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THE PRIVY COUNCIL DECISIONS.

BEFORE the next number of the BARRISTER appears it is likely that the Governor-in-Council will have acted upon the petition of the Catholic minority of Manitoba for some remedial order. To discuss the probable action of the Council would be premature at this stage; it will, however, prepare the ground for such discussion to briefly review the history of the case up to the hearing by the body upon which the responsibility has devolved of dealing with this, the ugliest, political question that in recent years has arisen in all Canada.

In 1890, two acts relating to education were enacted by the Manitoba Legislature. The one (53 Vic., c. 37 Man.), created a Department of Education, consisting of the Executive Council of the Province, or a Committee thereof, and created also an Advisory Board. This Board, it was provided, should consist of seven members, four of them to be appointed by the Department of Education, two to be elected by the teachers, and one to be appointed by the University Council. Among other powers entrusted to the Advisory Board, were (Sec. 14), powers "(b), to examine and authorize text-books and books of reference for the use of pupils and school libraries," and "(g), to prescribe the forms of religious exercises to be used in schools." This Act, in effect, supplied the machinery for the operation of the companion Act (53 Vic., c. 38, Man.)—"The Public Schools Act." We have seen that the Advisory Board had power to authorize text-books, and to prescribe the forms of religious exercise. The Main Act re-established the existing schools, whether Protestant or Catholic, as non-sectarian schools, and prohibited in these schools religious exercises other than those authorized by the Advisory Board (Secs. 3 and 8). None but authorized text-books are to be used in these national schools (Sec. 141), nor can other than teachers duly certificated under the regulations of the Department of Education, teach (Sec. 126), The Catholic School Districts were wiped out (Sec. 179.) A general rate for school purposes was provided, to be levied upon all taxable property in the municipality (Sec. 89), and municipalities were deprived of power to exempt any property from the school tax (Sec. 92). This Act came into force on May 1st, 1890. Thereafter, Catholic Separate

Schools, as part of a state-aided system of education, ceased to exist.

The first attack upon the new school system arose under a by-law of the City of Winnipeg, by which, pursuant to the Act, a rate was to be levied for school purposes upon Protestant and Catholic rate-payers alike. This case (*Sub. nom.* Barrett v. the City of Winnipeg), began by an application to the Court of Queen's Bench within the Province to quash the by-law, on the ground that the School Act of 1890 was *ultra vires* of the Provincial Legislature, inasmuch as it prejudicially affected a right or privilege with respect to denominational schools, which the Roman Catholics had by law or practice in the Province at the union. The Court of Queen's Bench refused the application, being of opinion that the Act was *intra vires*. The Supreme Court of Canada reversed this decision, but in turn the Judicial Committee reversed the decision of the Supreme Court. At this stage it seemed well settled that the legislation complained of was within the competence of the Manitoba Legislature.

In the later case of *Brophy et al. v. The Atty.-Gen.*, the Committee limits the intended scope of the judgment in *Barrett's case*. "In *Barrett's case* the sole question raised was whether the 'Public Schools' Act, 1890', prejudicially affected any right or privilege which the Roman Catholics by law or practice had in the Province at the union." This is neither the spirit nor the letter of the decision in *Barrett's case*. We quote from the report in Upp. Cas., 1892, at page 451. "The result the controversy is of serious moment to the Province of Manitoba, and a matter apparently of deep interest throughout the Dominion. But in its legal aspect the question lies in a very narrow compass. The duty of this Board is simply to determine as a matter of law *whether*, according to the true construction of the Manitoba Act, 1870, having regard to the state of things which existed in Manitoba at the time of the union, *the Provincial Legislature has or has not exceeded its powers in passing the Public Schools Act, 1890.*"

However, we are told, by the judgment in the later case, that in *Barrett's case* the question was simply upon the construction of sub-section 1 of section 22 of the Manitoba Act (33 Vic., cap. 3 (Can.) This section and sub-section are as follows:—

"22. In and for the Province, the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege, with respect to denominational schools, which any class of persons have by law or practice, in the Province, at the union." The Judicial Committee say that in *Barrett's case*, it was found that "the only right or privilege which the Roman Catholics (*i.e.*, at the time of the union) possessed, either by law or in practice, was the right or privilege of establishing and maintaining for the use of members of their own church, such schools as they pleased. It appeared to their Lordships, that that right or privilege remained untouched, and, therefore, could not be said to be affected by the

Legislation of 1890." (Judgment in *Brophy case*). This is incorrect. This is not the whole intent of the express judgment in *Barrett's case*. Again, we cite from the report, at page 454: "But, in their Lordship's opinion, it would be going much too far, to hold that the establishment of a national system of education upon an unsectional basis, is so inconsistent with the right to set up and maintain denominational schools, that the two things cannot exist together, or that the existence of the one, necessarily implies or involves immunity from taxation for the purpose of the other." Again, at page 452, the two further sub-sections of section 22 of the Manitoba Act are noted, and at page 453, the construction of the whole section is thus stated: "Their Lordships are convinced that it must have been the intention of the Legislature," (seen by reference to the beginning of the paragraph, to mean—in enacting sub-sections 1, 2 and 3 of sect. 22) "to preserve every legal right or privilege, and every benefit or advantage in the nature of a right or privilege, with respect to denominational schools, which any class of persons practically enjoyed at the time of the union." We are satisfied, from an examination of the judgment, that at the time of the decision in *Barrett's case*, every phase of the controversy was present to the minds of the members of the Board. At page 439 of the report, we find it stated:—"With the policy of the Act of 1890, their Lordships are not concerned. But they cannot help observing that, if the views of the respondents (*i.e.*, the Roman Catholic minority) were to prevail, it would be extremely difficult for the Provincial Legislature, which has been entrusted with the exclusive power of making laws relating to education, to provide for the educational wants of the more sparsely inhabited districts of a country almost as large as Great Britain, and that the powers of the Legislature, which on the face of the Act appear so large, would be limited to the useful, but somewhat humble office of making regulations for the sanitary condition of school-houses, imposing rates for the support of denominational schools, enforcing the compulsory attendance of scholars, and matters of that sort."

In Canada, the great bulk of the people were happy in the conviction that this decision of the Privy Council had set at rest definitely, a question which threatened to convulse the body politic. Now, by the judgment of the same Board in the parallel *Brophy case*, Canada is once more face to face with the whole issue in a much more dangerous form. We cannot help characterising the process of reasoning by which this later decision was reached, as a mere juggling with a great question. There is a point where "distinguishing" becomes indistinguishable from "casuistry," and this point has been reached in the treatment of the Manitoba School Acts by the Privy Council.

Side by side with the appeal to the courts in the *Barrett case*, the Roman Catholic minority had pursued the remedy provided by sub-section 2 of section 22 of the Manitoba Act. This sub-section (2) enacts: "An appeal shall lie to the Governor-General-in-Council from any act or decision of

the Legislature of the Province, or of any Provincial authority, *affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects, in relation to education.*"

Failing to show upon the appeal to the courts, that any right or privilege with respect to denominational schools had by law or practice in the Province, at the union (in the words of sub-section 1) was prejudicially affected by the legislation of 1890 (for that which had not existed could not be affected), the Roman Catholic minority claimed, in its appeal to the political forum, for the words underlined in the second sub-section, a meaning wider than right or privilege, *at the time of the union.* The sub-section was now made to extend to the rights and privileges acquired by purely provincial legislation, subsequent to the union. In other words, the claim is that the enacting body has no power to amend or repeal its own statutes. This position is, on its face, a singular one. The Roman Catholic minority, at the time of the union, had no right or privilege with respect to state support, in whole or in part, for Catholic schools. After the union, the Legislature of the Province did grant public money, from year to year, to denominational schools. Thereby, it is claimed, the Roman Catholic minority acquired for all time a vested right to state aid for Catholic schools, and no subsequent legislation of the same Legislature might deprive them of that state aid.

This is the meat of the sixth question, propounded by the political body to whom appeal was made for answer by the Supreme Court of Canada: "Did the Acts of Manitoba, relating to education, passed prior to the session of 1890, confer on or continue to the minority a 'right or privilege in relation to education' within the meaning of sub-section 2 of section 22 of the Manitoba Act. . . . ?" Upon this point the conclusion of the Chief Justice of the Supreme Court of Canada, (22 S.C.R., at page 654), was based upon the inherent right in every legislature to amend or repeal its own statutes. "Whilst it was reasonable that the organic law should preserve vested rights existing at the union from spoliation or interference, yet, every presumption must be made in favor of the constitutional right of a legislative body to repeal the laws which it has itself enacted. . . . . Every statute may be said to contain an implied provision that it may be revoked by the authority which has passed it, unless the right of repeal is taken away by the fundamental law, the over-riding constitution which has created the legislature itself." This cogent line of reasoning leads irresistibly to the same conclusion that the Chief Justice arrived at:—(page 656), "I am of opinion that in construing the Manitoba Act, we ought to proceed upon this principle, and hold the Legislature of that Province to have absolute powers over its own legislation, untrammelled by any appeal to Federal authority, unless we find some restrictions of its rights in this respect in express terms in the Constitutional Act."

The Judicial Committee, upon the matters raised by the sixth question, contented itself with stating broadly:

"In their Lordships' opinion the second sub-section was a substantive enactment, and was not designed merely as a means of enforcing the provision which preceded it. The question then arose, did the sub-section extend to rights and privileges acquired by legislation subsequent to the union? It extended in terms to 'any' right or privilege of the minority, affected by an Act passed by the Legislature, and would, therefore, seem to embrace all rights and privileges existing at the time when such Act was passed." How does this square with the treatment of these sub-sections in *Barrett's Case?* Why was not some hint of this view given in that judgment?

