Canada Law Journal.

VOL. LVII. TORONTO, APRIL, 1921. No. 4.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

We do not propose to add to the mass of literature which has been given to the civilized world in connection with the "League of Nations," but only to refer to that portion of its work which comes within the purview of our pages.

On recent occasions Sir George Foster and Hon. Mr. Rowell, K.C., who are the worthy representatives of Canada in the Assembly of the League of Nations, have both spoken of the formation of a permanent Court of International Justice. Sir George Foster referred to the subject by saying, "that the one outstanding work of the Assembly of the League of Nations has, I think, been the construction of a permanent Court of International Justice." He also said that early in the year the Council called together a committee of ten of the first jurists of the world, which met at Brussels and for six weeks conferred on the subject, and at last agreed upon a proposal for a permanent Court of International Justice. That report went to the Council of the League of Nations where it was examined, discussed and revised, and finally as amended it was sent to the Assembly, which, with some few amendments, unanimously approved of the draft and expressed the belief that the various States composing the League would approve of the construction of this new Court.

Should this Court come into existence it will be the most august and important tribunal that the world has ever seen. Nations will be the litigants and the subjects will be disputes between nations, such as the interpretation of treaties and other questions of like character.

Hon. Mr. Rowell, on the 25th of February last, delivered an address before the Manitoba Bar Association in reference to this Court. We are indebted to him for a verbatim copy of his most illuminating paper which we gladly publish in full. It reads as follows:—

"For more than a hundred years the British Empire and the United States have found it possible to settle all their disputes by peaceable means. While we may not always have approved of all the terms of these settlements, who is there who will deny that the worst settlement so secured was better for both nations than the best settlement that could have been secured by war between the two great branches of the Anglo-Saxon race? Great Britain and the United States have conclusively demonstrated the possibility of nations settling their disputes by peaceable means, and it is but natural, therefore, that they should have been the leaders among the great powers at the Peace Conference in endeavouring to secure a general world-wide agreement for the peaceable settlement of international disputes. This agreement took the form of the Covenant of the League of Nations.

In the past arbitration and conciliation have been the only peaceable methods available, and statesmen and jurists have recognized the weaknesses inherent in these methods of settlement, where political considerations almost inevitably enter into the final decision. For years, therefore, many of the ablest statesmen and jurists have been devoting their best efforts towards promoting the establishment of a Permanent Court of International Justice, composed of judges of the highest standing, and who, by reason of their integrity, their ability and their permanent judicial position, would decide international causes, just as domestic causes are decided according to the very right and justice of the case.

So far, however, all efforts to secure this result have been unavailing. The final and insuperable difficulty has been the method of selecting the judges. It was on this point that the Hague Conference of 1907 failed to reach an agreement. This difficulty has now been solved through the League of Nations, and if the statute constituting the Court, which was approved at Geneva in December last, is ratified by a majority of the members of the League, as it almost certainly will be within the next few months, the new Court will be established, and the next assembly at Geneva will be in a position to elect the judges.

May I indicate, first, the steps so far taken by the League to procure the establishment of this new Court, and then outline briefly its organization, jurisdiction and procedure.

The principal function of the League of Nations is to preserve the world's peace by providing a substitute for war as a means of settling international disputes.

When the statesmen responsible for framing the Treaty of Peace and the Covenant of the League met in Paris, they recognized that if the League was to provide a substitute for war as a means of settling international disputes, they could not depend solely, or even principally, upon arbitration and conciliation. They must secure the establishment of a Permanent Court of International Justice.

Article 14 of the Covenant, therefore, provides:—

"The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any disputes of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

Acting upon this article the Council, very wisely, I believe, appointed a commission of ten jurists of international repute to prepare plans for the establishment of such a Court. Although the United States had not entered the League, Mr. Elihu Root, probably the ablest living member of the American Bar, accepted a position on this commission and rendered invaluable assistance in its work. Lord Phillimore was the British representative.

Before this Commission was appointed, the Scandinavian countries and Holland and Switzerland, had, through a commission of their ablest jurists, prepared a draft scheme for submission to the Council of the League. This and other draft schemes prepared by other states and by individuals, were submitted to the Commission. The Commission also had the benefit of a very full and detailed report prepared by the Legal Branch of the Secretariat of the League on the history of the efforts previously made to secure the constitution of such Court, together with an exam-

ination and criticism of the proposals from time to time submitted for the creation of a Permanent Court. As a result of five weeks' unremitting labour at the Hague, the Commission reached complete accord on the plan to be recommended to the Council for the constitution of this Court.

The plan, as prepared by the Commission of jurists, was submitted to the Council and approved, subject to two important modifications: the first, relating to jurisdiction, to which I shall refer later, and the second, relating to language. The report of the jurists provided that, proceedings should be conducted in the French language. As both French and English are official languages of the League, it was considered but right that English should also be an official language of the Court, and the report was amended so as to place English on a parity with French in the proceedings of the Court.

The report as thus modified was submitted to the Assembly and referred to a commission composed of forty-one members, representing all the States, members of the League. This commission in turn referred the detailed consideration of the draft plan to a sub-committee of ten members, five of the ten having been members of the original Commission that framed the scheme, and five being chosen from other representatives of the League. I am glad to say that Canada was represented on this sub-committee in the person of Mr. Doherty, Minister of Justice. The sub-committee thoroughly examined the proposals and made its recommendations to the main Commission. This Commission in turn further examined the proposals and made its recommendations to the Assembly. The Assembly unanimously approved the report and proposed plan. In the report so presented certain modifications were made in the scheme as recommended by the Council, the most important being (1) in reference to the nomination of judges and (2) in reference to the jurisdiction of the Court.

While the jurists at the Hague were obviously determined to secure a workable basis for the constitution of the new International Court, they were apparently equally determined to keep politicians out of the Court. Instead of providing that the nomi-

nations should be made by the Governments concerned, they provided that the nominations should be made by the national groups, members of the Court of Arbitration constituted under the Convention for the pacific settlement of international disputes signed at the Hague, October, 1907. You will recall that under that Convention, each contracting power was to select four persons of known competency in questions of international law, of the highest moral reputation and disposed to accept the duties of arbitrator. The persons so selected were thereby constituted members of the Court, from which arbitrators might be selected from time to time by States desiring to resort to the Hague Tribunal for settlement of their disputes.

At the time this Convention was signed the British Dominions had not attained the national status or received the international recognition which they now enjoy and the United Kingdom was the only contracting party representing the British Empire. If the scheme as recommended by the jurists and approved by the Council had been adopted by the Assembly, the Dominions would have had no right to nominate persons for election as judges of the Court.

This was a position which Canada and the other Dominions felt they could not accept. They were members of the League, possessing exactly the same status and rights as every other member, and were entitled to exactly the same privileges of nomination as other members of the League. The justice of this view was recognized by the Assembly and the plan was, therefore, amended so as to give the Dominions the same right of nomination as other members of the League. The indirect method of nomination was, however, retained, and the Dominions will be required to nominate national groups under the same conditions as prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of the Hague of 1907, and the national groups thus constituted will make the nominations to the Assembly.

Under the scheme as originally framed it was also provided that not more than one person of any nationality should be elected as a member of the Court. As we have an Imperial nationality, embracing the whole Empire, it might be contended that

only one judge could be chosen from the whole British Empire. This again would discriminate against the Dominions as compared with other members of the League, and on the motion of Canada the scheme was amended so as to provide that not more than one national of any member of the League should be elected. A Canadian, therefore, will be eligible for election even though a member should be chosen from Great Britain or one of the other Dominions.

The question of jurisdiction presented the most important and difficult problem which the Assembly was called upon to face. The jurists at the Hague had recommended that the Court should have compulsory jurisdiction, that is, that any State having a dispute of a judiciable character with any other State should be entitled to bring its cause before the Permanent Court of International Justice for decision, and should there be a difference of opinion as to whether the dispute was of a judiciable nature that question was to be decided by the Court.

You will note that this goes beyond the requirement of the Covenant. Article 14, to which I have already referred, does not provide for the creation of a Court with compulsory jurisdiction, but for a Court to hear and determine all disputes of an international character that the parties may submit to it. The Council, therefore, amended the scheme as submitted by the jurists to conform with what they understood to be the terms of the Covenant. When the matter came before the Assembly there was a clear and marked division of opinion on this question, the smaller powers on the one side and the great powers on the other; the smaller powers were almost unanimous in contending for a Court with compulsory jurisdiction, whereas the great powers were unwilling to go beyond the strict terms of the Covenant. Under the Covenant it was necessary that the Assembly should reach a unanimous decision. The Commission, therefore, decided in favour of voluntary jurisdiction, subject, however, to this important qualification, that any State entitled to sign or ratify the protocol might when signing or ratifying or at a later moment declare that they recognized as compulsory *ipso facto* and without special agreement, in relation to any other member or State

accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes defined in the article. The classes so defined being disputes of a juridical character.

Disappointment has been expressed in many quarters that the Assembly did not decide in favour of compulsory jurisdiction. While the delegates from Canada favoured compulsory jurisdiction, they did not feel that any just criticism could be levelled against the great powers for not being willing to go beyond the terms of the Covenant at the present time. The view expressed by the representatives of the great powers was that it was better that the Court should be established under the conditions named in the Covenant and that by its strength and its prestige it should win the confidence of all the nations of the world, rather than that compulsory jurisdiction should be conferred on it at its organization.

Members of the Assembly differed on a very important question of procedure, namely, as to whether the Assembly as such had the power to finally pass the statute creating the Court, or whether, owing to the peculiar wording of Article 14 of the Covenant, it was necessary that the question should be referred to the members, and that the Governments of the respective members should give their adherence to the Statute in the form of a protocol signed and ratified by them. It was, therefore, agreed that the Statute constituting the Court should be submitted to the members of the League for adoption in the form of a protocol duly ratified and declaring their recognition of this Statute, and that as soon as this protocol had been ratified by the majority of the members of the League, the Statute of the Court should come into force, and the Court should be called upon to sit in conformity with the Statute.

