Hyslop, but on the interest of her mortgagor, and prior to her interest in respect of any

advances made after the registration of the lien, but, we take it, though the finding was formally defective, the Referee adjudged the lienholders to have priority to Mrs. Hyslop only in respect of the advances made by her after the registration of the lien; this, it appears to us, he was justified in doing under sec. 14 (1) of the Act, which seems to have escaped the notice of the Court, but the manner in which the Referee proposed to enforce this priority, by a sale of the mortgages, the Divisional Court found, and, we should say, quite correctly, was not warranted by the statute.

The defeat of the Eaton claim as against Mrs. Hyslop may, however, be probably justified in this way. The lien of Eaton is a lien against the estate or interest of the "owner"; but in this case the "owner" has successfully cut out the lien as against him by conveying his estate to the purchaser without notice, and, as the lien, therefore, fails against the "owner," it fails also as against his mortgagee. But whether this ingenious argument is a true interpretation of the Mechanics' and Wage Earners' Lien Act, we venture to doubt.

This case is, we see, referred to by Riddell, J., in *Marshall Brick Co.* v. *Irving*, 9 O.W.N. 429, as authority.

There is another recent case in a Divisional Court of Ontario also deserving of remark.

It used to be, and we believe it is still, a sound rule of law that a suitor can only recover upon a case alleged in his pleading and proved. To put the point in an extreme way—If a man sues another for seduction he cannot properly recover in the action on a promissory note which he happens to state in the course of the trial that he holds against the defendant.

No doubt with the passing of the Common Law Procedure Act in 1856, a great change was wrought in the matter of pleading, and the powers of amendment were so much enlarged that it came to be a common rule for a Judge to hear the evidence and then, if need be, make such amendments in the pleadings as might, upon the evidence, appear to be necessary in order to entitle the plaintiff to recover or to enable the defendant to defeat the action, as the case might require.

But it never was the law, even after the Common Law Procedure Act, nor was it the rule in Equity practice that a suitor might recover in respect of a cause of action not alleged in the pleadings either originally or by amendment, and we do not think that such a course is warranted even under the very lax system which at present prevails. What Hodgins, J.A., recently said regarding a libel action applies to some extent to all actions. The learned Judge said: "The pleadings in a libel action must define the issue which is being tried—justification means one thing, and one thing only—*i.e.*, that the libel is true as printed. If the parties can shift their ground during the trial, and evidence can be given, not under the limitations imposed by that plea, upon the theory that the pleadings do not bind the parties, utter confusion may be caused and a general verdict one way or the other may mean a mis-trial."

And yet in a recent case in the Divisional Court a judgment of a District Court, based on a contract not alleged in the pleadings nor capable of being introduced into the pleadings, was affirmed by a Divisional Court. We refer to *Mazzareno* v. *Pastino*, 9 O.W.N 414. The note, however, does not give a full statement of the case, but a reference to the record shows that the writ issued on Sept. 21st, 1914, and that the action was based on contracts made prior to that date for 1,200 cases of macaroni. According to the statement of the learned Chief Justice who delivered the judgment of the court, war broke out, the defendants thought they should be excused. The plaintiff accepted this view and the parties entered into negotiations for another contract—a substituted one. The plaintiff testified that the original contract was reduced to one for 600 cases." This the defendant's agent denied. "The judge gave the plaintiff reasonable *damages for the breach of that contract.*" Now, if that contract had been made before action, not much exception could be taken to the judgment, because, even though not actually made the ground of action, yet by amendment it could have been so; but it appeared by the evidence that the new contract, if made at all, was not made until the 26th of September, 1914, and therefore was not susceptible of being set up in an action commenced five days before.

It will probably be said by some that the Court nevertheless did what is called "substantial justice", but where this kind of "justice" is administered counsel is placed in an embarrassing position. He may advise that an appeal should be had on the supposition that justice will be administered according to law, and when he comes to argue the appeal, he may find that "justice" according to the whim of the Judges who happen to be sitting is the only kind that he can get from the Appellate tribunal.

Justice according to law needs no adjectives. It is only where there seems to be a doubt whether the justice administered is according to law that adjectives seem to be necessary to describe it.

NOTES FROM THE ENGLISH INNS OF COURT.

The War and Legal Reforms.

The committee appointed by His Majesty's Government to consider the question of economy in the public services—for rigid economy has been rendered necessary by the stupendous cost of the war—has had its attention directed to the English legal machine.

It has already reported in favour of certain economies. Thus it is suggested that the salaries of judges' clerks might be paid by the judges and not by the State; that the judge who has a marshal to attend him on circuit might as well pay the £2 2s. a day himself; and that certain offices in the Courts should not be filled up as they fall vacant. It is necessary, however, to correct a popular misapprehension in this matter. Roughly speaking the cost of the administration of justice in the High Court is £300,000 a year; but of that only about 20% is a burden on the taxpayers. The remainder is recovered from litigants in the form of judicature fees. The theory is that the State pays the salaries of the judges and the litigious public pays the rest of the establishment charges. Law is not, therefore, so great a burden to the State as some people might suppose. Nevertheless, there can be no doubt that the law courts are overstaffed. The

writer remembers having an official pointed out to him as "a man who drew £1,500 a year for handing pens up to a judge." That is, of course, an exaggeration; but nevertheless, when a European war is costing £5,000,000 a day, such an officer might well be dispensed with.

The Passing of the "Indictment."

The Indictments Act, 1915, is not of any special interest to Colonial lawyers but it deserves to be mentioned because it heralds the entry of the law reformer into the domain of the criminal pleader.

While the rules of pleading in civil cases have been greatly relaxed in the last few decades, no profane hand has ventured until last year to tamper with the indictment—the necessary statement of the case in every charge of felony or misdemeanour. Every visitor to assizes will have witnessed the solemn presentment of "a true bill" by the grand jury. Hitherto indictments have had to be written on parchment; in future they may be written on paper. Hitherto the offence has had to be described in language which might appear to the mere layman to have nought but ancient usage to commend it. In future, brevity and simplicity are the order of the day. But one does not take leave of the old order without regret. Compare the wording of an old style indictment for murder with the new form which is prescribed in the appendix to the above mentioned statute.

This is the new style—

"*Statement of Offence*

"Murder

"*Particulars of Offence.*

"A.B. on the ..... day of ..... in the County of ..... murdered J. S."

Now listen to the stately form to which English lawyers have been accustomed from time immemorial: -

"*County of Kent to wit:*

"The jurors of our Sovereign Lord, the King, upon their oath present that John Brown on the 16th day of February, 1916,

at Maidstone in the said County, feloniously, wilfully and of his malice aforethought, did kill and slay Abel Robinson, against the form of the Statute in that case made and provided, and against the peace of our Sovereign Lord, the King, his crown and dignity."

'Tis Amaryllis to a Satyr!

It is easy to abolish these ancient forms. A few lines in cold print in the statute book and the thing is done. But they can never be replaced. Moreover, it remains to be seen whether the new system will work well in practice. There was a certain rigidity and clearness of statement about the old form which had its advantages. In the very instance above quoted—on a charge of murder—"malice aforethought" is a necessary ingredient of the offence. It must be proved as well as "laid" in the indictment.