The reasoning of the Canadian Chief Justice was brushed away. "The Chief Justice of the Supreme Court was much pressed by the consideration that there was an inherent right in a legislature to repeal its own legislative acts, and that 'every presumption must be made in favor of the constitutional right of a legislative body to repeal the law which it has itself enacted.' . . . . Their Lordships were unable to concur in the view. . . ." It is staggering, if true, that one meeting of her own Legislature could bind Manitoba for all generations to support denominational Schools. The mind requires convincing proof before admitting the doctrine to be our future rule of conduct. What reasons are supplied by the judgment in *Brophy's Case?* "It might be said to be anomalous that such a restriction should be imposed on the free action of the Legislature, but was it more anomalous than to grant to a minority, who were aggrieved by legislation, an appeal from the Legislature to the Executive authority? . . . . If, on the natural construction of the language used, it should appear that an appeal was permitted in circumstances involving a fetter upon the power of a Provincial Legislature to repeal its own enactments, their Lordships saw no justification for a leaning against that contention, *nor did they think that it made any difference whether the fetter was imposed by express words or by necessary implication.*" As if the predicament was not itself good reason for holding that the interpretation sought to be put on the second subsection was incorrect! In connection with this placing of the fetter upon the Legislature of Manitoba, how are we to read and understand this dictum of the Board? . . . "To determine that an appeal lay to the Governor-General-in-Council, in such a case as the present, did not involve the proposition that the Provincial Legislature was unable to repeal the laws it had passed?"

The remedial method indicated by the Board is a fit and impotent conclusion to the whole judgment. For it had been held, as we have seen, that the Catholic minority had acquired vested rights by statutes of the Provincial Legislature enacted since the union. It had been further held that the repeal of these statutes by the Act of 1890 did prejudice the rights so acquired, and it had been further held that the second sub-section was a fetter upon the Legislature repealing those statutes. The natural conclusion was, that the Act of 1890 was *ultra vires* of the Legislature of Manitoba. This conclusion was plainly impossible in face

of the decision in *Barrett's case*, therefore, the recommendation of the Board is to exempt the Catholic minority from the operation of the Act of 1890, and to regard the Act as *intra vires* when relating to the non-Catholic majority. "It was not for their Lordships to intimate the precise steps to be taken. Their general character was sufficiently defined by the 3rd subsection of Section 22 of the Manitoba Act. It certainly was not essential that the statutes repealed by the Act of 1890 should be re-enacted, or that the precise provisions of these statutes should again be made law. The system of education embodied in the acts of 1890 no doubt commended itself to, and adequately supplied, the wants of the great majority of the inhabitants of the province. All legitimate grounds of complaint would be removed if that system were supplemented by provisions which would remove the grievance on which the appeal was founded, and were modified so far as might be necessary to give effect to these provisions."

The grievance is thus stated: "While the Catholic inhabitants remained liable for local assessments for school purposes, the proceeds of that assessment were no longer destined to any extent for the support of Catholic schools." Compare the judgment in *Barrett's case* (page 458 of the report). "They (their Lordships) cannot assent to the view, which seems to be indicated by one of the members of the Supreme Court, that public schools under the act of 1890 are in reality Protestant schools. The Legislature has declared in so many words that 'the public schools shall be entirely unsectarian,' and that principle is carried out throughout the act." The grievance then is judicially stated to be, not contribution to support of Protestant schools, but contribution to support of non-Catholic schools."

Our political parties have had the issue thrust upon them by this last decision, and if disaster to Canada should result, the burden seems to lie at the door of the Judicial Committee of the Imperial Privy Council.

THE CONSTITUTIONAL RIGHTS OF CANADA.

(Concluded.)

THE commonly cited origin for the doctrine of Imperial legislative supremacy is Lord Mansfield's famous judgment in the well-known case of Campbell vs. Hall. It is a judgment belonging to the ominous period of 1774. The question before the Court in Campbell v. Hall concerned the validity of certain duties sought to be imposed by the king upon the island of Grenada, one of the conquests from France ceded to Great Britain by the treaty of 1763. The duties were imposed by Patent, after a proclamation, dated 7th October, 1763, had authorized an Assembly to be convened for the island. Lord Mansfield thus stated the substance of the matter argued before the Court:

"That the duties were void has

been contended at the Bar upon two points; *first*, that although they had been made before the proclamation of the 7th of October, 1763, the king, by his prerogative, could not have imposed them; and, *second*, that although the king had sufficient authority before the 7th of October, 1763, he had divested himself of that authority by the proclamation of that date."

Now, it is obvious the second proposition (historically) was the principal one for the purposes of a legal determination. If the decision of the Court was in the affirmative of that proposition, the prior question became immaterial and unnecessary, and could not enter into the determination of the issue. We shall see that the Court did, in fact, find the affirmative of the second question, and proceeded to deliver its judgment upon that basis. Hence the remarks upon the question of prior Royal prerogative right were of the nature of mere dicta of the presiding judge: in regard to which doubts have even been thrown out, whether the whole Court concurred. (Houston's Constitutional Documents, p. 89). On the main point—the declaration that there was no prerogative in the king to legislate for his Grenadan subjects after the creation of an assembly there—the judgment was undoubtedly unanimous.

After a lengthened resumé of opinions of previous judges, and Acts of Parliament, bearing on the (historically) prior question, Lord Mansfield proceeds to the real point of the judgment.

"The counsel for the plaintiff undoubtedly labored this point from a diffidence of what might be our opinion on the second question. But upon the *second* point, after full consideration, we are of opinion that before the letters patent of the 20th of July, 1764, the king had precluded himself from an exercise of the legislative authority which he had before, by virtue of his prerogative, over the island of Grenada."

Campbell *v.* Hall was a case relating to a dominion acquired by conquest, and the fact of its original acquisition in that manner is made the ground of setting forth a good deal of curious extra-judicial learning: for which the Chief Justice quotes as authority the more ancient, but equally extra-judicial, dicta in what is known in the Reports as Calvin's case.

(The quotations are from Houston's Constitutional Documents of Canada.)

"We therefore think," Chief Justice Mansfield proceeds, "that by the two proclamations, and the commission to Governor Melville, the king had immediately and irrevocably granted to all who were or should become inhabitants, or who had, or should have, property in the island of Grenada—in general, to all whom it might concern —that the subordinate legislation over the island should be exercised by an assembly, with the consent of the Governor and Council, in like manner as in other Provinces under the king.

"Therefore, though the right of the king to have levied taxes on a conquered country, subject to him in right of his crown, was good, and the duty reasonable, equitable, and expedient; and, according to the finding of the verdict, paid in Barbadoes and all the other Leeward Islands; yet by the inadvertency of the king's ser-

vants in the order in which the several instruments passed the office (for the patent of the 20th of July, 1764, for raising the impost stated, should have been first) the order is inverted, and the last we think contrary to and a violation of the first, and therefore void. How proper soever the thing may be respecting the object of these letters patent of the 26th of July, 1764, it can only now be done," to use the words of Sir Philip Yorke and Sir Clement Wearg, "by the assembly of the island, *or by an Act of the Parliament of Great Britain.*

It has been already pointed out that the expression of opinion that the king had once possessed the right of legislation, and taxation was extra judicial, and consequently unauthoritative. The concluding suggestion that the legislative right, which the king could no longer claim, might still be asserted by the Parliament of Great Britain, was even more outside the matter for decision, and equally of the nature of a pure dictum.

Any valid judicial foundation for the doctrine of Parliamentary supremacy must be found farther back than this case of Campbell v. Hall, if it exists at all.

The sole authority referred to by Lord Mansfield is Calvin's case.

When I come to the discussion of the status of English colonies planted in conquered territories, I will refer more particularly to the reasoning founded upon Calvin's case, both in Campbell v. Hall and in Blackstone's Commentaries.

INHERENT RIGHTS OF ENGLISHMEN.

Let us, however, first examine what have been acknowledged by legal and constitutional writers to be the inherent rights of English subjects: and next, what is the effect in law upon these rights of a change of the place of residence of the subject from one part to another of the dominions under the Crown. Lord Mansfield's contemporary, the famous Blackstone, in the chapter of his Commentaries on "Countries subject to the law of England," says at page 77: (Chitty's Blackstone).

"It hath been held that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, *which are the birthright of every subject,* are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation, and the condition of an infant colony; such, for instance, as the general rules of inheritance, and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue, (such especially as are enforced by penalties,) the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and, therefore, are not in force."

We will see how exactly the claims of the English colonists in the New England Provinces, asserted in the Declaration of Rights issued by the Colonial Congress of 1774, corresponds with these principles of inherent right and constitutional law, set forth in the

foregoing extracts from the most erudite authority at that date, upon the law of England:—

"Our ancestors, who first settled these colonies," thus runs the second article of that Declaration, "were at the time of their immigration from the mother country, entitled to all the rights, liberties and immunities of free and natural born subjects within the realm of England." "By such emigration," continues the article, "they by no means forfeited, surrendered, or lost any of these rights, but they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them as their local and other circumstances enable them to exercise and enjoy." "The foundation of English liberty," they continued, "and of all free government, is a right in the people to participate in their Legislative Councils; and, as the English Colonists are not represented, and from their local and other circumstances cannot properly be, in the British Parliament, they are entitled to a free and exclusive power of legislation in their several Provincial Legislatures, where their right of representation can alone be preserved in all cases of taxation and internal policy."

INHERENT RIGHT OF LOCAL LEGISLATURE.

The position of the colonists at that time would seem on the face of it to have been, and to be still, an unanswerable assertion of fundamental principles. What is English law, historically and constitutionally? In the face of the full and indefatigable investigations of so many lawyers, constitutional writers, and historical scholars, during the present century, there is no room left to doubt that English law was correctly said by Blackstone to be founded upon custom. It was the habitudes which grew up in the tribal societies which ultimately coalesced into an English people, that became, by general acceptance and long observance, rules out of which grew the notion of fixed law. The laws of England, therefore, were and are simply the customs of the English people. It is obvious that the right to alter, add to, or detract from these popular rules and customs, could exist nowhere except in the same body to which they owed their original existence. Only in assemblies of the English people could the laws and customs of England be changed.

The statutes enacted by the kings from early times, and still, in form, enacted by the Crown, by and with the advice and consent of Parliament, were always by implication, if not expressly, mere declarations by the head of the nation, of the wishes and determinations of his people in that respect.

