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*MARRIAGE AND DIVORCE IN CANADA.**

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* The scope of this article, prepared by Fraser Raney, M.A., LL.B., Barrister, with an introduction by W. E. Raney, K.C., appears by the following summary. Part I. appeared in the first issue; parts II and III were given in issue of April 1, and the remainder appears in this number.

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PART IV.

1. DIVORCE TRIBUNALS AND THE GROUNDS UPON WHICH DIVORCE IS GRANTED.

Divorce in its widest meaning includes both a total dissolution of the marriage bond and a partial suspension of the marriage relation. The former, or divorce *a vinculo matrimonii*, is the popular meaning of the word. The latter, or divorce *a mensa et thoro*, is usually called judicial separation. The word divorce will here be used in the first-mentioned sense alone.

There is a fundamental difference between divorce and a

proceeding for a declaration of the invalidity of the marriage contract. The first assumes what the second denies, namely, the existence of the marriage status. The distinction is especially important in the Province of Quebec, and from the point of view of the Roman Catholic Church, which sets its face steadily against divorce, but tolerates and is sometimes said to encourage proceedings for a judicial declaration. Thus the Church has frequently countenanced suits to annul marriage where, the parties or one of them being a Roman Catholic, the ceremony was not performed by a priest of the Roman Church.

As a general rule, throughout the Dominion, the Court or tribunal which has authority to decide questions relating to divorce has also jurisdiction to declare a marriage to be null—and no other. Notwithstanding its undoubted power to declare a marriage to be void, the Dominion Parliament discourages applications of this nature, and has only exercised its authority in this respect on two or three occasions.

In England, prior to 1858, Parliamentary divorce was the only available method of obtaining the dissolution of the marriage bond. The Ecclesiastical Courts could only give relief by separation. To bring divorce within the reach of others than the wealthy classes, a Court of Divorce and Matrimonial Causes was established in 1858. Later, by the Judicature Act, the jurisdiction of this Court was vested in the High Court of Justice, and administered by the Probate and Divorce Division. The jurisdiction of this Court includes (1) the dissolution of marriage, (2) the right to decide upon the nullity of marriage, (3) judicial separation, (4) the restitution of conjugal rights, (5) alimony, and (6) the custody of children.[71]

According to the statute law of England, a divorce can be granted for (1) the adultery of the wife, or (2), in the case of the husband, incestuous adultery, bigamy with adultery, rape, adultery with cruelty, or cruelty accompanied by desertion. A decree of nullity may be pronounced for (1) impotence, (2) the

71. Imperial Statutes, 20 & 21 Vict. ch. 85, sec. 6; 36 & 37 Vict. ch. 66, sec. 31.

breach of a statute directing certain forms of marriage, (3) bigamy. Judicial separation will be granted for adultery, unnatural practices, cruelty, or desertion for two years and upwards. This is the law which is applicable in British Columbia, and possibly in the Prairie Provinces and the North-West Territories.

2. Divorce by Act of Parliament.

Parliamentary divorce, or divorce by private Act of the Dominion Parliament, is the only form of divorce available for citizens of Ontario and Quebec, and in practice for Alberta, Saskatchewan, Manitoba, and the North-West Territories. Bills of divorce were formerly granted by the Dominion Parliament upon the same evidence and for the same causes as are required by the Courts in England having jurisdiction in matrimonial causes. The practice of the Senate, however, has relaxed the requirements imposed by the English statute upon wives applying for divorce. Adultery of the husband is held sufficient grounds for relief without the additional requirements laid down by the English statute. On the other hand, the Senate will not grant divorce for any less cause than adultery, and has not encouraged applications for nullifying marriages or for judicial separation.

3. Divorce by Provincial Courts.

(1) *Nova Scotia.*—The Court for Divorce and Matrimonial Causes has power to declare any marriage null and void for impotence, adultery, cruelty, or marriage with kindred within the prohibited degree. The Court, on dissolving the marriage, may order the husband to pay alimony. Its powers as to maintenance of children are the same as those of the English Court. It has, moreover, by statute, all the powers of the English Divorce Court.

(2) *New Brunswick.*—The Court of Divorce and Matrimonial Causes, as established by provincial statute of 1860, has power to dissolve marriage on the ground of impotence, adultery, or marriage with kindred within the prohibited degrees, provided that in case of adultery the issue of such marriage shall not in any way be prejudiced, and provided that, unless decreed to the

contrary, the wife shall not be barred of dower, nor the husband of tenancy by the curtesy.[72]

(3) *Prince Edward Island.*—A Court for hearing all suits concerning marriage and divorce was established in 1835, with power to dissolve marriage on the ground of impotence, adultery, or consanguinity within the prohibited degrees. Such a decree of divorce does not render the issue illegitimate, nor does it bar dower or curtesy unless expressly so adjudged.[73] It is noteworthy that no divorce has been granted by a Prince Edward Island Court since Confederation, nor was there any for many years prior thereto.

(4) *British Columbia.*—Under the Ordinance of 1867,[74] the Supreme Court of British Columbia was given jurisdiction to give the relief and exercise the powers conferred by the Imperial Act of 1858. By this Act judicial separation may be granted to either party on the ground of adultery, cruelty, or desertion without cause for two years and upwards, but divorce may only be granted on the ground of adultery.

(5) *Ontario* has no Divorce Court and no Court having jurisdiction to annul a marriage, except possibly for want of consent of parents under the Act of 1907 already referred to, but the constitutionality of which is doubtful. Alimony is in the jurisdiction of the Supreme Court of the Province.

(6) *Manitoba, Alberta, Saskatchewan, and the North-West Territory* have, as already stated, no legislation on the subject of divorce, and no Divorce Courts. It has not been judicially determined whether the Supreme Courts of these Provinces have jurisdiction over marriage and divorce.

(7) *Quebec* has no Divorce Court.

4. Procedure.

Divorce procedure in the various provincial Divorce Courts follows closely the procedure of the English Divorce Court.

72. Revised Statutes of New Brunswick (1903) ch. 115.

73. Statutes of Prince Edward Island (1835), 5 Wm. IV. ch. 10.

74. Embodied in Revised Statutes of British Columbia (1911) ch. 75; and see *Watts* v. *Watts* (1908) Appeal Cases, p. 573.

The procedure with regard to parliamentary divorce is exceptional, and deserves special mention. Generally speaking, the rules or orders of the Senate govern, but if there is no rule applicable then recourse will be had to the rules governing the conduct of the English House of Lords sitting as a Court of Appeal. The Senate sits as a quasi-judicial and legislative body, and is not bound by any body of law or precedents. Divorce bills originate in the Senate by usage only; they could also originate in the House of Commons.