Under the new procedure the prisoner who finds himself charged with "Murder" must needs consult some legal text book with a view to finding a definition of the offence.

The Privy Council.

Colonial lawyers will have heard with interest that the work of the Privy Council has increased to such an extent that it has been found necessary to pass an Act to enable the Judicial Committee to sit in two divisions. Amongst the law lords who discharge the function of advising His Majesty in Colonial appeals none is more prominent than Lord Halsbury. A few notes concerning this veteran lawyer and statesman may be of interest.

Born in the year 1825, the Earl of Halsbury may well be called the *doyen* of the English Bench. Long past the age at which most men feel bound to answer the command "Unarm! The long day's work is o'er," the aged ex-Chancellor is still active in the Upper House as a Peer of the Realm, as a Law Lord and as a member of the Judicial Committee. To review his early forensic life were to set forth the legal history of many a decade.

Beginning at the Old Bailey he rapidly acquired a large practice, and eventually as a Queen's Counsel he knew no equal. In particular was he successful in the Court of Appeal. Let one example of his powers as an advocate suffice.

It is one of the rules of English legal procedure that an appeal from the decision of a County Court Judge is heard by two or sometimes three judges of the King's Bench Division. From their decision an appeal lies (in certain cases), to the Court of Appeal. An eminent "junior" at the Common Law Bar was acting for the appellant in an appeal from the Divisional Court. Mr. Giffard, Q. C. (as Lord Halsbury there was), was briefed to lead him. Let the story be told as it was told by this "junior" to his pupil the writer of these lines: "We were first in the list in the Court of Appeal. My leader's brief lay unopened on the desk. At the stroke of 10.30 a.m., just when the Lords Justices were taking their seats, Giffard rushed into Court:

"'Who are we for?' he said to me, hastily untying his brief. 'I haven't read the papers!'

"'For the appellant,' I replied, somewhat dismayed.

"He urged me to open the appeal, but I declined. His *worst* was better than my best.

"There was no time for further parley before the case was called on.

"Giffard literally rose to the occasion. He said: 'My Lords, in this case I appear with Mr. —— for the appellant, and with your lordship's permission I would like to reverse the usual order of procedure. I propose to read the judgments delivered in the Court below before stating the facts. I think this will tend to shorten the proceedings.'

"This was to be his method of reading his brief! His legal acumen was such that he was able to make caustic comments upon the judgments as he went on, with the result that almost before he had reached the end of the last judgment he had the Court with him.

"Before he had addressed any independent argument the other side was called on. Eventually the appeal was allowed without a reply being called for."

His Powers as a Judge.

It does not always follow that because a man has been a great advocate he will shine as a judge. The power "to hear and de-

termine" is given to few. Lord Halsbury was and is still one of the few. Go to any library which contains the decisions of the House of Lords for the last thirty years and then *si monumentum requiris, circumspice!* When sitting as Lord Chancellor he had a marvellous faculty of boiling down the lengthy arguments of counsel to a few terse sentences. Whole mountains of irrelevant matter would be swept on one side. The great black volume in which the proceedings in a case before the Supreme Court of Appeal are printed at such enormous length (and at such enormous cost to the litigant), had no terrors for the Lord Chancellor. He was never afraid of work; but from the midst of a mass of pleadings, correspondence, long-winded documents, affidavits, transcripts of shorthand notes of evidence and judgments of inferior tribunals his master mind would select the crucial point long before any of the counsel arguing before him had been able to find it.

In Private Life.

In private life it may fairly be said that simplicity is a leading characteristic of this truly great man. The writer (who had only been called to the Bar a few years), once had the privilege of presiding at a dinner where Lord Halsbury was guest of the evening. He spoke words of encouragement on that occasion which have never been forgotten. After dinner (it was summer time), the Lord Chancellor walked back to his club along the Strand in evening dress, without an overcoat, and with a Gibus hat on his head.

Indeed his simplicity and hatred of ostentation was sometimes an embarrassment to those who entertained him. Under the shadow of Cannon Street Station, on the western side, runs a narrow street known as Dowgate Hill. In Dowgate Hill there stands the house of the Skinners Company. It is on record that Lord Halsbury, when still on the Woolsack, was a guest of the Master, Wardens and Commonalty of that Worshipful Company at one of their banquets. The entertainment was over. The guest of the evening was about to leave. The clerk was ready to see him off. Two flunkeys rushed forth into Dowgate Hill

shouting for Lord Halsbury's carriage. They came back to announce that it was not there.

"Oh, don't trouble," said the Lord Chancellor. "I'm going home by the Underground"—which he proceeded to do.

Of his political activities it is unnecessary to speak. He has left his mark upon the statute book in many places. That he may long be spared to lend the aid of his ripe experience and wise counsel to the British nation is the earnest prayer of those who know and appreciate him in the profession of the law.

1 Brick Court, Temple, London, E.C. W. VALENTINE BALL.

CANADIAN BAR ASSOCIATION.

We are informed that the Association has decided to hold its annual meeting at Toronto, on Thursday and Friday, the 15th and 16th days of June, 1916, and the Committee on Arrangements is formulating a programme for that meeting.

It is proposed that meetings shall be held in the morning and afternoon of the 15th, with a general and open meeting in the evening, at which the Honourable James M. Beck, formerly Assistant Attorney-General of the United States and the author of the well-known book on the pending war, "The Evidence in the Case," and another distinguished representative of the American Bar Association, will deliver addresses. There will also be meetings in the morning and afternoon of the 16th, and there will be luncheons on both the 15th and 16th, and a banquet in the evening of the 16th, and such other entertainment for the members and their wives as the committee may be able to arrange.

The programme of the meetings will include reports, addresses and discussions on the following, among other subjects:—Company Incorporation, Fire Insurance, Succession Duties, and Conditional Sales. The chief subject for discussion will be the harmonizing of the laws of the different Provinces.

The members of the profession are desired to co-operate, and, if possible, to attend the annual meeting. Arrangements will be made for the usual convention return railway rates.

REVIEW OF CURRENT ENGLISH CASES.

(Registered in accordance with the Copyright Act.)

CERTIORARI—LICENSE FOR CINEMATOGRAPH EXHIBITION—CONDITIONS OF LICENSE—OBJECTION TO CONDITIONS BY THIRD PERSONS—"PERSON AGGRIEVED."

Ex p. Stott (1916) 1 K.B. 7. This was an application to quash a notice given by a licensing authority in the following circumstances—the licensing authority had granted a license for the holding of a cinematograph exhibition subject to a condition that the licensee should not exhibit any film which the licensing authority should notify him not to exhibit. The licensee made an agreement with a firm which had acquired the sole right to exhibit a certain film in the district in which the licensed theatre was situated for the exhibition of the film at his theatre, and thereafter the licensee was notified by the licensing authority that he was not to exhibit that film. The application was then made by the proprietors of the film to quash the notice, they contending that the condition in the license above referred to was unreasonable, and therefore void. Avory, J., refused the motion on the ground that the applicants were not "persons aggrieved" by the condition, and had no *locus standi* to make the application.

