Canada Law Journal.

VOL. LIII. TORONTO, AUGUST-SEPTEMBER, 1917. Nos. 8 & 9

THE LAW OF COMMON CARRIERS.

THE RESPONSIBILITY OF THE CROWN WHEN ACTING AS A COMMON CARRIER.

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It has for a long time been accepted as a principle of law that the Crown, in respect of the conveyance of goods over Canadian Government railways, is not in the position of a common carrier. In the case of *Lavoie* v. *The Queen*, 3 Can. Ex. 96, the learned trial Judge made the following observation:—

"In *The Queen* v. *McLeod* (8 Can. S.C.R. 1), the majority of the Court, following *The Queen* v. *McFarlane*, 7 Can. S.C.R. 216, held that the Crown, in respect of government railways, is not a common carrier."

In view of its importance the soundness of this doctrine is well worth a careful enquiry.

Before discussing the opinions of the Judges in the two Supreme Court cases above mentioned, it would be well to examine some pertinent provisions of the Exchequer Court Act and the Government Railways Act, and then review the principles upon which the legal liability of a common carrier are based.

In the first place, by sec. 19 of the Exchequer Court Act, R.S.C. 1906, ch. 140, it is provided that "The Exchequer Court shall have exclusive original jurisdiction in all cases in which demand is made or relief sought in respect of any matter which might, in England, be the subject of a suit or action against the Crown, and for greater certainty, but not so as to restrict the generality of the foregoing terms, it shall have exclusive original jurisdiction in all cases in which the land, goods or money of the subject are in the possession of the Crown, or in which the claim arises out of a contract entered into by or on behalf of the Crown."

Then turning to the Government Railways Act, R.S.C. 1906, ch. 36, it is abundantly clear that parliament, in enacting certain of its provisions, contemplated that the government railways would carry on the business of common carriers. For instance, by sec. 46 of the said Act the Governor-in-Council may impose and authorize the collection of tolls and dues upon any

railway vested in His Majesty. By secs. 49, 50 and 51 the Governor-in-Council may make regulations for the ascertaining and collection of the tolls, dues and revenues on such railway; for imposing fines for the violation of any such regulation; and for the detention and seizure, at the risk of the owner, of any carriage, animal, timber or goods on which tolls or dues have accrued and have not been paid. It is also noteworthy that by clause (*h*) of sec. 2 of the Act, "toll" is defined to include any rate or charge, or other payment payable for any passenger, animal, carriage, goods, merchandize, matter or thing conveyed on the railway. Furthermore, clause (*i*) declares that "goods" includes things of every kind that may be conveyed upon the railway, or upon steam or other vessels connected therewith.

Our object in quoting these statutory enactments is merely to show, *expressis verbis*, how far parliament intended to place the Crown in the position of a common carrier, and to give a remedy for its breach of duty as such.

In the second place, we shall proceed to examine the principles underlying the common carrier's liability at common law.

A common carrier may be defined to be a person who undertakes for hire or reward to transport the goods of such as employ him from place to place. *Dwight* v. *Brewster*, 1 Pick. 50. The following definition from one of the older books has been specially commended both for brevity and exactness: "Any one who undertakes to carry the goods of all persons, indifferently, for hire, is a common carrier." *Gisbourn* v. *Hurst*, 1 Salk, 249 (91 E.R. 220) Cf. *Liver Alkali Co.* v. *Johnson*, L.R. Ex. 267. These definitions bring the obligations of a common carrier within that branch of the law of contract known as bailments. The bailment of common carriage falls within the fifth of Sir William Jones' classifications, viz., *locatio operis mercium vehendarum*. Jones, Bail. 36.

Yet the common carrier's liability is something more than that of an ordinary bailee. Cf. Van Zile on Bailments, 2nd ed., sec. 29 (*c*). Lord Mansfield in *Forward* v. *Pittard* (1785), 1 T.R. 27 (99 E.R. 953) at p. 33, says:—"It appears from all the cases for 100 years back, that there are events for which the carrier is liable independent of his contract. By the nature of his contract, he is liable for all due care and diligence; and for any negligence he is suable on his contract. But there is a further degree of responsibility by the custom of the realm, that is, by the common law; a carrier is in the nature of an insurer. It is laid down that he is liable for every accident except by the act of God or the King's enemies.

Now as to railways. "That railroad companies are authorized by law to make roads as public highways, to lay down tracks, place cars upon them, and carry goods for hire, are circumstances which bring them within all the rules, of the common law, and make them eminently common carriers." *Per* Shaw, C.J. in *Norway Plains Co.* v. *Boston & Maine Rd.* (1854), 1 Gray 263, p. 269.

Now, while the Crown is liable in actions arising out of contract, it is clear law that it is not liable to the subject in actions of pure tort except where made so by statute. *Tobin* v. *The Queen*, 16 C.B. (N.S.) 355; *City of Quebec* v. *The Queen*, 24 Can. S.C.R. 420. However, it is equally certain that the Crown

is liable for all breaches of contract no matter whether they depend on its servant's breach of duty or otherwise. In *Brown* v. *Boorman*, 11 Cl. & F. 1, (8 E.R. 1003), at p. 44, Lord Campbell said: "Whenever there is a contract, and something to be done in the course of the employment which is the subject of that contract, if there is a breach of a duty in the course of that employment, the plaintiff may either recover in tort or in contract."

In the case of the *Windsor & Annapolis R. Co.* v. *The Queen* (1886), 11 App. Cas. 607, the claim rested on a trespass by the Crown's servants in ejecting the suppliants from a railway over which the Crown had contracted to give them possession and control for a stated period. Lord Watson, in delivering the judgment of their lordships, said (p. 613):—"A suit for damages, in respect of the violation of the contract, is as much an action upon the contract as a suit for performance: it is the only available means of enforcing the contract in cases where, through the act or omission of one of the contracting parties, specific performance has become impossible."

In *Tobin* v. *The Queen* (1864), 16 C.B. N.S. 310, at p. 355, Earle, C. J., said "Claims founded on contracts and grants made on behalf of the Crown . . . are within a class legally distinct from wrongs."

"No civil wrong is a tort if it is exclusively the breach of a contract. The law of contracts stands by itself, as a separate department of our legal system, over against the law of torts; and to a large extent liability for breaches of contract and liability for torts are governed by different principles. It may well happen, however, that the same act is both a tort and a breach of contract . . . Thus he who refuses to return a borrowed chattel commits both a breach of contract and also the tort known as conversion: a breach of contract, because he promised expressly or impliedly to return the chattel; but not merely a breach of contract, and therefore also a tort, because he would have been equally liable for detaining another man's property, even if he had made no such contract at all." Salmond's Jurisprudence, 2nd ed., p. 435. Finch, J., in *Rich* v. *New York Central, etc., R. Co.*, 87 N.Y. at p. 390, said:—"We have been unable to find any accurate and perfect definition of a tort. Between actions plainly *ex contractu*, and those as clearly *ex delicto* there exists what has been termed a border-land, where the lines of distinction are shadowy and obscure, and the tort and the contract so approach each other, and become so nearly coincident as to make their practical separation somewhat difficult . . . Ordinarily, the essence of a tort consists in the violation of some duty due to an individual, which duty is a thing different from the mere contract obligation. When such duty grows out of relations of trust and confidence, as that of the agent of his principal or the lawyer of his client, the ground of duty is apparent, and the tort is, in general, easily separable from the mere breach of contract. But where no such relation flows from the constituted contract, and still a breach of its obligation is made the essential and principal means, in combination with other and perhaps innocent acts and conditions, of inflicting another and different injury, and accomplishing another different purpose, the question whether such invasion of a right is actionable as a breach of contract only, or also as a tort, leads to a somewhat difficult search for a distinguishing test."

How far the undertaking of a common carrier protrudes itself into the

border-land of obligations mentioned by Finch, J., is shown by the following extract from Keener on Quasi-Contract, p. 18:—"Of a quasi-contractual nature, it is submitted, is the duty of a carrier, founded upon the custom of the realm to receive and to carry safely. That the liability in such cases arises not from contract, but from a duty, is clear. While it is true that the liability is ordinarily described as one in tort, it is submitted that it has been so described because of the usual classification of legal rights into contracts and torts, and that since the obligation imposed upon the carrier is to act, the obligation is really quasi-contractual in its nature, and not in the nature of a tort."

Mr. Keener's view that the obligation of the carrier sounds in contract rather than in tort is strongly supported by the opinion of Lord Mansfield in *Forward* v. *Pittard*, quoted *ante*, and by that of Lord Kenyon, C.J., in *Buddle* v. *Willson* (1795), 6 T.R. 369 (101 E.R. 600), where he says, at p. 373, that a declaration against a carrier on the custom of the realm is, in substance, *ex contractu*. In the report of this case in the Revised Reports, vol. 3, at p. 202, the syllabus reads: "The cause of action in the ordinary case of an action against a common carrier is essentially *ex contractu*." In the editorial note to *Buddle* v. *Willson*, (*ubi sup.*) we find the following:—"Lord Kenyon's judgment in *Buddle* v. *Willson*, as well as the case of *Boson* v. *Sandford*, on which it is founded, is impeached by Lord Ellenborough in *Govett* v. *Radnidge*, 3 East, 62, 69 (102 E.R. 520). But the principle is reaffirmed by Sir J. Mansfield, C.J., in *Powell* v. *Layton*, 2 Bos. & P. (N.R.) 365, (127 E.R. 669), and Mr. Dicey (On Parties, p. 20) after reviewing these, with other conflicting authorities, supports the view of Sir J. Mansfield." Let us first quote Mr. Dicey's exact words, and then proceed with those of Sir James Mansfield in the case last mentioned, as they are both of high authority. Mr. Dicey says (p. 20.):—"In spite of conflicting decisions, the doctrine laid down by Sir J. Mansfield, C.J., is (it is submitted) in theory correct. Actions for torts, founded on contract, though in form actions for tort, are in reality actions for breach of contract. They owe their existence to the fact that for technical reasons . . . declarations were often framed in tort where the real cause of action was the breach of a contract." In *Powell* v. *Layton*, Sir James Mansfield, said (pp. 369, 370):—"Let us see what is meant by the defendant's duty? How did he undertake any duty, except by his agreement to carry and deliver the goods? The duty of a servant or the duty of an officer I understand, but the duty of a carrier I do not understand, otherwise than as that duty arises out of his contract . . . The form of the action cannot alter the nature of the transaction; the form of the transaction is originally contract." See also *Baltimore and Ohio R. Co.* v. *Pumphrey*, 59 Md. 390; and Pollock on Torts, 10th ed., p. 558.