Thus, in Blackstone's chapter on the King:

"The share of legislation, which the constitution has placed in the crown, consists in the power of rejecting rather than resolving; this being sufficient to answer the end proposed. For we may apply to the royal negative, in this instance, what Cicero observes of the negative of the Roman tribunes, that the crown has not any power of doing wrong, but merely of preventing wrong from being done.

The crown cannot begin of itself any alterations in the present established law: but it may approve or disapprove of the alterations suggested, and consented to by the two Houses."

We quote Blackstone once more: (chapter on rights of persons):

"In preceding articles we have taken a short view of the principal *absolute rights which appertain to every Englishman*. But in vain would these rights be declared, ascertained, and protected by the dead letter of the laws, if the constitution had provided no other method to secure their actual enjoyment. It has, therefore, established certain other auxiliary subordinate rights of the subject, which serve principally as outworks or barriers to protect and maintain inviolate the three great and primary rights of personal security, personal liberty, and private property. These are: 1. The constitution, powers and privileges of *Parliament*; of which I shall treat at large in the ensuing chapter. 2. The limitation of the king's prerogative, by bounds so certain and notorious, that it is impossible he should either mistake or legally exceed them, without the consent of the people."

Again:

"The absolute rights of every Englishman (which, taken in a political and extensive sense, are usually called their liberties), as they are founded on nature and reason, so they are coeval with our form of government; though subject at times to fluctuation and change: their establishment (excellent as it is), being still human. At some times we have seen them depressed by overbearing and tyrannical princes; at others so luxuriant as even to tend to anarchy, a worse state than tyranny itself, as any government is better than none at all. But the vigor of our free constitution has always delivered the nation from these embarrassments, and, as soon as the convulsions consequent on the struggle have been over, the balance of our rights and liberties has settled to its proper level; and their fundamental articles have been from time to time *asserted in Parliament*, as often as they were thought to be in danger."

Such were the inherent absolute rights of all Englishmen; which, Blackstone commenced by admitting, travel with them, wherever they may settle under the Crown.

PRETENCES TO SUPREME JURISDICTION OVER COLONIES.

The claim of jurisdiction by the English in England over the English in America, so inconsistent with principle, was attempted to be supported by a refinement based upon a curious distinction between conquered countries and desert regions. It was a notion, or rather an argument, which arose from the strange assumption that law is a territorial institution, not a system which is purely popular in its origin and essence, and inherent in a *people*, not in their place of residence.

Now, it seems to be an obvious principle that, just as the laws and customs of England were really imported with the immigration of the Angles, so in any further migrations, the people would always carry their laws with them. Let us suppose, for instance, that by some extraordinary convulsion, or convention, the popula-

tion of France and England were to suddenly and completely exchange and reverse their relative positions: so that France became a country inhabited wholly by Englishmen, and the French people, on the other hand, were to be found bodily transferred to the British Islands. Where, after that convulsion, would our English law and constitution be found? Would it be found governing the French people in the nominal or geographical England? Or would it not certainly have shifted with the people of England to their new habitations across the channel? As the law of a free people springs from, so it abides with the people. It is not a mere geographical institution.

COLONIAL RIGHTS NOT DEPENDENT ON CHARTERS.

While the whole originative legislative power of England is, under the constitution and customs of the people deemed to be vested in assemblies of the people (local in some cases, national in others), there was a recognized necessity for reposing the right and duty of summoning such assemblies in a more permanent authority; of which the king is the most complete type. Having this in mind, let us read what Blackstone has said, first on King and Parliament, secondly on the charters granted to the British settlers on colonial soil:

From a consideration of the foregoing fundamental principles, light is thrown upon the constitutional origin of the Royal grants of Parliamentary charters to British colonies. It will be seen that such charters granted by the king by his prerogative are legally attributable to the *king's summoning power*, and can never support an inference that the legislative rights of colonial subjects are derivative from such patents or charters. Colonial constitutions, set forth in Acts of the House of Parliament, are simply more solemn charters enacted by the king, by and with the assent of his Home Parliament. They possess neither less nor more authority, from the joinder of his Home advisers with him in that exercise of his prerogative, of providing for, summoning and constituting a local assembly.

(Chitty's Blackstone, page 108:)

"No parliament can be convened by its own authority, or by the authority of any, except the king alone. And this prerogative is founded upon very good reason. For, supposing it had a right to meet spontaneously, without being called together, it is impossible to conceive that all the members, and each of the Houses, would agree unanimously upon the proper time and place of meeting; and if half of the members met, and half absented themselves, who shall determine which is really the legislative body, the part assembled, or that which stays away? It is, therefore, necessary that the parliament should be called together at a determined time and place, and highly becoming its dignity and independence, that it should be called together by none but one of its own constituent parts; and, of the three constituent parts, this office can only appertain to the king; as he is a single person, whose will may be uniform and steady; the first person in the nation, being superior to both Houses in dignity; and the only

branch of the legislature that has a separate existence, and is capable of performing any act at a time when no parliament is in being."

Again, page 78:

"Charter governments," Blackstone states, "are in the nature of civil corporations, with the power of making by-laws for their own interior regulations, not contrary to the laws of England; and with such rights and authorities as are specially given them in their several charters of incorporation. The form of government in most of them is borrowed from that of England. They have a governor named by the king (or, in some proprietary colonies, by the proprietor), who is his representative or deputy. They have courts of justice of their own, from whose decisions an appeal lies to the king and council in England. Their general assemblies, which are their House of Commons, together with their Council of State, being their Upper House, with the concurrence of the king or his representative the governor, make laws suited to their own emergencies."

Lord Mansfield in Campbell *v.* Hall, (page 86, Houston):

"The constitution of every province immediately under the king has arisen in the same manner; not by grants, but by commissions, to call assemblies."

PLEA OF CONQUEST.

It is very curious, and I believe will be novel to modern readers, to observe to what far-fetched distinctions Blackstone and his contemporaries resorted, to find reasons for the supposed constitutional inferiority of colonists; and for subordinating the colonial assemblies to the Home Parliament.

It will be observed that all these arguments proceed from the untenable theory—of law being essentially a territorial instead of a popular institution.

Lord Mansfield thus cites with approval the opinion of the law officers regarding the status of Jamaica:

"If Jamaica was still to be considered as a conquered island, the king had a right to levy taxes upon the inhabitants; but, if it was to be considered in the same light as the other colonies, no tax could be imposed upon the inhabitants, but by an assembly of the island, or by an act of parliament."

"And, therefore, all the Spaniards having left the island, or having been killed or driven out of it, Jamaica from the first settling was an English colony, who under the authority of the king planted a vacant island belonging to him in right of his crown; like the cases of the islands of St. Helena and St. John, mentioned by Mr. Attorney-General."

Curious indeed is Blackstone's argument for bringing the American colonies under the description of a conquered territory:

"In conquered or ceded countries, that have already laws of their own, the king may, indeed, alter and change those laws; but, till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country. *Our American plantations are principally of this latter sort*, being obtained in the last century either by right of conquest, and driving out the natives (with what natural justice I

shall not at present inquire), or by treaties. And, therefore, the common law of England, as such, has no allowance or authority there; they being no part of the mother-country, but distinct, though dependent, dominions. They are subject, however, to the control of the parliament; though (like Ireland, Man, and the rest), not bound by any acts of parliament, unless particularly named."

The suggestion that the former occupation of colonial territory by a few savage tribes puts upon their British inhabitants the status of inhabitants of a conquered possession, is too flimsy to be worthy of serious argument. The like plea, as applied to a country like the Dominion of Canada, that as a portion of it was once under the flag of France, and as some portion of its present inhabitants are descendants of the former French settlers, therefore, not only they, but their fellow British Colonists, even in separate Colonies, lose the natural status of English colonists, is practically equally untenable.

So far as judicial precedent goes, these doctrines appear to depend wholly upon Blackstone's and Lord Mansfield's readings of the resolutions in Calvin's case.

Lord Mansfield expressly admits the absence of any other judicial precedent:

"It is not to be wondered that an adjudged case in point is not to be found; no dispute was ever started before upon the king's legislative right over a conquest; it never was denied in a court of law or equity in Westminster-hall; never was questioned in parliament. Lord Coke's report of the arguments and resolutions of judges in Calvin's case lays it down as clear (and that strange extra judicial opinion as to a conquest from a pagan country, will not make reason not to be reason, and law not to be law as to the rest). The book says, that if a king—I omit the distinction between a Christian and an infidel kingdom, which, as to this purpose, is wholly groundless, and most deservedly exploded;—

"If a king comes to a kingdom by conquest, he may, at his pleasure, alter and change the laws of that kingdom; but, until he doth make an alteration of those laws the ancient laws of that kingdom remain; but if a king hath a kingdom by title of descent, then, seeing that by the laws of that kingdom he doth inherit the kingdom, he cannot change those laws of himself without consent of parliament."

Lord Mansfield proceeds upon an extra-judicial excursion of his own, over a very wide field:

"A great deal has been said, and authorities have been cited relative to propositions in which both sides exactly agree, or which are too clear to be denied. The stating of these will lead us to the solution of the first point." (This *first* point, we will remember, was itself unnecessary to the decision of Campbell *v.* Hall.)

"1. A country conquered by the British arms, becomes a dominion of the king in the right of his crown, and therefore, necessarily, subject to the legislative power of the Parliament of Great Britain.

"2. The conquered inhabitants, once received into the conqueror's protec-

tion, become subjects; and are universally to be considered in that light, not as enemies or aliens.

"3. Articles of capitulation, upon which the country is surrendered, and treaties of peace by which it is ceded, are sacred and inviolate, according to their true intent and meaning.

"4. The law and legislation of every dominion, equally affects all persons and property within the limits thereof, and is the true rule for the decision of all questions which arise there. Whoever purchases, sues, or lives there, puts himself under the laws of the place, and in the situation of its inhabitants. An Englishman in Ireland, Minorca, the Isle of Man, or the Plantations, has no privilege distinct from the natives while he continues there."