May I now refer briefly to the organization of the Court, its competence and its procedure.

Organization of Court.—The Court shall be composed of fifteen members, eleven judges and four deputy judges, "elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law."

The full Court consists of eleven judges, but where eleven are not available nine constitute a quorum.

The judges are to be nominated in the manner already indicated, and are to be elected by the Council and the Assembly voting separately. Candidates must receive a majority vote of both Council and Assembly to ensure election. This provision was made to ensure that the judges elected will be satisfactory to both the great and the small powers, as in the Council the great powers are in the majority, while in the Assembly the small powers predominate. Suitable provisions are made to avoid a deadlock and to ensure the due constitution of the Court.

The tenure of office is nine years and the members are eligible for re-election. The ordinary members of the Court must not exercise any political or administrative function, and no member of the Court can act as agent, counsel or advocate in any case of an international nature. The Court elects its own President and Vice-President for a period of three years. The seat of the Court is established at the Hague where the President and the Registrar must reside. A session of the Court is to be held every year, and unless otherwise provided by the rules the session will begin on the 15th day of June. The President may summon an extraordinary session of the Court whenever necessary.

For the speedy despatch of business the Court is authorized to form annually a Chamber composed of three judges, who at the request of the contesting parties may hear and determine cases by summary procedure. The Court is also required to appoint every three years a special Chamber of five judges to hear and determine labour cases, particularly cases referred to in the labour clauses of the Peace Treaties. This Chamber is to be assisted by four technical assessors sitting with them but without the right to vote, and chosen with a view to ensuring just representation of competing interests. Unless, however, the parties demand that the case should be heard by this Chamber, it must be heard by a full Court.

Similar provision is made for the hearing of cases relating to transit and communication, particularly those referred to in the clauses relating to ports, waterways and railways in the Treaties

of Peace. This Chamber is also to be assisted by four technical assessors sitting with them but without a vote. These special Chambers may, with the consent of the parties, sit elsewhere than at the Hague.

Judges of the nationality of each contesting party retain their right to sit on cases before the Court, and if there is a judge of only one nationality, the other will be entitled to choose a judge of his own nationality to sit as a member of the Court.

The salaries of judges are as follows:—

1. President	Annual Salary	15,000 Dutch florins
	Special Allowance	45,000 " "
		60,000 " "
2. Ordinary Judge	(a) Annual Salary	15,000 " "
	(b) Duty Allowance	100 florins per day from the date of leaving his home to attend the Session of the Court until his return.
	(c) Subsistence Allowance	when at the Hague, 50 florins per day.
	(d) Travelling Expenses.	

3. The Vice-President of the Court receives an additional 50 florins per day as duty allowance.

The expenses of the Court are to be borne a decided by the Assembly on the recommendation of the Council.

Competence of the Court.—Only States or members of the League can be parties before the Court. Private citizens cannot be heard. The Court is open to members of the League and to States named in the annex to the Covenant. This will admit the United States though not a member of the League. Other States may be admitted on conditions to be laid down by the Council.

Jurisdiction.—The Court has jurisdiction in the following causes:—

1. All cases which parties refer to it.
2. All matters specially provided for in Treaties orConventions in force, *e.g.*:

a. Labour Clauses of Peace Treaties.
b. Ports, Waterways and Railway Provisions of Peace Treaties.
c. Minorities Treaties.
d. Mandates.
e. Air Convention.
f. Arms Traffic Conventions.
g. Liquor Traffic Conventions in Africa.

3. Matters submitted by the Council or Assembly for an advisory opinion.
4. Disputes between States who have signed the protocol to the Statute agreeing to compulsory jurisdiction.

The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

2. International Custom, as evidence of a general practice accepted as law;

3. The general principles of law recognized by civilised nations;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Procedure.—As already explained English and French are the official languages of the Court.

If a dispute arises and danger is imminent, the Court has power to indicate the provisional measures that ought to be taken to preserve the respective rights of either party. The parties are to be represented before the Court by agents and may be assisted by Counsel.

The procedure consists of two parts, written and oral, the written in the form of cases, counter cases and if necessary replies and all papers and documents in support; the oral proceedings consist of hearing testimony of witnesses and argument of Counsel.

The proceedings are to be public unless the Court otherwise decides or the parties demand. The Court may direct an enquiry at any stage of the proceedings by any person or Commission.

All cases are decided by a majority of the judges present at the hearing, but dissenting judges are entitled to deliver a separate opinion. The decision of the Court is only binding between the parties and in the particular case, and is final and without appeal. In case of dispute the Court will interpret its own judgment. Provision is made for rehearing only upon discovery of some fact of a nature to be a decisive factor and unknown to the party at the time judgment was delivered, the rehearing to be granted only if made within six months of discovery of the new fact and within ten years from the date of decision. Any State which considers it has an interest of a legal nature which may be affected by the decision in any case before the Court may apply for permission to intervene, and the Court may grant such permission. If other States are interested in the construction of a Convention, they are to be notified so they may be represented in the hearing. Unless otherwise decided each party is to bear its own costs.

I have endeavoured to state in the most simple and direct form the provisions of the Statute constituting the Court. Time will not permit of either an explanation or exposition of these provisions.

May I say in conclusion that the constitution of this Court is the realization of one of the great hopes of our humanity, but its real utility and power for good will depend upon the intelligent and wholehearted co-operation of the Governments and peoples of the nations, members of the League.

To no constituency will it make a stronger appeal than to the members of the Bar in every land, and this appeal should be particularly strong to members of the Bar in all portions of the British Empire, for there is no feature of our political institutions which has contributed more to the preservation of our liberties and to the strength and stability of these institutions than the "supremacy of law." To this "rule of law" our people yield ready obedience because they recognize that it is only thereby that liberty is guaranteed that the weak are protected as well as the strong, and because they are convinced that through our Courts the law is honestly and impartially administered.

The establishment of a Permanent Court of International

Justice, composed of judges of the highest standing, for the determination of justiciable causes between nations on the basis of public right, a Court, to which all nations, small as well as great, may resort in confidence that their causes will be determined, not on the basis of either military or commercial strength or both, but on the very right and justice of their cause, is a great practical step towards the establishment of "public right" and of the "rule of law" among the nations of the world, and is a very great contribution toward the cause of world peace and world stability.

If the League should accomplish no other purpose than the establishment of this Court, it will have justified its existence and proved itself one of the greatest and most beneficent international organizations ever formed.

PROVINCIAL JURISDICTION OVER DOMINION COMPANIES.

One of the difficult questions arising under the British North America Act has been one concerning the right claimed by Provincial Governments to exercise a certain jurisdiction over companies incorporated by the Dominion Government.

The British North America Act does not expressly authorize the Dominion Government to incorporate companies. It does expressly authorize it to incorporate banks: sec. 91 (15). But under its general authority for the regulation of trade and commerce, sec. 91 (2); and under its authority to deal with all matters not coming within the classes of subjects by the Act assigned exclusively to the Provincial Legislatures, it undoubtedly has a right to incorporate companies inasmuch as the only authority the Provinces have in this respect is the incorporation of companies with provincial objects: sec. 92 (11).

In the interpretation of the Act regarding these matters, we are inclined to think it would have been a fortunate thing if it could have been determined that the provincial authority was definitely limited to granting incorporations to companies whose operations were to be confined exclusively within the territorial

limits of the Province granting the incorporation; but when the question of the provincial powers came to be considered in the Privy Council it was held that although a company might be incorporated by a Province to do business within the Province, it might also be endowed by the Province with a capacity to acquire a right to do business in other Provinces: *Bonanza Creek* v. *The King*, 1916, 1 A.C. 566, 114 L.T. 765, and in this way it would seem as if a Province might in substance, though professedly incorporating a company for provincial objects, nevertheless enable the company so to extend its powers as practically to acquire all the powers of a company incorporated by the Dominion. We venture to doubt very much whether this latter decision really effectuates the intention of the Act. The words, "The incorporation of Companies with Provincial objects" in sec. 92 (12) seem to import that the companies which the Provinces are authorized to incorporate are to limit their operations within the territory of the Province by which they are incorporated, and it is difficult to believe that it was ever the intention of the B.N.A. Act to enable Provinces to incorporate companies capable of carrying on business beyond the limits of the Province granting the incorporation. To the ordinary mind it hardly seems possible to regard as a "provincial object" in Ontario, the carrying on of business in other Provinces; and if a Province cannot directly incorporate a company to carry on business outside its territorial limits, then whatever may be the powers of a corporation at common law, it would seem, that the kind of corporation a Province is authorized to create must of necessity be limited in its powers and incapable of extending them by its own volition so as to enlarge its powers to do business beyond the limits of the Province to which it owes its existence. And if this view of the meaning of sec. 92 (12) were correct it would follow that the Provincial statute, 6 Geo. V., ch. 35, sec. 6, Ont., which purports to give to all provincial companies the powers and capacities of common law corporations; and all kindred legislation in other Provinces would be *ultra vires*, as being an attempt indirectly to extend the powers of provincial corporations beyond "provincial objects" for which alone a Province has power to incorporate companies. But so long as the

decision in *Bonanza Creek* v. *The King* stands the contrary appears to be law; and according to this decision Provinces appear to be capable of doing indirectly what by the terms of the B.N.A. Act they are not authorized to do directly, viz., to create corporations with other than "provincial objects."