It would appear from this examination of the authorities establishing the criteria of the carrier's obligation, that the remedy for a breach of that obligation extends itself within the province of contract rather than within that of tort.

Turning now to a consideration of the Supreme Court cases of *The Queen* v. *McFarlane*, and *The Queen* v. *McLeod*, it is well to bear in mind that when they were decided, the Dominion Petition of Right Act, 1876, was in force.

By that Act the subject in Canada was put in the same position as the subject in England under "Bovill's Act," 23 and 24 Vict. (U.K.) ch. 34. His petition, after a fiat was obtained thereon, was cognizable in the Exchequer Court of Canada. The question of the liability of the Crown in damages for breach of contract, was pursued with great historical research and acumen by the Court of Queen's Bench in the case of *Thomas* v. *The Queen* (1874), L.R. 10 Q.B. 31, and it was held on the authority of the *Banker's* case (14 How. St. Tr. 1), that the Crown had always been liable to the subject in matters of contract. Parliament, in enacting the Dominion Petition of Right Act of 1876, made it clear that there was no intention of giving to the subject any remedy against the Crown in any case in which he would not have been entitled to such remedy in England, under similar circumstances, by the laws in force there prior to the passing of the English statute above mentioned. That Act distinctly negatived any intention of giving to the subject any remedy which he would not have been theretofore entitled to. In other words, the English Petition of Right Act is to be regarded as nothing more than a statute of procedure. (See Clode on Pet. Right, p. 176.) Furthermore, by the sec. 58, of the Supreme and Exchequer Courts Act, then in force, it was provided that the Exchequer Court should have "exclusive jurisdiction in all cases in which the demand shall be made or relief sought in respect to any matter which might in England be the subject of a suit or action in the Court of Exchequer on its revenue side against the Crown." By all of which it appears that when the *McFarlane* case and the *McLeod* case were decided the subject in Canada has as full a remedy in the Exchequer Court against the Crown for breach of contract as the subject in England had at that time. Bearing this in mind let us proceed to examine the decisions of the Supreme Court of Canada in the cases mentioned.

Dealing first with the *McFarlane* case, the petition of right set out that a quantity of timber and logs belonging to the suppliants while in transit through certain slides and booms belonging to the Dominion Government on the Ottawa River were lost "by reason of the unskilful, negligent and improper conduct" of the slide-master. The claim sounded in tort, and the Crown pleaded that there was no liability, on its part, for the negligent acts complained of, and that no contract with the suppliants was shown for breach of which a petition would lie. So that as the action was shaped and presented to the Court, there was no jurisdiction under the statutes mentioned to entertain it. Beyond this, it is submitted, that the expressions of the Judges are *obiter*. Ritchie, C.J., while negativing any analogy between the case and that of a common carrier (p. 236) thought that even if a contract of carriage could have been made out upon the facts as between subject and subject, in any event the Crown would not have been liable as a common carrier on grounds of public policy, relying therefor upon *Whitfield* v. *Lord DeSpencer*, 2 Cowp. 764. Taschereau, J., concurred with the Chief Justice. Strong, J. (at pp. 242, 243) said:—"Without enquiring whether this analogy between the liability of the Crown and a private person for a breach of contract arising from the laches and negligence of an agent is correctly assumed, it appears very clear that there is no room for applying it in the present case, for the petition of right does not show any contract on the part of the Crown to pass the timber

safely through the slides, either expressly or impliedly entered into by the parties, as in the case of a carrier undertaking the carriage of goods, or arising by operation of law." Gwynne, J. (p. 244) regarded the case shaped in the petition as one of pure tort. So that the *McFarlane* case, thus analyzed, hardly affords a sure foundation for the doctrine that the Crown is not a common carrier in respect of government railways in Canada.

In the *McLeod* case the suppliant had been seriously injured in an accident while being carried as a passenger on a government railway. He had paid for and obtained a first-class ticket for his transportation between certain points, and was occupying a seat in a first-class car when the train was derailed. Having alleged in his petition that he had been received as a passenger upon a promise to be carried safely for reward between such points, the suppliant charged that "Her Majesty, disregarding her duty, in that behalf, and her said promise, did not safely and securely carry the suppliant . . . but so negligently and unskilfully conducted, managed and maintained the said railway, and the train upon which the suppliant was a passenger . . . that . . . suppliant was greatly and permanently injured in body and health, etc."

It will be observed that the *McLeod* case, as shaped in the petition of right, was not an action for the breach of an ordinary contract of common carriage in respect of which the carrier would be liable without negligence being shown. Railway companies are not common carriers as regards passengers. (See *per* Lindley, L.J., in *Dickson* v. *Great Northern R. Co.* (1886), 18 Q.B.D. at p. 185; Macnamara's Law of Carriers (2nd ed.) p. 519.) A carrier of passengers is not, as such, liable as a common carrier of goods. (*East Indian Ry. Co.* v. *Kalidas Mukerjee*, [1901] A.C. 396); but when a carrier of passengers also holds himself out as a carrier of goods, he is a common carrier *qua* the goods. (*Dickson* v. *G. N. R. Co.*, 18 Q.B.D. 183.) That Ritchie, C.J., appreciated the distinction between the *McLeod* case and that arising under a true contract of common carriage appears at pp. 20, 23 of the report. He says:—"This is, in my opinion, unquestionably a claim sounding in tort, a claim for a negligent breach of duty. A carrier of passengers is not an insurer." If the learned Chief Justice had stopped there, the case would hardly have been an authority for the proposition or doctrine in question. But he proceeds to take up the threads of an enquiry into the reasons of the Crown's immunity from ordinary civil actions, begun by him in the *McFarlane* case,—and finally arrives at the conclusion that "the establishment of the government railways in the Dominion is . . . a branch of the public police, created by statute for purposes of public convenience and not entered upon or to be treated as private mercantile speculations . . . To say that these great public works are to be treated as the property of private individuals or corporations, and the Queen, as the head of the Government of the country, as a trader or common carrier, and as such chargeable with negligence, and liable therefor, and for all acts of negligence or improper conduct in the employees of the Crown, from the stoker to the Minister of Railways, is simply to ignore all constitutional principles." The majority of the Court also thought that the case could not be distinguished in principle from the *McFarlane* case, but Fournier, J., in his able dissenting judgment (p. 40) points out that the two

cases are distinguishable inasmuch as the claim in the *McFarlane* case was for a pure tort while in the *McLeod* case "two essential elements for the existence of a contract of conveyance are to be found; on the part of *McLeod*, a good and valid consideration given in exchange for the service demanded, by paying the railway fare according to the tariff—on the part of the government, by the handing over of a passenger ticket as evidence of the promise to convey the respondent from C. to S."

The *McLeod* case was decided in 1883, and comparing it with the *Windsor and Annapolis Railway* case, decided by the Judicial Committee of the Privy Council three years later (1886), 11 App. Cas. 607, and referred to *ante*, it will be seen that Fournier, J's, view that the Crown was liable for a tortious breach of contract is supported by Lord Watson's observations in the case last mentioned. Furthermore, Fournier, J., expressly controverted the argument put forward by the majority of the judges in the *McFarlane* and *McLeod* cases to the effect that it would be contrary to the interests of administration and public convenience to hold the Crown liable as a trader or common carrier in respect of railways and other undertakings operated by the government; and it is both interesting and important to note that Sir Barnes Peacock, in *Farnell* v. *Bowman* (1887), 12 App. Cas. 643, at p. 649, takes much the same view of the *ab inconvenienti* argument against the Crown's liability in these matters as Fournier, J., does. His language is so much to the point that it would almost seem that he expressly intended to impugn the conclusions of the majority of the Supreme Court of Canada in the cases mentioned. He says:—"It must be borne in mind that the local governments in the colonies, as pioneers of improvements, are frequently obliged to embark in undertakings which in other countries are left to private enterprise, such, for instance, as the construction of railways, canals, and other works for the construction of which it is necessary to employ many inferior officers and workmen. If, therefore, the maxim that 'the King can do no wrong', were applied to colonial governments . . . it would work much greater hardship that it does in England."

The Supreme Court of Georgia, in *Western & Atlantic Rd.* v. *Carlton* (1850), 28 Georgia, at p. 182, might be cited as arriving at the same conclusion by a parity of reasoning:—"It is insisted that the State is not a common carrier, and is not subject to the rules of law which apply to common carriers. When a State embarks in an enterprise which is usually carried on by individual persons or companies, it voluntarily waives its sovereign character and is subject to like regulation with persons engaged in the same calling."

It is convenient at this place to note that the Judicial Committee of the Privy Council has decided that the Crown, represented by a colonial government, can be chargeable with a warehouseman's obligations as a bailee.