(This proposition surely has obvious limitations. Of a single Englishman, or even a petty factory of English residents on the borders of an immense and populous country, it may be true. Of the few English merchants at first resident in Quebec and Montreal it may have been true; but it never was true of the Province of Upper Canada since 1791.)

"5. The laws of a conquered country continue in force until they are altered by the conqueror. The justice and antiquity of this maxim are incontrovertible; and the absurd exception as to pagans mentioned in Calvin's case, shows the universality and antiquity of the maxim. That exception could not exist before the Christian era, and in all probability arose from the mad enthusiasm of the Crusades. In the present case, the capitulation expressly provides and agrees, that they shall continue to be governed by their own laws, until his Majesty's pleasure be further known.

"Taking the above propositions to be granted, the king has a legislative power over a conquered country, limited to him by the constitution, and subordinate to the constitution and Parliament."

Now, what was Calvin's case, upon which so much law is founded by Lord Mansfield and Sir Wm. Blackstone. Calvin was an infant born in Scotland three years after James VI., of that country, became James I. of England, and the question at issue in the case was, whether, having been born after the union of the Crowns, he was an alien in England. The court decided that Calvin was not an alien. Inasmuch as Scotland was not a conquered country, the status of conquered countries was not in issue. The resolutions on that point are wholly extra-judicial. They belong to a class of far-reaching dissertations to which the early judges were prone, probably because the line between legislative and judicial law had not yet been as clearly drawn as it has since been. They have the force of argumentative precedents, but not the weight of judicial authorities.

(Page 81-82 Houston.) Lord Mansfield considered himself at liberty to repudiate so much of them as appeared repugnant to the more modern spirit of the 18th century. No greater bar exists to their *complete* re-examination and repudiation to-day.

Lord Mansfield proceeds to supplement this defective authority by reasonings which might have passed in the 18th century, but which, I doubt, will not be as well received now:

"It is left by the constitution to the king's authority to grant or refuse a capitulation. If he refuses, and puts the inhabitants to the sword, or exterminates them, all the lands belong to him; and if he plants a colony, the new settlers share the land between them, subject to the prerogative of the conqueror. If he receives the inhabitants under his protection and grants them their property, he has power to fix such terms and conditions as he thinks proper. He is entrusted with making peace at his discretion: and he may retain the conquest, or yield it up, on such condition as he pleases. These powers no man ever disputed. neither has it hitherto been controverted that the king might change part or the whole of the law or political form of government of a conquered nation."

Lord Mansfield's argument proves too much for its lasting validity. His plea for political subjection, arising from conquest, is a pale restatement of the argument in its ancient forms: when it was used by classical and mediæval continental authorities, as the basis of the right of *slavery*. The conquered had no right, not even the right of existence; he might, therefore, lawfully be held as a slave, as a milder substitute for extermination. Will any modern writer contend for the right under international law to exterminate the men, women, and children of a conquered province; or rest upon such *right* as a basis of laws and constitutions?

At page 73 (Chitty's Blackstone), the true origin and limitations of the rights arising from conquest are more reasonably stated. "For this follows from the very nature and constitution of a dependent state, dependence being very little else but an obligation to conform to the will or law of that superior person or state upon which the inferior depends. The original and true ground of this superiority, in the present case, is what we usually call, though somewhat improperly, the right of conquest, a right allowed by the law of nations, if not by that of nature: but which in reason and civil policy can mean nothing more than that, in order to put an end to hostilities, a compact is either expressly or tacitly made between the conqueror and the conquered, that if they will acknowledge the victor for their master, he will treat them for the future as subjects, and not as enemies." In other words, the conditions of conquest are not conditions of law, but of *force* and violence, which are an *abrogation* of law; and are continued so long and to such extent as the conqueror deems necessary to the preservation of his acquisition.

By the capitulation of Montreal, and by treaty, the inhabitants of Canada were assured they would be subjects of the crown. Thrice since 1763 they have approved their loyalty to that settlement. First, during the American war of revolution of 1775: again more signally in the war of 1812, when they contributed essentially to the retention of Canada to the British Crown; and yet once more in the Fenian invasions of 1866. Under the constitution of 1791 and all subsequent constitutions, no distinction has existed (or is possible) between them and their fellow subjects. The

status of subjection of a portion has become merged in the status of the majority of British origin. Both classes of the population of Canada have long ago become incorporated in a common citizenship. There is not a French-Canadian now living in Canada who is not a native British subject, entitled from his birth to all the privileges of British colonists. Certainly, the incorporation of those descendants, and of the original Province of Quebec into the Dominion formed in 1867, cannot derogate from the rights of the English colonists of regions in Nova Scotia and New Brunswick, which were never under the French crown.

CLAIM OF PARLIAMENT THROUGH ROYAL JURISDICTION.

Any power of interference of the House of Parliament with the internal legislation of the colonies, is not an original, but a derivative authority.

The Home Parliament having an interest in the preservation of the union under him of every part of the King's realm, has some right to advise him against conceding to legislation by a colony, which would determine, or would tend to an inconsistency with, the continuance of such union.

The king, pursuing his prerogative office, as head of the Colonial Government, is, at the same time, as the constitutional sovereign of Great Britain, obliged to act in these, as in other matters, under the advice, and with the consent of his Home Parliament.

Benj. Franklin, indeed, and his fellow-colonists, protested againt his admitting such advisory co-operation in the execution of his office, *qua* king of a colony. But this contention went beyond the necessity or reason of the case. It is a moot point, contested in England itself, but never determined against the king, that he may take other counsel than that of his recognized constitutional advisors, the Cabinet, possessing the confidence of his Parliament.

The matter only comes to a test when such advice leads the common sovereign into a conflict with any of his Parliaments. Such conflicts are never again likely to become irreconcileable. There is an ample safeguard in the principles of the constitution against an excess of local influence upon the sovereign of the union. No part of the realm will wish to drive any other portion to the last resort. What this is may be implied from what happened in England in 1688, and on this Continent in the last century.

The necessary existence of such a resort is inevitably implied in the principle that a mutual compact rests between crown and people. That compact is established as an express part of our constitutional law.

To quote again from Blackstone:

"I proceed next to the duties incumbent on the king by our constitution; in consideration of which duties his dignity and prerogative are established by the laws of the land, it being a maxim in the law that protection and subjection are reciprocal. And these reciprocal duties are what, I apprehend, were meant by the convention in 1688, when they declared that King James had broken the original contract between king and people. But, however, as the terms of

that original contract were in some measure disputed, being alleged to exist principally in theory, and to be only deducible by reason and the rules of natural law; in which deduction different understandings might very considerably differ; it was, after the revolution, judged proper to declare these duties expressly, and to reduce that contract to a plain certainty. So that, whatever doubts might be formerly raised by weak and scrupulous minds about the existence of such an original contract, they must now entirely cease; especially with regard to every prince who hath reigned since the year 1688."

"At the time of the revolution, A.D. 1688, the lords and commons, by their own authority, and upon the summons of the Prince of Orange (afterwards King William), met in a convention, and therein disposed of the crown and kingdom. But it must be remembered that this assembling was upon a like principle of necessity as at the restoration, that is, upon a full conviction that King James the Second had abdicated the government, and that the throne was thereby vacant; which supposition of the individual members was confirmed by their concurrent resolution, when they actually came together."

James II.'s "abdication" consisted simply in his breach of the constitutional compact, followed by his flight before the insurrection of his people. Modern common sense will not be much troubled with the niceties of expression forced upon the Convention Parliament of 1688, by way of compromise with the advocates of Divine right. Historically, there can be no doubt that James II. did *not* abdicate. What took place was a deposition, by one party to the contract, the people, of the hereditary official, for causes, namely, for gross breach of the duties, and disregard of the limitations of his office. In the case of a colony, which, (though equally in law the seat of the King's government) is not the place of his residence, the equivalent of deposition is separation. Deposition in that form was declared and effected by the colonists of 1776. We may believe that the penalty was impatiently and unnecessarily imposed in that instance; but we cannot deny the constitutional character of the action, without attacking the logic of the similar act of the Convention Parliament of 1688.

THE ONLY DECIDED PRECEDENT.

The dispute with the American colonists was the first real issue formally presented for an authoritative decision and declaration on the question, whether the status of Englishmen in a colony was different from that of Englishmen in England.

Blackstone, whose famous commentaries were issued contemporaneously with the first mutterings of the Colonial question, has a passage of great interest, as setting forth the view then assumed by the Home Parliament and English lawyers, which was to form, in fact, the brief on that side of the coming struggle:

"But it is particularly declared by statute 7 and 8 W. III. c. 22, that all laws, by-laws, usages, and customs, which shall be in practice in any of the plantations, repugnant to any law, made or to be made in this kingdom, relative to the said plantations,

shall be utterly void and of none effect."

This, it is to be observed, is in substance the same as the Colonial Laws Validity Act, once more cited as overruling Colonial legislation.

"And, because several of the colonies had claimed a sole and exclusive right of imposing taxes upon themselves, the statute 6 Geo. III. c. 12 expressly declares, that all his majesty's colonies and plantations in America have been, are, and of right ought to be, subordinate to and dependent upon the imperial crown and parliament of Great Britain; who have full power and authority to make laws and statutes of sufficient validity to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever. And this authority has been since very forcibly exemplified, and carried into act, by the statute 7 Geo. III. c. 59, for suspending the legislation of New York; and by several subsequent statutes."

It has been generally thought that something had been decided by the result of that great historic controversy once and forever. A determination on such a question arrived at at the bloody assize of war, solemnly embodied in a treaty, is surely entitled to hold rank as a precedent along side of any judicial precedent whatever. Yet, now that by a series of glorious accidents, the British crown is once more lord over a vast colonial empire, we have the extraordinary spectacle of eminent judges seeming to be of the opinion that the British Parliament is once more in a position to repeat the error (as I submit, in law, as well as of policy) of 1774.

LIMITS OF THE POWER OF DISALLOWANCE.