Proceedings to obtain a parliamentary divorce are commenced by petition to the Governor-General, Senate, and House of Commons. This petition, which becomes the preamble of the bill for divorce, must state the facts relied upon to obtain relief. The petition is deposited with the Senate not less than eight days before the opening of Parliament, together with a fee of $200 and a sufficient additional sum to cover the cost of printing the bill. Six months' notice of the application for divorce is required, the publication to be in the *Canada Gazette* and in two newspapers where the respondent resides. There must also be proof of service of a copy of the *Gazette* on the respondent.

A typical bill of divorce consists of a preamble and three enacting clauses, the first dissolving the marriage, the second allowing the petitioner to marry again, and the third giving the issue of the second marriage the same rights as if the first marriage had never been solemnized. On the second reading, the rule requires that the petitioner attend before the Senate to give evidence. This rule is, however, in practice, suspended, and the evidence is taken by a select committee of nine senators. The ordinary rules of evidence are followed in proceedings before this committee. If a witness fails to attend, he may be taken into custody by the Usher of the Black Rod. If the evidence is sufficient, the bill is read a third time, passed, and is sent to the House of Commons, where it goes through the ordinary procedure of a private bill, and may, of course, be rejected. Until 1879 these bills were reserved for her Majesty's pleasure, but since then that practice has been discontinued.

Collusion or connivance between the petitioner and the re-

spondent will prevent the petitioner obtaining relief. If the wife has no means to defend the action, the husband will be required to advance a proper sum for this purpose.

The ground for seeking divorce was adultery in every case, additional reasons being alleged in some of the cases.

The following table indicates how the divorces granted at Ottawa for eight years, ending with 1914, were distributed, by Provinces:—

	1907.	1908.	1909.	1910.	1911.	1912.	1913.	1914.	Total for 8 Years.
Ontario.....	3	8	8	14	12	9	21	18	 93
Quebec.....	1	0	3	2	5	3	4	7	 25
Manitoba.....	1	0	2	2	3	1	5	2	 16
Saskatchewan.	0	0	1	2	0	1	1	2	 7
Alberta.....	0	0	1	0	2	2	4	4	 13
P.E.I.....	0	0	0	0	0	0	1	0	 1

5. Foreign Marriage.

The question of the validity of a foreign marriage or divorce may arise, either directly in the provincial Courts in Canada which have jurisdiction to annul marriages, or collaterally in the ordinary Courts of civil or criminal jurisdiction, as, for instance, on a question of inheritance or title to real property or on a charge of bigamy. Whenever such a question arises, whether directly or collaterally, the domicile of the parties at the time of the marriage or divorce, as the case may be, is likely to be an important question. Upon the decision of this question of domicile will depend, in the case of a marriage, the body of law which is to

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Note.—Table of divorces granted by the Dominion Parliament since Confederation:—

1868	1	1890	2	1903	7
1869	1	1891	4	1904	6
1873	1	1892	5	1905	9
1875	1	1893	7	1906	14
1877	3	1894	6	1907	5
1878	3	1895	3	1908	8
1879	1	1896	1	1909	16
1884		1897	1	1910	19
1885	5	1898	3	1911	22
1886	1	1899	4	1912	14
1887	5	1900	5	1913	35
1888	3	1901	2	1914	33
1889	4	1902	2		
Total.....					263

determine the property rights of the parties,[75] and in the case of an alleged divorce the validity of the decree.

Domicile being thus important, it is desirable to have a clear understanding of the meaning of the word.

In a leading case Lord Westbury describes domicile as "A conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. There must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness; and it must be residence fixed, not for a limited period or particular purpose, but general and indefinite in its future contemplation."[76]

The domicile of a married woman is the same as and changes with every change of the domicile of her husband, even though she resides apart from him, except for the purpose of procuring divorce.[77]

The validity of a foreign marriage is decided by Canadian Courts according to the law of England—which on this subject is also the law of Canada. A foreign marriage is valid when—

1. Each of the parties has, according to the law of his or her respective domicile, *the capacity* to marry the other, and

2. Either of the following conditions as to the *form* of celebration is complied with: (*a*) The marriage is celebrated in accordance with the local form; or (*b*) the marriage is celebrated in accordance with the requirements of the English common law in a country where the use of the local form is impossible.[78]

6. Dissolution of Marriage.

(1) Canadian Divorce Courts have no jurisdiction to entertain proceedings for the dissolution of the marriage of parties not

75. *De Nichols* v. *Curlier* (1900) Appeal Cases, p. 21.

76. *Udney* v. *Udney* (1869) Law Reports, House of Lords (Scotch), p. 441.

77. *Harvey* v. *Farnie* (1882) 8 Appeal Cases, p. 43, at pp. 50 & 51; *Dolphen* v. *Robins* (1859) 7 House of Lords Reports, p. 390.

78. *The King* v. *Brampton* (1808) 10 East's Reports, p. 282.

domiciled within their respective Provinces at the commencement of the proceedings,[79] except where a husband domiciled in the Province deserts his wife and removes from the Province, and she continues to live in the Province. In such a case the Court may on petition grant her a divorce.[80] On the other a Canadian Divorce Court has jurisdiction to entertain a suit to declare a marriage to be null and void if it was celebrated within its jurisdiction. It may also entertain a suit for judicial separation or for the restitution of conjugal rights when both the parties thereto are at the commencement of the suit resident within its jurisdiction although this residence may not amount to domicile.[81]

(2) With regard to the dissolution of a Canadian marriage by the Courts of a foreign country, the law is that the Courts of such a foreign country have jurisdiction to dissolve the marriage of persons domiciled there in good faith at the commencement of the proceedings for divorce. This rule applies alike to Canadian and to foreign marriages.[82] A foreign divorce, therefore, if pronounced by a competent Court of a country where the parties to a marriage performed in Canada were (in good faith) domiciled at the time of the divorce proceedings, will dissolve such marriage and be held valid in Canada.[83] This rule is equally applicable to foreign divorces granted for causes not recognized in Canada, if proper domicile is established.[84]

In the Ash Case (1887) it was stated that under no circumstances would the Canadian Parliament recognize a divorce granted by a United States Court in a case where the parties were married in Canada.[85] But the evidence in the *Ash Case* did not establish a *bonâ fide* domicile within the jurisdiction of the Court which granted the divorce, and this broad statement was therefore

79. Prof. A. V. Dicey, "The Conflict of Laws" (1908), 2nd ed., at p. 256.

80. *Armytage* v. *Armytage* (1898) Probate Reports, p. 178.

81. Dicey, *supra*, at p. 265.

82. Dicey, *supra*, at p. 381.

83. *Scott* v. *The Attorney-General* (1886) 11 Probate Division Reports, p. 128.

84. *Harvey* v. *Farnie* (1882) 8 Appeal Cases, p. 43.

85. See Gemmill, "Practice of the Senate as to Divorce" (1889), at p. 27.

unnecessary to the decision of the case. At all events, and whatever the Parliament of Canada might do there is no doubt that Canadian Courts of justice will recognize a foreign decree of divorce if regularly granted by a Court of competent jurisdiction.