In the case of *Brabant & Co.* v. *King*, [1895] A.C. 632, the question is decided unequivocally in the affirmative. The Government of Queensland had, under the provisions of the Queensland Navigation Act of 1876 (41 Vict. No. 3), accepted from the plaintiffs certain explosives and stored them in one of their magazines at Brisbane under the control of the Governments servants, charging the plaintiff storage-rent for the same. The Act provided that if such storage-rent was not paid, the goods might be sold by the Government.

While the goods were so in storage the River Brisbane rose to an exceptional height and flooded the magazine. The plaintiffs' goods were rendered valueless by their immersion in water. Lord Watson, in delivering the judgment of their lordships, at p. 640, said: "Their lordships can see no reason to doubt that the relation in which the Government stood to the appellant company was simply that of bailees for hire. They were therefore under a legal obligation to exercise the same degree of care towards the preservation of the goods entrusted to them from injury, which might reasonably be expected from a skilled store-keeper . . . And that obligation included not only the duty of taking all reasonable precautions to obviate these risks, but the duty of taking all proper measures for the protection of the goods when such risks were imminent or had actually occurred."

The question naturally arises after a perusal of this case, why should the Crown be held liable as a warehouseman and not as a common carrier?

We have already quoted the remarks of Burbidge, J., in *Lavoie* v. *The Queen* upon the question of the Crown's liability as a common carrier. That case was decided in the year 1892, 16 years after the Dominion Petition of Right Act was passed, and some 5 years after the Exchequer Court Act of 1887 became law. It will be remembered that the latter provided, *inter alia*, that the Court should have jurisdiction in any case "in which the claim arises out of a contract entered into by or on behalf of the Crown." The *Lavoie* case was essentially a case of common carriage. In 1905, the case of *The Nicholls Chemical Co.* v. *The King*, came before Burbidge, J., on a petition of right for damages for the loss of a certain quantity of acid while in transit over a railway owned and operated by the Dominion government.

In the interval between the decision in the *Lavoie* case and that in the one last mentioned, the learned Judge seems to have modified somewhat the view implicit throughout his reasons in the former case that the Crown can be in no sense a common carrier. But he does not conceive of the Crown being liable as an insurer. He says (9 Can. Ex. at p. 278): "The Crown is not in regard to liability for loss of goods carried in every respect in the position of an ordinary common carrier. The latter is in the position of an insurer of such goods, and any special contract made is, in general, in mitigation of its common law obligation and liability. The Crown, on the other hand, is not liable at common law except under a contract, or where the case falls within the statute under which it is in certain cases liable for the negligence of its servants." Here we see that the learned Judge relies upon the very technical principle underlying the carrier's responsibility as an insurer (namely, that such responsibility does not arise out of the carrier's contract, but is cast upon him by the "custom of the realm") to place an action against the carrier for failure to carry and deliver the goods wholly within the domain of tort. But with all deference we would point out that to do this is to ignore the opinions of Lord Kenyon in *Buddle* v. *Willson*, of Sir James Mansfield in *Powell* v. *Layton*, and of Lord Campbell in *Brown* v. *Boorman*, cited and discussed *ante*, as well as those of text writers of high authority, certain of which we have passed in review. Remembering that common carriage is a bailment, it is noteworthy that Burbidge, J., in *Johnson* v. *The King* (1903), 8 Can. Ex. 360), found no difficulty in holding the Crown liable as a bailee for hire in respect of the duty

of such a bailee to take reasonable care; yet the duty to take reasonable care in the bailment of hire (*locatio rei*) is as much an obligation, superimposed by law upon the actual contract, as the duty of an insurer is in the case of the bailment of common carriage (*locatio operis mercium vehendarum*). As Dr. Holland puts it:—"What is called, with reference to carriers, the 'custom of the realm,' is really a term implied by law in the contract of carriage." (Elem. of Juris., 9th ed., p. 241.) Finally, when we read the following observations by the Court on the contract in *Johnson* v. *The King*—"Such a contract involved all its usual terms and incidents, as well those that were expressed as those that arose by law upon the contract being entered into"—we fail to see any ineluctable reason why the Crown should not be held liable under a petition of right based upon a bailment of common carriage.

As a result of our review of the cases in the Supreme Court of Canada, and in the Exchequer Court of Canada, we venture to think that the doctrine that the Crown, in respect of the conveyance of goods over the government railways of Canada, cannot be held liable as a common carrier, is unsound. Furthermore, we think it reasonably clear that under the Dominion Petition of Right Act of 1876, read in conjunction with the Supreme Court and Exchequer Court Acts of 1875, the Crown might have been held liable on an undertaking to carry goods to the same extent as an ordinary common carrier; and that under subsequent remedial legislation embodied in the Exchequer Court Act (R.S.C. 1906, ch. 140) and the Government Railways Act (R.S.C. 1906, ch. 36), this liability, both in its contractual and delictual aspects, is established beyond doubt.

UNIFORMITY OF LAWS IN THE WESTERN PROVINCES.

It seems that there was no probant reason for the division of Alberta, Saskatchewan and Manitoba into three distinct provinces. There was an ethnical one for the division of Upper and Lower Canada. There might have been a justification in the separation of the Maritime Provinces on account of their respective origins, and British Columbia was also in a special position.

But as the Western, or I should rather mention them by their appropriate name, the Central Provinces, were all taken from Rupert's Land, they derive their respective individualities from the same source. Their traditions are alike, the conditions of the soil and their respective geographical positions are the same and they are inhabited by a population ethnically identical so it is a pity that their political Governments should not be one with one common aim, one common administration, one common system of Courts.

We must face the situation as it is but there is no reason, however, why we should go on and accentuate the divergence once we see the advantage of creating some uniformity and we should seek to attain a desirable uniformity in our respective laws, so as to bring them in unison with the homogeneousness of our natural conditions, our ethnical situation, our needs and our mutual, continuous and frequent association with each other.

It seems clear that the people of the central prairie provinces would welcome some uniformity of laws which would simplify mutual relations of citizens of the three provinces, which would render the knowledge of the laws more accessible to the lay mind and render the practice of lawyers easier and as a consequence would redound to the benefit of the clients.

The people of Manitoba have many dealings in land and grain with the citizens of the other provinces of the west, and wholesalers and manufacturers deal as much with Saskatchewan and Alberta as with Manitoba merchants.

Many Manitobans own land, farms and town lots in Saskatchewan and *vice versa*. As a matter of fact there are few days when some law firms in Winnipeg are not called upon to advise upon some Saskatchewan transactions. And there is no business day that does not see some banking or other mercantile dealings going through between us and our sister provinces.

If we agree upon the desirability of creating some uniformity of laws between the central provinces along what lines shall the attempt be made and upon what laws shall the reform apply?

As to the former, I shall discuss a little further. But as to the laws which would need action I could say: all the laws relating to real property, to personal property, especially grain and farm stock and machinery, and to probate matters as well as to Court procedure and practice.

First, as to land. We have now in all the three provinces a Torrens system. In Alberta, Saskatchewan and the new territory of Manitoba there is practically no old system of registration but all lands are under the Torrens system. Crown patents are not sent by Ottawa to the owners, but to the Land Titles Office where

they are exchanged by Torrens titles guaranteed by the respective Governments.

It might be advisable for the Legislature of Manitoba to declare all old system lands to be under the Torrens system and appoint more Torrens examiners who would proceed to issue titles to whomsoever is entitled to them after examination of the records and compulsory interrogatories of the occupants and apparent owners, including the last recorded owners or their respective heirs.

However, this is a difficult question which no doubt could be solved by a general study of titles. The fees for examining such titles could be borne equally by the Government and the title-holder and his share of the costs might be made a lien upon the land as special taxes.

Even if this particular reform were not introduced in Manitoba the respective Torrens Act, of the three provinces could be made identical in the manner suggested hereinafter.

With regards to personal property, uniformity is still more desirable. Personal property is continually moving from one province to another; manufacturers and wholesalers are daily shipping goods to other provinces. Uniformity in all the provinces would be a great advantage but in the central provinces it is nearly a necessity as they enjoy exactly the same peculiar conditions.

The laws as to Bills of Sale, Chattel Mortgages, Sales of Goods are so nearly similar it would be an easy matter to make them identical. Manitoba might introduce here the Hire Receipt Act of Saskatchewan so as to enforce the registration of lien notes which are a thorn in the flesh to lawyers and laymen alike.

There might be an Act similar to the Alberta statute and to the bill presented once in Manitoba relating to the standardizing of farm implements' contracts and prohibiting any contract but on the standard model and protecting thereby the unsuspecting farmer.

Many other Acts would suggest themselves as to which legislatures in all the three provinces might legislate simultaneously with advantage, such as crop leases, seed grain advances, sales

or mortgages of growing crops and compulsory registration of the same.

As to Court procedure and practice. We have, in Manitoba, copied the Ontario Act. It seems that Alberta and Saskatchewan have been wiser in adopting the English practice. They have there a wealth of precedents of law and practice which goes on forever increasing but which are in a great measure lost to Manitoba. However it might be argued that the Ontario practice is more in conformity with needs of a new country like Canada. That may be so but it seems that the English practice is not very much different from our own and if we had to choose now between the two Judicature Acts the majority possibly of lawyers would take the English one in preference to the other.

If an agreement cannot be arrived at in adopting the English rules the Ontario rules might as well be followed strictly and some arrangement should be arrived at between Ontario and the Central Provinces whereby the procedure hereinafter mentioned might be carried through before Ontario would further change its Judicature Act once adopted by the other provinces.

