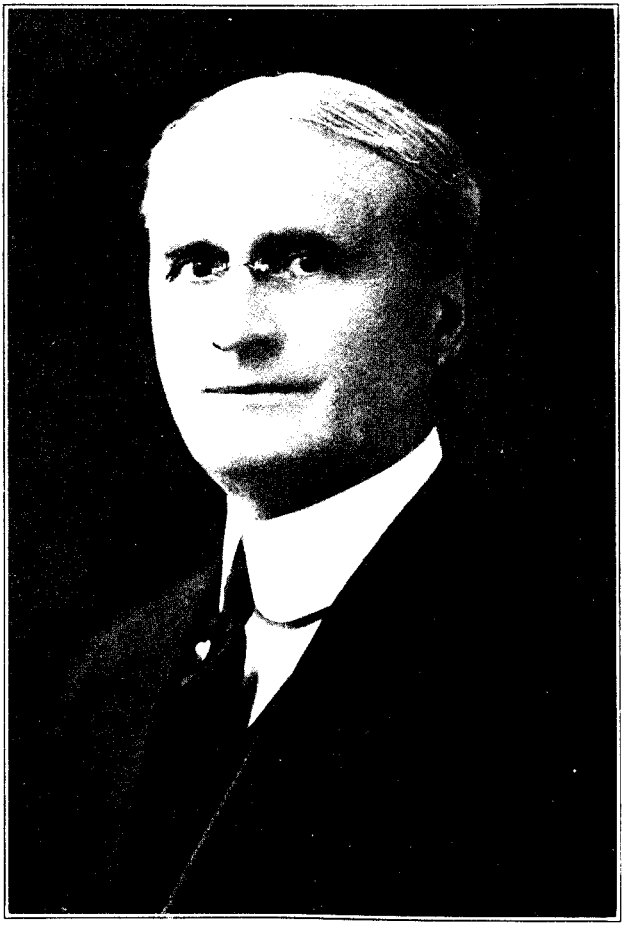

M. H. LUDWIG, K.C.

Retiring President, Ontario Bar Association

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ONTARIO BAR ASSOCIATION.

The annual meeting of this Association was held in Toronto on December 29th and 30th of last year. There was a large attendance of members, as well as a number of judges and other distinguished members of the professsion.

The proceedings opened with the retiring President's annual address--on this occasion delivered by Mr. M. H. Ludwig, K.C. This address gives an interesting sketch of every-day matters pertaining to Bench and Bar, and the development and growth of various matters appertaining to the administration of justice. We reproduce it in full on subsequent pages in this issue.

The bill of fare included, amongst other things, reports on the following subjects: Legal Ethics, Legislation of the past year, with suggestions for the future, Law Reform, etc., followed by discussions by members, and, of course, a financial statement.

The suggestion for the formation of a Dominion Bar Association, so often made, was again brought up, and a committee appointed to deal with the question and report to the Council of the Association from time to time. This matter has on several occasions been referred to and a beginning was once made, but so far no success has attended the efforts of its promoters. The difficulty is largely geographical and therefore difficult to overcome. We will see however what the Provincial Associations will be able to do about it.

Interesting addresses were delivered by Chief Justice Sir William Meredith and Mr. Justice Riddell. The Chief Justice spoke on a subject which no doubt he has mastered in connection with the Commission on that subject which has engaged so much of his time, viz.: "Workmen's Compensation." We shall

doubtless hear more of this at the next session of the Ontario Legislature. Mr. Justice Riddell in his own happy and exhaustive manner discussed International Arbitration as affecting Canada. We shall be glad if we can find room for this in our columns on a future occasion.

The new President, Mr. F. M. Field, K.C., of Cobourg (an excellent appointment by the way) submitted for the consideration of the Council a memorandum in reference to various matters which seemed to him might appropriately be taken up and dealt with by the Association during the coming year.

The following are the officers for the Association for the ensuing year: Honorary President, James Bicknell, K.C., Toronto; President, F. M. Field, K.C., Cobourg; Vice-Presidents, W. J. McWhinney, K.C., Toronto, G. C. Campbell, Toronto, A. E. H. Creswicke, K.C., Barrie; Recording Secretary, A. J. Thomson, Toronto; Corresponding Secretary, R. J. Maclennan, Toronto; Treasurer, C. A. Moss, Toronto; Historian and Archivist, Col. W. N. Ponton, K.C., Belleville.

The following is the address of Mr. Ludwig, the retiring president, already referred to:—

"This is the seventh annual meeting of the Association. Our membership has been increased very largely each year. The Association has received much encouragement not only from the judges, but also from lawyers everywhere throughout the province, and it is confidently expected, very soon, every lawyer in the province will be a member of the Association. I have been told that a very small number of the benchers of the Law Society claimed that there was no need or place for the Ontario Bar Association at all, because the benchers being elected by the bar, thereby became its representatives as to all its interests. I dispute this contention. This Association aims to occupy, and does occupy, a field not open to the Law Society, and yet one in which Convocation is greatly interested. Our Association recognizes and has always acknowledged the right and duty of the benchers in reference to the education, admission and discipline of the bar. But there are many questions and

matters which lie entirely outside of these limits. Lawyers constantly carry on their affairs before the public gaze and find themselves engrossed with and interested in numberless questions, municipal, public and social, as well as legal. The members of the bar should come together more often than they do, not only in social and friendly intercourse, but also to consult, discuss and decide upon ways and means for securing the improvements in the administration of justice and of the law. Nearly all measures which have resulted in simplicity of procedure and speed in administration, and many measures which improve the law, have been initiated and carried to a conclusion by lawyers.

"I believe I have attended every meeting of the Association since its organization, and I know there is not now, and never was, any ground for the belief or opinion that this Association was formed for any other purpose than that declared in its constitution, namely:—'To facilitate the administration of justice, to promote reform in the law of procedure, to assist in upholding the honour and dignity of the profession of the law, to bring about united action, to conserve its interest, to encourage interchange of ideas and close intercourse among members of the profession in Ontario, and to maintain friendly relations with the profession in other jurisdictions.'

"I believe the work done by the Association so far amply justifies its existence and demonstrates that there is a field in which it can be of great service to the legal profession in this province without in any manner encroaching upon the rights, duties, or privileges of any other society, association or organization.

"Not only is there need for a Provincial Association of lawyers such as ours, but I believe there is urgent need for a Dominion Bar Association, which could be of great service to the people of the whole Dominion by initiating a movement towards bringing about uniform laws throughout the whole Dominion on such important subjects as commercial law, corporation law, insurance, sales of goods, bills of lading and many others which

will readily occur to all of you. The great work done by the American Bar Association aided by the State Bar Association, in initiating and promoting uniformity of legislation in the United States, proves what can be done by bar associations. Every business man at once admits the pressing need of the business world, to remove as far as possible the uncertainty and vexation arising from the sometimes widely different laws of the Provinces on matters of daily importance. Yet the business man is usually so fully engrossed in his own business affairs that he will not give the time to bring about reforms or improvements in the law which would mean to him, in many cases, the opening of a very extended market with largely increased earning powers. It invariably rests with lawyers or law associations to inaugurate and advocate great improvements in the law and to press them to a successful issue.

"It will, perhaps, not be out of place here to mention a few of the matters dealt with by the Association during the past two years. The Supreme Court of Canada held in *Clarke* v. *Goodall*, 44 S.C.R. 284 and *Crown Life* v. *Skinner*, 44 S.C.R. 616, and in other cases, that where a trial judge found a party to an action liable and then directed a reference, or ordered an account to be taken, on the footing of such finding or judgment, there was no right of appeal from such finding or judgment, because the finding or judgment was not a 'final judgment' within the meaning of sub-section (*e*) of section 2 of the Supreme Court Act.

"It was deemed advisable that there should be a right of appeal in cases such as I have mentioned to the Supreme Court, either on a question of liability irrespective of amount, or on a question of amount irrespective of liability, or that there should be a right of appeal on both questions. In order to procure an amendment to said sub-section, members of the Association attended at Ottawa on two different occasions and interviewed the proper authorities there with a view of having the Supreme Court Act amended so as to give a right of appeal in cases such as I have referred to.