PART V.

Rights and Obligations of Parents and Children.

(1) *General Statement.*—By the common law of England the father has the right to the custody of his infant children as against third parties, and even as against the mother and though the child be an infant at the breast. The ante-nuptial contract of a father to give over the control of the children of the intended marriage to their mother is deemed to be against public policy, and will not be enforced by the Courts, although upon separation such an agreement is perfectly valid. During the lifetime of the father a mother has at common law no legal authority; but on the death of the father, without having appointed a guardian, she is entitled to the custody of her infant children. Where the father has by will appointed a guardian, the mother has, by the common law, no right to interfere with him.

At common law the control of the parent (father or mother) lasts, under ordinary circumstances, until, and in all cases ends, when the child attains the age of twenty-one or marries under that age. Parents cannot at common law enter into legally binding agreements to deprive themselves of the custody and control of their children. If, however, as a matter of fact, parents do put their children into the control of others, they will not be permitted, at the hazard of injuring the children, to take them back into their own custody. The interest of the children is the sole guide to the Court in such a case.[86]

The obligation to maintain children is enforced by the Criminal Code. "Everyone who, as parent or guardian or head of a family, is under a legal duty to provide necessaries for any child under the age of sixteen years, is criminally responsible for omit-

86. Eversley, "Domestic Relations," 2nd ed., at p. 493 *et seq.*

ting, without lawful excuse, to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused, or if his life is endangered, or his health is, or is likely to be, permanently injured by such omission."[87] An amendment passed in 1913[88] provides that if a parent so neglects his children, when destitute or in necessitous circumstances, he shall be liable to a fine of $500 or to one year's imprisonment or to both. It is also an indictable offence, punishable by three years' imprisonment, to abandon any child under the age of two years whereby its life is endangered or its health is permanently injured.[89]

At common law a parent is not liable for necessaries supplied to his children apart from agreement, express or implied. The same is true of the support of a parent by his child.

The common law of England, as above outlined, is in force in Canada unless changed by the statutes of the various Provinces. The changes which have been made are, however, important. Thus, in Ontario the Supreme Court or the Surrogate Court has general authority to make orders as to the custody of children and the right of access of either parent, having regard to the welfare of the children and to the conduct of the parents, and "to the wishes as well of the mother as of the father."[90]

All the English-speaking Provinces and the Territories have very similar statutes. In the Yukon and the North-West Territories the Court may give the mother the custody of the child, but only if the child is under twelve years of age. In 1913, British Columbia enacted a provision similar to that of Ontario. Prior to that year the Court could only give the mother the custody of her child if the child was under the age of seven.[91]

87. Revised Statutes of Canada (1906) ch. 146, sec. 242.

88. Statutes of Canada, 3 & 4 Geo. V. ch. 13, sec. 14.

89. Revised Statutes of Canada (1906) ch. 146, sec. 245.

90. Revised Statutes of Ontario (1914) ch. 153, sec. 2, sub-sec. 1.

91. Statutes of British Columbia (1913) ch. 31, sec. 4, sub-sec. 9; Statutes of Alberta (1913) ch. 13, sec. 2; Statutes of Manitoba (1913) ch. 94, sec. 32; Revised Statutes of New Brunswick (1903) ch. 112, sec. 196; Revised Statutes of Nova Scotia (1900) ch. 121; Consolidated Ordinances of the Yukon (1902) sec. 582; Consolidated Ordinances of the Northwest Territories (1905) sec. 574.

(2) *Adoption.*—The only Province which has attempted comprehensive legislation dealing with adoption is Nova Scotia. The Nova Scotia statute provides that a child may be adopted by any person over twenty-one years of age upon petition to the Court and upon proving the consent of the child and its parents, or mother only if the child be illegitimate. The Court must be satisfied as to the petitioner's ability to maintain the child. Under this statute an adopted child has the same rights of succession in case of death of the guardian intestate that he would have if he were the legitimate child of the guardian. Alberta gives its Courts jurisdiction to sanction the adoption of infants, but goes no further.[92]

(3) *Children of Divorcees.*—The jurisdiction of the English Divorce Court as to the custody of children is entirely statutory. The English Matrimonial Causes Act, 1857, gives the Court jurisdiction to provide for the custody, maintenance and education of the children of divorcees. Although the interests of the parents will be taken into consideration, the chief aim is to do what is best for the children. As a general rule the innocent party has a *primâ facie* right to the custody of children after a final decree of divorce.

The British Columbia, New Brunswick, Nova Scotia and Prince Edward Island statutes dealing with divorce and matrimonial causes do not vary substantially from those of the English Act.[93]

(4) *Children Born Out of Wedlock.*—According to the common law of England legitimacy is a status arising from the fact of birth within lawful wedlock or within a reasonable time after its dissolution.[94] Illegitimate children are, according to the strict interpretation of the common law, strangers, so far as the rights of the child are concerned, to those who have brought them into being. Statute law has qualified this by imposing

92. Revised Statutes of Nova Scotia (1900) ch. 122, as amended by Statute of Nova Scotia (1901) ch. 47; Statutes of Alberta (1913) ch. 13, sec. 27.

93. Revised Statutes of British Columbia (1913) ch. 67, sec. 20; Revised Statutes of Nova Scotia, 3rd Series, ch. 126.

94. Eversley, *supra*, at p. 475.

obligations for their support and maintenance upon their parents. Upon legitimacy depend the child's right of inheritance, of bearing the father's name, of kinship and of family ties, and the right to be maintained, educated and protected. At common law the mother has the primary right to the custody of an illegitimate child. The liability of the putative father to maintain his illegitimate child is statutory.

Two outstanding methods of providing for the maintenance of illegitimate children have been adopted by provincial statutes. Ontario permits any person furnishing clothing, lodging or other necessities to a child born out of wedlock and not living with its reputed father to recover against him for the same. Where the mother sues, corroborative evidence that the defendant is the father of the child is necessary. In either case, in order to maintain an action, an affidavit of affiliation must be made voluntarily by the mother and deposited with the clerk of the peace of the county or city in which she resides, either while she is pregnant or within six months after the birth of the child. British Columbia and the North-West Territories have similar statutes.[95]

The Nova Scotia law may be taken as typical of the second method of dealing with the subject. The Nova Scotia Act is divided into two parts. The first deals with proceedings which may be taken to indemnify the municipality against payment for the support of illegitimate children. At the instance of the mother, or of a ratepayer, an information is sworn out alleging that a certain man is the child's father. If the man admits the charge he is required to give a bond for $150 for the mother's medical expenses and the child's future maintenance. If he does not admit the charge he and the mother are brought before the County Judge. Evidence is taken, and if the charge is established a lump sum in payment of expenses may be assessed, not to be less than $80 or more than $150.