If it be asked what safeguards then exist against legislation directed against the continuance of the union with the remainder of the Empire under the same crown, or against legislation inconsistent with or embarrassing the Empire in its relations and obligations with other nations, the answer is, that appropriate constitutional protection is provided by the royal veto on improvident, unauthorized, or revolutionary legislation.

In each legislature of the Empire Her Majesty is a constituent part. Her assent is necessary to every Act to be passed in Her Dominions. It is given to local provincial acts, by Her Lieutenant-Governor; to the Dominion acts by the Governor-General; to Acts of the British Parliament by Her Majesty in person, or by commission. In each case the assent is given or withheld upon the advice of the committee of Her Majesty's Privy Councillors possessing her confidence, and at the same time that of the representative body of the Province, of the Dominion, or of the United Kingdom, respectively. The assent given to acts passed by any Provincial Legislature through the Lieutenant-Governors is subject to revision by Her Majesty's Governor-General-in-Council within one year. Similar acts passed by the Dominion Government are nominally subject to disapproval by Her Majesty and her Home Council within two years after the original assent.

Opposite contentions have existed as to the construction of this reservation. It has been urged on the one

hand that the clause was intended only to give to a superior authority—the Dominion Government in the one case, and the home Government in the other case—power to restrain excess of legislative jurisdiction by the inferior legislative authority. Some support might be found for this interpretation in the reasons assigned in some cases for refusals to exercise the jurisdiction, notably the Jesuit Estates Act by the Dominion Government, and the Letellier Resolutions by the Home Government. On the other hand, it has been contended that the power is unlimited, and is intended to reserve a full and absolute discretionary revising power over acts upon all subjects whatever. This view also can appeal to precedent: notably, so far as the Dominion powers are concerned, in the case of the Streams Bill, over which so stout a controversy long raged.

In my humble opinion both extremes of construction are equally erroneous. One is too limited, the other is too broad. Both overlook one of the prime elements upon which Coke lays stress in approaching the constitution of a statute—the state of the law apart from the enactment. The Crown and people of Canada do not derive their relative rights from grants or concessions of the so-called Imperial Legislature. They are their inherent possession. The chief forms of the British Constitution as applied to Canada, are recognized and declared in statutory form by the Confederation Act, instead of resting upon unwritten customary law, as they continue to do in England. The governing intention of the Confederation Act was to create both the Local and Dominion Legislatures, consisting of Crown and Parliament, with the full relative powers inherent in the British sovereign and the representatives of the English people. The powers and forms of legislation are express, and it was necessary that so much as pertained to the sovereign should be likewise express, or they might have been held to be obliterated by the omission. Now, if we pierce the veil of legal fictions which wraps the forms of the Constitution with something of mystery as well as of antique dignity, there is not much doubt about the relation of the sovereign to her people and her parliament. It existed and was understood in 1867 just as it is understood to-day.

By the custom of England, every bill altering or adding to the laws of England has always required the assent of the sovereign before it became law. The necessity of express assent implies the power of dissent. But in considering a bill presented to her for her assent, the sovereign does not in modern times treat with her subjects as a separate contracting party. She is a part of the government of her people. Since 1688 it has not been open to be contended that she was more than the head of a government existing by the consent and for the benefit of the governed. She occupies an office, and is part of the machine of government. What are called the rights of the Crown are really the duties of the Crown. They are high, honorable and responsible functions, involving an exercise of personal discretion, but more or less capable of definition. In respect of

the administration, her office is practically divested of discretionary power, because in administration she can only act by ministers, and no ministers can act for her except such as are approved by the representatives of the people. (Todd, Parliamentry Govt., 2nd Ed., p. 19.)

There is a difference in the case of the legislative power. No alteration in the law of England can be made by statute without the personal action of the sovereign, signifying her assent. A royal disallowance cannot be overridden by any number of parliamentary votes without *ipso facto* effecting a revolution in the Constitution. In the meantime, what are recognized as the limitations of the royal discretion? These, I think, are determined by considering what are the uses intended by vesting this ultimate discretion in a single personage. It cannot for a moment be considered as an irresponsible discretion. It is a discretion lodged in the Crown by the consent of the people, as a security for their good government, and the protection of their rights and liberties. But, protection against what? Not protection against the real will of the people, for that would be an absurdity: but protection against the hasty or fraudulent action of those who purport by any chance to be their representatives for the time being. Lord Salisbury, who is a student as well as a statesman, with his acute practical sense, has laid down such a rule for the government of the Lords, as a non-popular assembly. The Crown and Lords are peers, according to the ancient classification of the Estates of Parliament, and what Lord Salisbury has defined as the duty of the Lords under modern circumstances, has much longer been the tacitly-understood office of the Crown. The sovereign has, therefore, a personal discretionary power of dissent which, under conceivable circumstances it would be wise and right to exercise: that is to say, when the act was in violation of the Constitution, when it was passed improvidently, and without due consideration, and, lastly, when it was passed by a parliament fraudulently elected, or otherwise believed by the sovereign to be not truly representing the will of the people. Of course the ordinary consequence of the refusal of the Crown to assent to a bill would be the resignation of her Ministers. Ministers would have to be found to advise and adopt her action, and if still opposed by the majority of parliament, to refer the issue to the people by a dissolution and new election. (Todd, Parl. Govt., 2nd Ed., p. 16.) Should a new parliament be returned to reaffirm the action of its predecessor, no sane occupant of the throne is likely to afterwards take a course that would make it necessary to lay down the proper constitutional remedy for such a deadlock.

The foregoing powers of the Crown are, therefore, to be read into the Confederation Act as expressive of the understood limitations of that power, whether exercised through her Lieut.-Governor, Governor-General in-Council, or Her Majesty in person, with the advice of her home Council. (Todd, Parl. Govt. in Canada, 2nd Ed., pp. 118, 119.)

In one respect, and perhaps in two, additional power is to be implied in

the Governor-General in-Council, in consequence of the Federal nature of the Canadian Constitution. The Governor-General and Council are necessarily made the final judges, through their power of disallowance, whether the acts of the local legislature correspond with the distribution of powers between the local and federal legislatures. Again, in respect of acts admittedly within local jurisdiction, the absence from many of the Provincial Constitutions of a second Chamber increases the liability to hasty and improvident legislation. On the other hand, the fact that the Governor-General acts by the advice of a Privy Council responsible to the representatives of the whole people of the Dominion, justifies a more unlimited exercise of discretion in disallowing acts passed by the local representatives of a part of the same electorate than could properly or prudently be exercised by the Crown in person, upon the advice of a home council not so responsible. Apart from these special powers, arising out of the distribution of representative capacity between the Dominion and local houses, the Sovereign, with the advice of her Home Privy Council, would seem to have constitutionally no greater right of disallowance than it has been stated she possesses in case of acts passed by the Home Parliament.

It therefore appears to me that the existence of the Colonial Law Validity Act affords no valid grounds upon which the Royal assent can be constitutionally refused to the Copyright Act submitted by the Parliament of Canada. I am not to be assumed to be expressing any views upon the merits and wisdom of that legislation in itself.

O. A. HOWLAND.

SIR OLIVER MOWAT, Q.C., M.P.P.

Attorney-General of Ontario.

In this brief sketch of a busy professional life, we have nothing to do with the successful politician, with the famous statesman, but only with the lawyer. The beginnings of Sir Oliver's, the lawyer's, career belong to the traditional past. An equity lawyer, he remembers the days when equity jurisprudence was unhonored in his native province. He has practised before that maimed, peripatetic Court of Chancery, *sans* Chancellor, sitting at one time in Toronto, then again at Kingston, a despised handmaid to a roving government. He has known and used the cumbrous procedure of archaic pleading—with its long drawn out bills and answers, interrogatories and cross interrogatories. He has chafed at the vexatious delays and inefficiency of the first Vice-Chancellor, who is remembered now, scarce as a jurist,

but because he had given his name to the lively Anna Jameson. Sir Oliver has seen his chosen jurisprudence become the predominating influence in all the courts of the province. At the time he was called to the Bar, and for years after, the cry for law reform was loud in the land, and in this, the closing decade of the century, he is aroused by the same clamor to devise measures of relief for burdened suitors. What changes he has seen in the organization and personnel of the courts! In his junior days the Court of Appeal consisted indifferently of the Lieutenant-Governor, or Chief Justice, of the province, and two or three members of his Executive Council. We can hardly imagine, now-a-days, a deliberate appeal from the courts upon matters of law to the current phantom of royalty sitting with his political advisers. Such organization of the judiciary is immeasurably distant from the complex machinery introduced by the Judicature Act. Concerning these momentous changes, Sir Oliver can, without boasting, say of his public career, *quorum pars magna fui.*

From the public point of view, then, what a career, as honorable as useful! Yet for Sir Oliver, the lawyer, how uneventful in its prosperous progress. Everything seems to have gone well with him; he met no reverses of fortune; there is nothing for the biographer to lay hold of to excite our sympathy with the early struggles of the rising barrister; there is no store of anecdote or picturesque incident to afford light and shadow to the picture; from the outset, all is smooth, monotonous success. Even Sir Oliver, if one applies to him personally, can add nothing of interest to what is already known. So, it results that all the biographers have done for their subject is to show to us the prominent facts in his life, and with general phrase leave us to fill in the woof with what material may be gleaned from dry narratives of reported cases, and reminiscences of the few survivors of his own generation of lawyers.