There should be no question of false pride, of territorial petty jealousies between the Westerners and the Easterners in such an important matter as a uniform practice and procedure for the four provinces. The advantage of having four sets of Courts deciding cases upon one Judicature Act should not be lost on the ground alone of local prejudice.

The Surrogate Courts Act, together with the Wills Act and Succession Duty Acts, might with advantageal so be made identical in the three provinces. And no doubt many other Acts could be refunded likewise but the question is how is it to be done?

Many suggestions could be made but it seems that the following plan might not be impractical.

It is well known that whilst many statutes have been minutely prepared most of the legislation in the west has been hastily thrown into the respective legislatures on account of some pressing need or some pressure made for good purposes by parties or communities directly affected. All legislatures and all parties are to blame for this kind of undigested legislation and the main

reason for it is that this western country is a country of wide-awake democracy, of rushing activity, of galloping progress, of born-in-the-night towns and we cannot wait once we see a reform is needed. The result is hasty action and hasty amendment and final complexity of laws.

We might with advantage follow somewhat the methods of the Mother Country and go slow, not necessarily as slow as they do in England, but a little slower than the pace we have been setting so far. We cannot attain perfection in a day. We cannot crowd in, without making mistakes, reforms however badly needed, into one session. As a matter of fact, we find after a session of the legislature that the most important reforms have been shelved on account of the time being taken up by lesser amendments to the law.

It is hardly fair to expect an Attorney-General or even his deputy to devote more time than they do at present upon the preparation and examination of new laws. They have other important duties which take up a necessary part of their valuable time such as criminal matters and the like subjects.

The only practical thing is to leave the examination of projected laws and amendments to the existing law to some special officer who would devote his whole time to it. The matter is important enough to warrant the slight expense, and besides that is practically the only way that uniformity of laws in the three western provinces can be secured.

Each legislature would appoint a law clerk who whilst connected with the Attorney-General's Department would have no duties but those mapped out hereunder.

Such law clerk would be chosen amongst the most studious and painstaking lawyers, not necessarily the most brilliant at court. The salary should be high so as to be attractive. The position should be independent of politics and practically permanent like a judgeship. He would devote his whole time to the reading of the laws of the world, acquainting himself with the most advanced legislation and compiling it for reference and preparing new laws and amendments to existing laws.

He would be assisted at the beginning when refunding the

present laws and making them identical in all the western provinces by one or more judges. The three law clerks together with the three Attorneys-General or their respective representatives would form a board which would meet once or oftener a year. The board and each law clerk would court suggestions and judges should be asked to report to the local members of the board all points of law coming up to their notice as to which legislation appears desirable.

The board's decision could not of course be binding on the legislatures but each Attorney-General would agree not to bring any legislation upon general matters without first submitting it to the board.

The private members could, strictly speaking, carry through some independant legislation but the suggestion by the Attorney-General that it be first referred to the board would commend itself to the members at large and the private sponsor of the proposed bill would get scant support.

The legislature would not divest itself of its supreme powers as it could reject any law proposed by the board but with the assistance of the Attorneys-General the board's decisions would go through.

Winnipeg. ALBERT DUBUC.

THE HOUSE AND FAMILY OF WINDSOR.

The change in the family name of the Sovereign of the British Empire is of more than passing interest. The explanatory statement of the *Times* and the King's proclamation are worthy of perusal and of record. The article from the *Times* is as follows:—

"The step formally taken on Tuesday, July 17, by the King in Council will give unqualified satisfaction throughout the British Dominions. He has abolished all German titles and dignities in the Royal Family and assumed the family name of Windsor. This is a more democratic step than is apparent on the surface. It means that the male descendants of the Sovereign will be commoners in the third generation, with a courtesy title as the sons of Dukes, and plain Mr. Windsor in the fourth generation. The assumption of a family name is a necessary corollary

of the recently announced abolition of princely titles for the younger generations in descent from the Sovereign, and no better choice could have been made than that of Windsor. It connects the old with the new. The fame of Windsor goes back to Saxon times, and the Castle has been closely associated with the successive Royal Houses of England. Plantagenets were born there; Tudors and Stuarts were buried there; Hanoverians died there; Queen Victoria, King Edward VII., and King George's brother, who would have been King had he lived, are buried there. There is an ample and unbroken tradition with this old Kingdom of England, "blazoned in Shakespeare's purple page," as an American poet has finely said. And Windsor is a lodestar for the descendants of those who have gone forth from these islands and have made the new British Empire. Visitors who "come home" from the Dominion want to see Windsor, and make their pilgrimage there. It is an appropriate and significant fact that representatives of the Dominions were present at Tuesday's historical Privy Council at which the King assumed the name of Windsor for his House and Family. Cynics may regard the change as a matter of no importance, but they are mistaken. His Majesty has been better advised. It is not wisdom, but folly, to ignore the influence of sentiment in the populace. More than anything else it binds the Empire together, and the war has demonstrated the strength of the bond by proofs which no man can gainsay or belittle. The King has known well how to gratify the patriotic sentiment of all the British peoples which centres in the Crown, in this as in other things. During the earlier part of Queen Victoria's reign, after her marriage, the German element at court was a standing cause of irritation among the mass of the people in this country, as everyone who knows them is well aware. Later the feeling, once acute, abated, and during King Edward's reign it died down. It was not a personal feeling against members of the Royal Family, who were, and are, popular, but due to an instinctive dislike of Teutonism; and who shall say now that it was not justified? By his last act King George has expunged the memory of it, and therein he has done wisely."

The following is the text of the Proclamation:—

"By the King.

A PROCLAMATION.

Declaring that the name of Windsor is to be borne by His Royal House and Family and relinquishing the use of all German titles and dignities.

George R. I.

Whereas We, having taken into consideration the Name and Title of Our Royal House and Family, have determined that henceforth Our House and Family shall be styled and known as the House and Family of Windsor:

And whereas We have further determined for Ourselves and for and on behalf of Our descendants and all other the descendants of Our Grandmother Queen Victoria of blessed and glorious memory to relinquish and discontinue the use of all German Titles and Dignities:

And whereas We have declared these Our determinations in Our Privy Council:

Now, therefore, We, out of Our Royal Will and Authority, do hereby declare and announce that as from the date of this Our Royal Proclamation Our House and Family shall be styled and known as the House and Family of Windsor, and that all the descendants in the male line of Our said Grandmother Queen Victoria who are subjects of these Realms, other than female descendants who may marry or may have married, shall bear the said Name of Windsor:

And do hereby further declare and announce that We for Ourselves and for and on behalf of Our descendants and all other the descendants of Our said Grandmother Queen Victoria who are subjects of these Realms, relinquish and enjoin the discontinuance of the use of the Degrees, Styles, Dignities, Titles and Honours of Dukes and Duchesses of Saxony and Princes and Princesses of Saxe-Coburg and Gotha, and all other German Degrees, Styles, Dignities, Titles, Honours and Appellations to Us or to them heretofore belonging or appertaining.

Given at Our Court at Buckingham Palace, this seventeenth day of July, in the year of our Lord One thousand nine hundred and seventeen, and in the Eighth year of Our Reign."

God save the King.

KINGSHIP AND THE EMPIRE.

A writer in a recent number of the *Law Times* (Eng.) deals with this subject and refers to an address given by General Smuts at a Parliamentary dinner given in his honor on the 15th ultimo. General Smuts is *persona gratio* in these days, and what he says on the subject of this character will be received with the attention it deserves: it being the views of one, who, not many years ago was fighting with his compatriots for what he believed to be right in South Africa, but who wisely and patriotically accepted graciously and loyally the generous treatment of the victors in the recent war there when generous terms were given to the Commonwealth, resulting in the loyal devotion to the Empire which General Smuts and others of his race have exhibited during the present war. General Smuts, as we all know, is not only a brilliant soldier but one of the most learned of the legal profession of the present day.

The following from the *Law Times* gives the substance of his address on the occasion above referred to:—

General Smuts, who is, as everyone knows, not merely a great soldier, but one of the most erudite jurists of his generation, at the Parliamentary dinner given in his honour on the 15th inst., in the gallery of the House of Lords, made a notable contribution to the study of constitutional development of the British Empire. Dealing with "the very difficult question of future constitutional relations and readjustments within the Empire itself," he relied on a solution of these difficulties supplied by our past traditions, "our hereditary kingship." He thus expounded the position: "You cannot," he said, "make a Republic of this country. You cannot make a Republic of the British Commonwealth of Nations, because you would have to elect a President not only here in these islands, but all over the British Empire, in India, and in the Dominions. A President would be representative of all these peoples, and here I say you would be facing an absolutely insoluble problem. Let us be thankful for mercies known as kingship, but which is really not very far different from an hereditary Republic." His exposition of the true bond of union of the multi-

tude of communities of diverse tongues and races which constitute the "British Commonwealth of Nations"—our "hereditary kingship"—would, perhaps, carry with it an enhanced force if we bear in mind the limitations of the doctrine of hereditary right enunciated by Blackstone, limitations which bring our hereditary kingship into very close analogy to the Republican system owing to its inherent liability in exceptional cases to variation of the line of succession and even to change, not occasioned by a demise of the Crown, in the *personnel* of the hereditary King. "The doctrine," writes Blackstone, "of herditary right does by no means imply an indefeasible right to the throne. No man will, we think, assert this who has considered our laws, Constitution, and history without prejudice and with any degree of attention. It is unquestionably in the breast of the supreme legislative authority of this kingdom—the Sovereign and both Houses of Parliament—to defeat this hereditary right, and by particular entails, limitations, and provisions to exclude the immediate heir and vest the inheritance in anyone else. This is strictly consonant to our laws and Constitution, as may be gathered from the expression, so frequently used in our statute book, of 'the King's Majesty, his heirs and successors,' in which we may observe that as the word 'heirs' necessarily implies an inheritance or hereditary right generally subsisting in the Royal person, so the word 'successors,' distinctly taken, must imply that this inheritance must sometimes be broken through, and that there may be a successor without being the heir to the King. And this is so extremely reasonable that without such a power lodged elsewhere our polity would be very defective." Blackstone still further expounds the doctrine of hereditary kingship in these countries. "The Crown," he writes, "however it may be limited or transferred, still retains its descendible quality, and becomes hereditary in the wearer in the same manner as it was before hereditary in his predecessor, unless by the rules of the limitation it is otherwise ordered and determined."