A putative father is rendered liable, by the second part of the Act, for the medical attendance and care of the mother for three

95. Revised Statutes of Ontario (1914) ch. 154; Revised Statutes of British Columbia (1911) ch. 107; Consolidated Ordinances of the North-west Territories (1905), including Statute of 1903, ch. 29, secs. 1-3.

months after the child's birth, and for the child's maintenance and education until it is fifteen years of age. Action may be brought as for a debt, but no order for future maintenance will be granted awarding more than $1 per week. The weekly payment of maintenance may be enforced by execution.

New Brunswick, Manitoba and Saskatchewan have statutes similar to that of Nova Scotia.

In New Brunswick the consent of one of the overseers of the parish is necessary before a warrant for the arrest of the father can be issued. The limit of the allowance for maintenance in New Brunswick is 70 cents per week until the child is seven years old. In Saskatchewan the Judge may order a payment for maintenance, education and expenses of birth not to exceed $5 per week, until the child reaches the age of thirteen. Saskatchewan also requires that an affidavit of affiliation be filed before action can be brought for necessaries supplied to an illegitimate child.[96]

The law of Quebec as to parent and child, being fundamentally different from the law of the English-speaking Provinces, is treated separately.

A child remains subject to parental authority until his majority, that is to say, until he is twenty-one years of age, or until his emancipation, but the father alone exercises this authority during his lifetime.[97] A father is by law entitled to the custody and guardianship of his children, and cannot be deprived of his minor child, except for insanity or gross misconduct; nor can he deprive himself of his paternal right; and any contract to the contrary cannot bind him, as it is immoral in the eye of the law.[98] As a general rule, where a minor is brought before the Court by *habeas corpus*, if he be of an age to exercise a choice, the Court leaves him to elect as to the custody in which he will be.[99] The mother has an absolute right to the charge of a child until it is twelve

96. Revised Statutes of Nova Scotia (1900) ch. 51; Revised Statutes of New Brunswick (1903) ch. 182; Statutes of Saskatchewan (1912) ch. 39; Revised Statutes of Manitoba (1906) ch. 92.

97. Civil Code of Quebec, Arts. 243 & 246.

98. *Barlow* v. *Kennedy* (1871) 17 Lower Canada Jurist, p. 253.

99. *Regina* v. *Hull* (1877) 3 Quebec Law Reports, p. 136.

years old (the father being dead), unless it is established that she is disqualified by misconduct, or is unable to provide for the child.[100]

An unemancipated minor cannot leave his father's house without his permission.[101] Emancipation only modifies the condition of the minor; it does not put an end to the minority, nor does it confer all the rights resulting from majority. Every minor is of right emancipated by marriage.[102] A tutor (or guardian) for an infant may be appointed by a competent Court on the advice of a family council. The family council must consist of at least seven near relations, who must be males over twenty-one years of age.[103]

Quebec is the only Province in Canada where children born out of wedlock are legitimated by the subsequent marriage of their father and mother.[104] An illegitimate child has a right to establish judicially his claim of paternity or maternity, and, upon the forced or voluntary acknowledgment by his father or mother of him as their illegitimate child, he has the right to demand maintenance from each of them, according to their circumstances.[105]

ATTEMPT TO COMMIT A CRIME.

The perplexing question of the meaning of "attempt to commit a crime" has once again claimed the attention of the Court of Criminal Appeal. It is sometimes supposed that the principle of the established definitions of "attempt" is clear, and that it is only its application, which must depend upon the circumstances of each individual case, that causes all the difficulty. It is doubtful, however, whether there is any very clear principle. Over and over again counsel cite the definition in Stephen: "An act done

100. *Ex parte Ham* (1883), 27 Lower Canada Jurist, p. 127.
101. Civil Code of Quebec, Art. 244.
102. *ib.* Arts. 247, 248 & 314.
103. *ib.* Arts. 249, 251 & 252.
104. *ib.* Art. 237.
105. *ib.* Arts. 240 & 241.

with intent to commit the crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted." This definition was approved in *Rex* v. *Laitwood* (4 Crim. App. Rep. 248), and recently was again cited by the Crown. But obviously it tells us nothing. For assuming any series to be divisible into preparation, attempt, and accomplishment, the real difficulty is to determine exactly at what point in the series the interruption demarcates an attempt from mere preparation. Stephen's definition, as has been said before, would not prevent a conviction for forgery of one who purchased a bottle of ink and some paper.

The circumstances in *Rex* v. *Robinson*, the case before the Court of Criminal Appeal, were these: The appellant conceived a fraudulent scheme to make good his trade losses by first insuring at Lloyd's, and then pretending that robbers had broken into his premises, tied him up, and robbed him. A police officer, hearing his cries, broke in and found him partly tied up. The appellant had made no claim on the underwriters, and the police, dissatisfied with his story, had made a search and found the jewels alleged to have been stolen. The Court held that all this amounted to no more than preparation, and that there was no evidence of an attempt to obtain money by false pretences.

The Lord Chief Justice appears to have been pressed by the fact that the appellant had made no claim on the underwriters, and had taken no steps to communicate with them with the object of making a statement as to the "burglary"; and he alluded to the principle as stated by Baron Parke in *Re.* v. *Eagleton* (6 Cox C.C. 559)—viz., "acts remotely leading to the commission of the offence are not to be considered as attempts to commit it but acts immediately connected with it are." Neither this principle nor its application is clear. What is wanted is a test of the necessary degree of approximation towards commission. Mr. Justice Bray intimated in the recent case that the Crown was attempting to go further than in any previous case; but at least it can be said that the appellant had proceeded very much further than to commit a merely equivocat act or series of acts. The impress of his fraudulent intention was clearly stamped on

his acts. The fact that he had made no communication to Lloyd's, having been interrupted before he had reached the stage at which it would have been natural to make such communication, seems immaterial; for, had he gone as far as that, the crime would, it is submitted, have been practically complete. There would have remained nothing essential on his part to do, except, in the event of suspicion, to reiterate his claim. In every case, of course, if matters go no further than "preparation," there is still a *locus pœnitentiæ*.

But the difficulty is to say in any case when it is too late to repent, and there is no case that really affords a satisfactory principle. It has been suggested, on the analogy of the definition in the German Civil Code, that an attempt is the "commencement of the execution of a crime," or, in other words, forms a constituent part of the complete crime. Professor Salmond acutely suggests that the solution may be whether the act is itself evidence of the criminal intent with which it is done: "A criminal attempt bears criminal intent upon its face. *Res ipsa loquitur*." Mr. Justice Wightman goes very near this suggestion in *Roberts'* case (Dears. C.C. 539): "An act immediately connected with the commission of the offence, and in truth a person could have no other object than to commit the offence." But Professor Salmond's seems to be too severe and too objective a test. No Court has yet gone to the length of suggesting that the "attempt" should have criminality clearly and objectively stamped on its face. There is no doubt that the Court of Criminal Appeal were right in quashing the conviction in *Robinson's* case, because, even if the police officer had gone away satisfied with the appellant's story, the latter might still have hesitated to "fish in the swim so ingeniously baited by him."