CARRIER—FURNITURE REMOVER—LIABILITY AS INSURER—PERSON EXERCISING A PUBLIC EMPLOYMENT.

Walkins v. *Cottell* (1916) 1 K.B. 10. The plaintiff in this case had employed the defendant, who carried on business as a furniture remover, to remove his furniture from one town to another. The defendant made an estimate of the work to be done, and agreed to do it for a certain price. There were no special terms or conditions agreed to. While the goods were in the defendant's custody a fire broke out among them and they were damaged. The fire was not due to negligence by defendant. It was admitted that the defendant was not a common carrier; but the plaintiff sought to make the defendant liable for the loss on the ground that he was exercising a public employment and as such impliedly took upon himself the liability of a common carrier. The judge of the County Court held that the defendant was liable, but a Divisional Court (Avory & Rowlatt, JJ.) held that there was no evidence on which it could be held that the defendant had taken upon himself that liability.

ALIEN ENEMY—CONTRACT OF TENANCY—TENANT AN ALIEN ENEMY—ALIEN'S RESTRICTION ORDER—TENANT FORBIDDEN TO RESIDE IN DISTRICT WHERE DEMISED PREMISES SITUATE —LIABILITY FOR RENT.

London & Northern Estates Co. v. *Schlesinger* (1916) 1 K.B. 20. This is a case resulting from the war. The action was by a landlord against the tenant of a residential flat for rent. The lease was made before the war. The defendant on the outbreak of the war became an enemy, and as such was by order-in-council forbidden to reside in the district where the flat was situate. It was contended on his part that the implied basis of the contract was that he should be continued to be allowed by law to inhabit the flat in person and that the order-in-council forbidding him to do so had the effect of putting an end to the lease. The Common Serjeant in the Mayor's Court overruled the contention and gave judgment for the plaintiff. The Divisional Court (Avory and Lush, JJ.) affirmed the decision, being of the opinion that it was not an implied term of the contract that the law should continue to permit the defendant personally to reside on the premises.

HIGHWAY—NUISANCE—NEGLIGENCE—REPAIR OF GAS MAIN, FIRE AND MOLTEN LEAD ON LAND ADJACENT TO HIGHWAY—INJURY TO CHILD.

Crane v. *South Suburban Gas Co.* (1916) 1 K.B. 33. This case presented a neat little problem for decision. The defendant company's workmen, for the purpose of repairing a gas main in a highway, placed a fire pail on which was a ladle of molten lead, on unenclosed land adjacent to the highway. The plaintiff, a young child, was with other children playing near the fire, when a passer-by accidentally knocked it over, and the molten lead was spilt on the plaintiff, who was thereby injured. In such circumstances are the defendants liable? The judge of a County Court held they were, on the ground that it was negligent to leave the fire unattended in such a place with children about; and the Divisional Court (Avory and Lush, JJ.) agreed that it was actionable negligence, and also that it was a nuisance which also rendered the defendant liable.

MARRIAGE—BREACH OF PROMISE OF MARRIAGE—ILLNESS OF PLAINTIFF AT DATE FIXED FOR MARRIAGE—ONUS OF PROVING THAT SHE WAS FIT TO MARRY WITHIN A REASONABLE TIME AFTERWARDS—REASONABLE GROUND FOR BELIEVING PLAINTIFF UNFIT TO MARRY—NEW TRIAL—"NO SUBSTANTIAL WRONG OR MISCARRIAGE." RULE 556—(ONT. JUD. ACT. s. 28 (1)).

Jefferson v. *Paskell* (1916) 1 K.B. 57. This was an action

for breach of promise of marriage brought in somewhat peculiar circumstances. The defence was that by reason of the plaintiff's ill health she was not fit to marry. It appeared by the evidence that on the 9th April, 1913, the day originally fixed for the marriage, the plaintiff was suffering from a supposed tubercular affection and had gone to a sanitarium where her sister was a consumptive patient. On the 14th of April, 1913, the defendant's solicitor wrote to the plaintiff's father to the effect that owing to the plaintiff's state of health the defendant would not proceed with the contemplated marriage; this letter was communicated to the plaintiff in the following May. The plaintiff subsequently left the sanitarium and went to reside with her parents and in a short time recovered her health, and in August, 1913, was examined by a physician who certified that in his opinion she was in good health. On September 4th her solicitor wrote to the defendant's solicitors announcing the fact and asking what the defendant intended to do regarding the marriage and they replied on 12th Sept. stating that, notwithstanding the defendant's continued affection for the plaintiff, the contemplated marriage could not now take place on the ground of the plaintiff's state of health and family history. The action was commenced on 23rd September, 1913. The judge at the trial put questions to the jury: (1) Was the plaintiff suffering from tuberculosis between 28th March and 15th April, 1913, or on 12th Sept., 1913? (2) Was the plaintiff on 12th Sept. in such a condition as to be unfit for marriage within a reasonable time after that day? (3) Did defendant honestly believe the plaintiff was unfit for marriage within a reasonable time after 12th Sept. and did he refuse to marry her on that ground? The jury on the evidence was unable to say whether the plaintiff was suffering from tuberculosis on the 15th April, 1913, but found she was not so suffering on 12th September, 1913, and that she was not then unfit for marriage, and that the defendant did not reasonably believe that she was unfit for marriage on that day and that he did not refuse to marry the plaintiff on that ground.

Bray, J., on the findings of the jury, gave judgment for the plaintiff for the damages assessed. On the appeal it was contended that the judge at the trial erred in fixing the 12th day of Sept. as the date of the breach, and not an earlier date in April or May when the defendant's letter was communicated to the plaintiff, and also in directing the jury that the onus was on the defendant to show that the plaintiff was in fact unfit for marriage, which he had not discharged. The Court of Appeal (Eady, Phillimore and Pickford, L.JJ.) although inclined to the opinion that the breach

took place earlier than the 12th Sept., nevertheless refused a new trial on the ground that no substantial wrong or miscarriage had taken place. (See Rule 556, Ont. Jud. Act. s. 28 (1)).

The Court of Appeal also held that, whereas in this case the plaintiff was unfit for marriage on the day named for the marriage, the onus was on her to show that she was fit within a reasonable time thereafter, but that slight evidence is sufficient to discharge that onus, and that the evidence in this case was sufficient for that purpose; and they agreed that the onus was then cast on the defendant to show that she was in fact unfit, and that he had not discharged it; and also that the fact that the defendant honestly believed she was unfit would be no defence, if the plaintiff was not in fact unfit.

MINES—MINING LEASE—SUBSEQUENT GRANT OF BUILDING LEASE RESERVING MINES—COMPENSATION FOR INJURY CAUSED BY MINING.