The description of "our so-called Dominions" by General Smuts as "nations almost sovereign, almost independent," was very happy and in strict consonance with constitutional practice

and usage. These Dominions may be designated "almost" sovereign although their Legislatures are non-sovereign law-making bodies and almost independent although they are theoretically amenable to the legislation of the Imperial Parliament and absolutely bound by the foreign policy of the Imperial Cabinet. Their position of independence and sovereignty for all practical purposes is due to the policy of the Imperial Government not to interfere with the action of the Dominions in their own affairs and to the complete sympathy between the Imperial Government and the Dominions in foreign affairs—a fact which has been demonstrated by the present war. "The tendency," wrote Professor Dicey so far back as 1885, "of the Imperial Government is as a matter of policy to interfere less and less with the action of the colonies whether in the way of law-making or otherwise. Colonial Acts, moreover, even when finally assented to by the Crown, are invalid if repugnant to an Act of Parliament applying to the colony. The Imperial policy, therefore, of non-intervention in the local affairs of British dependencies combines with the supreme legislative authority of the British Parliament to render encroachments by the British Parliament on the sphere of colonial legislation and by colonial Parliaments in the domain of Imperial legislation of rare occurrence."

In welcoming the system of Imperial Conferences to discuss matters concerning all parts of our Empire for the purpose of determining the true orientation of our common Imperial policy, General Smuts laid stress on the effect of such a system in securing the knowledge and control of foreign policy by the people not only of these countries, from whom such knowledge and control have hitherto been withheld, but by the peoples of the British Empire. He thus enunciated a doctrine frequently expounded in these columns. "In the overseas Dominions," he said, "they did not understand diplomatic finesse, and if our foreign policy was going to rest not only on our Cabinet here, but finally on the whole British Empire, that policy would have to be a simpler policy, a more intelligible policy, a policy which in the end would lead to less friction and to greater safety. At the same time nobody would dispute the supremacy of the Imperial Parliament. They

would always look upon the Imperial Parliament as the senior partner in the concern. The Imperial policy would always be subject to the principles laid down at such a meeting as he suggested. This would lead to greater publicity. Nations in future would want to know more about foreign affairs." On the 17th inst., two days after the delivery of General Smuts' speech, the Prime Minister announced in the House of Commons "that the holding of an annual Imperial Cabinet to discuss foreign affairs and other aspects of Imperial policy will become an accepted convention of the British Constitution." The use by the Prime Minister in this connection of the term "convention of the British Constitution" in relation to the establishment of an institution which he said "grew not by design, but out of the necessities of the war," reminds us that the British Constitution is, in the words of Lord Courtney of Penwith, "a living and a changing organism." By the side of our written law there has grown up an unwritten or conventional Constitution. The work, as Professor Freeman maintains, of legislation, of strictly constitutional legislation, has never ceased, but there has also been a series of political changes of no less moment than those recorded in the statute-book which have been made without any legislative enactment whatever.

NOTES FROM THE ENGLISH INNS OF COURT.

Criminals and the War.

The great war has undoubtedly affected all classes of the community in these islands. Those members of the Bar who practice in the criminal courts have been heard to deplore its consequences from the purely professional point of view. And with good reason. Statistics recently published have shown a remarkable falling off in crime. It is now possible to compare the years 1913, 1914 and 1915. According to the *Law Times* (June 23, 1917), the number of persons for trial at assizes and quarter-sessions in 1913 was 12,511. In 1914 it fell to 10,800; while in 1915 the figure was 6,010—less than half the pre-war figure.

In the courts of summary jurisdiction the number of persons proceeded against for indictable offences tried summarily were: 1913, 50,758; 1914, 47,759; 1915, 49,525. Other offences tried summarily being: 1913, 680,290; 1914, 626,765; 1915, 532,444. In the Court of Criminal Appeal there were 287 applications for leave to appeal in 1915 and eighty-nine appeals actually heard or otherwise disposed of, the figures for 1914 being 497 and 160 respectively. Appeals to quarter-sessions numbered 132 in 1915 as against 100 in the previous year.

These figures may possibly be explained by the fact that a large number of the unsettled members of the community are in the army, while those who are still in civil life find plenty of honest employment. It may be hoped that the change will be permanent.

Codifying the Law.

Every now and then the voice of him who would codify the law of England makes itself heard. It is possible that if the war had not supervened, some very long steps might have been taken in this direction, but since August, 1914, the time of the legislature has been very fully occupied with emergency statutes of all kinds. The necessity for this legislation supplies a partial answer to those who would place the whole law of England upon the statute book. Suppose that had been done in as complete a form a possible in 1913, would an answer to the legal conundrums which have been propounded since the war have been found in the pre-war code? The genius of a Blackstone could not have foreseen and provided for a tithe of them! There have, however, been several recent and very successful attempts to codify the law in certain of its branches. Mention may be made in this connection of the Bills of Exchange Act, 1882, the Sale of Goods Act, 1893, the Marine Insurance Act, the Merchant Shipping Act, 1894, the Forgery Act, 1909, and the Perjury Act, 1913, and lastly, the Larceny Act, 1916. Some of these measures have been, with great propriety, "lifted" from the English statute book and made part and parcel of the law in certain colonies and dependencies.

The Sale of Goods Act, 1893.

The Sale of Goods Act, 1893, is perhaps the most successful of them all—if the true measure of the success of an enactment lies in the fact that it is seldom explained or criticised in reported cases. The fact is, of course, that this particular measure embodies the condensed wisdom of whole generations of English Judges, famous alike for their knowledge of the common law and for their faculty of applying it to individual cases. The Act was drafted by His Honour Judge Chalmers, and the manner in which it took shape is best described in the preface to his work, The Sale of Goods Act, 1893 (published in 1894). He wrote: "It is difficult to know whether to call this little book a first or a second edition. It is a first edition of the Sale of Goods Act, 1893, but it is a reproduction of my book on the sale of goods, published in 1890, which was in substance a commentary on the Sale of Goods Bill. The clauses of the Bill, with a few verbal alterations, formed the large type propositions of the book. But though the language of the propositions remains the same its effect is now very different. Those propositions have become sections in the Act, and the decided cases are only law in so far as they are correct and logical deductions from the language of the Act." The great beauty of this measure is largely due to the fact that its passage through Parliament was secured by a number of distinguished lawyers, including (in the Upper Chamber) Lords Bramwell, Herschel, Halsbury and Watson, and (in the House of Commons) Sir Charles Russell and Sir Richard Webster.

Lord Brougham as Law Reformer.

Many of the great Victorian Chancellors toiled in the interests of legal reform. In 1828 Lord Brougham—or plain Mr. Brougham as he then was—moved the House of Commons that a commission should issue to enquire into the defects occasioned by time or otherwise in the laws of the realm and into the measures necessary for removing the same. His speech lasted six hours. In the course of it he exhausted a hatful of oranges, the only refreshment then tolerated by the custom of the House! According

to Mr. Atlay in his *Lives of the Victorian Chancellors*, Brougham's oration led to a greater number of legal reforms than any speech delivered either in ancient or modern times. "His concluding word," wrote his biographer, "are the noblest he ever uttered."

"It was the boast of Augustus—it formed part of the glare in which the perfidies of his earlier year were lost—that he found Rome of brick and left it of marble; a praise not unworthy a great prince, and to which the present reign also has its claims. But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence." It may be added that by a curious misprint, the *Times* in reporting this speech substituted the word "*insolvent*" for the word "*innocence*" in the last line. One may be permitted to wonder what Brougham thought of this when he read his morning paper!

An Archbishop as a Judge.

The Archbishop of Canterbury has recently for the first time been called upon to perform a duty imposed upon him by an Act passed nearly twenty years ago. The Bishop of Oxford, acting on the report of Commissioners appointed by him under the Benefices Act, 1898, to hold an enquiry into the conduct of a rector, appointed a curate of the benefice without requiring the rector to make such appointment, and inhibited the rector from performing all ecclesiastical duties of the benefice. The rector appealed to a court which, under the terms of the Act, consists of the Archbishop of the province and a judge of the High Court.

The charges and the evidence in support of them were of an extraordinary nature. It was alleged that the rector had lost influence with his people; had subordinated his duties as a priest to those of a landowner; had preached sermons which had no connection with his text or Christian doctrine; had used the pulpit as a political platform; had used bad language and been convicted of assault. Let one example suffice. On one occasion he said

in the pulpit: "My churchwardens are liars; Mr. ——— (meaning one of the churchwardens) is a liar. This was a happy company before ——— came to the parish, and it would be better for us if the ——— did not come into the church." The churchwarden who had been named rose and left the church. As he passed down the aisle the rector shouted from the pulpit: "The wicked flee and none pursueth." Of course there was a conflict of testimony, but the Judge and the Archbishop could have come to only one conclusion. They approved the order of the Bishop.

A Judge's View of a Rector's Duty.