But, applying Mr. Justice Wightman's principle, it is clear that the appellant could have had no other object than to defraud the underwriters, though, objectively regarded, his acts might, on the mere face of them, be susceptible of an innocent construction. A really satisfactory principle still remains to be enunciated.—*Law Times*

REVIEW OF CURRENT ENGLISH CASES.

RAILWAY—POWERS OF BOARD OF RAILWAY COMMISSIONERS—ORDER AUTHORIZING BRIDGES—COST OF WORK—ORDER AGAINST PROVINCIAL RAILWAY—ULTRA VIRES—RAILWAY ACT (R.S.C. c. 37), ss. 59, 237, 238—B.N.A. ACT (30 VICT. c. 3), s. 92 (10).

British Columbia Electric Ry. v. *Vancouver, Victoria and Eastern Ry.* (1914) A.C. 1067. This was an appeal from the Supreme Court of Canada affirming an order of the Board of Railway Commissioners. This order had been made in the following circumstances. The city of Vancouver desired to alter the grade of four streets in the city which were crossed by the tracks of a railway under Dominion control, and on two of which streets a railway under provincial control operated a street railway, and the city applied to the Dominion Board of Railway Commissioners for authority to carry the streets over the Dominion railway tracks on bridges. The Board authorized the work to be done, and ordered that a part of the cost should be borne by the railway under provincial control, on the ground that that company would be benefited by the alteration. The Judicial Committee of the Privy Council (Lords Moulton, Parker, and Sumner, and Sir. Geo. Farewell) held, reversing the Supreme Court of Canada, that the Board of Railway Commissioners had no power in the circumstances to make such an order against the railway under provincial control. Their Lordships point out that the application was made by the city against the railway under Dominion control. No relief was asked as against the tramway company, which was notified merely that it might see that its rights were not interfered with, but that company was not asking any privilege, so that its presence did not give the Board any jurisdiction to make the order against it. Their Lordships held that the fundamental error of the Railway Commissioners was that they considered that the fact that the tramway company would be benefited by the works gave them jurisdiction to order them to pay part of the cost; but their Lordships say there is nothing in the Railway Act which gives any such jurisdiction.

PRINCIPAL AND AGENT—SALE OF GOODS—DEL CREDERE COMMISSION—NON-PERFORMANCE OF CONTRACT BY BUYER—SOLVENCY OF BUYER—LIABILITY OF BROKER.

Gabriel v. *Churchill* (1914) 3 K.B. 1272. This was an appeal from the decision of Pickford, J. (1914) 1 K.B. 449 (noted *ante* vol. 50, p. 261). It may be remembered that the point involved is the nature and extent of the liability of agents selling on a *del credere* commission. The buyers were perfectly solvent, but a dispute arose between them and the sellers as to the performance of the contract by the sellers, and the buyers refused to pay the balance claimed, whereupon the sellers brought the present action against the agents, claiming that in default of payment by the buyers the agents were liable as principals. Pickford, J., decided that the defendants were only liable for any ascertained debt due in respect of the goods sold on default of payment by the buyers, and that in the present case the debt had not yet been ascertained. The Court of Appeal (Buckley, Kennedy and Phillimore, L.JJ.) affirmed his decision.

CRIMINAL LAW—BRIBERY—CONSPIRACY—PUBLIC OFFICER—COLONEL OF REGIMENT ACCEPTING BRIBES FROM CATERERS FOR CANTEEN.

The King v. *Whitaker* (1914) 3 K.B. 1283 is a kind of case which happily does not often occur, it being a prosecution against a colonel of a regiment for accepting bribes from a mercantile firm competing for the custom of the regimental canteen. The accused was found guilty. The evidence shewed that he had received cheques from time to time for shewing favours to a mercantile firm who competed for the right to supply the regimental canteen of his own regiment, and also for recommending that firm to other regiments. The defendant appealed from the conviction, but the Court of Criminal Appeal (Lawrence, Lush and Atkin, JJ.) held that he had been rightly convicted; that the offence was a misdemeanour at common law for a ministerial public officer, which the defendant was held to be, to receive, or conspire with others that he should receive, bribes to influence him in the discharge of his public duty. The appeal was therefore dismissed.

VENDOR AND PURCHASER—BUILDING SCHEME—RESTRICTIVE COVENANT—CONSTRUCTION—POWER TO "VENDOR" TO VARY—SUBSEQUENT SALES SUBJECT TO STIPULATIONS IN ORIGINAL DEED—"VENDOR"—RELEASE OF STIPULATIONS BY ORIGINAL VENDOR.

Mayner v. *Payne* (1914) 2 Ch. 555. A somewhat novel point

of construction was involved in this case. Land, the subject of a building scheme, was sold to the plaintiff subject to a restrictive covenant as to building, but which covenant was subject to a proviso that the "vendor" might vary the stipulations. Part of the land sold to the plaintiff he re-sold to the defendant's predecessor in title, and the conveyances contained a schedule of the various stipulations in the conveyance from the original owner to the plaintiff, including the proviso that they might be altered by the "vendor." The plaintiff's vendor had for valuable consideration waived some of the stipulations in favour of the defendant, and the question was whether the "vendor" referred to in the restrictive covenant in the defendant's deed was the plaintiff or the plaintiff's vendor. Neville, J., held that on the true construction of the covenant the "vendor" who might vary the stipulations was the plaintiff's vendor and not the plaintiff himself.

COPYRIGHT—INFRINGEMENT OF COPYRIGHT—OFFER BEFORE ACTION TO DESIST FROM INFRINGEMENT—INJUNCTION—COSTS.

Savory v. *World of Golf* (1913) 2 Ch. 566. This was an action to restrain the infringement of the plaintiff's copyright. Before action the defendants offered to discontinue the infringement and pay damages which might be agreed on; the plaintiffs, nevertheless, instituted the action, and claimed an injunction. Neville, J., held that notwithstanding the offer to discontinue the infringement before action the plaintiffs had a right to an order of the Court restraining the infringement. But he held that if such an offer is made after action, accompanied by an offer to submit to an order and pay the costs to date, the plaintiffs may be deprived of any subsequent costs.

WILL—CONSTRUCTION—GIFT TO "MY COUSINS AND HALF COUSINS."

In re Chester, Servant v. *Hills* (1914) 2 Ch. 580. By the will in question in this case the testatrix left property in trust for "my cousins and half cousins," and the question presented for adjudication was, who were meant by the term "half cousins." Sargant, J., accepting the definition given in Murray's Dictionary, determined that "half cousins" meant "second cousins," and he rejected the suggestion that any local signification could be attached to the term. He therefore held that first cousins, first cousins once removed, and second cousins, took under the gift.