Jones v. *Consolidated Anthracite Collieries* (1916), 1 K.B. 123. The plaintiff in this case was a lessee under a building lease, which contained a reservation of mines under the demised plot and the right to work them, "reasonable recompense and satisfaction being made for any injury done to the demised premises by reason of the exercise of any of the rights aforesaid, whether by the letting down the surface or otherwise." The mines had been previously leased to the defendant company, who had worked them under a system, which it was common knowledge would cause subsidence. This method the Judge, at the trial, found as a fact had been followed by collieries in the district for the past fifty years. The plaintiff erected two houses on the demised land in 1910, and in 1911 they were damaged by the subsidence caused by the working of the mines. The plaintiff sued both his own lessor and the lessees of the mines. Scrutton, J., who tried the action, held that the lessees of the mines were not liable to the plaintiff, because they had the right to work the mines, and, having done so in accordance with the mode universally used in the district, they must be taken to have an implied leave to cause subsidence, but that the plaintiff's lessor was liable under the clause relating to compensation, which constituted a covenant on his part, and also because he could not derogate from his own grant. As to whether the plaintiff's lessor was liable on his covenant for quiet enjoyment, the learned Judge thought it unnecessary to decide.

PRIZE OF WAR—RIGHT OF CROWN TO REQUISITION NEUTRAL CARGO BEFORE CONDEMNATION.

The Zamora (1916) P. 27. In this case a neutral vessel had been seized. A writ having been issued in prize; an application was made, on behalf of the Crown, before condemnation, for leave to requisition 400 tons of copper, part of the cargo of the prize. The neutral owners claimed that they were entitled to have the cargo retained in specie until condemned. But Evans, P.P.D., held that the Crown had a right to requisition the goods, and that the owners would have the proceeds of sale, together with damages and costs, if any, in case the part of the cargo in question should turn out not to be confiscated.

ALIEN ENEMY—ACTION AGAINST ALIEN ENEMY—CAUSE OF ACTION ACCRUING AFTER OUTBREAK OF WAR—ILLEGALITY—RIGHT OF ALIEN ENEMY DEFENDANT TO TAKE THIRD PARTY PROCEEDINGS.

Halsey v. *Lowenfeld* (1916) 1 K.B. 143. This was an action against an alien enemy to recover damages for breaches of a contract made prior to the war, the alleged breaches having taken place after the war. The contract in question was contained in a lease made in 1896. The breaches consisted in the nonpayment of rent falling due subsequent to the war. The defendant had served a third-party notice. At the trial the defendant contended that the effect of the war was to suspend all contracts made between subjects of belligerent states, and for the third parties it was contended that the defendant had no right to serve the third party notice. Ridley, J., who tried the action, held that it was properly maintainable against the defendant notwithstanding the war, but that the defendant, although he had the right to defend the action, could not himself initiate any proceeding, and, therefore, that, in the circumstances, the third party notice was invalid.

NEGLIGENCE—LEAVING MOTOR UNATTENDED ON HIGHWAY—INTERFERENCE WITH MOTOR BY TRESPASSER, CAUSING DAMAGE—LIABILITY OF OWNER OF MOTOR—PROXIMATE CAUSE OF DAMAGE.

Ruoff v. *Long* (1916) 1 K.B. 148. The facts in this case were very simple. The defendants owned a motor lorry, and their servants left it unattended on the highway. A couple of soldiers, passing along the street, mounted and set it in motion, with the result that it backed into the plaintiff's shop and caused the damage complained of. A County Court Judge held that the

plaintiffs were liable, but his decision was reversed by a Divisional Court (Avory and Lush, JJ.), on the ground that, in the circumstances, there was no evidence of negligence on the part of the plaintiffs in leaving the lorry unattended, and, even assuming that was negligence, there was no evidence that it caused the damage.

PAYMENT INTO COURT DENYING LIABILITY—ACTION OF NEGLIGENCE—ADMISSION OF NEGLIGENCE—DENIAL OF DAMAGE—COSTS.

Mundy v. *London County Council* (1916) 1 K.B. 159. The plaintiff in this case claimed damages for injury to a horse caused by the defendant's servant. The defendants admitted negligence, but denied the damage, but paid into Court a sum of money which they alleged was sufficient to satisfy the plaintiff's damage, if any, and costs. The plaintiff recovered the amount paid into Court and no more. The County Court Judge who tried the action held that the notice was a sham notice and gave the plaintiff the full costs of the action; but a Divisional Court (Avory and Lush, JJ.) held that, damage being the gist of the action, the notice admitting negligence but denying damage was a proper notice denying liability, and that the defendant should have the costs of the action subsequent to the payment into Court.

NUISANCE—HIGHWAY—SHEEP STRAYING ON HIGHWAY—DAMAGE TO VEHICLE USING HIGHWAY CAUSED BY STRAY SHEEP.

Heath's Garage v. *Hodges* (1916) 1 K.B. 206. In this case the plaintiff's motor car was being driven along a highway, in the daylight, at the rate of 16 or 20 miles an hour. The driver saw in front of him about twenty sheep unattended; he put on his brakes and almost immediately two sheep which had got separated from the others jumped from the bank and one of them ran in front of the car, which, in consequence, was overturned and damaged. The sheep had escaped through a defective hedge, and the owner had been fined for permitting them to stray on the highway, under the Highways Act, 1884. The County Court Judge found as a fact that sheep have almost a mania for rejoining the flock when they get separated and are perfectly regardless of intervening traffic; and he gave judgment in favour of the plaintiffs; but the Divisional Court (Avory and Lush, JJ.) reversed his decision, holding that, even if the defendant were guilty of negligence in allowing the sheep to stray

on the highway, yet, there being no evidence that they had any "vicious or mischievous propensity" within the meaning of *Cox* v. *Burbidge* (1863) 13 C.B.N.S., the accident was not the direct and natural consequence of such negligence, and, therefore, that the defendant was not liable.

LORD'S DAY OBSERVANCE ACT (29 CAR. 2 C. 7), S. 1—PURCHASER OF GOODS SOLD CONTRARY TO LORD'S DAY OBSERVANCE ACT —AIDING AND ABETTING OFFENCE.

Fairburn v. *Evans* (1916) 1 K.B. 218. This was a case stated by magistrates. The defendant had been prosecuted and convicted for aiding and abetting the commission of a breach of the Lord's Day Observance Act, 1677, by purchasing sweets from a refreshment house keeper on a Sunday knowing that the vendor, in selling the goods, was exercising his ordinary calling in contravention of the Act. A Divisional Court (Ridley and Low, JJ.) held that the defendant was properly convicted.

PRIZE COURT—ENEMY YACHT—DAYS OF GRACE

The Germania (1916) P. 5. This was an application for condemnation of a pleasure yacht belonging to an alien enemy which was seized in a British port on the 6th August, 1914. It was claimed that under the Hague Convention the vessel was entitled to days of grace in which to have departed; but Evans P.P.D., held that the convention only applied to merchant vessels, and he ordered the vessel to be condemned and sold as a prize of war. The Crown, as a matter of grace, agreed to allow certain claims for docking and necessary repairs incurred while the vessel was under detention.

PROBATE—PRACTICE—GRANT IN IRELAND TO IRISH EXECUTOR— ENGLISH ASSETS—RESEALING IRISH GRANT—JURISDICTION TO GRANT PROBATE IN ENGLAND OF WILL PROVED IN IRELAND— (R.S.O. c. 62, s. 74).