While the recent decision of the Judicial Committee in *The Great West Saddlery Company v. The King*, and various other cases consolidated therewith throws no additional light on this question it does,at all events, establish that the Provinces have no right by any provincial legislation to interfere with the operations of Dominion corporations. An attempt to do this had been made in several Provinces by statutes requiring Dominion companies to take out provincial licences to do business and the imposition of licence fees, and forbidding the carrying on of business in case of default. While it is conceded that Provinces may impose a tax on all companies doing business within their respective limits, there can be no discrimination in this respect between provincial and Dominion companies, neither can any Province prevent a Dominion company from carrying on its business for default in payment of taxes so imposed. This decision also establishes that with regard to the acquisition of lands within any Province by a Dominion corporation it is bound by the local laws prevailing in each Province and where mortmain laws exist they are binding on Dominion corporations and land cannot be acquired or held by them except in accordance with the provisions of such provincial

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Motion Pictures as Evidence.

New branches are growing apace on the parent stem of common law—one of the most flourishing nowadays is the law as regards "Movies" as they are called. *Law Notes* (Northcliffe, N.Y., Nov., 1920) refers to this, and notes a recent case, *Feeny* v. *Young*, 181 N.Y.S. 481, where the dispute brought up a discussion on a point of evidence. The same journal says that Dr. Wigmore has formulated an additional section of his work on evidence dealing with motion pictures as evidence. Any of our readers who are interested might get some light from these sources.

TITLE BY POSSESSION.

This subject is discussed in the Dominion Law Reports in an article written by Mr. E. Douglas Armour, K.C., of the Toronto Bar, as an annotation to some recent cases. The article is as follows:—

The law respecting title by possession, where a trespasser encloses a piece of the adjoining land overhung by the projecting eaves of his neighbour's house seems to be assuming a novel shape. We are not without instances of cases where prior decisions have been accepted without criticism, until at last the law becomes settled beyond hope of reclamation; and the same fate may attend the question which was involved to some extent in the cases of *Rooney* v. *Petry* (1910), 22 O.L.R. 101, and *DeVault* v. *Robinson* (1920), 54 D.L.R. 591, 48 O.L.R. 34. *DeVault* v. *Robinson* followed the other case without criticism, the reasoning being adopted and accepted as correct. It will therefore be convenient to examine the earlier case.

In *Rooney* v. *Petry*, the plaintiff's north wall was situated about a foot from the northerly boundary of his lot, and the eaves of his house projected over this one foot space. The defendant for "many years" treated the one-foot strip as part of his lawn and sometimes planted flowers in it. The plaintiff was in the habit of using the land to the north of his house for the purpose of painting it. The Court held that the defendant had extinguished the plaintiff's title to the strip but that his title was "subject to the easements, (1) the maintenance of the roof, and (2) the right of entry and support, etc., for painting, etc., the north side of the house and front fence." It is unfortunate that the number of the "many years" was not stated, as the question of the acquisition of an easement is involved therein.

In giving judgment Riddell, J., said, 22 O.L.R., at 107:—"That the right of a person to have his eaves or roof project over another's land is an easement is, of course, elementary, and the power of acquiring such an easement by the statute has been admitted since *Thomas* v. *Thomas* (1835), 2 Cr. M. & R. 34, 150 E.R. 15; *Harvey* v. *Walters* (1873), L.R. 8 C.P. 162; *Lemmon* v. *Webb*, [1894] 3 Ch. 1, at 18."

Let us now examine these three cases, in order to ascertain whether they decide that a projecting eave constitutes an easement.

In *Thomas* v. *Thomas*, 2 Cr. M. & R. 34, at 36, 150 E.R. 15, the plaintiff complained that the defendant by building had obstructed a drain which discharged through the defendant's premises (which need not be further remarked upon) and that the building was "so near to the said wall and to the thatch thereof, that by reason thereof . . . the rain which from time to time descended to and fell upon the thatch of the said wall was wholly prevented from dripping and falling from the thatch thereof in manner aforesaid." The issues in the case were two, viz.: (1) whether unity of possession had extinguished the easement of dripping or shedding water, and (2) whether the plaintiff by having raised the height of his wall had lost his easement. The effect of the judgment on the latter point is shortly and correctly expressed in the head-note:—"Where a party has a right to have the droppings of rain

fall from his wall upon the premises of another, the right is not destroyed by raising the height of the wall."

In *Harvey* v. *Walters*, L.R. 8 C.P. 162, precisely the same point arose, namely, whether increasing the height of the wall from the eaves of which rain dripped upon the defendant's land destroyed the easement; and it was held, following *Thomas* v. *Thomas*, that in the absence of evidence that any greater burden was thrown on the servient tenement, the easement was not destroyed.

It will be noticed that in each case there was an easement to shed water on another's land acquired by user before the action was brought, and as far as the writer can ascertain, nothing is said in either of the two cases about the maintenance of a projecting eave being an easement.

In *Lemmon* v. *Webb*, [1894] 3 Ch. 1, the plaintiff's trees grew so that the boughs overhung the defendant's land, and the defendant cut them off up to the boundary line without giving previous notice to the plaintiff; and it was held that the overhang of the trees constituted a nuisance and not a trespass, and that the defendant had a right to abate the nuisance by cutting the boughs, and was not obliged to give notice of his intention to do so. This decision was affirmed in the House of Lords, [1895] A.C. 1, where the sole question was, as it was largely in the Court below, whether previous notice was necessary. The overhanging boughs had been in that position for more than 20 years, so that if the fact had constituted a trespass the plaintiff would have acquired an easement, whereas the Courts held that the overhang in the case of trees was merely a nuisance. It cannot be inferred from this case that the right to maintain a projecting eave is an easement.

Assuming then that those cases do not support the proposition in the text, it must be examined on principle to ascertain whether it is accurate. If a man in building his house build on a foot of his neighbour's land, there is no doubt that the encroachment would be an occupation which would develop into ownership in 10 years, and not the exercise of a right which would ripen into an easement in 20 years. Similarly, if he excavated his neighbour's land and constructed a cellar and used it in connection with his own house which, except the cellar, was built on his own land he would in 10 years gain title by possession and not an easement: *Rains* v. *Buxton* (1880), 14 Ch.D. 537. In each case there is permanent occupation to the exclusion of the owner; whereas an easement is the result of the exercise of a right which does not exclude the owner of the servient tenement from the occupation of his land. If then, a man should build the upper portion of his house so as to overhang his neighbour's land, does he not exclude the neighbour from the occupation of that portion, and is he not in exclusive possession himself? A passage from the judgment of Kay, L.J., in *Lemmon* v. *Webb*, [1894] 3 Ch. 1, at 18, shews the difference between that case and the case of a projecting house. Where boughs of trees overhang, the wrong is a nuisance, the remedy is by action on the case, and damage must be shewn as the cause of action; but where a house projects over adjoining land, it is a case of trespass and the remedy is for trespass to land. Now a trespass to land constituting occupation by a mere continuance ripens into a title by possession, whereas the overhang of the boughs for more than 20 years gave no right of any kind.

The preceding discussion is academic in so far as the principal cases are concerned, for the projections of the buildings in both cases were over the plaintiff's own lands; but it arises naturally out of the Judge's dictum; and if the arguments are sound and the cases cited properly interpreted it appears that there is no ground for the proposition that the right to maintain a permanent portion of a building projecting into a neighbour's property is an easement.

Another, and the true point to be determined is, upon what grounds such a projection is to be maintained as of right when the owner loses part of his land underneath the projection by the occupation of a trespasser. In this phase, if the right claimed is an easement, the number of years of occupation is an important factor, for title by possession can be acquired in 10 years, while the acquisition of the right to an easement takes 20 years.

Assume, for the sake of the argument, that in either case the defendant had been in occupation of the plaintiff's strip of land for exactly 11 years, during which time the plaintiff had regularly, at intervals, gone on the strip for the purpose of painting his house, taking in supplies or the like, so that if the strip had belonged to the defendant, he would have been in the way of acquiring an easement. Now, it is plain that a man cannot have an easement over his own land; and the land belongs to the plaintiff, notwithstanding the occupation of the defendant, up to the close of the last day of the 10 years. Therefore, during the 10 years the user by the plaintiff of his own land cannot be considered in computing the 20 years necessary to acquire an easement. It is not until his title to the strip has been extinguished by the occupation of the defendant that he is in a position to begin that user which may in time ripen into an easement. On the above hypothesis of occupation for 11 years, then, the plaintiff would have had only one year's user to his credit. It is submitted, therefore, that in order to justify awarding an easement to a plaintiff whose title has been defeated by possession, there should be a lapse of at least 30 years before (occupation and user continuing) the plaintiff could claim an easement.

But there seems to be another and a better ground for the plaintiff's relief. It has been determined that a man may gain title by possession to a cellar, *Rains* v. *Buxton*, 14 Ch.D. 537; and that title can be similarly gained to a tunnel, *Bevan* v. *London Portland Cement Co.* (1892), 3 R. 47, 67 L.T. 615, without interfering with the ownership of the soil lying above. And, where a trespasser has been in occupation of land, lying under an overhanging projection, it is sufficient, and seems on the authority of the above cases, proper, to hold that all that the owner loses is that which the trespasser occupied, namely, the land under the projection, and that the overhanging portion of the owner's building remains his own property unaffected by the trespass.

DOMINION INCOME TAX ACT.