"At the last session an Act was passed (3-4 George V. (1913) Ch. 51, sec. 1) repealing paragraph (*e*) of section 2 of the Supreme Court Act and substituting—in so far as it affects the Province of Ontario—the following section therefor:—

"(*e*) 'Final judgment' means any judgment, rule, order or decision which determines in whole or in part any substantive right of any of the parties in controversy in any action, suit, cause or matter or other judicial proceeding.

"The Rules of Practice which were revised in 1897 were constantly added to until in the beginning of the year 1913, they numbered upwards of 1,300. Difficulties had developed in the working of these rules. Provisions overlapped owing to the fact, no doubt, that they were drawn from different sources, and perhaps also for the reason that they may have come from different hands, and the further reason that in the framing of the amending rules, the effect of other provisions or of statutory enactments were overlooked or not fully considered. As a rule a statute or set of rules, consisting of a collection of separate provisions from different sources by different persons, produces confusion and complications and general dissatisfaction.

"General dissatisfaction with the rules was expressed by the profession and by the judiciary, but no move was made to improve them until the matter was taken up by our Association. A large committee of our Association waited upon the Attorney-General, pointed out the necessity for a revision and consolidation of the Rules, and asked that a judge or small commission be appointed to revise and consolidate the rules and the forms and tariffs. Shortly after this conference, Hon. Mr. Justice Middleton was appointed to revise and consolidate the rules, forms and tariffs. Three members of the Association were appointed to confer with his Lordship from time to time to present the views of the profession as to suggested changes and additions to the rules. Mr. McAndrew, late Taxing Officer, was specially engaged and paid by the Association to confer with his Lordship with regard to the new tariff fees. These representatives were most kindly received and were given every oppor-

tunity to fully present the views and suggestions of the profession.

"His Lordship applied himself to the task of preparing or revising the new rules with his usual industry and ability, and completed his work with his usual despatch. The result of his labours takes the form of 772 rules, which as you know came into force on the first day of September, 1913. In the framing or revising of the new rules it is evident that the framer at the outset mapped out a plan to overcome the many difficulties and objections to the rules, which had developed, and with which no one was more familiar than his Lordship, who we all know knew all the practice as well as a little law.

"Time will not permit any attempt to point out at any length in how many respects the new rules are a distinct improvement on any rules of practice heretofore in force. I shall refer to only a very few. Petitions are abolished. All actions as formerly are commenced by writ. All other proceedings are commenced by originating notice. All interlocutory proceedings are commenced by notice of motion. The old rules with regard to the period of time which must elapse between the service and the hearing of a notice have all been repealed, and a new rule now provides (R. 215) that at least two days' notice of a motion in an action, and at least seven days' notice in the case of an originating notice, must be given except special leave is obtained. All the rules respecting appeals have been simplified and grouped in chapter XVII. The cases where a matter is appealable, and the practice to be followed in such appeals, is now so plainly laid down, that anyone who can read plain English will have no difficulty in easily determining any question as to a right of appeal or as to what must be done to bring the appeal to a hearing.

"Since the decision of *Jacobs* v. *Booth Distillery Co.* (1901), 85 L.T. 263 old rule 603 has practically been a dead letter. New rule 57, which takes its place, has so far been found to work very satisfactorily. The filing of the affidavit by the defendant, required by rule 56, shewing a defence with the appear-

ance has already stopped many a defendant, and will stop many more, from disputing a just claim merely for the purpose of gaining time. It is to be hoped that if this or any other rule should in practice shew defects the judges will promptly exercise the power given them to remedy such defects by proper changes or amendments.

"I would, I am sure, tire you by referring to the many other matters taken up by the Association in the interests of the profession and successfully carried out. Let me mention one more. The Provincial Government appointed a Board of County Court judges to revise the Surrogate Court rules, forms and tariffs. A committee appointed by the Association waited upon the Board and urged among other matters: (1) That the tariff of fees should be remodelled and simplified. (2) That fewer affidavits and documents should be required on an application for Letters Probate or Administration. Subsequent to said conference the Association employed and paid Mr. G. M. Kelley of Toronto, a barrister who has had a wide experience in Surrogate Court matters, to prepare a tariff of fees for the Surrogate Court and submit same to the Board. Mr. Kelley's tariff was largely adopted and the suggestions with reference to fewer affidavits in procuring Letters Probate or Administration have also been adopted.

"It is the intention of the Association to still further extend its field of usefulness and activity by appointing a committee whose duty it shall be to deal with all matters affecting the profession brought before it, and take such action thereon as may be deemed expedient. It is believed that such a committee will be of great service to the profession, and it is hoped that the members of the profession will freely call its services into requisition.

"Part 1 of the Law Reform Act, 1909 (Cap. 28) constituting the Supreme Court of Ontario, as you, of course, know, came into force on the first day of January, of this year. Judging from articles which appeared in the press, in legal periodicals, and from what was said at some of our annual meetings and

elsewhere, it appeared that a large number of the members of the profession were of opinion that the passing of the old Court of Appeal would be an irreparable loss to the province. The profession did not regard the work of the old Divisional Court as entirely satisfactory, for reasons familiar to all of us, and feared that the working of the new Divisional Court would be equally unsatisfactory. Many grounds were urged against putting Part 1 of the said Act in force. One of these was that it was unreasonable to expect that proper consideration could or would be given a case by a court of five judges so long as only three copies of the evidence were required. This objection has, however, now been removed. New rule 494 provides that five copies of the evidence must be delivered by an appellant.

"A year's trial of the new Appellate Court, has, I think, satisfied the profession who took so gloomy a view of this new Appellate Court that their misgivings have not been and will not be realized. The present court gives every counsel quite as patient and kindly a hearing as did the old court, and in my opinion its members are quite as able and do their work quite as thoroughly, satisfactorily and expeditiously as did the members of the Court which they have succeeded. If any suggestion as to any further improvements necessary to make the work of the court more effective, is in order, I would suggest that rule 494 be further amended so as to require an appellant to provide not only five copies of the evidence, but five copies of all other papers necessary for the proper hearing of the appeal, and that all such copies be arranged in their order of dates (if any) and securely fastened. In many cases the rights of parties must be decided largely and sometimes entirely on documents, and it is, therefore, advisable, I think, I may say essential, that each judge should have a copy of such documents before him when considering the case in appeal.

"This being a meeting of lawyers I hope I need not offer any apologies if I devote the remainder of my address to three subjects which are of more particular interest to us than perhaps any other, namely:—

"I. The Judiciary; II. The Lawyer; III. Law Reform.

"I. The Judiciary of this province consists of nineteen Supreme Court judges and seventy-four County Court judges (when all vacant offices are filled.) The judges hold their offices during good behaviour, subject to removal for inability, incapacity or misbehaviour. (9 Edward Ed. VII. (1909) Chap. 29, sec. 2, Ont. R.S.C. Chap. 138, sec. 38). Section 9 of chap. 28 of 3-4 George V. provides that every judge of a County Court, who has attained the age of seventy-five years, shall be compulsorily retired. So far as I am aware there is no age limit when a Supreme Court judge must retire. It would seem he may serve —subject to the right of removal for inability or incapacity— so long as he can keep alive, if he wishes to do so.

"The relationship between the bench and bar has never been more cordial—I think I may say has never been as cordial—as it is at the present time. Year by year the bench and bar are getting closer together. Never have we had a more conscientious and painstaking bench than we have now. I occasionally hear a disappointed counsel find fault with the judge's head, but I have yet to hear any lawyer find fault with a judge's heart. If proof is needed that the bench of to-day gives better satisfaction and is held in higher esteem by the profession than ever before, I believe I need only state what is well known to every lawyer, this fact that the large majority of civil cases and many criminal cases, which formerly were tried with a jury, are now tried without a jury although a right to a jury exists. The jury system, in my opinion, is rapidly dying out. This change, can, I believe, be accounted for only because of the firm conviction of the profession, formed from actual experience and observation, that our judges have no favorites, are no respecters of persons, do not make bad law in hard cases, and will give judgment according to the very right and justice of the case.

"It is to be regretted that the salaries of men of such high character and ability should be so small that most judges find it difficult, and in some cases impossible, to live as their station in life requires. There is a crying need that this great and rich

province should no longer tolerate the disgrace of an underpaid Judiciary, and should now see to it that they have enough compensation to permit them to live decently and well, and to make reasonable provision for their family after they shall have closed their labours and passed away.