Mr. Justice Coleridge, in language worthy of his illustrious father—whose exquisite diction earned him the *sobriquet* "silver-tongued"—said in the course of his judgment:

"With regard to his language used in the parish the evidence shows that he has an ungoverned temper. Here again we must not be too critical. Some men are slow to wrath; some have irascible tempers. Because a man is a clergyman we must not expect that he must therefore, of necessity, change his disposition. An occasional expletive, hastily uttered, and at once repented of, may be excused by human infirmity. But the habitual use of such language unfits a man to be a clergyman. It produces the worst impression, saps his influence, and encourages others, to whom he ought by his calling to show an example, to be foul-mouthed and unrestrained in their utterances. I find as a fact that the appellant is in the habit of using foul language, and in doing so, not as an unfortunate exception, but as a habit, he has been guilty of negligence. A quarrelsome disposition with his neighbours, if indulged in, and especially if accompanied by intemperate language and violent and threatening gestures, is calculated to undermine the whole influence which a clergyman should wield. I find that in several instances this has been proved by the evidence, and that in this matter he has been guilty of negligence. Finally, a clergyman should at all times be a man of peace."

The Archbishop of Canterbury, after reciting passages from the ordination service to show how the appellant had failed to be

"a wholesome example and pattern" to those among whom he was "to maintain and set forth quietness, peace and love," pronounced judgment affirming the order of the Bishop, and the appeal was dismissed.

A Case at Lambeth Palace.

Although great ecclesiastical causes are now comparatively rare, the Archbishops do occasionally exercise judicial functions in matters of ritual. In 1899 the lawfulness of the use of incense and of processional lights was referred to the Archbishops of two provinces for judgment, Dr. Temple, Archbishop of Canterbury, and Archbishop McGee, of York. They decided that the two practices were neither enjoined nor permitted by the law of the Church of England. A third question, viz., the reservation of the Blessed Sacrament, referring only to the southern province (i.e. that of Canterbury) was brought before Archbishop Temple alone, and he decided that the Church of England does not at present allow reservation in any form.

A Mild Expletive.

The hearing of this cause occupied two summer days. Mr. E. W. Hansell, known to most people as the editor of many editions of "Williams on Bankruptcy," also known to fame as an ecclesiastical lawyer, addressed the Court at great length. On the table before him there lay a huge volume from which he had been reading a passage. Upon this he had placed a glass of water which a kindly usher had provided for his refreshment. Happening, by a careless movement, to overturn the water into the black-letter book, he uttered the words "Oh! Bother." Conscious of his indiscretion, he was about to apologise to the Prelates who sat in front of him. After whispering to his colleague, Dr. Temple observed: "My brother of York agrees with me that even a stronger expletive would have been justifiable in the circumstances!"

That Former Opinion.

When preparing an argument, the advocate is sometimes confronted with a case likely to be relied on "by the other side,"

in which, on a former occasion, he successfully contended in support of a proposition which it has now become his duty to refute. But that is all in the day's work. He must needs get round it, or over it, by arguing that the former case can be distinguished; that it has since been over-ruled, or by other means. Sometimes, too, it may transpire that he himself has given an opinion contrary to that which it is now his duty to support. But recently a recognized authority on patent law, who was seeking to establish the validity of a certain patent, was a little startled when his opponent unearthed an opinion in which he had advised that the patent was worthless! "Experience has taught me that I was wrong" was his only way of getting out of a difficulty.

A Former Opinion of Lord Westbury.

Even a Judge may sometimes come against things done in his professional youth. An episode in the life of Lord Westbury—who as Attorney-General was known to fame as Sir Richard Bethell—may be mentioned in this connection. Mr. Atlay in the work above referred to (p. 259), after pointing out that the great Lord Chancellor was not always infallible either in his deduction or in his recollection, records the following incident: "I am sorry" said Lord Westbury in delivering judgment against some unfortunate trustees "profoundly sorry for the embarrassment in which these gentlemen now find themselves placed. Had they taken the most ordinary precautions, had they employed a firm of reputable solicitors, had they taken the opinion of a member of the Bar, they would never have been enmeshed in the snares which now hold them." This was a little too much for the learned counsel, whose brief contained an opinion dated some years back and signed "R. Bethell," in which his clients were advised to follow the identical course they had pursued with such disastrous consequences. "My Lord, he said there is a paper here which I am unwilling to read in open Court, but which I would beg to submit to your Lordship: "It is a mystery to me, continued the Chancellor, with unabashed countenance, when he had perused the document, how the gentleman capable of penning such an

opinion can have risen to the eminence which he now has the honour to enjoy."

LAWYERS IN FICTION.

Allusion was recently made in these notes to the conduct of a certain novelist who by causing real men and women, under a thin disguise, to figure in his pages came perilously near an action for libel. But which of our great writers has not drawn his pictures, or some of them, from life? Without pausing to give a complete answer to this question let us consider the case against Charles Dickens.

To establish the charge it is only necessary to study one chapter in one of his books, namely, that which contains the report of the case of "Bardell v. Pickwick." The word "charge" is only used in a Pickwickian sense; for Dickens wrote nothing that could give offence to anyone. Like a true artist, however, the man who involved Mr. Pickwick in a lawsuit obeyed the precept of Wordsworth when he wrote:

Unto the solid ground
Of Nature builds the mind that builds for aye.

BARDELL V. PICKWICK.

To begin with the judge who tried the case. He is called *Stareleigh*. Was it a mere coincidence that Mr. Justice *Gaselee* was then an ornament of the English bench? As for Serjeant Buzfuz, his speech for the plaintiff was modelled on the style of Charles Phillips who was counsel for the plaintiff in the case of *Guthrie* v. *Sterne*, an Irish case printed in 1822. But certain episodes in the Serjeant's speech are founded on fact.

CHOPS AND TOMATO SAUCE.

In the summer of 1836 a *crim. con.* action was brought by one Norton, the husband of one of the most beautiful of the Sheridan sisters, against Lord Melbourne who was then Prime Minister. Sir William Follett, who was of counsel for the plaintiff, offered certain letters in evidence against Lord Melbourne. One was in the following terms: "How are you? I shall not be able to call to-day, but probably shall to-morrow.—Yours, &c., Melbourne."

And another ran: "There is no House to-day; I will call after the levee, about four or half-past. If you wish it later let me hear from you. I will then explain to you about going to Vauxhall.—Yours, &c., Melbourne."

Sir William described these letters as "the most important the most tell-tale, the most damnatory." That they failed of their effect is proved by the fact that Lord Melbourne was triumphantly acquitted by the jury. It is now generally believed that Charles Dickens who, at that very time, was writing the Pickwick Papers modelled himself upon these letters when he made Mr. Pickwick write to Mrs. Bardell: "Garraway's twelve o'clock. Dear Mrs. B, chops and tomato sauce, Yours Pickwick," and again, "Dear Mrs. B., I shall not be at home till to-morrow. Slow coach. Don't trouble yourself about the warming pan." Who, even writing fiction, would have dared to make his imaginary counsel put forward such evidence? But Dickens was merely ridiculing what Follett had done in solemn earnest! It will be remembered that the Pickwick Papers were dedicated to Mr. Serjeant Talfourd. He was counsel for the defendant in the Norton case. It was the Serjeant who indirectly contributed the germ of the joke which so greatly entertained the friends of Mr. Peter Magnus. Serjeants junior to Thomas Noon Talfourd, whose name was last on a particular list of the members of the order, were known in the Common Pleas as "Afternoons."

Temple, June 30, 1917. W. VALENTINE BALL.

THE LAW OF ENGLAND AND CHRISTIANITY.

A judgment of far-reaching and historic importance was delivered in the House of Lords on Monday, the 14th inst. The appeal to the Lords was that of *Bowman* v. *Secular Society Limited*. The question raised was whether a bequest of residue to the respondent society, having regard to its declared objects, was good in law. The society is a company limited by guarantee, and duly registered as such under the Companies Acts. The memorandum of association defines the objects of the society, the first

of which is "(*a*) To promote, in such ways as may from time be time be determined, the principle that human conduct should be based upon human knowledge, and not upon supernatural belief; and that human welfare in this world is the proper end of all thought and action." The remaining objects, regarded separately, were admittedly (so far as they were not tainted by being merely ancillary to the first one) lawful in themselves, such as the secularisation of the State and education, the recognition of marriage as a purely civil contract, and of Sunday as a purely civil institution, and so forth. The appellants were the heir-at-law and next of kin of the testator, and their contention was that the gift of residue to the society failed on the ground that the primary object of the society involved illegality. Mr. Justice Joyce, in the Chancery Division, and Lord Cozens-Hardy, M.R., and Lords Justices Pickford and Warrington, in the Court of Appeal, had held that there was nothing necessarily illegal in the society's objects, and that therefore the bequest was valid: *Re Bowman*; *Secular Society Limited* v. *Bowman* (113 L.T. Rep. 1095; (1915) 2 Ch. 447).

The appeal was argued in January and February last, before the Lord Chancellor, Lords Dunedin, Parker of Waddington, Sumner, and Buckmaster. In the result, the Lord Chancellor alone was for allowing the appeal, the other four noble and learned Lords (Lord Dundein, after some hesitation) for dismissing it. The appeal accordingly stood dismissed, and (as was resolved on further consideration on Thursday, the 17th inst.) with costs. It was surely by the irony of fate that the House (as Lord Bowen would have said) dismissed Christianity with costs on Ascension Day—a *dies nefasta*.

The main contention of the appellants was two-fold: (1) that it is criminal to attack the Christian religion, however decent and temperate may be the form of attack; and (2) that a court will not assist in the promotion of such objects as that for which the society was formed, whether they are criminal or not.