An important decision was given recently in the Exchequer Court of Canada in the case of *The King* v. *Lithwick*, reported in 57 D.L.R. 1. An annotation to this report discusses the law on the subject as follows:—

The duties imposed by the Income War Tax Act, 7-8 Geo. V. 1917 (Can.), ch. 28, upon persons acting in a fiduciary or representative capacity, may be grouped under six heads:

1. Sub-sec. 6 of sec. 3, as amended by 10-11 Geo. V. 1920, ch. 49, provides that: "Income accumulating in trust for the benefit of unascertained persons or of persons with contingent interests shall be taxable in the hands of the trustees or other like persons acting in a fiduciary capacity as if such income were the income of an unmarried person." This is interpreted by the Department of Finance to mean that where the whole or any portion of the income of an estate received by a trustee is not payable in the year of receipt to any beneficiary, as for example, where there is a direction in the will to accumulate the income until the happening of some future event or until some one is born or definitely ascertained, the trustee must deliver a return of the portion of the income not distributable on what is known as Form T.1. The trustee mus pay the tax due in respect of the income in the same manner as is required in the case of a personal return. As the trustee as such can have no relatives, the maintenance of which gives an unmarried person an exemption of $2,000, the exemption from normal tax to which the trustee is entitled is $1,000. It has to be noted that this sub-section is retrospective in its operation to the commencement of the 1917 taxation period. As the Act provided no penalties for delay in delivering returns for 1917 or 1918, returns for these years may still be filed without penalty. Where returns for 1919 are filed after May 31, 1920 (the time for delivering of returns having been enlarged by the Minister from April 30, to May 31), the taxpayer is subject to a penalty of 25% of the amount of the tax payable. This penalty, however, was reduced by Order in Council to a penalty of 5% of the amount of the tax payable, the penalty in any case not to exceed $500.

Where a trustee has discretion as to the amount which he may pay to a beneficiary out of the income of an estate, the amount retained by the trustee has to be returned as income under this sub-section. While there may be cases where the income of an estate is not payable to any beneficiary during the taxation year nor accumulated in trust for the benefit of "unascertained persons" or of "persons with contingent interest," it was apparently the intention of Parliament to provide that all incomes should be taxed regardless of the disposition made of them and if any part of the income of an estate is not taxable as part of the income of a beneficiary, the trustee is only safe if he makes a return of such income himself. The amounts received by beneficiaries, or amounts which they are entitled to receive whether they actually withdraw them or not are of course part of the income of the beneficiaries and must be shewn by them in their personal returns. The residence of the probable or possible beneficiary is immaterial in determining whether

the trustee is liable to taxation. The tests which would be applied to ordinary residents or non-residents would be applicable to the trustee. Where there are two trustees of an estate, one resident in Canada and the other resident outside of Canada, the question as to whether the income of the estate, taxable in the hands of the trustees, should be taxed as the income of a resident or of a non-resident, may present some difficulty. Probably such facts as the residence of the managing trustee and the place of receipt of the income would be taken into consideration by the Department. Cases where the beneficiaries voluntarily allow income, to which they are entitled, to accumulate in the hands of the trustee either for their own benefit or for some other purpose, have to be distinguished from those cases where the income accumulates under the direction of the testator or under the discretionary power of the trustee. In the former case it is income of the beneficiary.

2. Sub-sec. 9 of sec. 7, as enacted by 10-11 Geo. V. 1920, ch. 49, sec. 10, provides: "In cases where trustees in bankruptcy, assignees, liquidators, curators, receivers, administrators, heirs, executors and such other like persons or legal representatives are administering, managing, winding up, controlling, or otherwise dealing with the property, business or estate of any person who has not made a return for any taxable period or for any portion of the taxable period for which such person was required to make a return in accordance with the provisions of this Act, they shall make such return and shall pay any tax and surtax and interest and penalties, assessed and levied with respect thereto before making any distribution of the said property, business or estate."

Sub-sec. 10 of sec. 10, immediately following the above, provides that: "Trustees in bankruptcy, assignees, administrators, executors and other like persons before distributing any assets under their control shall obtain a certificate from the Minister certifying that no unpaid assessment of income tax, surtax, interest and penalties properly chargeable against the person, property, business or estate as the case may be, remains outstanding. Distribution without such certificate shall render the trustees in bankruptcy, assignees, administrators, executors and other like persons personally liable for the tax, surtax, interest and penalties."

It is understood that the Department allows the representatives of a deceased person a reasonable time within which to make returns without penalty, but that a penalty accrued at the date of death of the deceased continues in force. For example, if a person dies towards the end of April, it would be improbable that the executors or administrators could obtain probate or administration by April 30, the last day for the delivery of the return. It is not likely that the Department would claim any penalty provided the executors or personal representatives observe all due expedition in filing a return after obtaining probate or administration. On the other hand, if the deceased before his death had allowed the prescribed time to elapse and the penalty for failure to file the return within the time limited by the Act had consequently accrued before his death, it would be payable by the personal representative along with any tax found due. Once the representative makes a return he must pay the tax and is subject to interest and penalties as in the case of a personal return.

Sub-sec. 9 provides for the case where a deceased or insolvent person has neglected to file returns at the proper time. Sub-sec. 10 covers the case where a deceased or insolvent person has made proper returns, but has not paid the tax due in respect thereof. These sub-sections impose no duty upon the trustee to see to it that beneficiaries of the estate made proper returns. His duties are confined to carrying out the obligations of the deceased insolvent.

On a question of priority, see the *King* v. *Lithwick*, *ante* p. 1. Trustees, assignees, etc., to protect themselves, should make enquiry of the Commissioner of Taxation as to what returns have been made by the deceased or insolvent person and what taxes, if any, are in arrears. There may be cases where an executor or administrator is satisfied beyond a doubt that the deceased was not liable to tax, but he can not be certain that the deceased has not been called upon to make a return. It is questionable whether the duty imposed upon trustees, etc., by sub-sec. 9, 10-11 Geo. V. 1920, ch. 49, sec. 10, extends to the delivery of returns other than personal returns. Returns on what are known as Forms T.3, T.4 and T.5 are returns required "in accordance with the provisions" of the Act, and this sub-section states that trustees, etc., shall make such returns. It is probable that by this sub-section it was intended to make the legal representatives responsible for the delivery of returns, in respect of which taxes might be payable, and in practice this is all that is required by the Department. See note under head 4.

3. Sub-sec. 11 of sec. 7, as enacted by sec. 10, 10-11 Geo. V., 1920, ch. 49, provides that: "Every agent, trustee or person who collects or receives or is in any way in possession or control of income for or on behalf of a person who is resident outside of Canada, shall make a return of such income, and in case of default by such non-resident of the payment of any tax payable, shall, on being so notified by the Minister, deduct the amount of such tax from either the income or other assets of such non-resident in his hands, and pay the same to the Minister."

This sub-section specifies no time within which the return referred to must be made by the agent or trustee, nor the form in which the return must be made. The form required is presumably Form T.1 and is in practice only required to be delivered upon demand by the Minister. With the introduction of the system of payment of the tax by instalments, a literal fulfilment of the provisions of this sub-section seems impracticable.

4. Sub-sec. 3 of sec. 7, 7-8 Geo. V. 1917, ch. 28 (amendments 9-10 Geo. V. 1919, ch. 55, sec. 5), provides: "If a person is unable for any reason to make the return required by this section, such return shall be made by the guardian, curator, tutor or other legal representative of such person, or if there is no such legal representative, by some one acting as agent for such person, and, in the case of the estate of any deceased person, by the executor, administrator or heir of such deceased person, and if there is no person to make a return under the provisions of this sub-section, then such person as may be required by the Minister to make such return."

This sub-section was contained in the original Act of 1917, 7-8 Geo. V. ch. 28, and refers to the personal return on Forms T.1, T.1a or T.2, and also to the returns required from trustees, employers or corporations giving information as to the income of the trust, salaries paid to employees or dividends paid to shareholders respectively (Forms T.3, T.4 and T.5).

Sub-sec. 9 of sec. 10 referred to under head 2 above, appears to be in part a repetition of this sub-section, both apparently imposing a duty upon the representative of deceased persons to file returns not delivered by the persons they represent. The penalty contained in sub-sec. 6 of sec. 7, as enacted by 9-10 Geo. V. 1919, ch. 55, sec. 5, which provides for cases where persons, other than those required to make returns under sub-sec. 1 of sec. 7, who fail to make a return within the time limited therefor, will be subject to a penalty of $10 for each day during which the default continues, appears to apply to default under sub-sec. 3.

The word "unable," as used in the sub-section (7-8 Geo. V. 1917, ch. 28), has not as yet been interpreted by the Department, but probably means unable on account of physical or mental incapacity, or on account of immaturity. Guardians and committees should therefore make returns where their wards have taxable incomes, or if a demand is made for a return. If the ward is liable to make a return on Form T.3, T.4 or T.5, it may be the duty of the guardian to make it.

5. Sub-sec. 4 of sec. 7, as amended by 8-9 Geo. V. 1918, ch. 25, sec. 6, and 9-10 Geo. V. 1919, ch. 55, sec. 5, provides *inter alia:* "And all persons in whatever capacity acting, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits or income of any taxpayer shall make and render a separate and distinct return to the Minister of such gains, profits or income, containing the name and address of each taxpayer. Such returns shall be delivered to the Minister on or before the 31st day of March in each year without any notice or demand being made therefor, and in such form as the Minister may prescribe."

The above provision is extremely broad and imposes the duty of making the return without demand upon many persons who have not as yet been required to deliver returns by the Department except upon demand. The form prescribed (T. 3) provides for the delivery of certain information by trustees, executors, administrators, assignees, receivers or persons acting in a fiduciary capacity. These forms have to be delivered to the Inspector of Taxation for the district in which the person making the return resides. A separate return has to be made for each trust or estate administered by the trustee, or trust corporation. The Department under this sub-section has the right to call for returns from such persons as brokers, real estate agents, lawyers and any other persons handling the funds of their clients, and if a form should be prescribed by the Minister suitable for use by such persons, they would be required to make a return giving the information required relative to the persons for whom they have acted during the taxation year.