"Under instructions from the council of our Association your President attended at Ottawa in the spring of this year and interviewed the Minister of Justice with a view of ascertaining whether something could not be done particularly for the judges of the County Court towards providing reasonable compensation for these underpaid judges. My interview with the minister satisfied me that Hon. Mr. Doherty is entirely in sympathy with the request for an increase and that he will not lose any opportunity to deal liberally with the judiciary, fully appreciating that the increased costs of living mean as much, and sometimes more, to a judge as to any other man.

"II. The number of lawyers practising in the Province of Ontario is 1746. Of these five are women. Upwards of one-third (627) live in the City of Toronto, and about one-half of all the lawyers in the province practise in the four cities, Toronto, Ottawa, Hamilton and London.

"About one-quarter of all the lawyers in the province are King's Counsel. I am informed that there was a time when barristers were appointed counsel to the Crown and called within the bar only on account of superior standing or ability. I fancy the profession has long ago come to the conclusion that that standard has long ago been abrogated or forgotten, party service, and not superior legal attainments, has become the requirement in many cases for appointment as King's Counsel. It is to be regretted that both political parties seem to have thought it proper to reward party services with an appointment which at one time was regarded as the very highest honour and distinction which could be conferred upon a barrister, but which now can no longer be so considered. If party services must be rewarded I would suggest that some new office be created for such reward or that some such office as

Notary Public be set aside for such special favours. It is to be hoped in making future appointments of King's Counsel the original idea of superior standing, ability and experience at the bar will again find favour, be adopted, and thereafter steadfastly adhered to.

"For generations it has been not uncommon in works of fiction and on the stage to portray the lawyer as unscrupulous, as an oppressor of the weak and those unable to help themselves, and as subordinating all considerations and all interests only to promote his selfish aims and objects. This is not my view of the character of the members of the profession to which I have the honour to belong. Some black sheep I fear there have been, are, and always will be amongst us. No profession, calling or business is entirely free from them; but because a few black sheep stray into the flock is surely no reason why the whole profession should be branded as habitually dishonest. The obvious cause of this attitude is probably the great publicity given to lawyers and their business in comparison with the general public and its occupations. The members of our profession as a whole are a hard working, not over-paid body of men, who conscientiously endeavour to do their duty to their clients, and who in performing such duties assume large responsibility, involving in many cases much anxiety, thought, labour and trouble.

"The sneering remarks of the great Dr. Johnson, who said: 'I do not care to speak ill of any man, but I believe he is an Attorney,' does not, nor does the old grave-yard joke, which asserted that there must be two people buried beneath the tombstone with the epitaph 'Here lies a lawyer and an honest man,' nor the yarn about the man who was brought before the discipline committee for charging less than the fee fixed by the tariff and was acquitted upon stating that he took all the man had, and other similar rude jibes and saws, discourage us from continuing the practice of our profession fully mindful of our duty in advising those who consult us or require our advice, assisting the wronged in obtaining redress

for their wrongs, or in aiding the weak against the strong, or to encourage settlements of differences, if possible, without resorting to the courts, and discourage dishonest, doubtful or hazardous enterprises.

"Is it not surprising that with all this outcry against lawyers and their doings a fair number of prosperous business people do not object to bring up a son or two in the very profession they never lose an opportunity of assailing.

"When I was called to the bar and for a number of years afterwards some half-dozen counsel did most of the trial and appeal work in this province. The services of these leaders were constantly in demand. No case of any importance seemed to be properly manned without at least two of these leaders. This scene has entirely changed. So called leaders have disappeared from the arena and a new order of things has set in. The few barristers who formerly did most of the court work have been superseded by many. In my opinion cases are presented, tried and argued better to-day than they ever were before, even by the distinguished leaders who have passed away. This change, in my opinion, has been brought about largely since 1889, when the Law Society established the Law School in Toronto and required all law students to attend a three years' course of instruction at this school and pass certain examinations before being admitted to the bar. Prior to the establishment of the Law School a very limited knowledge of the law seemed to suffice to pass the one day examination required for admission to the bar. Students in offices outside of Toronto had few opportunities to witness the manner in which cases ought to be tried. Now the theoretical and practical training afforded by the Law School, coupled with the opportunities given students to observe the manner in which cases are presented, argued and tried in many courts in Toronto, which are practically sitting all the time, have created a new race of lawyers, who, when admitted, have a fair working knowledge of the law and of the practice and procedure of the courts, and who have acquired sufficient courage and confidence

in their own ability to conduct a case, and who would spurn the assistance of other counsel. They may make mistakes—so did the great leaders. The man who never makes a mistake is the man who never does anything. It is to be hoped the day is far distant when the seat of learning for the student at law will be removed from Osgoode Hall, which, according to my way of thinking, is the ideal place where complete facilities can be afforded the students for practical as well as theoretical instruction in the law.

"It has been truly said that the twentieth century belongs to Canada. The lawyer—particularly the younger lawyer—and the law student of to-day will surely play a prominent part in the wonderful onward and upward movement of this country. The bar of this province was never better equipped for the great work before it. It never has had as much honour, as much talent, as much industry, as it has to-day. Surely such a foundation is all that is required to build upon for the future.

"This is fast becoming an age of specialists. This country's business transactions are becoming so multifarious, so complicated and extensive that the general practitioner finds difficulty in keeping pace with the requirements of the times. Specialists are demanded in all professions and in all walks of life. In the legal profession specialists are called for, in real estate law, corporation law, commercial law, patent law, marine law, insurance law, railroad law. Our national expansion calls for specialists in international law. Moreover, if the history of other countries is repeated here, as it probably will, it will not be long before we will have a mass of colossal trusts, combinations of capital, as they are called, which some of you will be called upon to challenge or defend. Beyond that again some of you will be called upon to undertake the task of codifying and assimilating our laws and making them applicable for the whole Dominion. Then too, there is a great field before us to specialize in criminal law, but in order to make a name and fame in that branch of law one must be careful not to be

of the suspected type referred to by a German in one of our western towns, who, when asked whether there was a good criminal lawyer in his town, replied that they all thought they had one, but so far nobody had been able to prove it on him.

"III. The demand for changes in the law, popularly called Law Reform, is regularly agitated previous to an election and is seldom mentioned at any other time.

"Enquiry and some investigation has satisfied me that a demand for law reform amounts to nothing more in the popular mind than a complaint that litigation is too costly and that a change should be made, so that disputed claims might be litigated practically at nominal cost.

"So far as the work of the courts and the facilities afforded for speedy hearing are concerned, what was said by Mr. Justice Middleton in an address delivered by him to this Association in 1911, namely:—

" 'There is no congestion of business in our courts. Cases can be tried as soon as ready for trial. There are no arrears in any of our courts, either trial or appellate. Appeals can be heard practically as soon as set down, and speaking generally there is no delay between the hearing and judgment. That this is so in all courts, from the court of first instance to the court of last resort, indicates that as a whole our system is well balanced and efficient,' practically correctly describes the expedition with which trials and appeals are disposed of, the efficiency of the courts, and the state of the court calendar at the present time.

"Any delay in the disposal of an action or appeal cannot be charged to any alleged defect in the law. The trouble will probably be found with the litigant, his solicitor or counsel. It is well known to every lawyer that the least profitable and most worrying branch of his business is litigation. Litigants are often too anxious to fight with and for every advantage and only too ready to blame their legal warriors if they do not fight their quarrels according to the principle that everything is fair in war.

"No work is more trying than the preparation and conduct of a lawsuit. No labour produces less certain results. It has been said a lawsuit, a horse race and the weather are all equally uncertain quantities. On a certain state of facts one judge may find for the plaintiff. On the same facts another judge might hold the very opposite. This does not mean that counsel should be expected to be familiar with every judge's law, nor is it a reflection on the judge's ability or integrity. It simply means a judge is human and is liable to err. Not all judges will look at a matter from the same angle. Many counsel have given up counsel work altogether having come to the conclusion that county town hotels with the usual facilities afforded by such hostelries, to say nothing of the glorious uncertainties of a lawsuit, do not produce anything like the monetary result, peace of mind and comforts which other legal fields open to him afford.