POWER OF APPOINTMENT—APPOINTMENT TO OBJECT OF POWER, COUPLED WITH CONDITION THAT THE APPOINTOR SHOULD PAY ANNUITIES TO PERSONS NOT OBJECTS—VALIDITY OF APPOINTMENT FREE FROM CONDITIONS.

In re Holland, Holland v. *Clapton* (1914) 2 Ch. 595. The validity of the exercise of a power of appointment was in question in this case. By the will of her father a lady had power by will or codicil to appoint the whole or any part of the income of a fund yielding about £600 or £700 per annum to her husband for life. By her will she appointed the whole fund to him for his absolute use, provided he should acquiesce in her testamentary dispositions and so long as he should pay to her three nieces £100 a year each, these nieces being also under the will some of the residuary legatees of the testatrix. It was contended that the whole appointment was bad, as being an attempt on the part of the appointor to benefit persons who were not objects of the power. But Sargant, J., was of the opinion that the testatrix had a genuine desire to benefit her husband, and that the appointment in his favour was good, but that the condition annexed was invalid.

RESTRAINT OF TRADE—COVENANT—REASONABLE PROTECTION OF COVENANTEE — SEVERABILITY OF COVENANT — PROCURING BREACH OF COVENANT—DAMAGES.

Goldsoll v. *Goldman* (1914) 2 Ch. 603. This was an action to restrain the breach of a covenant in restraint of trade. The facts were that Goldsoll had carried on a business in imitation jewellery in London under the name of Tecla, and Goldman was principally interested in a company named Terisa, which carried on a like business in the same neighbourhood. The Tecla business was also carried on in Paris, New York, Vienna, Berlin, and other cities. In June, 1912, Goldsoll and Goldman entered into an agreement for putting an end to competition between the Terisa business with the Tecla business, and Goldman agreed to discontinue the Terisa business and not allow the name Terisa to be used in a similar business for two years from October 22, 1912, and covenanted that he would not for the like period, "either solely or jointly, with or as agent or employee for any other person, persons or company, directly or indirectly carry on or be engaged, concerned or interested in, or render services gratuitously or otherwise, to the business of a dealer in real or imitation jewellery in the County of London or any part of the United Kingdom of Great Britain and Ireland and the Isle of Man, or in France, the United States, Russia, or Spain, or within

twenty-five miles of Potsd Jamerstrasse, Berlin, or St. Stefans Kirche, Vienna." Goldsoll had transferred his business to the Tecla Gem Co., and he and that company brought the action against Goldman and Sessel, a former manager of the Teresa Company, and S. Sessel & Co., a company under whose name Sessel and his wife had started a similar business to that of the plaintiffs in London, claiming an injunction against Goldman restraining breaches by him of his covenant, and restraining the other defendants from procuring and inducing such breaches. It appeared, as the Judge found, that the Sessel Co. had been promoted and assisted by Goldman, and that the business was really his. On the part of the defendants it was contended that the covenant was too wide in area, and extended to the dealing not only with imitation but also real jewellery, and was not necessary for the plaintiff's protection, and was therefore void. Neville, J., who tried the action, held that as regards the dealing in real jewellery the covenant was not too wide having regard to the nature of the plaintiff's business, and as regarded the question of area it was severable, and so far as it related to the United Kingdom and the Isle of Man it was not too wide, and he granted the injunction as to that area as prayed. With regard to damages, he held the evidence of damage to be of too general a character to enable him to estimate it properly, and he therefore gave only the nominal amount of £10 as against Sessel and Sessel & Co.

INSURANCE OF DEBENTURES—RE-INSURANCE—BANKRUPTCY OF INSURER—LIABILITY UNDER CONTRACT OF RE-INSURANCE.

In re Law Guarantee T. & A. Society,—Liverpool Mortgage Insurance Co.'s Case (1914) 2 Ch. 617. This was an appeal from the decision of Neville, J., (1913) 2 Ch. 604 (noted *ante* vol. 50, p. 61), the question in controversy being the measure of liability on a contract of re-insurance. The Law Guarantee T. & A. Society had guaranteed the payment of certain debentures. They re-insured two-elevenths of this risk with the Liverpool Mortgage Co. The Society became insolvent and went into liquidation, and a scheme was arranged whereby the claims of the debenture holders were compromised at 10s. in the pound. The liquidator claimed to recover the two-elevenths of the gross amount for which the Society was liable, and the Mortgage Co. contended, and Neville, J., so held, that it was only liable for two-elevenths of the amount payable under the arrangement made with the debenture holders. The Court of Appeal (Buckley, Kennedy and Scrutton, L.JJ.) dissent from that view. On behalf of the

Law Guarantee Society it was argued that if the Mortgage Co.'s contention were correct a person with no assets other than full re-insurance might be driven into bankruptcy and only be able to recover from the re-insurers the nominal dividend his assets would pay, although the very object of the re-insurance was to provide him with funds to meet his liability; and the Court of Appeal agreed that such is not the effect of a contract of re-insurance such as was in question in this case. It is not a contract of indemnity against what the insured are actually able to pay, but a contract insuring them against what they are liable to pay in respect of the risk insured against.

EASEMENT—RIGHT-OF-WAY—PRIVATE ROAD—FENCING RIGHT-OF-WAY—ACCESS BY GATES—OBSTRUCTION.

Petley v. *Parsons* (1914) 2 Ch. 653. The exact facts of this case it would be difficult to explain without a diagram, but it may suffice here to state that the question involved was the right of access to a road over which the defendant had a right of way by grant from the plaintiff. At the time of the grant the way was unfenced. Subsequently the plaintiff fenced in the way, giving the defendant access by means of a gate, which gate and fence the defendant removed as being an obstruction of his right-of-way. Sargant, J., held that the defendant was justified in removing the fence and gate, but the Court of Appeal (Cozens-Hardy, M.R., and Eady and Pickford, L.JJ.) reversed his decision, holding that the defendant had no right to insist on the way remaining unfenced, and that what had been done by the plaintiff was not any infringement of the defendant's right over the way.

PRACTICE—FUND IN COURT—PAYMENT TO ONE TRUSTEE.

Leigh v. *Pantin* (1914) 2 Ch. 701. A fund in Court had been settled by a lady, on her marriage in 1890, in trust for herself for life, then for her husband for his life, and on the death of the survivor for the children of the marriage, and in default of children for the settlor absolutely. The only trustee of the settlement was the settlor's brother. In 1890 the husband deserted his wife and had not since been heard from, and there were no children of the marriage. The sole trustee and the wife now applied for payment out of Court of the fund to the trustee. The husband was not a party to the proceeding. After consideration, Sargant, J., came to the conclusion that although the general rule is that a fund in Court will not be ordered to be paid out to a sole trustee without the consent of all the beneficiaries, yet in the

circumstances of this case the order might be made, on the trustee undertaking to have another trustee appointed in case children of the marriage should be born.