Irwin v. *Caruth* (1916) P. 23. This was an application by residuary legatees for letters of administration with the will annexed. It appeared that the will had been proved in Ireland and probate granted to an Irish executor of the Irish property of the testator. Horridge, J., held that, notwithstanding 20-21 Vict. c. 79, s. 95 (see R.S.O. c. 62, s. 74), enabling the English Court of Probate to reseal the Irish letters probate, the jurisdiction of the English Court to make the grant asked for was not affected where, as in this case, there had been no resealing.

WILL — PERPETUITY — PERSONALTY SETTLED ON PERSON WHO SHALL BECOME ENTITLED TO REALTY—CONSTRUCTION.

In re Atkinson, Atkinson v. *Atkinson* (1916) 1 Ch. 91. By the will in question in this case real and personal estate was given to trustees, as to the personal estate for sale, and to pay the income thereof to the person, if any, who, under the trusts and limitations of the will, should for the time being be tenant for life of, or otherwise entitled to the possession or receipt of the rents or profits of the realty, until such real estate should become vested in some person who should become adult tenant in tail in possession of such realty and from and after that event as to both capital and income of the personalty upon trust for such last-mentioned person absolutely; and as to the realty upon trust for the testator's brother John for life, and after his death upon trust for the first and every other son of his said brother successively in remainder one after another, according to their seniorities in tail general. It was admitted that the trust of the personalty in favour of John for life was valid; but it was contended that the subsequent trusts were void for remoteness, because the trust in favour of the adult tenant in tail in possession could not be construed as applying only to a tenant in tail by purchase, and with this contention Sargant, J., agreed.

POWER OF APPOINTMENT—LIMITED POWER—APPOINTMENT TO TRUSTEES FOR OBJECTS OF POWER—TRANSFER OF FUND.

In re Mackenzie, Bain v. *Mackenzie* (1916) 1 Ch. 125. The decision of Astbury, J., in this case follows the cases of *Burk* v. *Oldam* (1874), L.R. 19 Eq. 16; *Scotney* v. *Larner* (1886), 31 Ch. D. 380, 386; and *In re Tyssen* (1894), 1 Ch. 56, to the effect that where a person has a power of appointment in favour of a class, and appoints the fund to be paid to trustees in trust for the benefit of the objects of the power, the appointment is valid as far as the beneficial interests are concerned, but that the original trustees must continue to hold and administer the fund; in other words, a limited power to appoint does not include a power to appoint to trustees for the objects of the power. The learned Judge distinguishes the case from *In re Redgate* (1903), 1 Ch. 356, and *In re Adadanes* (1907), 1 Ch. 695.

WILL—LIMITATION TO A. FOR-LIFE REMAINDER TO B. IN TAIL—CODICIL GIVING A. AN EXCLUSIVE POWER BY DEED OR WILL TO APPOINT TO A CLASS—REVOCATION OF CODICIL—RESTORATION OF CODICIL ON PROMISE OF A. NOT TO INTERFERE WITH B.'S SUCCESSION—APPOINTMENT BY A. TO HIMSELF IN VIOLATION OF PROMISE—FRAUD—INVALID APPOINTMENT.

Tharp v. *Tharp* (1916) 1 Ch. 142. By the will in question in this case real estate was settled to the use of the testator's widow for life, with remainder to Arthur Tharp for life, with remainder to the use of the first and every other son of Arthur Tharp successively for life, with remainder to the use of the first and every other son of Arthur Tharp successively in tail male, with remainder to Horace Tharp for life, with remainder to the use of the first and every other son of Horace successively for life, with remainder to the use of the first and every other son of Horace Tharp successively in tail male. By a codicil the testator gave a power of appointment by deed or will to Arthur to appoint, after the use in favour of Arthur's children in tail male, to such persons being of a certain class (of whom Arthur was one) as Arthur, by deed or will, should appoint and so as the remainder in favour of Horace and his issue should only take effect in default of such appointment or so far as such appointment should not extend. The testator subsequently revoked this codicil, and Arthur, hearing of the revocation, procured the testator's wife to induce the testator to restore the codicil on Arthur's promise that he would not exercise the power to the prejudice of Horace or his issue. After the testator's death, Arthur executed the power in favour of himself. The plaintiff, who was the eldest son of Horace, claimed a declaration that the appointment was void as being a fraud, and to enforce the promise made by Arthur not to exercise the power to the prejudice of Horace and his issue. Neville, J., who tried the action, held that the plaintiff was entitled to the relief claimed, and he granted a declaratory judgment that the defendant was not entitled to exercise the power so as to defeat the estate tail in remainder of the plaintiff, and that the appointment made by the defendant was invalid.

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Que.] RE GREAT NORTHERN CONSTRUCTION CO.; [March 3.
ROSS *v.* ROSS, BARRY AND MCRAE.

Appeal—Jurisdiction—Winding-up proceedings—Time for appealing—Amount in controversy—Construction of statute—Supreme Court Act, R.S.C., 1906, c. 139, ss. 46, 69, 71—Winding-Up Act, R.S.C., 1906, c. 144, ss. 104, 106—Practice—Affirming jurisdiction—Motion in court—Discretionary order by judge.

Held, per Fitzpatrick, C.J., and Idington and Brodeur, JJ. (Duff and Anglin, JJ., contra). The appeal to the Supreme Court of Canada given by sec. 106 of the Winding-Up Act, R.S.C., 1906, c. 144, must be brought within sixty days of the date of the judgment appealed from, as provided by sec. 69 of the Supreme Court Act, R.S.C., 1906, 139. After the expiration of the sixty days so limited neither the Supreme Court of Canada nor a judge thereof can grant leave to appeal. *Goodison Thresher Co.* v. *Township of McNab* (42 Can. S.C.R. 694), and *Hillman* v. *Imperial Elevator and Lumber Co.* (52 Can. S.C.R.), followed; *Grand Trunk Railway Co.* v. *Department of Agriculture of Ontario* (42 Can. S.C.R. 557), distinguished.

Per Duff, J., dissenting. Under section 106 of the Winding-Up Act, the application for leave to appeal may be made after the expiration of sixty days from the date of the judgment from which the appeal is sought and, whether it be made before or after the expiration of the sixty days lapse of time, should be considered by the judge applied to and acted on by him, in the exercise of discretion, according to the circumstances of the case.

Per Anglin, J., dissenting. On such an application for leave to appeal, the provisions of section 71 of the Supreme Court Act apply and an extension of the time for appealing may be obtained thereunder.

Per Idington, J. There is no authority under which an application for an order affirming the jurisdiction of the Supreme Court of Canada to entertain an appeal can be made to the Court; the proper and only course is by application to the registrar acting as

judge in chambers. *Per* Duff, J. Although not strictly the proper procedure, the objection to such an application may be waived.

Per Duff, J. Section 106 of the Winding-Up Act imposes a further condition of the right of appeal over and above those imposed by secs. 69 and 71 of the Supreme Court Act; an applicant having obtained leave after the expiration of the time limited for appealing, is still obliged to satisfy a judge of the Court appealed from that special circumstances justify an extension of time, and it is the duty of that judge to exercise proper discretion in making such an order on his own responsibility. *Attorney-General* v. *Emerson*, 24 Q.B.D. 53, and *Banner* v. *Johnston* (L.R. 5, H.L. 157), referred to.