"The prospects of success of the lawyer, when compared with the average run of recognized and respectable occupations, are very attenuated. When we look round and ask who are the owners of the magnificent city mansions and country homes, who drive in their limousines and carriages and pair, who make annual trips abroad with their families, and generally have a good time, we find they are not the so-called over-paid lawyers, but that these fortunes were made in manufacturing or buying or selling or share broking, or in some similar and recognized walk of life. Of course, a very few 'by wit and fortune led' climb to the highest places and get something less than a bank manager. But bar these and a few others and the balance are rank and file, toiling along in the battle with average earnings beneath contempt.

"There are many cases where reform might be introduced to the great advantage of the people, but as they do not relate to cutting down a lawyer's bill the public does not appear to take much interest in them. Time will permit me to mention only a few.

"No business man would dream of employing inexperienced

help in his business if for the same salary he could secure the services of experts. This rule, however, does not appear to hold when a Government employs a man to fill a vacancy which has to do largely with the administration of justice. I would think a lawyer should be preferred for a County Court Clerk to a farmer, or for a Registrar of a Surrogate Court to a baker, or for a sheriff to a shopkeeper, or for a Registrar of Deeds to a political campaigner. Because a man can plow a straight furrow or bake good bread or knows cane from beet sugar or can make a good stump speech, is surely not sufficient qualification for such important offices as I have mentioned, which call for legal training and knowledge to produce the best services in the interest of the people. It is, perhaps, too much to hope that the time will ever come when Governments will use the same business judgment and methods as any successful employer adopts in engaging employees to conduct his business.

"The original idea of settling disputes by arbitration was that disputes in that way could be settled speedily and cheaply. Every lawyer knows that arbitrations now are extraordinarily expensive and long drawn out affairs and it has become urgently necessary to provide means of remedying this evil. A law should be passed which should provide that claims and questions arising under a lease or other contract, and which by law or by the terms of the lease or contract are to be determined by arbitration, should be heard and determined by an official referee or an official arbitrator, who should be given all the powers of an official referee under the Judicature Act, and of an arbitrator under the Arbitration Act.

"Creditors should have the right to compel an insolvent debtor to hand over his estate to a trustee for the creditors, so that all creditors might share equally in the debtor's property. As the law now stands, speaking generally, a dishonest debtor can carry on his business until a seizure is made under an execution—and sometimes even after that—and apply the cash received in preferring a favoured creditor over all others. Often too a debtor who expects a sheriff rapidly gathers in as much cash

as he can, which the creditors seldom are able to locate. Again, debtors who find it impossible to meet their obligations and turn over all their property for distribution amongst their creditors—make an honest failure, as business men term it—should have an opportunity to make a fresh start unhampered by claims of his old creditors. A Bankruptcy Act such as in force in almost every civilized country of the world except Canada would remedy both of above mentioned evils and many others. There are many other real reforms the country needs, but I will not tire you with any more.

"In conclusion, I desire to thank the members of the council of the Association for their very great kindness to me during my tenure of office. I shall always gratefully remember how promptly, readily and willingly they responded to every one of my requests and suggestions."

MANITOBA BAR ASSOCIATION.

The annual meeting of the Manitoba Bar Association concluded its programme on Saturday, January 24th.

This meeting was an exceedingly interesting one, both in relation to the subjects discussed, and as to those taking part. Amongst the addresses was notably one by Hon. Frank B. Kellogg, the retiring president of the American Bar Association on the influence of the English people upon Constitutional Government. This was a strong presentation of a large subject and was exhaustively and intelligently treated. Interesting addresses were also delivered by Mr. Justice Galt upon the efficiency of various modes of education, and also by Mr. W. J. McWhinney, K.C., of Toronto, who worthily represented the Ontario Bar Association, speaking on various matters which have already engaged the attention of that body and especially on the subject of a Canadian Bar Association.

Mr. J. A. M. Aikins, K.C., M.P., was re-elected president of the association, Chief Justice Howell being honorary presi-

dent. Representatives were appointed from the various Judicial Districts of the Province.

The desirability of establishing a Canadian Bar Association was taken up and the same views were expressed as have found expression in other places. By a unanimous vote the meeting signified its approbation of the proposal to form such an Association, and directions were given for the necessary steps to be taken to communicate with the various Provincial Associations in order to expedite the matter as rapidly as possible. The question of capital punishment was also freely and breezily discussed, but no action was taken—standing over until the next annual meeting.

The annual dinner of the association which wound up the proceedings is thus referred to in a local newspaper: "Fully 300 members present, in addition to the members of the Bench, the association's guests, Mayor Deacon and President McLean, of the University of Manitoba. J. A. M. Aikins, K.C., president of the association, acted as chairman. The list of speakers to the various toasts including Edward Anderson, K.C., who, in proposing the toast to the Bench, recounted the early conditions of the profession in the province; Chief Justice Mathers, who made a splendid reply to the toast, pointed out that the lawyer's duty extended beyond his mere personal advancement: Frank B. Kellogg, who, in responding to the toast to the American Bar Association, referred to the various changes in the judiciary of the United States which have undergone change and conditions which are at present in the process of readjustment. W. J. McWhinney, K.C., in response to the toast to the Bar Associations of the sister provinces, proved himself a witty and brilliant after-dinner speaker."

HAMILTON LAW ASSOCIATION.

The annual meeting of this Association was held on Tuesday, January 13.

The membership has increased from 78 to 86. The Trustees report the death of Sir Æmilius Irving, K.C., who was the first president of the association, also of Mr. Eakins, who for many years inspected the library. The report also states that the total number of books in the library are 5,131, of which 149 volumes have been added during the year, two special additions being Halsbury's Laws of England (25 vols.) and Encyclopædia of Forms and Precedents (17 vols.).

The librarian expressed pleasure at the fact that no books had been missing during the past year. This strikes us as saying more for the honesty or thoughtfulness of the profession in Hamilton than can be said as to those in some other places.

MUNICIPAL GOVERNMENT BY COMMISSION.

This subject was referred to in our first issue for this year in an article entitled, "The betterment of Civic conditions," written by a gentleman well qualified for the task, and who had been asked to look into the working of Municipal matters in Germany and other places on the Continent. The suggestions made by that writer at the conclusion of his paper (ante page 5) are well worthy of careful consideration.

All light on the subject is valuable. Additional information will be gathered from an address given recently at the Club for the Study of Social Science in Toronto, by Miss Curlette, and we give it to our readers for future reference in connection with this important subject—one, which will, we venture to think, become more and more prominent until some change is made in the direction indicated. It is beyond question that our system of Municipal Government, admirable though it may be in rural municipalities, has proved a failure in the cities. Miss Curlette spoke as follows:—

"Much has been said and written about Municipal Government by Commission during the last two or three years. We have seen the subject discussed in magazines and newspapers, so that even those among us who have not given much attention to it, or are not particularly interested in the various forms of civic government, are asking: "What is Commission Government? Where did it originate? How does it differ in form from those with which we are all familiar? Why has it spread so rapidly in the United States? Why has it not been equally popular in Canada? etc.

"This form of government originated in the city of Galveston, Texas. In 1900 there was a terrific tidal wave and hurricane which swept over the city of Galveston, and I think 1,600 of its inhabitants lost their lives. The city was practically wiped out. In the months that followed this terrible disaster, the ordinary civic government proved utterly helpless and incompetent, and finally it broke down altogether, so that those men who had a stake in the city saw the people leaving every day, and the credit of the city becoming worse and worse. So they decided that unless there was some very radical means adopted the city was doomed. They petitioned the State Legislature to give them a new charter, and to replace it temporarily by a commission to be under the control of five men, who would act efficiently. There was quite a struggle in getting this charter, but finally they obtained it.

"The Commission consisted of five, two appointed by the city and three appointed by the Government of the State, though later these men were elected by the city. For want of a better name to describe the new form of government it was called "Commission Government," and this has stuck to it ever since. These men were paid officials. The President-Mayor, as he was called, presided at all the meetings, had a vote, but no veto. Various departments of the city's activities were divided among the four Commissioners. They were given what were considered in Galveston, particularly wide powers, although it does not appear very extreme to us as we are familiar with such

powers. They were able to bring about new laws and regulations by a majority vote, to appoint officials and dismiss them, to state the qualifications and salaries of the city officials and employees, and finally they were to grant all the franchises. The only check that the charter provided, by which the people could control this Commission, was publicity. That, too, is familiar to us. All the meetings of the Commission were to be open to the public and the press. The minutes of the meetings were to be available to the ratepayers at any time, whenever they wished to see them. In addition to that, however, later there grew what was known as the Citizens' League, which noticed in what way the Commissioners performed their duties, and if they merited it saw, when the time came for re-election, that they were elected again. They took upon themselves all the difficulty of looking after the commission literature, and so on. The Commissioners had very great success. They did great things during the two years, so much so that at the end of that time it became the permanent form of government in Galveston.