It is understood that at present only those persons named on Form T.3 need file a return under this provision. Others within its scope may wait until a demand is made upon them. As soon, however, as a form is prescribed no demand is necessary on the part of the Department.

6. Where persons acting in a fiduciary or representative capacity carry on a business in such capacity, they may be liable to deliver a return of employees on Form T.4 on or before March 31 of each year.

It will be seen that upon the appointment of a trustee, he may be liable to make a return under any one or more of the above heads. Under certain circumstances he may be liable to make a return under all of them.

MISLEADING CROSS-EXAMINATIONS.

A very objectionable practice in the examination of witnesses is referred to in a recent number of *Law Notes*. The evil referred to, and well stated by our cotemporary, obtains here as well as in the Courts of the United States and should be severely dealt with by trial Judges when the occasion demands interference. The article is as follows:—

"Every practising attorney has heard witnesses asked on cross-examination whether they have talked with counsel about the matter testified to. Few indeed have forborne to ask the question on occasion or to smile significantly at the jury when the witness says that he has talked with the counsel of the party calling him. The general attitude of laymen towards the legal profession is such that it is very probable that jurymen frequently draw from such a question and answer an inference more or less definite that the witness has been unduly influenced, if not suborned. Yet it is well known to every practitioner that a lawyer would be culpably negligent if he put a witness on the stand without having had an interview with him and ascertaining just what he would testify. The advisory lectures given to young lawyers enjoin the utmost care and thoroughness in this detail of the preparation for trial. It is hard to understand why trial Judges, who are perfectly familiar with the entire situation, permit a question so unfair in its tendencies to be asked. It should be met always with a sharp rebuke and a judicial statement to the jury that it is necessary and proper that counsel should interview the witnesses before trial. This is but one of an infinite number of the tricks of advocacy by which jury trials are all too frequently converted into a game in which success goes to the most skilful player. Entire equality in the trial Court is of course out of the question. There must always be a preponderance of ability on one side or the other. So far as that ability is manifested in careful preparation of the case and lucid presentation of the theory of counsel it cannot and should not be in any manner handicapped. But trial Judges should realize much more fully than they seem to do that they sit not merely to see that the rules of the game are

observed but to see that justice is done. The average lawyer feels a distinct grievance if the trial Judge interposes in such a manner as to deprive him of a tactical advantage, a point of view which seems to be wholly American and not wholly creditable. Ther can be little doubt that the Courts which dispense with formality attain a higher percentage of substantial justice than results from formal trials. If the legal profession is to survive the strong present trend toward methods of trial which dispense with the services of counsel, it must demonstrate that the success of informal tribunals is attained in spite of and not because of the absence of professional assistance. There is room for a strong contention that such is the fact, and its test needs no reformed system of procedure. It can be made at any time when trial Judges are willing to assume the powers which they possess and appellate Judges cease to reverse just judgments for technical errors of procedure."

We learn from the *Ontario Gazette* that the practice has now become universal to appoint Notary Publics for some limited and often exceedingly small territory in some county of Ontario. It is difficult to see any necessity for this, and it leads to evils and inconveniences. If a Notary Public is sufficiently learned, reliable and respectable to be a Notary Public for a village, he ought to be equally so for the Province. But many of them are necessarily ignorant of their duties and unlettered. This practice savors of petty patronage and should cease. The only class of persons who should be appointed, with perhaps an occasional exception, are lawyers. Is this not a matter which should engage the attention of our lawyer friends in the House, and of those who are in some sense representatives of the profession, such as Law Societies, etc.? Men appointed in this haphazard way are very commonly men ignorant of their duties and with no sense of responsibility. They are a nuisance rather than a convenience; but, unfortunately, have political influence.

REVIEW OF CURRENT ENGLISH CASES.

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FOREIGN JUDGMENT—ENFORCEMENT—FINAL JUDGMENT—APPEAL —JUDGMENT IN CRIMINAL PROCEEDING.

Harrop v. *Harrop* (1920) 3 K.B. 386. This was an action on a foreign judgment and the case turned on the point whether it could be regarded as a final judgment. The judgment in question was recorded in the State of Perak in these circumstances: By the law of that State, if any person neglects or refuses to maintain his wife or child, a magistrate may order him to make her a monthly allowance, and if he disobeys the order may by warrant direct the amount to be levied in the manner provided by law for levying fines, or may sentence him to imprisonment; and on the application of a person in whose favour such an order is made, on proof of change of circumstances of such person or his wife or child may make such alteration in the allowances ordered as he may think fit. By the judgment of a judicial Commissioner of Perak dated December 13th, 1916, which affirmed with a variation an order made by a magistrate in pursuance of the law above mentioned, it was adjudged that the defendant should pay to the plaintiff, his wife, as from August 9th, 1916, a certain sum per month for the maintenance of the plaintiff and a child of the marriage. In October, 1916, the parties having come to England, the plaintiff brought the present action, claiming five monthly payments alleged to be due under the judgment of the Judicial Commissioner. Mr. Justice Sankey, who tried the action, held that it was not a final and conclusive judgment within the doctrine of English law, which enables judgments of foreign Courts to be enforced in England, and therefore that the plaintiff could not recover. Its want of finality being in the opinion of the learned Judge due to the fact that it could not be enforced without a further application to the Court which pronounced it, and on such application owing to altered circumstances was liable to be changed.

ACTION FOR DECLARATION—PUBLIC OFFICER SUED AS AN INDIVIDUAL —CLAIM FOR COMPENSATION OUT OF PUBLIC FUNDS.

Bombay & Persia Steam Navigation Co. v. *Mocloy* (1920) 3 K.B. 402. This was an action against the defendant who, was H.M. Controller of Shipping. By orders of the defendant lawfully given a vessel belonging to the plaintiffs was diverted from

her voyage. The direction was subsequently cancelled. The plaintiffs claimed a declaration that they were entitled to compensation to be fixed by the Admiralty Transport Arbitration Board or such other referee as the Court might direct. Rowlatt, J., held that the defendant being sued as an individual no such declaratory judgment could be pronounced as against the Treasury. He therefore dismissed the action as being misconceived.

CONTRACT—BREACH ABROAD—DAMAGES—RATE OF EXCHANGE APPLICABLE.

Di Fernando v. *Simon* (1920) 3 K.B. 409. This was an action to recover damages for breach in Italy of a contract on February 10th, 1919, and the question was whether, in assessing the damages, in order to arrive at the proper equivalent in British currency, the rate of exchange at the time of breach or at the time of judgment was applicable. The Court of Appeal (Bankes and Scrutton, L.JJ., and Eve, J.) held the rate at the date of breach governed, affirming Roche, J. (1920) 2 K.B. 704.

LANDLORD AND TENANT—TENANCY FROM YEAR TO YEAR—RENEWAL SUBJECT TO SPECIAL TERMS AS TO NOTICE TO QUIT—REPUGNANCY.

Allison v. *Scargall* (1920) 3 K.B. 443. This was an action for possession by landlord against his tenant. The defendant was tenant from year to year subject to the usual six months' notice to quit, and his tenancy being about to expire he in February, 1915, agreed with the plaintiff to become tenant of the premises from the 6th day of April, 1915, "upon the same terms as he is now tenant until the 6th day of April, 1916, or such later date being the 6th day of April immediately following the sale of the farm." The defendant took possession under this agreement. The plaintiff sold the farm on 17th October, 1919, and on that day gave notice of the sale to the defendant. The defendant having refused to give up possession on 6th April, 1920, this action was brought. It was contended that the defendant was entitled to six months' notice to quit, and that the provision for termination of the term was repugnant and void: but Salter, J., who tried the action held that the provision for terminating the term after sale of the premises, was not repugnant to a lease from year to year, and that in the circumstances the lease was at an end and the plaintiff was entitled to possession.

FIRM OF BOOKMAKERS—ILLEGAL ASSOCIATION—ACTION FOR RECOVERY OF MONEYS PAID FOR BETS LOST—GAMING ACT, 1835 (5-6 W. IV. c. 41) s. 2—(R.S.O. c. 217 s. 3.)

O'Connor v. *Ralston* (1920) 3 K.B. 451. The plaintiffs, a firm of bookmakers sued *inter alia* to recover a sum of money paid for a lost bet made with the defendant. Darling, J., following a dictum of Moulton, J., in *Hyams* v. *Stewart King* (1908) 2 K.B. 696, 718, held that the plaintiffs being "an association for the purpose of carrying on a betting business" the action brought by them would not lie as no such partnership is possible under English law, therefore they had no *locus standi* and he dismissed the action. In the recent case of *Jeffery v. Bamford*, 151 L.T. Jour. 214, McCardi , J., refused to follow this case.

NEGLIGENCE—RAILWAY COMPANY—MOVING STAIRCASE UNPROTECTED—CHILDREN TRESPASSING—CHILDREN WARNED OFF AND DRIVEN AWAY.

Hardy v. *Central London Ry. Co.* (1920) 3 K.B. 459. The plaintiff was a child who was injured by getting his hand caught in a rubber band, being the part of an apparatus of a moving staircase. The plaintiff claimed damages on the ground that the defendants were negligent in that they took no precaution to prevent children from playing in the booking hall where the rubber band was, and on and with the staircase and permitted the plaintiff to be in the hall. But it appeared by the evidence that the railway policeman always drove children away from the booking hall when he saw them there, and that on the day of the accident he drove children away and with them the plaintiff who was in charge of an older boy. Before going into the hall again the older boy looked around to see if the policeman was there, and being absent he proceeded to play on the staircase, leaving the plaintiff in the hall where he put his hand in such a position that it was caught by the band and seriously injured. Shearman, J., who tried the action, thought the case was similar to the well known case of *Cooke* v. *Midland Great Western Ry.* (1909) A.C. 229; but the Court of Appeal (Bankes, Warrington and Scrutton, L.JJ.) dissented and held that the plaintiff was a trespasser and not entitled to recover.