Per Brodeur, J. In the case of appeal from judgments rendered under the Winding-Up Act the jurisdiction of the Supreme Court of Canada is determined by section 106 of the Winding-Up Act, and is dependent solely upon the amount involved in the judgment appealed from and not upon the amount demanded in the proceedings on which that judgment was rendered.

Motion dismissed with costs.

G. G. Stuart, K.C., for motion; *R. C. Smith*, K.C., *contra*.

Sask.] [Feb. 1.

HILLMAN v. IMPERIAL ELEVATOR AND LUMBER CO.

Appeal—Jurisdiction—Matter originating in inferior Court—Transfer to Superior Court—Extension of time for appealing—Special leave—Supreme Court Act, ss. 37, c. 71.

The action was commenced in the District Court to enforce a mechanic's lien and proceedings in that Court were discontinued, by consent of the parties, and were transferred and subsequently carried on in the Supreme Court of Saskatchewan as if a new writ had been issued, the statement of claim, pleadings and proceedings being all filed and taken in the latter Court. An order in the Supreme Court of Saskatchewan was made extending the time for appealing beyond the sixty days limited for bringing the appeal by the Supreme Court Act, under sec. 71. On an application, under sec. 48*e* of the Supreme Court Act, for special leave to appeal;

Held, that, although the proceedings, after the issue of the writ, had all been carried on in the Court of superior jurisdiction, yet, as the cause originated in a Court of inferior jurisdiction, no appeal would lie to the Supreme Court of Canada. *Tucker* v. *Young*, 30 S.C.R. 185 followed.

Held, also, following *Goodison Thresher Co.* v. *Township of McNab*, 42 S.C.R. 694, that, notwithstanding the order extending the time for appealing made in the Court appealed from, the Supreme Court of Canada had no jurisdiction to grant special leave for an appeal after the expiration of the sixty days limited for bringing appeals by section 69 of the Supreme Court Act.

Motion refused with costs.

Chrysler, K.C. for motion, *ex parte*, by consent.

Bench and Bar.

Lewis Henry Dickson, of the town of Exeter, province of Ontario, barrister-at-law, to be Judge of the County Court of the county of Huron, in the province of Ontario, vice Bernard Louis Doyle, retired.

Allan McLennan, of the town of Kenora, province of Ontario, barrister-at-law, to be Judge of the District Court of the Provisional Judicial District of Rainy River, vice Charles Russell Fitch.

John Franklin Wills, of the city of Belleville, province of Ontario, K.C., to be Junior Judge of the County Court of the county of Hastings, in the province of Ontario, vice Edison Baldwin Fraleck, [illegible]ed.

War Notes.

LAWYERS AT THE FRONT.

It is very difficult to obtain a complete list of the members of the profession who have gone or who are now preparing to go to the front to fight for the Empire for righteousness and for freedom or who have given their lives for the cause.

The following is the most complete list that has as yet appeared. We wish it were more perfect. Will our friends help to make it so? They can do this by sending us any names which have been omitted or the names of those who are now joining the ranks. And also will they send the names of any who may unhappily have fallen in this splendid service? Our present list, made up to March 1st, is as follows:—

PROVINCE OF ONTARIO.

First Year Students.

Toronto—J. R. Cartwright, J. S. Ditchburn, O. W. Grant, H. W. M. Ince, T. E. Kelly, R. C. O'Donoghue (26th Batt.); H. E. B. Platt, W. H. Schoenberger, F. C. Teskey (2nd University Overseas Co.); J. C. Tuthill (C.F.A.); C. G. Warner, G. E. Blake, H. S. Hayes, P. B. German (Navy); E. J. Kylie, W. H. Willard, William Mowbray, G. M. Orr (81st Battn.); T. D. Leonard (3rd Battn.); J. Q. Maunsell (77th Battn.); M. H. Gillam (71st Battn.); A. M. Naismith (25th C.F.A.); P. R. A. Ritchie (Cycle Corps); M. C. Roberts, H.D. McClelahan (44th Battn.); A. G. Stewart, A. S. Bourinot (77th Battn.); J. A. Harstone, A. J. Lester (116th Battn.); R. P. Wilkins, E. V. McKague (2nd Div. Cycle Corps); N. E. Strickland (59th Battn.); R. C. Hamilton (26th Batt[illegible]; F. D. Willkins (5th F.A.C.); W. K. MacGregor, T. C. Urquhart.

Following students of the First Year are from points outside Toronto—R. M. W. Chitty, London, Eng.; W. C. Kerr, Chatham; H. G. Murray, Fort Frances, W. J. O'Brien, Peterboro (7th Battery); A. R. M. O'Connor, Ottawa; H. S. Brewster, Brantford; C. B. Magrath, Ottawa; V. W. Price, Oakville; G. S. White, Belleville (80th Battalion).

Second Year Students.

Toronto—H. F. P. Dawson (70th Battalion), S. H. Brocklebank (71st Battalion), H. C. Farthing (4th Co. Div. Train), M. W. Keefer, R. W. Maclennan, W. L. Pinkey (C.E.), H. C. Draper, W. R. Strike (A.M.C.), W. O. Langton (139th Battalion), W. W. Fair (136th Battalion), W. D. Smith; C. W. R. Bowlby, Hamilton; O. A. Walsh, Hamilton; A. F. Cook, Midland; J. A. New, Peterboro.

Third Year Students.

Toronto—H. R. Alley, McGillivray Aylesworth, J. S. Bell, J. G. Bole, R. Johnson, N. A. Keyes; W. D. Bell, St. Thomas; C. W. G. Gibson, Hamilton; H. S. Hamilton, Sault Ste. Marie; Keith Munro, Port Arthur; N. M. Young, Barrie; R. Longmore, (University Hospital); H. McCready (59th Battn.); A. Wright (35th Battn.); W. H. Latimer (124th Battn.); A. G. Stewart (116th Battn.); L. D. Le Froy (123rd Battn.); A. Murray Garden (49th Batt.).

Class of 1916, Osgoode Hall.