"Then Houston, not very far from Galveston, noticing the wonderful strides that Galveston had made, decided they would adopt this form, which they did in 1905, with a difference in some of the details. The Mayor had the right of veto as well as of vote, and in the checks there was not only publicity, but a referendum for appointments and the granting of franchises.

In 1907 the city of Des Moines in Iowa found the condition of their civic government such that something had to be done. They had watched the above two cities with great interest, and adopted the commission form of government, adding further checks which are known as the initiative, referendum, recall and non-partisan primary. The initiative provides that on presenting a petition to the council, signed by a certain number of people, demanding a certain law, if the commission refuse the matter should be settled by popular vote. The referendum provides that an ordinance can be held up by a protest signed by a certain number of citizens, and must be rescinded by the

commission or approved by popular vote. By the recall provision, when a petition is presented, containing the names of a certain number of citizens, any member of the commission may be forced to submit the question of his continuance in office to a new election immediately. The non-partisan primary is an eliminating election.

"In 1911, the city of Lockport in the State of New York endeavoured to get a charter from the State Government, by which they could have a commission of three elected, and these three would appoint a business manager. This they borrowed from Germany. Nearly all our economic and social reforms come from the continent of Europe. This was known as the Lockport idea, and while Lockport did not succeed in getting this legislation, Sumter, in South Carolina, did succeed in getting it in 1912. After the three commissioners were elected they advertised for a general manager. This advertisement is unique, and was copied as news from the Atlantic to the Pacific.

'The City of Sumter hereby announces that applications will be received from now until December the first for the office of City Manager of Sumter. This is a rapidly growing manufacturing city of 10,000 population, and the applicant should be competent to oversee public works, such as paving, lighting, water supply, etc. An engineer of standing and ability would be preferred. State salary desired and previous experience in municipal work. The City Manager will hold office as long as he gives satisfaction to the commission. He will have complete administrative control of the city, subject to the approval of the board of three elected commissioners. There will be no politics in the job; the work will be purely that of an expert. Local citizenship is not necessary, although a knowledge of local conditions and traditions will, of course, be taken into consideration. A splendid opportunity for the right man to make a record in a new and coming profession, as this is the first time that a permanent charter position of this sort has been created in the United States. At the request of the City Commissioners, these applications will be filed with the Chamber of Commerce of Sumter.'

"There were about 150 applications, and, as a matter of fact, they did appoint a young engineer from one of the neighbouring States.

"These are the three types of Commission Government; the Galveston idea, the Des Moines plan and the City Manager or Lockport plan.

"In 1908 there were 12 commission governed cities in the United States. At the end of August, 1913, the latest date for which I have a report, there were 290. Among these the largest city of New Orleans with a population of 399,075. There were two cities with over 200,000, such as Jersey City, 20 cities with 100,000, like Oakland, California, besides a good many smaller cities, and the number is growing so rapidly that there may be several more by this time.

"3rd class cities of the State of Pennsylvania were compelled to adopt commission government, with others. Dayton had exactly the same experience with their civic government as they had in Galveston. In August last they voted for the City Manager plan.

"In these cities the details differ considerably. For instance, in the name given to the governing body; sometimes it is a commission, sometimes the mayor and council, sometimes a president-mayor and board. Then there is a difference in the number of commissioners, which varies from three until in one city they have ten. Then, the manner in which they are elected varies; whether they are elected at once, or retire in rotation. The salaries also are different, but where they differ in details the central principle underlying all is exactly the same. That is, a small governing body, the centre of power, etc. This body is elected by the city at large, and there are certain checks provided by which the people can control.

"We might read some of the reports of these cities. The majority have adopted the commission plan so recently that the reports are not of very great value, but we will look at some of the older cities like Galveston, Des Moines and others to see what has been accomplished. The reports I am reading

to-day have been compiled by Richard S. Childs, who is the Secretary of what is known as the National Short Ballot Organization in the United States. 'The Commission in Galveston was able to make decisions and get things accomplished in half the time it took the old board of aldermen to get a resolution referred to a committee. The commission planned and built a sea wall to protect the city against future floods, raised the ground level of a large part of the town, got the city government running again at one-third annual cost, made a number of important improvements and at the same time reduced the debt and the tax rate. After two years, during which the politicians were finding precious little to do, the commission was made entirely elective by popular vote, much to the dismay of many good persons in the town, who feared that the politicians would elect old-style officials and restore the old-time inefficiency and boss rule. Their fears, however, proved groundless, for the people proceeded to elect the same commission and have continued to do so at every election since. Except by death there have been only two changes in the personnel of the commission since the beginning. Galveston claims to be the best governed city in the United States.'

"In Houston the commission plan was in effect in January, 1906. The credit of the city, which had been worth about 80 cents on the dollar, was restored to par. The tax rate has been reduced from $2.00 to $1.70, while assessments are said to be proportionately lower. The old debt of $400,000 was quickly wiped out. In five years, seventy miles of streets have been repaved, the cost being defrayed out of general revenue. A great auditorium and its site have been paid for from the same source. Schools have been redeemed from politics. Gambling and illicit liquor selling have been stopped. The price of gas has been forced down from $1.50 to $1.15 per thousand.

"Des Moines, Iowa: The commission plan was in effect in 1907. In its first year the commission saved $184,000 in running expenses, as compared with the previous year under the old government. It made better bargains for the city in electric

light charges, obtained interest on city deposits for the first time, cleaned streets and alleys better (the alleys had formerly not been cleaned at all) and wiped out the 'red light district,' the effect of which has since been shewn in reduced crime. A system of periodical fines which were practically licences levied in this district formerly brought in a huge yearly income and the financial results above noted were obtained despite the ceasing of this illegal income

"Haverhill, Mass. Commission plan in effect in 1908. The first year's report under the new plan shewed a saving of $97,900 in running expenses. When the commission took hold the financial status of the city was very bad. It had reached both its debt limit and tax rate limit and was steadily falling behind in its payments. Appeals were being made to the legislature for an extension of the tax rate limit, but this extension has now become unnecessary. In addition the city has voted no licence, the revenue from the saloons being no longer needed. The commission has been fighting a big battle against the gas and electric light monopolies to obtain lower rates for the city and for private consumers, and has obtained from the people permission to resort to municipal ownership if necessary. There was fierce political opposition to the commission at the expiration of its first term, but it was re-elected. Party lines in Haverhill, which was formerly a Republican city, have been completely broken. The commission consists of two Democrats, two Republicans and a Socialist.

"In Kansas City, Kansas, a city of 82,000 people, where the commission commenced in 1910, when the new regime began it was found that a deficit of $40,000 in the annual expenses was imminent. By energy in collecting licenses, dog taxes, taxes on street cars and telephone poles $16,000 more was collected in nine months than in the previous year.

"Colorado Springs, Colo. Plan in effect 1909. Results have been most evident in appointments, which have been put on the basis of merit instead of party affiliation. The mayor went outside of the city to select as fire chief a man who had made an

excellent public record, but who had been dismissed in another town for political reasons.

"Chattanooga, Tenn. Plan in effect May 8, 1911. Population 44,000. On August 7, 1911, the mayor wrote: 'The financial credit of the city is already evidenced by the fact that our bonds are selling at a better premium. All useless offices have been abolished, partisan politics have been removed, a Civil Service Board has been elected and principles of non-partisan administration of city affairs have been applied in each department. Already the appearance of the streets has been improved, the necessity of enforcement of law is recognized and the general tone of the community has been lifted. There is not only marked efficiency in public service, but a marked interest in such service at the hands of the taxpayer.'

"Birmingham, Alabama. Plan in effect April, 1911. In the first month under the new plan the city borrowed $500,000 at the lowest rate in its history. The commission cut down the annual running expenses by $75,000 in the first week.

"Judging from these reports, and a great many others, you will see that the first advantage noticed was that of a better financial condition in the city. The civic credit seems to be better. Then the city's revenue is nearly always increased owing to the fact that back taxes are collected and the tax collection is more rigidly enforced. There seems to be a better enforcement of law, politics seems to be eliminated, and in addition to that there seems to be a better civic spirit developing among the citizens.