SALE OF GOODS—TIME FOR DELIVERY—ESSENCE OF CONTRACT—WAIVER—ESTOPPEL—IMPLIED AGREEMENT TO EXTEND TIME FOR DELIVERY—REASONABLE TIME TO BE FIXED BY NOTICE FROM BUYER—CANCELLATION OF CONTRACT BY BUYER WITHOUT NOTICE—DAMAGES.

Hartley v. *Hymans* (1920) 3 K.B. 475. This was an action by the seller of goods to recover damages for breach of contract to accept them. The contract was in writing and provided for delivery to be completed by November 18, 1918, and time was declared to be of the essence of the contract. The plaintiff made no delivery till October, 1918, when he made delivery of part, and thereafter, on various dates from the end of November, 1918, to the end of February, 1919, he delivered seven further portions; during all this period the defendant by his letters complained of the delay, and asked for better deliveries, but thereby led the plaintiff to entertain the belief that the contract still subsisted, and to act on that belief at expense to himself. On March 13, 1919, the defendant, having given no previous notice requiring delivery in any specified reasonable time, wrote to the plaintiff cancelling the order and thereafter refused to accept any more goods from the plaintiff. McCardie, J., who tried the action, was of the opinion that the terms as to the delivery and as to time being of the essence of the contract, could be, and were in fact waived by the defendant by his letters sufficient to satisfy the Statute of Frauds, even though the time had then expired, and that it was an implied term of the waiver that the goods should be thereafter deliverable within a reasonable time to be named by the buyer, and notified to the seller, and that until the time had been named the seller had no right to cancel the contract and was estopped from setting up the term as to delivery. He therefore gave judgment in favour of the plaintiff.

CONTRACT—FORMATION OF CONTRACT—IDENTITY OF CONTRACTING PARTY—SALE OF THEATRE TICKET—PROCURING BREACH OF CONTRACT—SERVANT OF CONTRACTING PARTY.

Said v. *Butt* (1920) 3 K.B. 497. This was an action brought by the plaintiff as holder of a ticket of admittance to the defendant's theatre, for refusing to admit him to the theatre. The plaintiff knew that in consequence of his having made certain serious and unfounded charges against members of the theatre staff, an application for a ticket in his own name would be refused. He therefore obtained a ticket through the agency of a friend,

without disclosing that it was for the plaintiff, and on presenting it the plaintiff was refused admission. The defendant was the chairman and managing director of the theatre company, and the plaintiff claimed damages from the defendant for maliciously procuring the theatre company to break its contract for the admission of the plaintiff to the theatre. McCardie, J., who tried the action, held that the omission to disclose the fact that the ticket in question was being purchased for the plaintiff prevented the sale of the ticket from constituting a contract with the plaintiff as alleged, the identity of the plaintiff being, in the circumstances, a material element in the formation of the contract and he therefore dismissed the action. The learned Judge also intimates that even if there had been a valid contract, the action would not have lain against the defendant, who was in the position of a servant acting bona fide within the scope of his authority and therefore not liable in tort for procuring a breach of that contract.

TRADE UNION—EXPULSION OF MEMBER—BRINGING UNION INTO DISCREDIT—RULES OF UNION.

Wolstenholme v. Amalgamated Musicians (1920) 2 Ch. 388. This was an action by a former member of a trades union, claiming that he had been wrongfully expelled, and for an injunction. By one of the rules of the union it was competent for any branch at a special or quarterly meeting to fine, suspend or expel any member upon satisfactory proof being given that he had by his conduct "brought the union into discredit." The plaintiff had written to the general secretary of the head office of the union making charges of serious misconduct against members of the committee of the branch to which he belonged; these charges were unfounded, and the plaintiff had been called on to withdraw and had promised that he would, but neglected to do so, thereupon a resolution of the branch was passed expelling him, as having been guilty of conduct bringing the union into discredit. On behalf of the plaintiff, it was contended that the rule above referred to was merely a rule of procedure and did not warrant the plaintiff's expulsion; but Sargant, J., who tried the action, held that the rule must be read as an enabling one as well as one dealing with procedure and that the conduct of the plaintiff afforded just ground for his expulsion. The action was therefore dismissed.

TRADE UNION—EXPULSION FROM UNION—NOTIFICATION BY SECRETARY OF BRANCH TO EMPLOYER THAT MEMBERS OF UNION WOULD REFUSE TO WORK WITH EXPELLED MEMBER—INDUCEMENT TO EMPLOYER TO BREAK CONTRACT.

Wolstenholme v. *Ariss* (1920) 2 Ch. 403. This action was brought by the same plaintiff as in the preceding case. In this case he sued the secretary and all the members of the branch of the union which had expelled him, alleging that they had severally and in combination amongst themselves, by unlawful threats, coercion and pressure, compelled the plaintiff's employer to break his contract with the plaintiff and to dismiss and to refuse to employ him any longer, and the plaintiff claimed an injunction to restrain the defendants individually and collectively from interfering with the right of the plaintiff to dispose of his labour as he would. After the plaintiff's expulsion from the union the secretary of the branch notified the plaintiff's employer of the fact and that the members of the union would thereafter refuse to work with him, and in consequence the plaintiff was dismissed. Eve, J., who tried the action, held that the defendants had not exceeded their just rights and that the notification to the employer of an intention to do a lawful act or acts gave the plaintiff no cause of action.

SPECIFIC PERFORMANCE—CONDITIONAL OFFER "SUBJECT TO TITLE AND CONTRACT"—AGREED TERMS EMBODIED IN DRAFT CONTRACT—VERBAL APPROVAL OF CONTRACT BY VENDOR—CONTRACT NOT EXECUTED.

Coope v. *Ridout* (1920) 3 Ch. 411. This was an action by a purchaser for specific performance of an alleged contract for the sale of land. The defendant relied on the Statute of Frauds. It appeared that the defendant had made a conditional offer to purchase the land in question "subject to title and contract." The terms of the intended contract were reduced to writing, and a copy sent to the defendant who verbally approved thereof, but the contract was not signed by him. In these circumstances, Eve, J., held that there was no enforceable contract and dismissed the action.

SPECIFIC PERFORMANCE—PURCHASE FOR BENEFIT OF THIRD PERSON—POSSESSION TAKEN BY THIRD PERSON—PART PERFORMANCE—STATUTE OF FRAUDS (20 CAR. II., c. 3) s. 4—(R.S.O., c. 102, s. 5).

Hohler v. *Aston* (1920) 2 Ch. 420, was also an action for specific performance, but in this case by the vendor. The circumstances

were peculiar. The plaintiffs were Hohler the vendor, Rollo and wife for whom the purchase was made, and the defendants were the executors of the deceased purchaser Mrs. Aston who was an aunt of the plaintiff Rollo. Hohler was in negotiation with the landlord of certain leasehold premises for the surrender of an existing term and for a renewal of the term for an extended period. Mrs. Aston, hearing of the transaction, agreed verbally with Hohler that she would buy the premises for her niece Mrs. Rollo and her husband who were then living in the country and who were informed by her of her intention. Mr. Hohler thereupon completed the purchase. Mr. and Mrs. Rollo gave up the lease of their premises in the country and entered into possession of the house and premises acquired by Hohler; but before the required deeds to give effect to the transaction were executed Mrs. Aston died, and her executors refused to be bound by the alleged agreement and set up the Statute of Frauds as a defence. Sargant, J., who tried the action, came to the conclusion that the contract was not only for sale by Hohler to Mrs. Aston (under which she would be the owner of the house) but was a contract for the purchase of it for the benefit of Mr. and Mrs. Rollo, and though the latter could not enforce the contract Hohler was nevertheless entitled to insist on its being carried out for their benefit, and that the Rollos entering into possession was a sufficient part performance to take the case out of the Statute of Frauds. He was, however, of the opinion, though not actually deciding it, that the Rollos giving up possession of their country house and going to the expense of removing to the house in question would constitute a valid consideration for the contract to give them the house, which would therefore not be a mere *nudum pactum*.

RESTRICTIVE COVENANTS—COVENANT BY PURCHASER TO PERFORM RESTRICTIVE COVENANTS BY WHICH VENDOR IS BOUND—COVENANT TO INDEMNIFY—DWELLING HOUSE.

Reckitt v. *Cody* (1920) 2 Ch. 452. The plaintiff in this case had purchased land and had given to his vendor a covenant that no detached dwelling house which should be built thereon should be of less value than £800. The plaintiff subsequently sold to the defendant a part of this land and took from her a covenant that she would perform the restrictive covenants by which the plaintiff was bound. The defendant thereafter erected on the premises a hut or shed for use as a schoolroom for boys of a less value than £800. The action was brought to compel the removal of this building. Two defences were raised: (1) that the covenant was

a mere covenant of indemnity and no action lay in the absence of any evidence that the plaintiff had been damnified, and (2), that the erection in question was not a dwelling house. Eve, J., who tried the action, upheld the first contention and held that, in the absence of any proceedings taken or threatened by the plaintiff's vendor to enforce the restrictive covenant, the plaintiff had no cause of action; but on the second point he held that the erection in question was "a dwelling house" within the meaning of the covenant.

GIFT COUPLED WITH PROVISO THAT THE DONEE SHALL ASSUME NAME AND ARMS OF DONOR—NO GIFT OVER ON NON-COMPLIANCE WITH PROVISO—COMMON LAW CONDITION.