LANDLORD AND TENANT—COVENANT FOR RENEWAL—CONSTRUCTION.

Wynn v. *Conway* (1914) 2 Ch. 705. In this action the construction of a covenant for renewal in a lease was in question. The lease was for twenty-one years, and the covenant in question provided that "at the expiration of the first eleven years of the term hereby granted, in case the lessee shall surrender or resign these presents and the term of twenty-one years hereby granted to the lessors, and upon such surrender as aforesaid, and paying to the lessors at the expiration of eleven years aforesaid, or upon the 29th day of September next after the determination of the said eleven years, £7 10s., for a fine for the said premises, then the lessors shall and will at the proper costs and charges of the lessee grant unto the lessee a new lease of the premises with the appurtenances for the like term of twenty-one years, to commence from the expiration of the said eleven years at, with and under the like rents, covenants and agreement as are in these presents mentioned, expressed or contained, and so often as every eleven years of the said term shall expire will grant and demise unto the said lessee such new lease of the said premises upon surrender of the old lease as aforesaid and paying such fine of £7 10s. on the day or time hereinbefore limited or appointed." The Court of Appeal (Lord Cozens-Hardy, M.R., and Eady and Pickford, L.JJ.) agreed with Joyce, J., that upon the true construction of the covenant the lessee was entitled to a perpetual renewal of the lease at the end of every successive period of eleven years, on surrender of the then existing lease and paying the stipulated fine.

EXECUTOR—RIGHT OF RETAINER—COVENANT TO PAY TO TRUSTEES OF MARRIAGE SETTLEMENT—STATUTE BARRED DEBT—CESTUI QUE TRUST OF DEBT ONE OF SEVERAL EXECUTORS OF COVENANTOR.

Re Sutherland, Michell v. *Bubna* (1914) 2 Ch. 720. In this case a right of retainer by an executrix was set up in somewhat peculiar circumstances. The claimant was the dowager duchess of Sutherland, and the claim arose in this way. By her father's marriage settlement in 1872 he covenanted to pay £3,000 to the trustees of the settlement. The duchess was the sole issue of the

marriage, and became absolutely beneficially entitled to the £3,000. Her father, having never paid the £3,000, died, leaving his widow sole executrix and residuary legatee of his estate, and directed the £3,000 to be paid. The widow died in 1912, without having paid the £3,000, but left a will appointing her daughter, the claimant, one of her executors. It was admitted that the claim of the trustees of the marriage settlement under the covenant was barred by the Statute of Limitations, but it was contended that the claimant, as one of the executors of her mother's estate, had a right to retain the £3,000 out of the assets of her mother's estate. But Joyce, J., who heard the case, considered that the inability of an executor to sue himself, which was the foundation of the right of retainer, did not exist in the present case, because the debt, if any, was due not to the claimant as *cestui que* trust, but to the trustees of the settlement, and the claimant's only right was to sue the trustees. The claim to retain was therefore disallowed.

CONTRACT—SEAT IN THEATRE—LICENSE—FORCIBLE REMOVAL OF A SPECTATOR WHO HAD PAID FOR A SEAT—ASSAULT—DAMAGES.

Hurst v. *Picture Theatres* (1915) 1 K.B. 1 is an interesting illustration of the effect of the Judicature Act in the administration of justice. The facts were very simple. The plaintiff had gone into the defendants' theatre to see moving pictures he paid for, and took his seat; but, after he had been there for some time, and while the show was in progress, the defendants' servants appeared to have come to the conclusion that he had got in without paying. They requested him to go and see the manager, which he declined to do. One of the defendants' servants then took hold of him and forcibly turned him out of his seat, whereupon he left the theatre without further resistance. The action was brought to recover damages for assault and false imprisonment, and the jury found that he had paid for his seat, and awarded him £150 damages. The defendants relied on the well-known case of *Wood* v. *Leadbitter*, 13 M. & W. 838, where it was decided that a grant of an easement or incorporeal right affecting land could not be conveyed without deed, and that a ticket to view a race was only a revocable license. But the majority of the Court of Appeal (Buckley, Kennedy and Phillimore, L.JJ.) held that what was at law a mere revocable license would in equity be regarded as an agreement to give a deed sufficient to insure the licensee in getting what he bargained for, and therefore, as equity considers that to be done

which ought to be done, it gives effect to the equitable right as if it had been effectuated by a legal deed, and in the present case the majority of the Court of Appeal (Buckley, and Kennedy, L.JJ.) held that, having regard to the equitable rights of the plaintiff, he was entitled to recover the damages awarded. This case, therefore, establishes as law that when a man pays for a seat at a public entertainment so long as he behaves himself properly he has a legal right to stay and see the performance, and cannot be lawfully ejected by the owner of the premises so long as the entertainment lasts. *Wood* v. *Leadbitter* is by the majority of the Court regarded merely as the decision of a legal principle, but equitable principles, the Court holds, must also now be taken into consideration even in deciding a purely common law cause of action. Phillimore, L.J., dissented, because he considered that the cases in equity only applied where it was really intended to give an interest in land, but here he thought there could be said to be no intention to give any interest in land, but at the utmost a mere license which, whether it were made by deed or parol, was in its nature revocable according to *Wood* v. *Leadbitter*, which he regards as still good law applicable to like cases. The only remedy this learned Judge considers the plaintiff was entitled to was one for breach of contract; but he holds that in remaining after he was told to leave he became a trespasser, and therefore in his opinion had no right of action for being ejected.

CHEQUE—UNCONDITIONAL ORDER TO PAY—"TO BE RETAINED" WRITTEN BY DRAWER ON FACE OF CHEQUE—BILLS OF EXCHANGE ACT (45-46 VICT. c. 61), ss. 3, 73—(R.S.C. c. 119, ss. 17, 165).

Roberts v. *Marsh* (1915) 1 K.B. 42. In this case the validity of an instrument as a cheque was in question, the peculiarity being that the drawer had written across its face, "to be retained." The cheque was written on ordinary paper, and at the time it was given the drawer promised to send a cheque on one of his banker's printed forms in substitution for it, which he failed to do. The cheque was presented and dishonoured, and the action was brought to recover the amount. The defence was that the instrument was not an unconditional order to pay, and therefore not a cheque within the meaning of the Bills of Exchange Act (45-46 Vict. c. 61), ss. 3, 73 (see R.S.C. c. 119, ss. 17,165). The Court of Appeal (Buckley, Kennedy and Phillimore, L.JJ.) held that the words "to be retained" merely imported a condition between the drawer and drawee, and did not bind the bankers,

or prevent the instrument from being a valid cheque within the meaning of the Bills of Exchange Act. The judgment of Avory, J., in favour of the plaintiff was therefore affirmed.