"But, of course, there are two sides to every shield, and there are objections raised to this form of government, the chief of which is that it is an untried system. Well, the first Commission Government was appointed in 1903, so that is a very legitimate objection. Then they say the checks provided are not reliable. For instance, by the initiative a commission or council may be compelled to pass a bad law, and by the referendum they may be compelled to repeal a good law, and by the recall they may recall a good commissioner as well as a bad commis-

sioner. Then, they say in addition to that, that while it may be a popular government, elected by the people, it is not necessarily an efficient government.

"Now, with regard to Canada, commission government has not made great progress. Perhaps it is due to the fact that the conditions are so different in our cities. National politics don't play a very great part. We have never developed 'boss' rule with the resultant graft and dishonesty. [But it has begun and is beginning to develop. Whatever difficulties we have had have been due to the inefficiency and the incompetency of our council men, rather than to their dishonesty and to the graft. But for the taxpayers it does not make much difference whether the city government is inefficient or incompetent or whether it is dishonest, because the tax bills mount up exactly the same. However, when it is the result of inefficiency, it does not seem to stir up that spirit of rebellion in the breasts of the taxpayers to cause them to say at once, 'We have got to have a change immediately.' They look around to get some better men to be elected next year. In addition to that, we have a good many of the special features of the commission government which seem to be obtained in the United States by the commission government. We have the short ballot and the non-partisan ballot. When we elect our municipal council in January, we simply vote for the mayor, the board of control and the council. We don't mix it up with anything else. All other officers are appointed and not elected.

"In the United States, the candidates are arranged under the heads of their political affiliations—Democrats, Republicans, etc. In Canada political parties are not recognized, and if you don't know to which party the candidate belongs before you go to vote, the ballot gives you no information. Our municipal government is along British lines.

"At present there are three commission governed cities in Canada: Lethbridge, Alta., St. John, N.B., the latter having the Des Moines plan, and Westmount, Que., has a business manager. Then there are some cities like Calgary, Edmonton, Re-

gina, Moose Jaw, etc., that have a partial commission plan. Guelph, for instance, has a partial commission plan. These commissioners act independently of the council. At Belleville not long ago they did away with a council of some twenty odd members, and replaced them by a council of ten. All are elected by the city at large. It was only in 1912 that St. John received its charter. The President of the Board of Trade, Mr. J. M. Robinson, in April of this year made this statement: 'Commission government has been particularly successful from both business and political standpoints, though it is too soon to pass judgment. The better administration of departments, the business-like handling of business, the fact that political influence is eliminated—are features that cannot fail to impress even the most casual.'

"In Westmount they have a council of four and a mayor. One of the ex-aldermen said that the men of Westmount found they could not give sufficient time to their own business and also to the city's business, they were permitted to make this change and in less than a year they appointed a business manager. He gets $5,000 a year and his duties are the administration of civic affairs. He is responsible only to the council. They can dismiss him whenever they see fit, and will do so, I presume if he does not do what they think he ought to do.

"In the western cities they seem to be very eager to try experiments, more so than eastern cities. Edmonton has a partial commission. Two commissioners were elected by the council and the mayor is one ex-officio. In a report from Edmonton it does not seem to have been particularly successful. 'There was constant friction between the council and the commissioners. The council was constantly encroaching upon the functions of the commissioners.

"They have a commission in Port Arthur. For instance, the railroad between Port Arthur and Port William is under a commission, but the city clerk in writing to me said that they had discussed the commission plan some three or four years ago, but it was now farther off than it was then and they feel satisfied that our form will give them good government."

SHORT METHODS OF EXPEDITING JUDICIAL BUSINESS IN OLDEN TIMES.

The reference by Sir Rufus Isaacs at the close of the sittings to the fact that the King's Bench had overtaken its work was made with just pride inasmuch as it was a successful effort to economise public time without hardship to the parties to actions, the witnesses, the Bar, and the general public. Other efforts to expedite the business of the courts have not been so successful or so popular. When Lord Brougham committed the enormity of hearing causes on Good Friday, Mr. Gladstone repeated with deep complacency a saying of Wetherell, that Brougham was the first judge who had done such a thing since Pontius Pilate. Irish legal history, however, records instances of the adoption of methods for the discharge of judicial business which must seem to us incredible if they were not authenticated by irrefragable proof. The Right Hon. Marcus Patterson was Chief Justice of the Irish Court of Common Pleas from 1768 till 1787. In going circuit during one especially hot season, he employed the following expedient for securing rapidity in the dispatch of business. The Chief Justice asked to see the list of cases to be tried in an assize town, and found to his dismay that it was a very voluminous one. "Mr. Registrar," he said, "call out these cases, beginning at the end." "Eh, my Lord," replied that functionary with a look of astonishment. "Begin at the end, sir," repeated the Chief Justice. "O'Regan against Rearden," the registrar called out; "O'Regan against Rearden," echoed the crier, and so on until they had called over four cases on the list. "No appearance," said the Chief Justice; "cross out those cases." The registrar bowed, and proceeded to call seven or eight others which, according to the calculation of parties interested, could not possibly have come on for hearing for a fortnight. "No appearance yet," said the Chief Justice, and another batch of cases were obliterated from the record. At last the registrar reached the first case in the list, when a response was made by the solicitor for the plaintiff. The case having been heard, Chief Justice Patterson thanked the jury for their attendance, and,

turning to the other judge of assize as he pointed to the large list of cases which had been so summarily disposed of, said: "Well, I think I have got through a vast deal of business to-day." Criminal cases have been as expeditiously disposed of as Chief Justice Patterson's list of circuit records. Mr. William Walker was Recorder of Dublin from 1795 till 1822. He was a great amateur farmer, and on one occasion he entered the court to discharge his judicial duties at an adjourned sessions and was horrified at hearing from the clerk of the peace that there were upwards of twenty larceny cases to be tried. "Oh," said he, "this is shocking. I have three acres of meadow cut, and I have no doubt that the haymaking will be neglected or mismanaged in my absence." In a few minutes he inquired in an undertone, "Is there any old offender on the calendar?" "Yes," was the reply; "there is one named Branagan, who has been twice convicted of ripping lead from roofs, and he is here now for a similar offence." "Send a turnkey to him," said the recorder, "with a hint that if he pleads guilty he will be likely to receive a light sentence." These directions were complied with, and the lead-stealer was put to the bar and arraigned. "Are you guilty or not guilty?" "Guilty, my Lord." "The sentence of the court is that you be imprisoned for three months. Remove him." Branagan retired delighted to find a short imprisonment substituted for the transportation he expected. As he passed through the dock he was eagerly interrogated by the other prisoners. "What have you got?" "Three months." "Only three months! His Lordship is in a good humour this morning." "Put forward another," said the recorder. The prisoners were rapidly arraigned and the same plea of "Guilty" marked in each case. Presently the calendar was exhausted. "Put the prisoners," said the recorder, "in front of the dock," and the men, who on having pleaded guilty had been put back, the sentences having been deferred, were mustered as the recorder directed. He then briefly addressed them: "The sentence of the court is that you and each of you be transported for seven years." Branagan had been thrown as a sprat and had

caught the other fish abundantly. The late Mr. Frank Thorpe Porter, an eminent Dublin police magistrate of the mid-Victorian period, in recording this anecdote, which had been communicated to him by the Clerk of the Crown, who was an eyewitness of the proceeding, adds humorously: "This incident might afford a useful, or perhaps it should be termed a convenient, suggestion to other judicial functionaries, especially on circuit, when there is a crowded dock."—*Law Times.*

CRIMINAL LAW.

Recognizances at Common Law.