From the meagre accounts of the biographers, we learn that Sir Oliver was born at Kingston, on the 22nd of July, 1820. He comes of a Scotch, Presbyterian stock—a strain of blood which, in theology, makes one take kindly to doctrine and metaphysics, in law, to the deduction of principles, and a certain flexibility in their application, coupled, however, with reverence for the decided case. In Kingston, the Rev. John Cruikshank conducted a seminary of good local repute. Among others who passed beneath his birch, and whose early days are interesting to Canadians, by reason of their after greatness, were Sir John A. Macdonald, and the Hon. John Hillyard Cameron. To this school the young Mowat resorted. As is customary to relate of those who afterwards become celebrated, we are told that as a child, Mowat was precocious. His father, a well-to-do general merchant, could give his boy all the limited educational advantages of the period. He seems early to have destined him for the law. The rebellion of 1837 found him a student-at-law, in the office of John A. Macdonald, then known merely as a prosperous lawyer. It is a queer coincidence, that the first relations of Sir Oliver and Sir John should be as student to principal, not

that in those days, any more than in our own, did the principal do more than allow the student to learn what he could in his office. The proof of the matter that Sir John did not exert a profound legal influence over his young pupil, is the fact that the student selected the Equity Bar and Sir John was a common law lawyer. The study of law in Sir Oliver's student days was not made easy by texts written for students. The law had to be gleaned from collections of cases, and from ponderous works like Coke upon Lyttleton. The writer counts among his literary curiosities a 'Coke' which belonged to Sir John in his cipal's books and picking up what he could from the business of the office, the young student doubtless bit by bit acquired a working knowledge of law and equity. The rebellion interrupted his studies for a few brief months, when, a lad scarce full 17, Sir Oliver served as a volunteer. His military experience did not include actual warfare, and when the immediate excitement was over he returned to his studies. Four years were thus spent in Sir John's office, when young Mowat removed to Toronto to obtain in the law capital the wider information to be gained as a student in a leading office. He was fortunate in his choice of a new principal—Mr. Robert Burns; and his choice, it will be seen, had an important influence on his after career. Mr. Burns, besides enjoying a large practice, was judge of the Home District, which included the Counties of York, Ontario and Peel, There was nothing incongruous then in the County Judge practising in other courts. In the early days, the emoluments of a County Judgeship would not attract a barrister in decent practice.

Upon the completion of his finishing course in Mr. Burns' office, Sir Oliver was, during Michaelmas term, 1841, admitted as attorney and solicitor, and in the same term was called to the Bar. He commenced practice in the City of Kingston. We can conjecture what determined him to start his professional life in his native town. The Court of Chancery, which had been organized in 1837, by its newness would attract one whose student days were contemporary with its history. There could be no well recognized leaders of the Equity Bar at this early period; all candidates for public favor would meet upon fairly equal terms before the Vice-Chancellor. Besides these considerations, in 1841 the Court of Chancery located itself in Kingston, for it was the theory of that day, that as the Chancellorship remained vested in the crown, the Vice-Chancellor's Court must be held at the seat of government. In 1844, however, the wandering government removed to Montreal, and as the Court of Chancery was for Upper Canada only, the bond was broken and the court returned to Toronto. Sir Oliver also removed to Toronto, to be in attendance upon the court. Of the Kingston sittings of the court but few memorials remain. We know that Turner, Maddock, and Esten, practised there before the court. We know also that the Vice-Chancellor was of Lord Eldon's school, and that an outcry was made from one end of the province to the other for the abolition of the court. We know also that Sir Oliver got a

fair proportion of the business done; causes were few, but the contests were Herculean, making full use of all the vast machinery of the contemporary English system. Modern aids to office work, too, were wanting, and the interminable proceedings had to be slowly engrossed by clerks.

In 1844, at Toronto, Sir Oliver formed a partnership with Mr. Burns, his former principal, under the style of Burns & Mowat. Mr. P. M. M. S. Vankoughnet was subsequently admitted to the firm, which then changed its style to Burns, Mowat & Vankoughnet. Their offices were on the south side of King Street, upon the site of the present Romaine buildings. McDonald's Hotel adjoined the office; here Sir Oliver lived, and it was a common sight to see him return in the evening to his office, and work late into the night. He almost exclusively took Chancery briefs, and rapidly engrossed this branch of his former principal's practice. In 1848, the Legislature interfered by statute to prevent County Judges from practising as barristers, and Mr. Burns withdrew from the firm. Mowat & Vankoughnet retained the large practice of the older firm. In 1849, came the sweeping changes in the Court of Chancery, effected by William Hume Blake, then Solicitor-General. The court was entirely remodelled, with a Chancellor and two Vice-Chancellors. Mr. Blake himself joined the court as Chancellor, and Mr. Esten was appointed one of the Vice-Chancellors. The court at once won the confidence both of the public and of the Bar. Now that the Court of Chancery became efficient, and its usefulness increased, Sir Oliver reaped the advantage of his early loyalty to Equity Jurisprudence. He took at once a foremost place at the Equity Bar, and was engaged in a majority of the causes. A casual inspection of 1 Grant's Chancery Reports, covering the period of the first year of the new court, shews him in one case out of every two reported. It is interesting to note who were his compeers. Robert Baldwin was Attorney-General; John Sandfield Macdonald, Solicitor-General; Adam Wilson, Hagarty, Eccles, Galt, Morrison, Cameron, together with forgotten leaders like Hector, Crickmore and Brough, made a strong Bar. Nor were picturesque figures wanting, conspicuous among his brethren was Dr. Connor, Q.C., formerly partner in the 'flourishing concern' with William Hume Blake and Joseph C. Morrison—tall, cadaverous, prematurely white—'Old Mortality' as Judge Sullivan dubbed him. Not all of these confined themselves to equity business, as did Sir Oliver, but it is evident that to be a leader among such men was standing not to be lightly won. In practice, as in later life, the keynote of Sir Oliver's success was his untiring industry and pertinacity. Not as brilliant as some of his rivals, he was unmatched in his industry. In the days of Vice-Chancellor Jameson, the Bar, with Blake and Esten as leaders, had been too strong for the Bench. A strong Bench calls out the best powers of counsel practising before it, and, year by year, practising before Blake and Esten, Sir Oliver's knowledge and breadth grew greater, until in his own sphere he was admitted leader of the Bar. His industry alone could allow him to

undertake, as he did, the largest equity practice in Upper Canada. His partnerships were numerous. After the dissolution of the firm of Mowat & Vankoughnet, he formed a partnership under the style of Mowat, Ewart & Helliwell, with Mr. John Ewart and Mr. John Helliwell. Next, we find him as head of the firm of Mowat, Roaf & Davis. For a time after the dissolution of this firm, he practised alone, and then entered into partnership with Mr. James Maclennan. His business followed him from firm to firm, showing that it was to Sir Oliver that the business came and not to the firm. Many of the cases he argued, reported in Grant's reports are to-day living authorities on topics of Equity-jurisprudence. In 1856, he put on silk as Queen's Counsel, and in the following year made his first essay in politics, contesting South Ontario. Sir Oliver was elected, and took his seat in 1858. Until his elevation to the Bench, in 1864, he engaged actively in politics, but never neglected his practice. He was Provincial Secretary in the four-day Brown-Dorion cabinet which preceded the famous double shuffle. In 1863, he was Postmaster-General in the Sandfield Macdonald-Dorion Administration, and still held this portfolio when, upon Vice-Chancellor Esten's death, he became Vice-Chancellor.

For eight years Sir Oliver was Vice-Chancellor. His appointment was grateful, both to the public and the bar. As a judge Sir Oliver's notable characteristic was his fairmindedness. His reported decisions are clear and logical, and have always been held of high authority in our courts. The education of a lawyer is not favorable to breadth of view, but with Sir Oliver, his natural fairmindedness saved him from narrowness. He was an ideal Equity Judge—learned in the jurisprudence, skilled in its technique, familiar with precedent, but withal master of his reason. He might not always be able, as judge, to deny a decree to a dishonest suitor, but he was a difficult judge to apply to under such circumstances. He resigned the bench to re-enter public life in 1872, with the fame of an upright judge. Since then Sir Oliver's career as law reformer and as administrator of a great province is known to all. He has left his mark upon our institutions.

The Barrister.

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TORONTO, MARCH, 1895.

CANADA'S CASE RE COPYRIGHT.

WE print in this issue the balance of Mr. Howland's article on the Constitutional Rights of Canada in support of Canada's right to legislate upon copyright untrammelled by the Berne Convention. It is only a fine feeling of deference to Imperial authority which has prevented our Government from claiming as a matter of right what has hitherto been sought as a necessary concession to our local needs. As we have already pointed out, the English claim involves an attempt to reimpose upon Canada in respect of copyright and the numerous interests swept into that term by the Berne Convention, such a monopoly or exclusive privilege as was characteristic of the old colonial system of England and France, but which has by England been long since abandoned in respect of all other commodities than books.

*

IT is not the policy of any Canadian legislature to reproduce here the social conditions of European countries, with their dangerous antagonisms of classes and masses, of vast wealth and profound destitution, of privileged intellect and brute ignorance. England and the other European countries that framed the convention for their own convenience took no account of any other continent than Europe. Therefore the convention had in view conditions of society happily very different from those in Canada. In those countries of Europe the population is dense. In London, or Paris, or Berlin, he that would read may, and generally does, borrow from a book club or library. In Canada, owing to the great dispersion of the people, he that would read must buy. In European countries, the reading classes form but a small fraction of the whole population; in the English-speaking provinces of Canada, the reading class means the whole population.

It is the duty of the Parliament of Canada to see that under color of any international convention, our social and economic conditions are not prejudicially interfered with.

*

THE Judicial Committee of the Privy Council has laid it down in various cases that franchises created by Imperial acts, must, when attempted to be exercised in Canada, be exercised in subordination to our domestic law. Parsons v. Queen Insurance Co. (7 App. Ca. 96), and the Bank of Toronto v. Lambe (15 App. Cas. 575), are types of these decisions. The largest and most important interests created by Imperial charter have been held to be within the rule. Why should the solitary interest of copyright be without the rule? To explain this anomaly it is suggested that copyright represents an interest of a higher

kind and more exalted character than any other commercial interest. But does it? Will anyone pretend now to say that the invention in Canada of the telephone did not involve more refined research and a higher intellectual process than the compilation in England of a book describing the patentee's invention and the mode of using it? The invention itself is undeniably subject to the jurisprudence of Canada, but the circulation of the paste and scissors description of the invention is a subject of legislation too refined and exalted for the Parliament of Canada.