John Leigh Bishop, Lieut. 77th Battn.; Jeffrey Bull, Capt. 75th Battn.; Robert Bethune; W. W. Boyd, 33rd Batt. C.F.A.; R. B. (Mike) Duggan, Lieut. 36th Battn.; George Ellis, 4th Uni. Co.; R. Forsyth, Lieut. Art. Reserve; H. V. Hearst, Lieut. 74th Battn.; R. Hett, Sergt-Maj. "C" Batt., R.C.H.A.; Wilfred H. Huycke, Lieut. 59th Battn.; Ernest Graham Joy, Capt. 74th Battn.; E. R. Kappelle, Lieut. 75th Battn.; Frank J. Kehoe, Driver, Batt. 7th Brig.; W. C. La Marsh, Corporal, 1st Battn.; G. L. Mackenzie, Lieut., 35th Battn.; E. A. H. Martin, Lieut. 37th Battn.; Angus McKinnon, Private, Army Service; Alex. McFarlane, Lieut. 86th Battn.; Hugh J. McLaughlin, Lieut. 74th Battn.; Kenneth McCrimmon, Lieut.; Norman F. Newton, Lieut. 135th Battn; Reg. Orde, Lieut. Ind. Ex. Force, Meerut; J. H. Phippen, Lieut. Army Service; Arthur Phillips, 21st Battn.; Stanley Rutledge, Private 4th Uni. Co.; J. D. Scott, Capt. 86th Battn.; Duff Slemin, Lieut. 125th Battn.; N. H. Treadwell, Lieut. Batt. C.F.A.; M. F. Wilkes, Private 20th Battn.; W. M. Wright, Army Service; R. H. Yeates, Gunner Batt. C.F.A.; E. G. Black, Gunner Batt. C.F.A.; R. C. Berkinshaw, Lieut. 124th Battn.; H. S. Parkinson, Lieut. 124th Battn.; Kirkconnell, Capt. on General Staff, Toronto; A. B. Mortimer, Lieut. 30th Batt.; R. B. Johnston, Capt. 166th Battn.; V. C. Gordon, Lieut. Royal Flying Corps; A. H. Lightbourn, Capt. C.M.R.

Barristers and Solicitors.

Toronto—Lt.-Col. G. T. Denison, Jr., Major W. W. Denison, Major Walter Gow, S. C. S. Kerr (19th Battn.), Major J. M. Macdonnel, Brig.-Gen. M. S. Mercer, Thomas Moss, H. S. Murton, Major L. C. Outerbridge, Eric Pepler, Capt. G. B. Strathy, C. A. Thomson, S. E. Wedd, J. L. Duncan, C. S. McInnes, Capt. A. D. Armour, G. F. McFarland, Capt. E. N. Armour, Capt. S. E. VanKleek (62nd Battn.), Capt. C. A. Moss, K. B. Maclaren, Capt. F. Aylesworth, Archibold Cochrane (C.F.A.); C. B. Henderson, H. H. Donald (92nd); H. W. Macdonnell, Lieut. A. B. Colville (20th Battn.); Lieut. P. W. Beatty (35th Battn.); Lt.-Col. H. A. Machin, J. P. Crawford, J. I. Grover, (81st Battn.); Major John Thompson, A. M. Boyd, Major Geo. H. Cassells, Major J. F. Lash, J. S. Beatty (Aviation Corps); Major A. A. Miller (134th); J. M. Forgie (92nd), E. F. McDonald,

Frank McCarthy, L. C. Jarvis (142nd), Capt. E. W. Wright (81st); Lieut. J. M. Langstaff (75th Battn.), J. Foulds, Major A. T. Hunter, Lieut.-Col. D. M. Grant (122nd Battn.); F. G. Dyke (C.A.S.C.) Thomas Gibson (168th Battn.), J. U. Garrow, W. W. Parry, R. O. Daly, Melville Grant (C.A.S.C.); M. C. Purvis, E. F. Appelbe, H. H. Ellis, Sub-Lieut. F. M. Fitzgerald (R.N.), Capt. R. P. Saunders (35th Battn.), N. S. Macdonell; Lt.-Col. R. H. Greer, Major A. H. O'Brien, and Capt. G. A. Grover (all of Sportsmen's Battn.); Major Holford Ardagh (124th Battn.), N. J. Macdonald.

Hamilton—G. W. M. Ballard, Everett Bristol G. R. Forneret, Brig.-Gen. W. A. Logie, Frank Morrison, Col. S. C. Mewburn, A.A.G., H. E. Snider, H. S. Robinson, H. A. Burbidge, A. B. Turner, Thos. Crosthwaite, P.P.C.L.I.

From other points—Lt.-Col. W. S. Buell, Brockville; F. B. Goodwillie, Melfort, Sask.; F. H. Greenlees, London, Ont.; F. W. Hill, Niagara Falls; E. L. Newcombe, Ottawa; A. C. T. Lewis, Ottawa; D. H. McLean, Ottawa; E. D. O'Flynn, Belleville; F. A. C. Redden, London, Eng.; E. S. Wigle, Windsor; J. E. Swinburne, Fort William; C. R. Widdifield, Peterborough; S. T. Medd, Peterborough; F. P. Blackwood, Winnipeg (C.A.S.C.); J. H. Burnham, Peterborough; R. I. Towers, Stewart Cown, Sarnia; Major Alexander Cowan, Barrie; L. P. Sherwood, Ottawa; Capt. H. P. Cooke, Uxbridge (116th Battn.); D. D. McLeod, G. G. McIntosh, Berlin; F. D. Boggs, K.C., Cobourg; F. H. Honeywell, Ottawa; W. A. Olmsted, Timmins; R. A. Patchell, Orillia; Capt. C. S. Bowie, Rainy River; Lieut.-Col. H. F. Hopkins, Lindsay; Armand Chenier, Cobourg; W. H. Gregory, Berlin; Lieut. W. Proudfoot, Jr., Goderich; G. N. Weeks, London, Ont.; Capt. J. A. Hope, Perth; Capt. A. L. McGovern, Port Arthur (28th Battn.); H. D. Smith, Chatham; F. W. Grant, Midland; F. J. S. Martin, Sault Ste. Marie; W. D. Herridge, Ottawa; A. H. Montieth, Paris; A. A. McLaughlin, Bowmanville, G. A. Urquhart, Windsor, J. L. Bishop, Ottawa.

Province of Saskatchewan.

Barristers.

To the names given, Vol. 51, p. 214, add the following:—William A. Adams, Qu'Appelle; Dudley A. H. Acheson, Saskatoon; John L. Bryant, Moose Jaw; H. C. M. Brown, Moosomin; Robert J. Campbell, Moosomin; James A. Cross, Regina; John

D. Cameron, Regina; Morley W. Coxworth, Regina; Robert M. Dennistoun, K.C., Winnipeg; Reginald W. Davis, Saskatoon; Robert F. B. Donald, Swift Current; J. J. Fyfe, Saskatoon; William R. Green, Moose Jaw; W. M. Graham, Yorkton; James H. Gunn, Prince Albert; C. E. Gregory, K.C., Prince Albert; H. Evans Hartney, Saskatoon; Earle W. Hume, Outlook; J. H. Hearne, Wadena; E. T. Heap, Shellbrook; H. E. Keown, Yorkton; Fred C. Kent, Moose Jaw; C. J. Lennox, Moose Jaw; Charles D. Livingston, Yorkton; David Mundell, Moosomin; John Macklem, Saskatoon; Francis H. McLorg, Saskatoon; David McKenzie, Wadena; Damien McKenna, Moosomin; John McAughey, Saskatoon; Arthur T. Procter, Moosomin; Alexander Ross, K.C., Regina; James S. Rankin, Weyburn; Alexander M. Stewart, Saskatoon; Walter E. Seaborn, Moose Jaw; David Taylor, Saskatoon; Charles P. Tisdall, Yorkton; Henry Ward, Regina; John W. Ward, Saskatoon.

Students.