The important question as to the power of a criminal court to require a defendant to find securities to keep the peace was raised again this week before the Court of Criminal Appeal in *Rex* v. *Trueman* (ante, p. 187). Sec. 5 of the Libel Act, 1843, enacts that "if any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine or imprisonment or both, as the court may award, such imprisonment not to exceed the term of one year." An appellant, convicted of publishing a defamatory libel, was sentenced to one year's imprisonment, and directed to find sureties to keep the peace for twelve months after the expiration of that sentence, and in default of his so doing was ordered to be imprisoned for twelve months. It is to be observed that the sentence of imprisonment was the maximum allowed by the section. It was contended on behalf of the appellant that there was no power to order him to find sureties in addition to the sentence of imprisonment, the failure to do which would entail another year's imprisonment, so that in effect the statutory limit of sentence might be exceeded. This contention did not prevail, for the court held that it was inherent in the court that it had power at common law to demand security for keeping the peace, in addition to awarding imprisonment. The power of the court in this respect was definitely settled in *Rex* v. *Hart*

(30 How. St. Tr. 1131). In that case, almost exactly analogous to the present case, upon a conviction for libel the defendant was awarded imprisonment and ordered to find security for his good behaviour, and the unanimous opinion of the judges was that the court could take that course in all cases of misdemeanour. It is true that in *Rex* v. *Hart,* the trial and conviction was in the King's Bench, but the principle was held to apply to a conviction and judgment at the Central Criminal Court in *Reg.* v. *Dunn* (12 Q.B. 1025). Both of those cases related to misdemeanours at the time punishable at common law only, whereas the indictment in question was under the statutory provisions of the Libel Act, 1843. That Act, however, does not appear to remove or qualify the common law power of the court to require sureties, so that the contention of the appellant was very properly held not to be well-founded.

The Suffragists' Trial.

The ruling above referred to has received the practical sanction of Mr. Justice Phillimore, who, on sentencing the defendants convicted on Tuesday last at the Old Bailey, in connection with the suffragist conspiracy, required them to enter into recognizances and find sureties as in the case which came before the Court of Criminal Appeal. The case was somewhat remarkable for the open avowal by the learned judge as to what his attitude would be, if consulted by the Home Secretary, in connection with the necessity of applying to the case of either prisoner the provisions of the recently passed Prisoners (Temporary Discharge for Ill-health) Act, 1913. One cannot but think that in the interest of public order and decency a good effect should be produced by the outspoken expressions of the learned judge, and the well-merited, although severe terms of the sentence imposed on the prisoners.

The Age for Whipping.

The curious and novel situation of a prisoner appealing for the substitution of a sentence of whipping in lieu of that of

imprisonment incidentally raised an ingenious, though unsuccessful, point of law before the Court of Criminal Appeal in *Rex* v. *Cawthron* (ante, p. 187). Under the proviso to sec. 4 of the Criminal Law Amendment Act, 1885, "in the case of an offender, whose age does not exceed sixteen years, the court may, instead of sentencing him to any term of imprisonment, order him to be whipped." Under sec. 123 of the Children Act, 1908, certain provisions are made for ascertaining the age of an alleged youthful offender, and such provisions apparently relate to the date when the charge is preferred. In the case in question the appellant, when under the age of sixteen had committed an offence under sec. 4 of the Criminal Law Amendment Act, 1885, but had passed that age when he was charged. The court was of opinion that there was no power to sentence him to whipping, inasmuch as the proviso quoted above referred to the age of the offender when charged. It was urged that the proviso applied to the age of the prisoner at the date when the offence was committed, and that this view was fortified by the fact that the Children Act, 1908, dealt with the age of the offender when charged. In view of the fact that, although in general, whipping cannot be awarded to offenders over the age of sixteen, the appellant's counsel was driven to admit that his argument involved the proposition that an offender under sixteen years of age at the date of the offence, if not apprehended until he was fifty years of age, might, on conviction, still be sentenced to whipping under the proviso to sec. 4, it is scarcely surprising that the Court of Criminal Appeal did not accede to the appellant's desire for the change of his sentence.—*Law Times.*

REVIEW OF CURRENT ENGLISH CASES.

PRACTICE — DISCOVERY — LIBEL — JUSTIFICATION — PARTICULARS OF JUSTIFICATION — FACTS RELIED ON IN SUPPORT OF JUSTIFICATION.

Wooton v. *Sievier* (1913) 3 K.B. 499. This was an action for libel. The plaintiff, an owner and trainer of racehorses, alleged in his statement of claim that the meaning of the libel complained of was that the plaintiff had been guilty of gross dishonesty in the training and running of horses, and particularly, that he had on several occasions conspired with other trainers and jockeys to defraud bookmakers and owners of racehorses and the public generally, for his own pecuniary gain. The defendant pleaded justification and under order delivered particulars ranging over a period of three years specifying a number of races, jockeys and horses, with the weights carried by them, and giving the names of certain trainers. Also numerous instances of races in which horses were said to have been "pulled" by their jockeys acting under the plaintiff's orders, with the result that other horses backed by the plaintiff had won. An application was made for further particulars, naming the bookmakers with whom the plaintiff was alleged to have backed the horses in question and the amounts of the bets respectively. This was refused by Bailhache, J. The plaintiff appealed. The Court of Appeal (Cozens-Hardy, M.R. and Kennedy, L.J.) allowed the appeal. Kennedy, L.J., who delivered the judgment of the Court, says that the following rules are established, viz.: In every case in which the defence raises an imputation of misconduct against the plaintiff, he ought to be enabled to go to trial with knowledge, not merely of the general case he has to meet, but also of the act which it is alleged he has committed, and upon which the defendant intends to rely as justifying the imputation. This rule is not limited to actions for libel, though it includes them. Further, as a general rule, it is now established that if the particulars are such as the defendant ought to give he cannot refuse to do so merely on the ground that his answer will disclose the names of persons he may intend to call as witnesses. The defendants were therefore ordered to deliver particulars of the "backing" by the plaintiff of horses mentioned in the particulars already delivered, specifying, where possible, in each case, the name or names of the person or persons with or through whom, and the time or times, and place or places, at which such "backing" took place.

PRACTICE—DISCOVERY—AFFIDAVIT OF DOCUMENTS—PRIVILEGE—DOCUMENTS COMING INTO EXISTENCE FOR PURPOSE OF LEGAL ADVISER AND TO ENABLE HIM TO CONDUCT DEFENCE.

In *Birmingham and M. & M. Omnibus Co.* v. *London and N.W. Ry.* (1913), 3 K.B. 850, a question of practice is dealt with. In an affidavit of documents, the defendant objected to produce certain documents as privileged, on the ground that they had come into existence after litigation was in contemplation, and in view of such litigation, and for the purpose of obtaining and furnishing for the defendant's solicitor evidence and information which could not be obtained otherwise, and to enable him to conduct the defence. The English Rules enable the court or judge to inspect documents, which are alleged to be privileged, and, after inspection of the documents in question, the documents were found to be privileged, and the Court of Appeal (Williams, and Buckley, L.JJ.) refused to order their production, and laid down that it is not necessary, in an affidavit claiming privilege on that ground for the deponent, to state that the documents were obtained "solely" or "merely" or "primarily" for the solicitor, it is enough that they were obtained for the solicitor, as materials upon which professional advice could be taken in proceedings pending, threatened, or anticipated.

SOLICITOR AND CLIENT—BILL OF COSTS—PARTY AND PARTY COSTS TAXED AND PAID—BILL FOR SOLICITOR AND CLIENT COSTS.

In re Osborne (1913) 3 K.B. 862. In this case the question was whether a bill of costs between solicitor and client should properly include the costs between party and party which had been taxed and paid. The Court of Appeal (Williams and Buckley, L.JJ.) held, affirming Channel, J., that it should.

ILLEGITIMATE CHILD—MAINTENANCE—PROOF OF PARENTAGE—CORROBORATIVE EVIDENCE—CONVICTION OF PUTATIVE FATHER—(1 GEO. V. c. 36, s. 2 (ONT.)).

Mash v. *Darley* (1914) 1 K.B. 1. This was an application against the putative father of an illegitimate child to compel him to pay for its maintenance. The English Act provides that on such application the uncorroborated evidence of the mother as to the parentage of the child is insufficient (see 1 Geo. V. c. 36, s. 2 (Ont.)). In corroboration of the mother's evidence, proof was given of the trial and conviction of the alleged father for

unlawfully and carnally knowing the mother of the child in the months of February and March, 1912, the child having been born in November, 1912, and it was held that this was sufficient corroboration.

LIQUOR LICENSE—PROHIBITED SALES—GUEST OF LODGER—USING LICENSED PREMISES FOR OBTAINING LIQUOR AFTER CLOSING HOURS—GUEST UNLAWFULLY ON LICENSED PREMISES—LICENSING ACT, 1910 (10 EDW. VII. AND 1 GEO. V. C. 24), S. 62(1)—(6 EDW. VII. C. 47, S. 13 (ONT.)).