*

IT is sometimes urged by the advocates of the Berne Convention that Canada ought not to stand upon her technical right. Would Canadian copyrights fare better in England than Canadian inventions? When the Canadian, Bell, having patented the telephone in Canada, took it to the patent office in England he was told that the English Government having purchased the monopoly of the telegraph, that must be deemed to include a monopoly of the telephone and of every other still undiscovered mode of transmitting sound by electricity. Thus one of the great inventions of the age, reflecting lustre not only upon Canada, but upon the British Empire, was refused a patent in England.

*

IT is undisputed that Canada has jurisdiction over patents of invention. An English patent is *per se* of no force in Canada, the Canadian patent must be taken out by the English inventor. What difference in principle is there between patent and copyright? Section 91 of the British North America Act places patent and copyright side by side among the twenty-nine enumerated subjects of legislation over which the Parliament of Canada is given "exclusive legislative authority."

*

THE constitutional question involved is one of great import to Canada. Can England, without Canada's assent to the Berne Convention, bind Canada to enforce throughout the Dominion the tax imposed upon Canadians by the convention in favor of foreign copyrights. Unless the history of the past 120 years is to be undone, England neither directly nor under color of an intimation at convention, can bind any of her self-governing colonies to pay a tax to England herself, much less to any other European country. To create any tax, direct or indirect, binding upon the Dominion of Canada, an act of the Parliament of Canada is clearly necessary. This was admitted in 1888, when a bill was introduced into the Dominion Parliament for the express purpose of assenting to the Berne Convention. This bill was withdrawn in deference to public sentiment in Canada which was aroused by the burdensome provisions of the convention.

*

IN 1889, Sir John Thompson introduced and carried the act 52 Vic. c. 29, Can., which is still in question. Only so far as this act can be treated as an assent on the part of Canada to the Berne Convention, has Canada given any legal or binding consent.

CONTRAST the Thompson act of 1889 with the Simonds act of 1891 in the United States. The Simonds act imposes all the conditions that the Canadian act does, but adds the important restriction that not only must the work be printed off in the United States, but that the type must be set there. While an English publisher can comply with the Canadian law by printing here from plates made in England, he must, in order to comply with the United States law, have the type all set up again in that country. The Simonds act violates the foundation principle contained in Article 2 of the convention. Under this Article, the mechanical aspect of book-making is to count for nothing; whereas in the Simonds act the mechanical production of the book in the United States constitutes the whole matter.

*

NOT only does the United States claim to have acceded to the Berne Convention, the first principle of which it has rejected, but in such character as accessory, having been admitted to the privilege of copyright in England, it claims to have thereby purchased a general right over the whole British Empire, including Canada. The United States therefore calls upon the English Government to compel Canada to throw into the bargain the book market of the Dominion. Under this contention, a United States publisher may set up, print and bind his book in the United States, and, by virtue merely of having taken out copyright in England, obtain the exclusive control of the Canadian market.

IF the Simonds Copyright Act is a good assent on the part of the United States to the Berne Convention, Sir John Thompson's more liberal act of 1889 should be a sufficient assent on the part of Canada to the same convention, and Canada should give no other assent.

*

THE position is a difficult one. The readiest solution is for the Government of Canada to have a friendly suit in our courts brought to test the claim put forward for the validity in Canada of an English copyright. In such a suit, the Government should take care that the constitutional questions involved are adequately presented to the court. If the decision be in favor of Canada's right to require Canadian copyright to be taken out, it is hard to see what the English publisher can do except gracefully accept the situation.

INSURANCE LAW NOTES.

IN placing life insurance (partnership) on three brothers, M. F., the agent, as a little inducement, entered into the following arrangement:

"To MESSRS. L. BROS.,

"*Renfrew, Ont.*,

"GENTLEMEN—You will be allowed five dollars rebate on your first semi-annual premium, and also five dollars on the second semi-annual premium on policies on the lives of Thos., Wm., and Robert L, W. J. F."

Three policies were issued, each for $2,000, the aggregate being $6,000, brought the transaction within the scope of the rebating clauses of the Insurance Corporations Act, 1892 Sec. 38 (2), if it were a single transaction. The magistrate convicted on

the ground that it was really a single partnership insurance. Upon certiorari, the Common Pleas Division quashed the conviction (Feb. 13, 1895), on the ground that the evidence showed three contracts each for less than $5,000, and not one contract for $5,000 or upwards.

This point arose under sub-section 11 of sec. 38. The sub-section makes it the duty of the Registry Officer, upon proof of conviction, to revoke registry of the agent, or, if there be an appeal, to suspend registry until the result of the appeal. It was contended that a proceeding by way of certiorari was not an appeal, and, therefore, the license of the agent pending certiorari, ought not to be suspended. But, *Query*, If it be not an appeal, ought not the Registry Office to revoke? For suspension is the only alternative provided, and unless there is an appeal there is no ground for suspension.

* *

B. made application for insurance against fire to the Dominion Grange Mutual to the amount of $1,500, for four years. The agent took the usual premium undertaking note, and issued to B. what was styled a provisional receipt, which declared the risk to be "subject to the approval of the Board of Directors, who shall have power to cancel this contract at any time within 50 days from this date, by causing a notice to that effect to be mailed to the applicant at the above post-office. And it is hereby mutually agreed that unless this receipt be followed by policy within the said 50 days from this date, the contract of insurance shall wholly cease and determine, and all liability on the part of the association shall be at an end. The non-receipt by the applicant of a policy within the time specified is to be taken, with or without notice, as incontrovertible evidence of the rejection of this contract of insurance by the said Board of Directors."

No policy was issued, nor was the contract of insurance cancelled by the Board within the 50 days, nor was any notice of cancellation mailed to the applicant. The 50 days expired on March 4th, 1891, and on the 24th April, 1891, a loss occurred. The Association relied on the terms of the receipt, and refused payment. At trial the plaintiff was non-suited, upon appeal to the Divisional Court (25 O.R., 100), held that the application, undertaking, note and receipt constituted a contract within the Ontario Insurance Act, and could have been terminated only under statutory condition 19, which provides for cancellation by notice. The Judges of the Court of Appeal are at variance in their views. Hagarty, C. J. O., would agree with the Divisional Court that this was a contract that could be terminated only in accordance with the 19th condition. Burton and Osler, JJ.A., were of opinion that this was a mere incomplete or provisional contract of insurance which came to an end in 50 days, by effluxion of time. Maclennan, J. A., that there was a contract, and the provision for determination by effluxion of time was a variation from the conditions, and, not being printed as a variation, was not binding. In the result, the court being two to two, the judgment of the Divisional Court was affirmed. It is to be hoped the Supreme Court will have an opportunity of settling the question. In the meantime the opinion of Armour, C. J. in the Lower Court, and of Hagarty, C. J., O., in the Court

of Appeal, is the preferable one. When a contract is found to exist, whether oral or written, the statutory conditions attach, and the contract can be terminated only in accordance therewith.

DECISIONS IN THE U. S. COURTS.

LIFE INSURANCE.—The action of an insurance agent in allowing one whose life he has written to retain one half the first premium, the amount of the agent's commission, in consideration of the insured's furnishing him with the names of certain others whom he might solicit, is not a violation by the company of Pub. Laws, c. 673, § 1, which prohibits any "distinction or discrimination as to the premiums or rates charged" on life assurance policies. Craig v. Coffey (R. I.) 30 Atl. Rep. 794.

*

THE right to insure one's life for the benefit of another is discussed in the Michigan case of Heinlein v. Imperial Life Ins. Co., 25, L. R A. 627, upholding a policy to the son of the insured, while a note to the case reviewing many authorities shows that nearly all of them sustain insurance taken by a person upon his own life for the benefit of another, even if the latter has no insurable interest therein.

*

AN application for a life insurance provided that the policy should be void if the statements in the application were untrue, and declared that the applicant knew that untrue answers or suppressions of facts as to her health would vitiate the policy. It was held that where both the mother and sister of an applicant, who afterwards died of consumption, had died of that disease, the applicant's failure to mention the sister's death avoided the policy though the doctor who examined her had previously rejected her, during her mother's life, as being liable to contagion from the latter. Jerrett v. John Hancock Mut. Life Ins. Co. (R. I.) 30 Atl. Rep. 792.

*

WHERE a married man disappears, and is not heard from for seven years, and when last heard from was in good health, and showed no intention of returning, but assumed to be an unmarried man, there is no presumption of his death within two years of his disappearance, so as to render valid an insurance on his life, which expired two years after his disappearance because of non-payment of assessments.—Seeds v. Grand Lodge of Iowa, A.O.U.W., Iowa, 61, N. W. Rep. 411.

*

EXPULSION from a Masonic lodge is held in the Missouri case of Ellerbe v. Faust, 25 L. R A., 149, to forfeit insurance in Masonic Mutual Benefit Association in which membership depends on standing in the Masonic order. The note to the case is upon the effect of expulsion from a society to destroy the right to insurance connected therewith.

*

SUBSTITUTION OF A BENEFICIARY.—Equities—Where the by-laws of a benefit insurance society allowed the insured to change the beneficiary in the certificate, on surrendering it and complying with certain rules, and the insured complied with all the other rules, but did not surrender the certificate, because the first beneficiary had possession thereof, and refused to give it up, equity will, as between the rival beneficiaries, consider the rules complied with, and the substitution made.—Jory v. Supreme Council, American Legion of Honor, Cal , 38 Pac. Rep. 524.

*

THE Supreme Court of Wyoming has decided that when a policy of accident insurance requires an action thereon to be brought within one year from the date of the happening of the alleged injury, the limitation begins to run at the date of the death of the insured, and not at the time at which the cause of action accrues: McFarland v. Ry. Off. & Empl. Acc. Assn. of Indianapolis, 38 Pac. Rep. 347. The Supreme Court of Wisconsin has improved on this, and asserts that when an accident policy provided that, in case of death or injury, notice of claim should be given to the secretary of the company immediately after the accident, and positive proof of death should be furnished

six months thereafter, as a condition precedent ; and the insured, a tugboat engineer, disappeared November 9, 1892, and his body was found in the water near the tugboat, April 19, 1893, and notice of death was furnished May 26, 1893, and proof thereof July 12, 1893 ; it showed a reasonable compliance with the terms of the policy.—Kentzler v. Am. Mut. Acc. Assn., 60 N. W. Rep. 1002.