Percy M. Anderson, Regina; Edward L. Abbott, Regina; Charles D. C. Blackburn, Saskatoon; Basyl P. Boyce, North Battleford; Austin H. Bailey, Saskatoon; Harold J. Cumming, Yorkton; Walter B. Caswell, Saskatoon; John N. Conroy, North Battleford; G. R. Davidson, Regina; Terrence P. Davidson, Prince Albert; Maurice B. Duquette, Moosomin; Oliver J. Dean, Regina; John Einarson, Yorkton; Stanley H. Edgar, Moosomin; William G. Elder, Saskatoon; William S. Elliott, Regina; V. S. Ferguson, Yorkton; G. A. Ferguson, Saskatoon; W. H. O. Green, Regina; J. R. B. Graham, Moose Jaw; A. R. Hamilton, Indian Head; John R. Hopkins, Swift Current; R. O. Hughes, Regina; R. P. Hughes, Prince Albert; James S. Hamilton, Weyburn, Hugh D. H. Hamilton, Regina; Llewelyn W. Jones, Battleford; Victor B. Lackey, Moose Jaw; Frederick L. Lawton, Yorkton; Charles E. Little, Regina; Frank C. Little, Saskatoon; Roy E. Murray, Weyburn; Arthur C. March, Regina; William W. Martin, Regina; William J. Murison, Arcola; Charles N. Morphy, Weyburn; Robert C. Mitchell, Weyburn; Clinton B. McGregor, Weyburn; John F. McKay, Prince Albert; John E. MacDermid, Saskatoon; Alexander F. Macdonald, Swift Current; William B. O'Hare, Regina; Herbert Olding, Saskatoon; Ronald W. Pearson, Saskatoon; P. P. Soren Rosthern; George F. Rowand, Regina; Alexander H. Reed, Outlook; Ernest J. Straker, Regina; Charles A. Scott, Saskatoon; George F. Stewart, Regina; Chester W. Stewart, Weyburn; Alfred G. Styles, Regina; Thomas R.

Simpson, North Battleford; Robert H. Scott, Moose Jaw; Alan C. Stewart, Moosomin; Cyril Stackhouse, Swift Current; Austin B. Smith, Saskatoon; Percival Shelton, Regina; Egerton A. Torrance, Regina; Thomas M. Walsh, Yorkton; Alfred J. Wickens, Moose Jaw; Sidney Lancelot Waterman, Regina; Walter B. Williscroft, Moosomin; John H. Warren, Saskatoon; Edward Woodcock, Saskatoon.

Province of Alberta.

To the names of Barristers given, Vol. 51, p. 259, add the following:—Milton H. Staples, Calgary; Robert T. D. Aitken, Calgary; Duncan Stuart, Calgary; Andrew B. Clow, Redcliff; Claude F. Gifford, Calgary; Cecil C. Trevanion, Calgary; Ernest Arnold Dyer, Calgary; Adam H. Goodall, Calgary; Frederick L. Shouldice, Calgary; Clarence H. Lougheed, Calgary; Richard B. Davidson, Medicine Hat; Cecil T. Chowne, Edmonton; William B. S. Craig, Edmonton; Thomas B. Malone, Edmonton; Daniel G. Campbell, Empress; Donald W. Patterson, Lethbridge; Francis G. Holyoak, Lethbridge; Robert Hunter, Wainwright; Percy A. McElwaine, Edmonton; Douglas Harper, Fort Saskatchewan; Charles G. O'Connor, Edmonton; Walter S. Wilson, Edmonton; Herbert S. Wilson, Calgary, Alberta; Frederick B. Bagshaw, Regina; Hugh G. Scott, Red Deer; Alexander C. Grant, Edmonton; Alan D. Harvie, Edmonton; Alex Ross, K.C., Regina; Eric L. Harvey, Calgary; Absalom C. Bury, Edmonton; William F. Ingpen, Calgary; Robert J. G. Dow, Edmonton; Harry M. Blois, Hanna; Alexander B. Macdonald, Edmonton; David Logan, Edmonton; Francis Craze, Edmonton; Horace A. Dickey, Edmonton.

Province of Manitoba.

(Complete to Feb. 25, 1916.)

To the names given, Vol. 51, p. 383, add the following:—E. D. Alder, O. E. Bryan, V. W. Baker, A. S. Baird, G. F. D. Bond, G. A. E. Bury, J. Cormack, T. Carr, F. W. Crawford, J. A. Cameron, W. K. Chandler, G. C. Cumming, J. B. Cuthbert, J. S. Cameron, H. E. B. Coyne, G. J. Charette, H. W. Clark, W. E. Davison, N. J. D'Arcy, E. A. Deacon, E. A. Dunfield, R. K. Elliott, T. P. Fleming, F. H. Fenwick, A. G. Finkbeiner, H. D. A. Gill, A. M. Graham, W. B. Henry, W. Hancock, C. C. Heath, F. M. Hetherington, A. Hutcheon, H. L. Jackson, L. H.

Johnson, H. E. Johnston, H. Leach, P. R. Leighton, C. V. Lindsay, G. F. Loree, G. W. McGhee,. C. Martel, R. M. MacTaggart, E. D. H. McMeans (killed), E. S. McQuarrie, P. J. Montague, R. C. Maples, W. J. Moran, C. L. Monteith, J. C. Martin, J. K. Morton, G. Morton, L. P. Napier, D. O. Owens, M. M. Perdue, R. M. Pearson, F. L. Pusch (D.S.O.), D. C. Philip, H. W. Porter, L. I. Pfummer, D. G. Potter, J. L Reed, C. D. Roblin, R. T. Robinson, E. L. Scott, E. E. Spencer, E. V. Sherlock, A. Sullivan, J. R. Sypher, M. E. Staples, B. Staples, F. G. Taylor, E. J. Thomas, R. M. Thomson, G. S. Thornton, C. S. Tupper, G. R. Trumbell, E. P. Thompson, L. T. Tweed, B. L. Whittaker, E. G. Wright,

From the Province of Prince Edwards Island—Lt.-Col. A. E. Ings.

From the Province of New Brunswick.- See list, ante, Vol. 51, p. 259 (15 names).

From the Province of British Columbia—J. M. Mowat, Vancouver, Edmund E. Delevault, Vancouver.

KILLED IN ACTION.

Lt.-Col. W. Hart McHarg, Barrister, Vancouver.
John L. Reynolds, Student, Winnipeg.
Francis Mallock Gibson, Student, Toronto.
Lt.-Col. H. F. Hopkins, Barrister, Lindsay, Ontario.
Henry Kelleher, Langemarck, April, 1915.
W. L. Lockhart Gordon, Toronto, Student; Ypres, 1951.
A. N. Morgan, Barrister, New Liskeard; May 24, 1915.
T. C. Gordon, Student, Owen Sound; Jan. 22, 1916.
R. DeB. Bird, Manitoba.
H. D'A. Gill, Manitoba.
R. Hoskins, Manitoba.
R. D. H. McMeans, Manitoba.
David Mundell, Saskatchewan; May 24, 1915.
Ernest Arnold Dyer, Manitoba; July 1, 1915.

We are aware that these lists are incomplete, and so far we have no lists from other provinces; we should be much obliged if the Secretaries of their Law Societies would give us further names.