Atkins v. *Agar* (1914) 1 K.B. 26. In this case a guest at a hotel invited a relative into the hotel after closing hours in order to have a drink and was supplied at the guest's request with intoxicating liquor at the expense of the lodger—and it was held by Ridley, Scrutton and Bailhache, JJ., that the relative in these circumstances was unlawfully on the premises for the purpose of obtaining liquor when the premises were required to be closed and might be properly convicted of a breach of the Licensing Act (10 Edw. VII. and 1 Geo. V. c. 24) s. 62(1)—(see 6 Edw. VII. c. 47, s. 13 (Ont.)).

JUSTICES—JURISDICTION — COURT CONSISTING OF STIPENDIARY MAGISTRATE AND ANOTHER JUSTICE OF THE PEACE—DIFFERENCE OF OPINION—STIPENDIARY MAGISTRATE ADJUDICATING ALONE—ACQUIESCENCE OF SECOND MAGISTRATE.

The King v. *Thomas* (1914) 1 K.B. 32. In this case the applicant was summoned before a court of summary jurisdiction for a contravention of the Pawnbrokers Act, 1872. The court consisted of the stipendiary magistrate for the district and another justice of the peace. After hearing the evidence the second justice told the stipendiary magistrate that he did not consider the evidence warranted a conviction. The stipendiary magistrate was of the contrary opinion and so informed the other justice and stated that he would take upon himself alone the burden of adjudicating the case, to which the second justice said, "Very well." The stipendiary magistrate then convicted and fined the applicant. On an application to compel the magistrate to state a case, the Divisional Court (Ridley, Scrutton and Bailhache, JJ.) held that as the case was one which the stipendiary magistrate had jurisdiction to decide himself, what took place amounted to a withdrawal by the second justice from taking any part in the decision, and that the conviction was valid. The motion therefore failed.

ACQUITTAL—QUASHING ACQUITTAL—COURT IMPROPERLY CONSTITUTED—"NEMO DEBET BIS VEXARI PRO EADEM CAUSA."

The King v. *Simpson* (1914) 1 K.B. 66. In this case the defendants had been acquitted of an alleged breach of the Coal Mines Regulation Act, which provided that in respect of offences under the Act "a person employed in a mine . . . shall not except with the consent of both parties to the case, act as a member of the Court." It appeared that one of the justices who tried the case was employed in a mine and sat without the consent of both parties, and that at the date of the trial the prosecutor was unaware of the disqualification. The object apparently of the motion was to enable the prosecutor to institute fresh proceedings, but the Divisional Court (Ridley, Scrutton, and Bailhache, JJ.) refused the application, holding that it is contrary to the usual practice of the court to quash an acquittal except perhaps where the proceedings can be said to be clearly coram non judice. In the present case the proceedings were voidable; but until voided, might have been enforced and the court was of the opinion that the defendants had therefore been in peril and that the maxim *nemo debet bis vexari pro eadem causa* was not to be lightly invaded and therefore the motion was refused.

EXTRADITION — HABEAS CORPUS — JURISDICTION — EVIDENCE — OMISSION TO PROVE ORDER IN COUNCIL.

The King v. *Governor of Brixton Prison* (1914), 1 K.B. 77. A police magistrate committed a fugitive criminal to prison with a view to his extradition to Italy. There was an order-in-council applying the Extradition Act, 1870 to Italy, but no formal proof of it was given, the magistrate being aware of its existence. The prisoner applied for discharge from custody on the ground that in the absence of proof of the order-in-council the magistrate had no jurisdiction to commit him; but the Divisional Court dismissed the motion, holding that the omission to give proof of the order-in-council, which contained nothing to assist the prisoner, did not invalidate the committal so as to entitle the prisoner to be discharged, as the order-in-council existed, and the magistrate had in fact jurisdiction to make the order.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.] [Nov. 10, 1913.

RICHELIEU ELECTION CASE.

Election law—Preliminary objections—Rule of court—Repeal —Inconsistency—Appeal—Jurisdiction — Objections not considered—Irregularity.

A rule made by the Superior Court judges in Quebec, under authority of the Dominion Controverted Elections Act of 1874, requiring notice of an election petition to be published by the returning officer in a French and in an English newspaper published in the electoral district is inconsistent with the provisions of section 16 of the Controverted Elections Act, R.S.C. (1906), c. 7, which requires publication in one newspaper only and has, therefore, ceased to have force.

Per Duff, and Brodeur, JJ.:—If the rule were still in force, failure of the returning officer to observe its requirements would not be a ground for dismissing the petition.

Per Davies, Duff, and Anglin, JJ.:—Where a petition is dismissed on one of several preliminary objections, the others not being considered, the respondent, on an appeal to the Supreme Court of Canada, may rely upon all the objections and is not confined to the one on which the judgment appealed from was based. Idington, J., contra. Fitzpatrick, C.J., and Brodeur, J., expressing no opinion.

Appeal allowed with costs.

E. A. D. Morgan, for appellant. *Belcourt*, K.C., for respondent.

Que.] WILKS *v.* MATTHEWS. [Dec. 23, 1913.

Insolvency—Payment by insolvent—Prejudice to creditors— Action by curator—Illegality—Art. 1927 *C.C.*

An action by the curator to an insolvent estate to recover back moneys paid by the insolvent immediately before the abandonment is not barred because the transaction, on account of which the money had been paid was so tainted with illegality

that the creditor himself could not have recovered it back by action. The creditor had deposited money with the insolvent on the promise of large profits. An exposure of the latter's methods having been published in the newspapers, and having other reasons for suspicion, the creditor, by urgent demands, obtained payment the day before the insolvent absconded.

Held, that the creditor must be deemed to have known that his debtor was insolvent at the time of the payment.

Appeal allowed with costs.

Atwater, K.C., and *Chauvin,* for appellant. *C. H. Stephens,* K.C., and *A. Maillot,* for respondent.

Bench and Bar

JUDICIAL APPOINTMENTS.

Hon. Ezekiel McLeod, a judge of the Appeal Division of the Supreme Court of New Brunswick to be Chief Justice thereof with the title of Chief Justice of New Brunswick, vice Sir Frederick E. Barker, retired. (Jan. 10.)

W. C. H. Grimmer, K.C., of St. Stephen, New Brunswick, to be a judge of the Appeal Division of the Supreme Court of New Brunswick, vice Mr. Justice McLeod. (Jan. 10.)

Hon. W. C. H. Grimmer, a judge of the Appeal Division of the Supreme Court of New Brunswick to be a judge of the Chancery Division of said court. (Jan. 14.)

Flotsam and Jetsam.

The following is a "chestnut," but may perhaps be helpful as a reminder to some judge who might be tempted to forget himself. The counsel was Scotch and the judge was English. The case concerned certain water rights, and the lawyer had frequently to use the word "water," which he pronounced very broad.

"Mr. So-and-So," at last interrupted the judge, "do you spell water with two t's in your country?"

"Na, na, my lord," retorted the lawyer, "but we spell manners wi' twa n's!"

A novel question was before the court in the Iowa case of *Kramer* v. *Ricksmeier*, 45 L.R.A. (N.S.) 928, which holds that no action lies for causing the relapse of a convalescent woman by calling her over the telephone during her husband's known absence, and with threatening and abusive language ordering her to take charge of her husband's cattle, which had escaped from their inclosure, under penalty of a threatened visit to her home to avenge the speaker of the assumed wrong inflicted by failure to keep the cattle inclosed.

This case is also authority for the proposition that abusing and threatening a woman over a telephone is not an assault.

A case was recently decided in Quebec by Judge Belleau (*Langlois* v. *Quebec & Lake St. John Ry. Co.*), which brought up an interesting question. The plaintiff sued for damages for being ejected from a train because he refused to surrender his ticket on account of not being provided with seating accommodation. In consequence of such refusal the conductor stopped the train shortly after it had left a station along the road and put the plaintiff off. The judge in rendering judgment said that the fact of the plaintiff remaining on the train and standing was an acknowledgment that he was prepared to proceed on the train, and therefore his ticket was collectable. He, however, gave plaintiff judgment for the sum of $10 and costs on account of the conductor putting him off between two stations, which was not justifiable.