On the first question, it now emerges as clear law from the entire final tribunal (including herein the otherwise dissentient opinion of the Lord Chancellor), that a decent and temperate

attack on the Christian religion is not criminal as blasphemy at common law, thus setting at rest any doubt which may have been felt about the striking summing up of Lord Coleridge, C.J., in *Reg* v. *Ramsay and Foote* (48 L.T. Rep. 733; 15 Cox C.C. 231; Cababé and Ellis, 126).

Lord Coleridge's ruling has held the field for thirty-four years, and was followed by Mr. Justice Phillimore in *Rex* v. *Boulter* (72 J.P. 188). Its accuracy had, however, been disputed by Sir James Fitzjames Stephen, in his writings on Criminal Law, *passim*, and more fully in the article in the *Fortnightly Review* for March 1884. To this article the late Mr. L. M. Aspland, barrister of the Middle Temple and Northern Circuit, replied in a pamphlet, "The Law of Blasphemy: being a Candid Examination of the Views of Mr. Justice Stephen" (Stevens and Haynes, 1884), which contains a full and able review of the authorities, and strongly supports Lord Coleridge's view. It is noteworthy that Mr. Aspland—a member of a well-known Unitarian family—in Appendix II. reprints two letters from Sir Samuel Romilly, written in 1817, which, curiously, contain the germ of the appellants' second contention. Thus, Sir Samuel Romilly wrote (p. 38) that legacies for propagating Unitarian or Jewish religion would not be "established" by the Court of Chancery, and (p. 39) that "there are many acts which are so illegal that courts of justice will give no countenance to them, although they do not amount to indictable offences." These letters were in explanation of his own argument for the relators in *Attorney-General* v. *Pearson* (3 Merivale, 353).

And, in truth, it was round this last point that the discussion in the recent appeal really ranged. The Court of Chancery, in the days of Lord Hardwicke and Lord Eldon, and later, certainly regarded the time-honoured dictum of Lord Hale in *Taylor's case* (Ventris, 293) that "Christianity is parcel of the laws of England," not (as Lord Sumner now regards it) as mere rhetoric, but as a definite rule of law, to be applied as occasion arose. Two comparatively modern decisions caused the principal difficulty to the society's case, and these the Court of Appeal felt bound to overrule: *Briggs* v. *Hartley* (19 L.J. 416, Ch.; 14 Jur. 683) and *Cowan* v. *Milbourn* (16 L.T. Rep. 290; L. Rep. 2 Ex. 230). They demand some examination.

In *Briggs* v. *Hartley*, Sir Lancelot Shadwell held that a legacy for the best essay on "Natural Theology," treating it as a science, and demonstrating its adequacy, when so treated, to constitute a true, perfect, and philosophical system of universal religion, was void as being inconsistent with Christianity. The Vice-Chancellor's decision was in these few words: "I cannot conceive that the bequest in the testator's will is at all consistent with Christianity, and therefore it must fail." "Not much of a judgment, that," remarked Mr. Justice Joyce when it was read to him. True, possibly; yet Mr. Justice Joyce himself brushed aside the elaborate arguments of Mr. (now Sir George) Cave, *tout court*, thus: "I do not find in the memorandum or articles of association anything subversive of morality, or contrary to law, or contravening the provisions of any statute." In the Court of Appeal, the Master of the Rolls and Lord Justice Pickford treated *Briggs* v. *Hartley* as a decision which ought not now to be followed, the latter attributing it to the doctrine as to public policy prevailing in 1850. Lord Justice Warrington, in his concurring judgment, did not deal with *Briggs* v. *Hartley*. According to the Lord Chancellor, the Court of Appeal had no sufficient ground for overruling *Briggs* v. *Hartley*. It must now be taken to be deprived of authority by the majority of the House, for, as Lord Parker pointed out, the trust there was clearly a good charity unless it could be held contrary to the policy of the law. Lord Dunedin also considers it clearly inconsistent with the opinions of the judges advising the House in the case of Lady Hewley's charities (*Shore* v. *Wilson*, 9 Cl. & F. 355, 409).

Cowan v. *Milbourn*, which the majority of the House, affirming the courts below, has declined to follow, was so strong a decision that, as the Master of the Rolls said, if it were still good law, the society could not claim the legacy. The Court of Exchequer, consisting of Lord Chief Baron Kelly and Barons Martin and Bramwell, there decided (on appeal from the Liverpool Court of Passage) that lectures maintaining that the character of Christ is defective and His teaching misleading, and that the Bible is no more inspired than any other book, involved illegality, with the result that the defendant was justified in refusing to perform

his contract to let rooms for such lectures to the plaintiff. The Chief Baron went the full length of saying that Christianity is part and parcel of the law of the land, and that, therefore, to support and maintain publicly the propositions announced could not be done without blasphemy at common law. Baron Bramwell based his judgment rather on the ground that the lectures would be unlawful under 9 & 10 Will. 3, c. 32 (commonly called the Blasphemy Act). It is true, as Lord Buckmaster pointed out, that only those persons who have been educated in or have at any time made profession of the Christian religion within the realm are within the statutory penalties (sect. 1), but (as appears from the report in 16 L.T. Rep., at p. 291) the plaintiff in *Cowan* v. *Milbourn* had stated, in answer to the recorder, that he had been educated in the Christian religion. Baron Bramwell (here echoing Sir Samuel Romilly's words) proceeded: "It is strange that there should be so much difficulty in making it understood that a thing may be unlawful, in the sense that the law will not aid it, and yet that the law will not immediately punish it." This proposition seems to have proved a dark saying to the majority in the House of Lords, three of whom (Lords Dunedin, Sumner, and Buckmaster) evidently think *Cowan* v. *Milbourn* to have been wrongly decided, though Lord Parker suggested that it might possibly be supported on the footing that the lectures intended to be given would have involved vilification, ridicule, or irreverence, likely to lead to a breach of the peace.

Whatever view one may take of the result, it is impossible not to pay a tribute of respectful admiration to the Lord Chancellor's closely reasoned and vigorous dissentient opinion. Lord Finlay stands in the ancient ways. Christianity, for him, is still part of the law of the land, and that law will not help to endeavour to undermine it. For him, if the law of England is to be altered, the change must be effected, not by judicial decision, but by the act of the Legislature. According to the noble and learned Lord on the woolsack, it could never be the duty of a court of law to begin by saying what is the Spirit of the Age, and, in supposed conformity with it, to decide what the law is.—*Law Times.*

EVOLUTION OF DOCTRINE OF AGENCY IN AUTOMOBILE CASES.

Cases treating of liability of the owner of an automobile, who has purchased same for family use and pleasure, have developed what seems to be a new principle in the law of agency. A recent case by New York Court of Appeals, in which a capable adult son of the owner of an automobile was using it for his own pleasure and the owner was sued for damages caused by the son using the automobile, presents opportunity for speaking of this new principle: *Van Blarcom* v. *Dodgson,* 115 N.E. 443.

The facts shew defendant "had purchased an automobile for the pleasure of the members" of his family, consisting of his wife, married daughter, son-in-law, and an adult son. On one occasion the son, unaccompanied by any other member of the family, used the automobile for his own pleasure and "so negligently operated it as to kill plaintiff's intestate." There is no claim that the son was ignorant or generally unskillful, but he was, as a member of the family, getting pleasure therefrom as the owner intended. Was he the agent of the owner under such circumstances? If he were taking along with him another member of the family, the Court says, it might be conceded he was agent of the owner. And it then speaks as follows:—

"The proposition of liability urged in this case, however, goes further. It asserts that the father is liable for negligence in the management of his automobile by an adult son when the latter is pursuing his own exclusive ends, absolutely detached from accommodation of the family or any other member thereof. On its face a proposition seems to be self-contradictory which asserts that a person who is wholly and exclusively engaged in the prosecution of his own concerns is nevertheless engaged as agent in doing something for someone else. It has always been supposed that a person who was permitted to use a car for his own accommodation was not acting as agent for the accommodation of the owner of the car. *Reilly* v. *Connable,* 214 N.Y. 586, 108 N.E. 853, L.R.A. 1916A, 954, Ann. Cas. 1916A, 656. The

attempt is made, however, to reconcile these apparently contradictory features of this proposition by the assertion that the father had made it his business to furnish entertainment for the members of his family, and that, therefore, when he permitted one of them to use the car, even for the latter's personal and sole pleasure, such one was really carrying out the business of the parent, and the latter thus became a principal and liable for misconduct. This is an advanced proposition in the law of principal and agent, and the question which it presents really resolves itself into one whether, as a matter of common sense and practical experience, we ought to say that a parent who maintains some article for family use and occasionally permits a capable son to use it for his individual convenience ought to be regarded as having undertaken the occupation of entertaining the latter and to have made him his agent in this business, although the act being done is solely for the benefit of the son. That really is about all there is to the question. Not much can be profitably said by way of amplification or in debate of the query whether such a liability would rest upon reasonable principles, or whether it would present a case of such theoretical and attenuated agency, if any, as would be beyond the recognition of sound principles of law as they are ordinarily applied to that relation. The question largely carries on its face the answer, whichever way to be made. Unquestionably, an affirmative answer has been given by the Courts of some States."

To this are cited a great number of cases, and then it is said: "But it seems to us that such a theory is more illusory than substantial, and that it would be far-fetched to hold that a father should become liable as principal every time he permitted a capable child to use for his personal convenience some article primarily kept for family use. That certainly would introduce into the family relationship a new rule of conduct which, so far as we are aware, has never been applied to other articles than an automobile. We have never heard it argued that a man who kept for the family use a horse or wagon or boat or set of golf

sticks had so embarked upon the occupation and business of furnishing pleasure to the members of his family that if some time he permitted one of them to use one of those articles for his personal enjoyment, the latter was engaged in carrying out, not his own purposes, but, as agent, the business of his father."