In re Evans (1920) 2 Ch. 469. This was a proceeding under the Vendors and Purchasers Act, and the question to be determined was the effect of a devise of land subject to a proviso that each devisee as he or she became entitled should within twelve calendar months thereafter assume the surname and arms of the testator. There was no gift over on non-compliance with the proviso. The vendor, who was a devisee, and became entitled in 1913, had failed to take the name and arms of the testator as provided. Peterson, J., held that if the proviso amounted to a common law condition the vendor was entitled as tenant for life under the Settled Land Act, as the testator's heir alone could take advantage by entry, which he had not done; and that there being no gift over in the event of non-compliance there was nothing to convert the proviso into a conditional limitation. The learned Judge therefore held that the vendor could make a good title notwithstanding her non-compliance with the proviso.

WILL—CONSTRUCTION—GIFT OVER ON ABSOLUTE DONEE DYING MENTALLY INCAPABLE—REPUGNANCY.

In re Ashton, Ballard v. *Ashton* (1920) 2 Ch. 481. By the will in question in this case the testator made an absolute gift to his sister but annexed thereto a clause providing that if at the time of her death she should be mentally incapable of managing her affairs the property so devised should go to the testator's brother. This attempted gift over Sargant, J., held to be repugnant and void on the ground that it was an attempt to contravene the law as to the devolution of property in the event of intestacy. And it may be observed that it also was an attempt to prevent the donee from alienating the property by deed or will, which she might well do, though subsequently becoming and dying lunatic.

VENDOR AND PURCHASER—MEMORANDUM IN WRITING—PLEADING SIGNED BY COUNSEL—STATUTE OF FRAUDS (29 CAR II., c. 3) s. 4—(R.S.O., c. 102, s. 5).

Grindell v. *Bass* (1920) 2 Ch. 487. This was an action by a purchaser for specific performance. The vendor Mrs. Bass was an old woman of 77 and claimed (1) that the contract had been obtained by undue influence, and (2), that she had previously agreed to sell the property to a Mr. Earle. Earle was then made a party defendant and set up by way of counterclaim the contract with him and claimed specific performance. The plaintiff objected that the prior contract with Earle was not enforceable because there was no sufficient note in writing signed by the vendor; but Earle contended that even if the plaintiff could raise the objection, which he denied, the statement of defence of his co-defendant Bass which set out the terms of the contract and was signed by her counsel was a sufficient memorandum within the statute, and with this contention Russell, J., agreed.

PRINCIPAL AND AGENT—CONFIDENTIAL LETTER CONTAINING DEFAMATORY STATEMENT AGAINST THIRD PARTIES—BREACH OF DUTY BY AGENT—LIBEL—DAMAGES.

Weld-Blundell v. *Stephens* (1920) A.C. 956, has reached its final stage and has ended in the defeat of the plaintiff but not without a difference of opinion on the part of the learned Lords who heard the appeal. The case was a somewhat curious and unusual one. The plaintiff had written a letter to his agents containing some defamatory remarks concerning third persons. The agent carried the letter to the office of a person named Hurst and there negligently dropped the letter on the floor. Hurst on finding it had a copy made and sent to the persons defamed, who forthwith brought an action against the plaintiff and recovered damages against them to the amount of £750 and costs for the defamatory statements above mentioned, and under this judgment the plaintiff had to pay £1,769. The plaintiff thereupon brought the present action against his agents, through whose negligence the plaintiff had been exposed to an action by the persons defamed. Darling, J., who tried the action, although the jury gave a verdict in favour of the plaintiff for £650, nevertheless dismissed the action. The Court of Appeal held that the plaintiff was only entitled to nominal damages, and the House of Lords (Lord Finlay, Dunedin, Sumner, Parmoor and Wrenbury), have now affirmed the judgment of the Court of Appeal (Lords Finlay and

Parmoor, dissenting). With great respect to so distinguished a tribunal, we humbly venture to think that the judgment of the majority proceeds on grounds which do not commend themselves to what appears to us the common sense view of the case. Juries do sometimes arrive at a clearer notion of what is justice between litigants than do lawyers, and this, it seems to us, is one of those cases. Suppose a client writes to his solicitor and admits having committed some criminal act, and the solicitor negligently suffers the letter to be seen by the party injured, and the client is thereupon prosecuted and sent to gaol, according to this decision the client would appear to have no remedy against his solicitor except a claim for nominal damages, because the injury he suffers is the consequence of his own act, and not that of his solicitor. Whereas natural justice seems to require that the solicitor who has thus, by his negligence, brought his client into ruin and disgrace should be held thereby to have been guilty of a wrongful act, for which he ought to make not merely nominal but substantial compensation. This is not the law according to this decision of the House of Lords, but nine persons out of ten, we venture to think, would say, that it ought to be.

SHIPPING—CHARTERPARTY—BREACH BY OWNERS—DETENTION OF VESSEL FROM CHARTERERS—REQUISITION BY GOVERNMENT DURING DETENTION—MEASURE OF DAMAGES.

Elliott Steam Tug Co. v. *Payne* (1920) 2 K.B. 693. This action was brought by charterers of a vessel against the owners to recover damages for detention of the vessel from the charterers in breach of the charterparty; while the vessel was so detained it was requisitioned by the British Government—and the only question discussed is the measure of damages. In the absence of any evidence shewing that the requisitioning arose out of the detention by the defendants, Rowlatt, J., held that the plaintiffs were not entitled to recover from the defendants damages for the period while the vessel was so requisitioned.

Correspondence.

SURROGATE COURT FEES.

To the Editor, CANADA LAW JOURNAL.

Dear Sir:—

The attention of those in authority in this Province should be drawn to the present position of the Tariff of Fees payable to Solicitors, Surrogate Clerks and Surrogate Judges. Lawyers get but little sympathy from Judges in respect to fees. They would be glad to know what the Attorney-General can do for us in relation to the matter I now venture to speak of.

The tariff of fees which has been in existence for years, and apparently not amended as it should have been in view of the high cost of living, etc., is at present so absurd that the profession apparently are beginning to hope that the Department of the Attorney-General may step in and make some reasonable changes.

1. In view of the increased salaries to County Judges (who do the Surrogate business) partly because fees going to them under the old Surrogate Court system have been, as we are told done away with, the question arises: "Are these Courts supported now by the fees collected from estates through solicitors and in that respect differing from other Courts administering justice in the Province?" And what is being done about the objectionable system of paying Judges and officials by fees?

2. The present tariff allows solicitors less than half the sum paid to officials. Why is this? Solicitors do comparatively all the work and have to prepare the forms, and as to these the writer remembers Mr. Christopher Robinson styling them as silly, meaningless and cumbersome, and difficult to understand or fill in.

3. Solicitors who have been at great expense in their legal education receive less than real estate agents who have almost doubled their commission on sales. These agents receive a commission on the sale of a $20,000 property of $700; a professional man taking out administration or probate on an estate for that amount receives about $30 and is as a tax collector for the Government, compelled to collect the sum of $63 for Surrogate fees.

4. We would also call attention to the fact that the preparing of the necessary papers and inventories collecting information as to the value of the property, etc., is a very laborious and time-taking work. The amount received for these services by a professional man is simply absurd.

May not the profession, which is represented by the Attorney-General so far as the Government is concerned, claim his attention to this matter, so that justice may be done in the premises?

SOLICITOR.

Reports and Notes of Cases.

Province of Ontario.

COUNTY OF PETERBOROUGH.

ASSESSMENT APPEAL.

Huycke, Co. J.] IN RE BEST AND WALTON. [Dec. 28, 1920.

Held, that under 5 Geo. V., ch. 50, sec. 5, sub-sec. 20, all incomes from investments over $800, as well as all such incomes under that amount if the total income of such person exceeds $1,500, are taxable, but in such case only.

R. R. Hall, for Best and Walton.

C. H. Widdifield, for City of Peterborough.

HUYCKE, Co. J.:—These are two appeals, both involving the same principle, from the city assessment, confirmed by the Court of Revision. The trouble arises from different interpretations of 9 Geo. V., ch. 50, sec. 5, which is a substitution for R.S.O. ch. 195, sec. 5, sub-sec. 20, referring to exemptions. In both cases the income from investment, etc., exceeds the $800 mentioned, but in each case the total income of "such *person*" does not exceed $1,500. The Court below held both such incomes not exempt, and in my judgment the appeals must fail. This conclusion has not been reached without much hesitation and some doubt, which doubt still exists. The section is obscure and ambiguous and susceptible of both interpretations placed upon it. My task is to find, if I can, the meaning of the Legislature and once found to give it effect.

I think the meaning is to tax all incomes from investments, etc., over $800, and also to tax such incomes under that amount if the total income of "such person" exceeds $1,500, but in such case only. In other words, an income of say $850 from investments is in any case taxable while one of say $750 is only taxable if such amount, added to personal earnings or any other income, it all aggregates $1,500 or more.

This is the best conclusion I can come to after much thought and careful consideration, but I am not absolutely sure such conclusion is correct. If this is not what the Legislature means it should, I think, be asked to make its meaning more explicit. The result is that both these appeals are dismissed.

Province of Saskatchewan

COURT OF APPEAL.

Full Court.] THE KING v. DUBUYK. [57 D.L.R. 126.

Criminal law—Motion by leave against verdict—Case reserved on question of law.

On concurrent applications, one under sec. 1021 of the Criminal Code, made by leave of the trial Judge for a new trial on the ground that the verdict is against the weight of evidence, and the other by case reserved under Code sec. 1014, as to the rejection of certain testimony offered by the defence, the Court of Appeal may allow a new trial under sec. 1021 without answering the question reserved as to the admissibility of testimony.

W. B. O'Regan, for accused. *H. E. Sampson*, K.C., for Attorney-General.

ANNOTATION FROM D.R.L.

CONCURRENT MOTIONS FOR NEW TRIAL UNDER CR. CODE SEC. 1021, AND ON CASE RESERVED.