*

THE Supreme Court of Wisconsin has held in Lord v. American Mut. Acct. Assn., Rep. 293, that it is for the jury to determine whether a total loss of three fingers and a part of another on the same hand, destruction of the joint of the thumb, and a cutting of the hand, is a loss of the hand "causing immediate, continuous, and total disability," within the meaning of that clause in a policy of accident insurance. This contrasts very strongly with the indefensible position of the Suprems Court of New York, that when the plaintiff's hand was cut off a short distance above the knuckles, leaving nearly the whole palm, and part of the second joint of the thumb, which the plaintiff testified was of considerable use to him, it was not a loss of "one entire hand," within the meaning of an accident policy.—Sneek v. Travellers' Ins. Co. of Hartford, 30 N. Y. Suppl. 881. Bradley, J., dissented, as well he might.

*

FIRE—An agent who has entire charge of the insurance upon property of his principal may accept notice of the cancellation of a policy, and procure substitute insurance upon the same property in another company, without previous notice to his principal, and the policy last issued will be valid.—Buick v. Mechanics' Ins. Co., Mich., 61 N. W. Rep. 337.

*

AN insurance policy covered a barn and tool house and the "contents in same." After the policy was taken the contents were removed and stored in a new barn which was uninsured, The latter, together with all it contained, was destroyed by fire. *Held*, that the policy did not cover the articles when removed, as place and location are of the essence of the risk. Benton v. Farmer's Mut. Ins. Co. 3 Mich. L. J. 322.

*

IN the opinion of the Supreme Court of Illinois, when an insurance company, by its adjuster, on being requested to rebuild a house destroyed by fire, unconditionally refused to do so, and stated that it would pay the amount of loss when the same was determined by arbitration. The company elected to pay the loss, and waived its right to rebuild. Platt v. Ætna Ins. Co., 38 N. E. Rep. 580.

*

A PROVISION in a fire insurance policy provided for the selection by the company and insured of two appraisers, who in turn should appoint an umpire, such umpire to be a person known to both parties. Where the conduct of the company's appraiser in refusing to agree on an umpire is inexcusable, and virtually amounts to a refusal to proceed with the appraisement, the fact that it was not concluded before suit was brought will not bar an action on the policy. Brock v. Insurance Co. (Dec. 7.) Sup. Ct. Michigan.

BOOK REVIEWS.

CRANKSHAW'S GUIDE TO POLICE MAGISTRATES.*

The general plan of this work is given in the preface : "After a short introduction on the origin of the office of a Justice of the Peace, and the growth of the institution to its present state of importance, the work is divided into four divisions. The *First* treats of the modes of and the formalities attending the appointment of Justices of the Peace and Police Magistrates, and of their respec-

*A Practical Guide to Police Magistrates and Justices of the Peace, with an alphabetical synopsis of the Criminal Law, and an analytical index by James Crankshaw, B.C.L., Advocate and Revising Barrister ; author of "An Annotated Edition of the Criminal Code of Canada, 1892." Montreal : Whiteford and Theoret, pp. 700 ; cloth $5.50 ; half-calf, $6.00.

tive powers, duties and responsibilities; the *Second* treats of the parties to the commission of crimes, and of the extent of the Criminal Law as to time, persons and place; the *Third* deals with the prosecution of criminal offenders, the jurisdiction of the criminal courts, and of Magistrates and Justices of the Peace, the general powers of summary arrest of criminal offenders, the modes of prosecuting indictable offences, the procedure before and at the preliminary enquiry into charges triable by indictment, the procedure in summary trials of indictable offences, speedy trials and trials of juvenile offenders, and the procedure in connection with the summary trial and conviction of persons charged with non-indictable offences, including the subsequent proceedings by way of appeal, reserved case, *certiorari* and *habeas corpus*; while the *Fourth* division consists of an alphabetical synopsis of the criminal law."

So much for the subjects and materials of Mr. Crankshaw's work; and now let us consider the vital question of how the materials are digested. The Justice of the Peace, being little addicted to studious pursuits, requires above all things that the directions to him shall be safe, simple, and easily followed. The legal practitioner requires that the author's citations, whether few or many in number, shall be accurate; while both the Justice and the practitioner are frequently called to intervene in criminal cases at the eleventh hour, so that a guide book to the criminal law must be ready to the hand. There must be no uncertainty, no fumbling. The magistrate must be able to lay his finger on the place where his duties, and the necessary forms to be gone through with, are clearly set forth. The lawyer, when sent for to the police court, must be able to find his arguments, his objections and his authorities on his road to the place of trial.

Such, then, are the merits that we should seek to find in this Guide, and upon the result of the search should depend our opinion of the work. To begin with, a moment's inspection shows that the paper and print are good, and that the usual tables and index are in their usual places. Before we have had the book in our hands many minutes we come upon a very commendable device. Every one is more or less familiar with the distinction between indictable and non-indictable offences, but not every one can at once recollect if a particular offence be indictable or not. Our author has been to the trouble of compiling two tables, one of indictable and the other of non-indictable offences, with the tribunals before whom the offences are triable, and the appropriate penalties.

Section 611 of the Criminal Code provides that the statement contained in an indictment may be in the words of the enactment describing the offence. But it may very often happen that some of the words of an enactment are lost in the transcription, and that accordingly some essential feature will be found lacking to the count. Mr. Crankshaw has come to the rescue in this matter, and has devoted nearly fifty pages of his work to examples of the manners of stating offences, alphabetically arranged, and as nearly as possible in the *ipsissima verba* of the enactments.

The style of the work is suitable to a law-manual. The paragraphs and sentences are not too long, and are lucidly written. There is a visible effort to collect and summarize matters, which, though analogous, are scattered through the Criminal Code. The citations are not heaped up, nor, on the other hand, are they scanty; while on a test being made in various places in the book, the cases appeared to be accurately cited, and their sense fairly represented.

On the whole, the author has succeeded in making a good work on the lines indicated in his preface, and we think there is a place for his book in the magistrates court-room, and among the well-thumbed handbooks that are found in every law-office.

*

Mr. J. Castell Hopkins' Life and Work of Sir John Thompson,* is well worthy of perusal. Mr. Hopkins has gathered together and condensed into 480 pages, the history of the late Premier. That portion of the work which deals with Sir John's career

* Life and Work of the Right Hon. Sir John Thompson, P.C.K.C.M.G., Q.C., by J. Castell Hopkins, with a preface by His Excellency the Earl of Aberdeen, pp. 480, Bradley, Garretson and Co., 1895. $2.50.

after he entered the Federal arena is necessarily not new to the reading public, but it is none the less interesting. The Book is written in a bright, easy style. The work contains about fifty illustrations, which include the photos of a large number of the public men of Canada, and adds greatly to its appearance.

*

WE are also in receipt of Mr. Hardy's Canadian Law List for 1895.* This extremely useful handbook includes a variety of information useful to lawyers throughout the Dominion.

BRIEFS FROM EXCHANGES.

UNITED STATES.—In Delaware, most of the serious offences against the person are punishable by whipping, the maximum number of lashes being sixty. In Maryland, an assault upon a wife is punishable by a maximum infliction of forty lashes. In Connecticut, disobedient convicts may be moderately whipped, not exceeding ten stripes for any one offence. In Georgia, whipping is inflicted when reasonably necessary to enforce discipline or compel work or labor by convicts. In one case where a wife beater was sentenced to be whipped under the laws of the State, the Court of Appeals there held that whipping was not a cruel punishment within the Constitutional prohibition.

*

LITIGANT—"You take nine-tenths of the judgment? Outrageous!"

LAWYER—"I furnish all the skill and eloquence and legal learning for your cause."

LITIGANT—"But I furnish the cause."

LAWYER—"Oh, anybody could do that."

* The Canadian Law List, 1895, edited by H. R. Hardy, Esq., Barrister at Law, pp. 125, $2.00.

INDEPENDENT ORDER OF FORESTERS

I.O.F

EVERYBODY who knows anything about insurance acknowledges that the Independent Order of Foresters is far and away the **Best Fraternal Benefit society in the World.** It was founded in Newark, New Jersey on the 17th June, 1874, and has spread all over the United States and Canada, and is rapidly spreading in Great Britain and elsewhere.

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	No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.
October, 1882	880	$ 1,145 07	January, 1888	7,811	$ 80,102 42	January, 1894	54,484	$858,887 89
January, 1883	1,134	2,769 58	January, 1889	11,618	117,599 88	February, "	55,119	875,860 06
January, 1884	2,216	13,070 85	January, 1890	17,026	188,130 86	March, "	56,319	878,230 08
January, 1885	2,558	20,992 30	January, 1891	24,466	283,967 20	April, "	59,359	911,529 93
January, 1886	3,648	31,082 52	January, 1892	32,303	408,798 18	May, "	59,697	928,707 04
January, 1887	5,804	60,325 02	January, 1893	43,024	580,597 85	June, "	60,206	951,571 62

Membership 1st July, 1894, about 61,000. Balance in Bank, $935,434.68.

The total number of applications considered by the Medical Board for the six months ending 30th June, 1894 was 13,381, of whom 12,296 were passed, and 1,085 rejected.

The cause of this unexampled prosperity and growth of the I. O. F. is due to the fact that its foundations have been laid on a **Solid Financial Basis**, and every department of the Order has been managed on business principles, thereby securing for all Foresters large and varied benefits at the lowest possible cost consistent with **Safety and Permanence.**

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FOR YOUR FAMILY.—1. Funeral Benefit, $50. 2. Mortuary Benefit of $1,000, $2,000, or $3,000.

The cost of admission to the Order in most Courts is only $7 to $9, according to the amount of Benefit taken, besides medical examination fee, which is $1.50 if you are taking only $1,000 of insurance, and $2 if taking $2,000 or $3,000. **Agents wanted in Canada, the United States, and Great Britain and Ireland.**

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