The Court goes on then to suppose that this theory owes its origin to an automobile being dangerous and an extension of the doctrine of principal is allowable.

We have set out at length the grounds upon which this Court assails the long line of cases sustaining the doctrine, and note the fact it cites no cases taking the view it advocates.

As the Court says, however, it looks like a self-contradictory proposition to say that one engaged in prosecuting his own concerns is agent for another. But does it not also look a little involved, if two members of the family were using the automobile for their pleasure, that both were agents of the owner all of the time they were using it? Did concurrence in purpose have any effect on the question of agency, or must the one driving the automobile be acting solely for the pleasure of the other?

If one acts alone for his own pleasure, this is as the owner intended, just as much as when he acts for the pleasure of another member of the family. What is there inherently contradictory in one acting as the agent for another in acting, not for himself, but in securing something for himself as one of a class? —*Central Law Journal.*

VERDICT FOR LARGER DAMAGES THAN CLAIMED.

The forms of statements of claims under the Judicature Acts conclude with a claim by the plaintiff for a sum of money as damages, but the rules make no provision for the case where the jury give a verdict for larger damages than the amount claimed. It was laid down in the early part of the last century that, when the jury gave greater damages than the plaintiff had declared for, the contradiction might be cured by entering a *remittitur* of the surplus before judgment, or the plaintiff might amend his declaration and have a new trial. A *remittitur* is not heard of in these days, nor would the privilege of amending a claim and taking a new trial be appreciated by plaintiffs. But by an ancient principle of the law of all civilised countries a judge cannot give more than the petitioner or suitor himself asks, or that which has been submitted to the judge himself on the pleadings or claims. In going beyond this, he would act beyond his jurisdiction. If, therefore, he gives more than the plaintiff seeks, his decree is ineffectual, and may be set aside. In accordance with this principle, the Exchequer Chamber in *Cheveley* v. *Morris* (2 W. Bl. 1300) reversed a judgment by default for the plaintiff as erroneous where the damages found by the jury, and for which judgment was entered up, exceeded the damages laid in the declaration. The Court refused to allow a *remittitur* to be entered, because the plaintiff had acted oppressively in suing out execution and taking the books of the defendant (who was a gentleman at the Bar) in a very insolent and invidious manner. This being the law, care had to be taken to claim a sum equal to the full amount of the debt as damages. Practitioners went further than was necessary, and it was the habit within living memory to make excessive claims which exposed the plaintiff to ridicule at the trial. The practice at the present day is more reasonable. The amount claimed is more in accordance with the facts, and an insufficient claim may be amended by the judge at the trial. Annual Practice, 1917, p. 466.—*Solicitors' Journal.*

Bench and Bar

Judicial Appointments.

Charles Percy Fullerton, of the City of Winnipeg, in the Province of Manitoba, Esquire, one of His Majesty's Counsel learned in the law for the said Province: to be a Judge of the Court of Appeal for Manitoba, in the room and stead of the Honourable A. E. Richards, deceased. (July 20.)

His Honour William S. Stewart, Judge of the County Court of the County of Queens, Prince Edward Island, to be Local Judge in Admiralty of the Exchequer Court, vice Hon. Sir William Sullivan, retired. (July 26.)

Alexander D. Mackintosh of Humboldt, Saskatchewan, Barrister-at-law, to be Judge of the District Court of the Judicial district of Battleford, Saskatchewan; vice James F. MacLean, deceased. (September 3.)

Thomas Joseph Blain of the City of Regina, Province of Saskatchewan, Barrister-at-law, to be Judge of the District Court of the Judicial District of Melville in the said Province. (September 15.)

Hugh St. Quintin Cayler of the City of Vancouver, British Columbia, Barrister-at-law, to be Judge of the County Court of Vancouver; vice W. W. B. McInnes, resigned. (September 17.)

Canadian Bar Association.

The annual meeting of this Association, which was to have been held in Winnipeg on August 29, 30 and 31 has been postponed until next year on account of the war.

Law School of Ontario.

The rumour that the School would be closed for the present, or during the continuance of the war, is unfounded. It will open as usual on September 24, with a slightly increased number of students, subject, of course, to diminution should any of them be drafted for service under the Conscription Act. The statement which has gone abroad to the effect that there will be a refund of fees to those who may be drafted is at present unauthorized.

War Notes.

LAWYERS AT THE FRONT.

Killed in Action.

Charles Bevers Scott, Lieut. 166th Battalion, Windsor, Barrister, July, 1917.

Grant Davidson Mowat, Lieut. 39th Battalion, Peterborough, First Year Student, August 15, 1917.

Military Service Act.

The following circular has been received in reference to the enforcement of the Military Service Act which has recently come into force:—

"Inquiries having been made as to the exact character of those provisions of the 'Act respecting Military Service' which relate to the prohibition of objectionable statements concerning the operation of that measure, it is deemed advisable to submit the text of the clauses of the Act containing these provisions as they appear in subsections 2 and 3 of section 16 of the Act. The subsections in question read as follows:—

"(2) Any person who by means of any written or printed communication, publication or article, or by any oral communication or by any public speech or utterence,—

"(*a*) advises or urges that men described in section 3 shall contravene this Act or regulations, or

"(*b*) wilfully resists or impedes, or attempts wilfully to resist or impede, or persuades or induces or attempts to persuade or induce any person or class of persons to resist or impede the operation or enforcement of this Act, or

"(*c*) for the purpose of resisting or impeding the enforcement or operation of this Act, persuades or induces or attempts to persuade or induce any person or class of persons to refrain from making applications for Certificates of Exemption or submitting evidence in respect thereof, shall be guilty of an offence and shall be liable upon indictment or upon summary conviction to imprisonment for a term not less than one year nor more than five years.

"(3) Any newspaper, book, periodical, phamphlet or printed publication containing matter prohibited by subsection 2 of this

section may, whether the printer or publisher thereof be previously convicted or not, be summarily suppressed and further printing or publication thereof and of any future issue of a newspaper or periodical which has contained such matter may be prohibited for any term not exceeding the duration of the present war; provided no action shall be taken under this subsection or under subsection 2 of this section without the approval of the Central Appeal Judge."

English Solicitors in the Army.

Up to the end of last year 2,570 solicitors and 1,285 articled clerks had joined the military forces, and of these 302 solicitors and 200 articled clerks had been killed. Up to the time named 180 solicitors and 38 articled clerks had been mentioned in dispatches, two had won C.B.s, eight C.M.G.s, 28 D.S.O.s, five D.C.M.s, 124 M.C.s, one the M.M., and two the Croix de Guerre. These facts were stated at the annual meeting of the Law Society recently. The Chairman also stated that out of 440 solicitors who had offered themselves for National Service, only six had been given employment.

Flotsam and Jetsam.

Insolvency Caused by War.

The English Parliament has passed a number of Acts modifying civil liabilities to meet the exigencies of war, and some similar legislation may be found necessary in this country. One of the most interesting of these measures is a provision that if a person against whom a petition in bankruptcy is presented proves that his inability to pay is due to the present war the Bankruptcy Court may stay proceedings under the petition. See *In re Silber*, [1915] 2 K.B. 317, wherein the Act was interpreted and applied. Many possible conditions can be imagined whereby a condition of war would render a solvent trader temporarily unable to meet his obligations—debts due from persons who have become alien enemies, inability to ship goods because of an enemy blockade or a government embargo, or the like. Such a person certainly should not be forced into liquidation, and a provision similar to that of the English Act might well be embodied in whatever emergency measures Congress may enact.

The Kaiser in Court.

It may not be generally known that some years ago (1856) a predecessor of the present reigning "All Highest," Frederick William IV., became a suitor in the courts of Missouri seeking to recover from the estate of a deceased postmaster a sum with which he absconded to America (*King of Prussia* v. *Kuepper's Admr.*, 22 Mo. 551). The royal plaintiff thus modestly described his status: "The plaintiff states that he is absolute monarch of the kingdom of Prussia, and as king thereof is the sole government of that country; that he is unrestrained by any constitution or law, and that his will, expressed in due form, is the only law of that country, and is the only legal power there known to exist as law." All of which is commended to the notice of those whose "consciences" revolt at the effort to prevent that type of government from gaining a world ascendancy.—*Law Notes.*

Advertising by Lawyers.

A speaker at a meeting of the Peoria Bar Association said that ninety per cent. of the people do not employ lawyers and do not know what their functions are. He recommended systematic advertising, saying that if people were properly informed as to the functions of lawyers they would consult them more freely and save themselves financial loss. There is no doubt that people in general are too reluctant to seek legal advice, and that their interests suffer greatly thereby. Most business men realize that the most valuable function a lawyer can render is to keep his client out of a lawsuit, and they seek professional aid promptly for that purpose. But with the great mass of the people it is otherwise. Not until trouble is imminent do they resort to a lawyer, to find that some simple act a year or two earlier would have avoided all the difficulty.—*Law Notes.*

Influence of the Professions.

At a recent meeting of the Chicago Bar Association, one of the speakers stirred up considerable comment by a statement that while the leadership of the bar has held its own in the last fifty years, that of the press and the pulpit has declined. The pulpit is too far outside our province to permit of its discussion. There is, however, an anecdote of a Bishop who claimed to be a greater man than a Judge because "I can say to a man 'you shall be damned' while you can but say 'you shall be hanged.'" "Yes," retorted his lordship, "but when I say to a man 'you shall be hanged' he is hanged."—*Law Times.*