The practice followed in the case above reported of granting a new trial on a motion under Cr. Code sec. 1021 without deciding the question concurrently brought before the Court of Appeal under Cr. Code sec. 1014, appears to be one which should not generally be adopted. It appears to have been assumed that because a new trial was being granted, which would have been the natural result on a decision favourable to the accused on either application, there was no necessity to decide whether certain testimony offered by the accused at the trial under review, and rejected by the Court below, was or was not admissible. The motion under Cr. Code sec. 1021 made by leave of the trial Judge is one of review only of the findings of fact, which in this particular case were found by a jury. The only ground for a motion under sec. 1021 is that the verdict was against the "weight of evidence."

Questions of law arising during the trial, including the question of the wrongful rejection of evidence, come within the scope of an appeal under Code secs. 1014-1019. Under sec. 1019 the Court of Appeal has to determine whether some substantial wrong or miscarriage was occasioned by the evidence having been improperly rejected if it finds the rejection to have been improper. A new trial is not to be directed on questions of law reserved, although it appears that some evidence was improperly rejected unless, in the opinion of the Court of Appeal, "some substantial wrong or miscarriage was thereby occasioned on the trial." Cr. Code sec. 1019.

The question of law as to whether testimony offered by the accused was properly rejected or not, remains undecided by the granting of a new trial under sec. 1021. The ruling of the trial Judge against such testimony is not reversed by the new trial order, and might still be urged as a precedent on the second trial when the same question would probably come up. If the second trial happened to come up before the same Judge as presided at the first trial, the same question arises for him to decide again, without any direction from the Appellate Court as to the correctness of his former decision. Thus a second unnecessary appeal is made probable or possible on a point which might well have been disposed of on the first appeal, and as to which the reservation of a case is in itself a request by the trial Court for directions. It does not appear that the question was waived by the accused, and it is submitted that it was one which he had a legal right to have answered by the Court of Appeal under the facts disclosed in the opinion above reported.

The weight of authority is in favour of the regularity of an appeal upon questions of law under Code sec. 1014, joined with a motion for a new trial under Code sec. 1021, made by leave of the trial Judge; *R.* v. *O'Neil* (1916), 9 Alta. L.R. 365, 25 Can. Cr. Cas. 323; *R.* v. *Jenkins* (1908), 14 B.C.R. 61, 14 Can. Cr. Cas. 221; although the right to the concurrent remedy was doubted in *R.* v. *McIntyre* (1898), 31 N.S.R. 422, and *R.* v. *MacCaffrey* (1900), 4 Can. Cr. Cas. 193, 33 N.S.R. 232.

Mr. Justice Horridge (England), in the hearing of a suit for a divorce, deprecated a reference by a witness "to a member of the High Court of Justice as Judge So-and-So. I hate to hear one of His Majesty's Judges referred to in that way. The term is an Americanism and in this country is only applicable to County Court Judges. The title 'Mr. Justice' is a very old and respected title." It may be of interest to recall the fact that "Judges in days gone by were commonly known as Lord So-and-So, probably because they were addressed in Court as My Lord—a relic probably of the *Curia Regis*. Sir Francis Bacon is known to the present hour as Lord Bacon. He was, in strictness of language, never Lord Bacon, but when elevated to the peerage he was Lord Verulam, a title by which he would now be scarcely recognised. Again, Sir Edward Coke is commonly known as Lord Coke, although he was never raised to the peerage, and, after he had been dismissed from a seat on the Judicial Bench, to which he owed his appellation of Lord, re-entered Parliament, not as a member of the House of Lords, but as a member of the House of Commons. The title of a County Court Judge and the form in which he should be addressed on the Bench were, till definitely settled, anything but uniform. A member of the County Court Bench told on one occasion a Select Committee of the House of Commons that the forms in which he had been addressed by witnesses varied considerably from "Sir" to "Your Lordship's Most Worshipful Reverence."

—*Law Times.*

Bench and Bar.

Dr. N. W. Hoyles, K.C., LL.D., Principal of The Law School of Ontario.

At the conclusion of the final lecture to this year's Graduating Class of the Ontario Law School, a very pleasant incident took place, when Dr. N. W. Hoyles, K.C., LL.D., the Principal of the School, was the recipient of an address from the Class, accompanied by a luxurious Chesterfield easy chair.

Dr. Hoyles, by his uniform kindliness and courtesy to the students, and his interest in them personally and collectively in relation to their studies, had so endeared himself to them that they desired to give expression to their feelings by the presentation above referred to. It was as worthy of them as it was gratifying to him. The whole profession and the many now in its ranks who have passed through the Law School of which Dr. Hoyles is the head, will be glad of this testimonial to his loyal devotion to his duties, as well as to the goodwill and respect which his high character has gained for him as a useful citizen and as a high minded Christian gentleman.

The presentation was made by Mr. A. K. Roberts, one of the Class, who in fitting terms voiced the affection and admiration that all the students felt for one who had been so helpful to them in their studies and had taken such a fatherly interest in them all. In the course of his remarks, the speaker said: "Since the war, the problem of fitting the large number of returned soldiers, desiring to enter the profession, for their work, in the shortest space of time possible, had confronted those in authority. Dr. Hoyles had done splendid work in the solution of it; and the fact that he had himself lost a son in France, had brought him into close touch with the returned men. Ulysses of old said: 'I cannot rest from travel; I must drink to the lees' was equally true of our revered and beloved Principal; that is the thought to-day of his pupils, past and present; and, like Ulysses also, he has kept at his work untiringly, and without saving himself. Nothing, indeed, is too good for one who has been a father to each of us, and whom we are proud to call 'the grand old man of Osgoode Hall.'"

Dr. Hoyles replied to the address substantially as follows:—

This, my last opportunity of meeting the Class after our three years' work together, I take advantage of the occasion to speak some words to you—apart from law—which I hope you will bear in mind in your future life as my last words to you:—

(1) First of all, in your professional life, "play the game!" "Be straight" and upright in dealing with your fellow practitioners. To use the words of a great lawyer and Judge, see that your weapon be "the sword of the warrior not the dagger of the assassin."

(2) *Be thorough* in all your work.

"Get to the bottom" (said Lord Russell, C.J., to his son) "of each work entrusted to you, even the simplest—do each piece of work as if you were a tradesman turning out the best sample of his manufacture by which he wishes to be judged."

(3) Be fearless and independent in your public and private life.

On the tomb of John, Lord Lawrence, the great Indian soldier and statesman, in Westminster Abbey, are the words: "He feared man so little because he feared God so much." Let this be your life motto and rule.

(4) But, more than this, I wish to impress upon you in my last talk the thoughts so well expressed by Lord Cozens-Hardy, M.R., when addressing a meeting of law students in London, on a recent occasion: "Never forget that yours is an honourable profession; never forget that you cannot escape *all* its perils without great care and great anxiety. To be a member of this profession is in one sense to occupy a post of *extreme danger*. It is a post of danger which will require you to have not only the armour of moral courage, but the panoply of *religious* principle; and, if you have moral courage *and religious* principle, I am confident that you will be able to face and overcome all those difficulties which I have hinted at."

To each and all I wish a happy and prosperous life, in private life, in professional life, and in any public career which you may enter upon.

But (probably) not all of you will command success; some will fail; deserving success but not achieving it. A distinguished canon of the Church of England, when addressing a body of lawyers, said to them: "Remember that your profession is a lottery in which you may lose as well as win. It is not in every man's power to say, 'I will be a great and successful lawyer,' but it is in every man's power to say that he will be an honest man."

But even if you fail, be not downhearted. This life and its rewards are not all *respice finem!* Study to shew yourselves approved unto God, workmen needing not to be ashamed. Expect your reward "as He pronounces lastly on each deed."

We are all glad to have this opportunity of adding our testimony to the services of Dr. Hoyles in connection with the Law School, and to express the feeling of respect and admiration of his work in various other important fields of usefulness.

Dr. Hoyles is a son of the late Sir Hugh W. Hoyles, Chief Justice of Newfoundland, one of the most respected citizens of that part of the Empire. He was educated in England, taking his degree at Trinity College, Cambridge. He commenced the study of law in the office of Bethune, Osler & Moss, and subsequently became a partner in that firm, remaining there in active practice until appointed Principal of the Ontario Law School in 1894. Like many others in the profession he was in touch with athletics and the Argonauts of his days knew him as a finished oarsman, and a "go[illegible]ort."

Dr. Hoyles is as well known outside the law as within that charmed circle. A man of deep religious convictions, he was one of the founders of Wycliffe College and one of the original corporators. For some years he was Chairman of the Council and on the death of the late Sir Casimir Gzowski, was, in 1901, selected to fill the office of President, a position which he still retains to the great advantage of that institution. Amongst his other activities he was interested in the Upper Canada Bible Society, becoming its President in 1[illegible], and was its active head for twenty years. He retired recently in favour of a younger man with the well-deserved recognition of his services as Honorary President.

JUDICIAL APPOINTMENTS.

Hon. W. F. A. Turgeon, of the City of Regina, Saskatchewan, K.C., to be Judge of the Court of Appeal for that Province, vice Hon. Mr. Justice Newlands, retired. (March 12.)

Our English exchanges discuss the new official phrase come into vogue to designate the twelve true and lawful men who give verdicts. They are now to be styled "Members of the Jury." His Hon. Judge Parry in a letter to the *Times* points out that the expression "Gentlemen of the Jury" has been in use ever since 1603. He thinks, however, that in these days it might be more appropriate to speak of them as "Ladies and Gentlemen of the Jury." This name may be in time more appropriate, and would be social in its character. "Members of the Jury" does not seem to fill the bill; so perhaps we had better retain the time-honoured title of "Gentlemen of the Jury."