CROWN—PREROGATIVE—SERVANTS OF THE CROWN—EXEMPTION FROM LIABILITY TO SUIT—INCORPORATION OF SERVANTS OF CROWN—AGREEMENT FOR TENANCY—BREACH OF CONTRACT—NUISANCE.

Roper v. *The Commissioners of His Majesty's Works* (1915) 1 K.B. 45. This was an action against the defendants, an incorporated body, as Commissioners of H. M. Board of Works. The defendants were lessees of certain premises of the plaintiff subject to certain terms *inter alia* that the defendants would not carry on any noisy business or occupation, nor permit or suffer any nuisance to arise or continue on the premises, and would keep the premises in repair. The plaintiffs claimed that in breach of the agreement the defendants had used the premises and suffered them to be used by loafers, and had under-let the premises to labour unions, which by reason of the congregation of men about the place created a nuisance, and that the defendants had also suffered the premises to be injured and destroyed. The plaintiffs claimed possession, damages for not repairing, and for the alleged nuisance, and mesne profits, or alternatively for an injunction restraining the defendants from using the premises contrary to the agreement, or permitting waste and destruction thereon. The defendants claimed as servants of the Crown to be exempt from liability to suit, for the alleged tort, notwithstanding they were incorporated, and this preliminary point of law was the subject of the present decision. Shearman, J., before whom the point was argued, held that the defendants, though incorporated, were nevertheless servants of the Crown, and as such exempt from liability to suit for torts, and so far as the action was in respect of alleged torts it must be stayed; but that as regards the claim for breach of contract it might, on the authority of *Graham* v. *Public Works Commissioners* (1901) 2 K.B. 781, be permitted to proceed.

PRACTICE—COSTS—"ISSUE"—EVENT—RULES 976, 977.

Howell v. *Dering* (1915) 1 K.B. 54. Under the English Rules 976, 977, unless the Judge at the trial directs otherwise, where there are several issues of law or fact the costs follow the event. This was an action against stock brokers for damages caused to the plaintiff by his having invested money on the faith of an

alleged fraudulent and false prospectus issued, as was claimed, by the defendant's authority. The jury found that the prospectus was not issued with the defendants' authority, and that they believed it to be true but that it was false, and that the defendant invested his money on the faith of it. The judgment was in favour of the defendants, and the Judge gave no special direction as to costs, but the judgment as drawn up gave the plaintiff the costs of the issue that the prospectus was fraudulent and false, and that he had invested his money on the faith of it. The defendants appealed from the judgment so far as it directed that the plaintiff should have any costs, and the Court of Appeal (Buckley, Kennedy and Phillimore, L.JJ.) allowed the appeal, being of the opinion that the question as to the fraudulent character of the prospectus, and the question whether the plaintiff had relied on it, were not "issues" within the meaning of the Rules, but merely links in the chain of facts whereby the liability of the defendants was sought to be established. The fact that they were put as separate questions to the jury did not make them "issues"; nor did the fact that they were disputed by the defendants. Definitions are proverbially difficult to make, but Buckley, L.J., offers the following: "An issue is that which, if decided in favour of the plaintiff, will in itself give a right to relief, or would, but for some after consideration, in itself give a right to relief; and if decided in favour of the defendant will in itself be a defence."

CARRIER—CARRIAGE OF GOODS—EXEMPTION FROM LIABILITY "FOR ANY DAMAGE TO GOODS, HOWEVER CAUSED, WHICH CAN BE COVERED BY INSURANCE"—DAMAGE OWING TO NEGLIGENCE OF CARRIER—EVIDENCE WHETHER NEGLIGENCE CAUSED LOSS—ONUS OF PROOF.

Travers v. *Cooper* (1915) 1 K.B. 73. The defendants in this case were carriers of goods on a barge, under a contract which exempted the defendants from liability for any damage, "however caused," which could be covered by insurance. The barge was left unattended alongside a wharf ready to be unloaded. It took ground at low tide, and when the tide came in it was submerged and the goods were damaged. It was not clear on the evidence whether the fact that the barge was unattended had occasioned the loss. The defendant's theory was that when the tide went out the barge became mud-sucked, and when it came in, even if anyone had been on her the damage could not have been avoided. Pickford, J., who tried the case, gave judgment in favour of the de-

fendant, because the plaintiff had failed to shew that his negligence had caused the action, but the Court of Appeal (Buckley, Kennedy and Phillimore, L.JJ.) were unanimous that the onus was on the defendant of shewing that his negligence had not occasioned the loss; but the majority of the Court (Kennedy and Phillimore, L.JJ.) held that the terms of the contract were sufficient to exonerate the defendant from liability even though it was due to his negligence; but Buckley, L.J., dissented from that view, and was of the opinion that, notwithstanding its general terms, there was an implied exception of losses which the defendant by his own negligence should occasion. The majority of the Court distinguish the case from those relied on by Buckley, L.J., by the fact of there being in the contract in question in this case the words, "however caused."

SUNDAY OBSERVANCE—REFRESHMENT HOUSE—EXCISE LICENSE—SALE OF ICE-CREAM ON SUNDAY—SUNDAY OBSERVANCE ACT, 1677 (29 CAR. II. c. 7), ss. 1, 3.

Amorette v. *James* (1915) 1 K.B. 124. This was a case stated by justices. The defendant kept a refreshment house for which he held an excise licence. He sold ice-cream on Sunday after 8.50 p.m., and the simple question submitted was whether the fact that he held a licence exempted him from liability under the Sunday Observance Act (29 Car. II. c. 7), s. 1, and the Divisional Court (Horridge and Shearman, JJ.) held that it did not. The Court, however, is careful to say that they do not decide that ice-cream may not be "meat" within the meaning of s. 3 of the Act, and as such be lawfully saleable; but on the case stated they held that it was not open. The learned Judges profess a curious ignorance of what "ice-cream" is composed, and whether, as a matter of law, it would come within the category of food or drink. The question, licence or no licence, in the opinion of the Court, did not in any way affect the construction of the Act.

WAR—CONTRACT—MARINE INSURANCE—ALIEN ENEMY—RIGHT OF ACTION AGAINST ALIEN ENEMY—APPLICATION BY ALIEN ENEMY TO STAY PROCEEDINGS.

Robinson v. *Continental Insurance Co.* (1915) 1 K.B. 155. This was an action to recover the amount of a policy of marine insurance. The contract was made with the defendants, a German insurance company, and the loss occurred and the action was brought and pleadings closed before the war began. The defendants applied to stay the proceedings during the war.

Bailhache, J., to whom the application was made, came to the conclusion that although an alien enemy cannot sue in British Courts during a war, yet there is nothing to prevent an alien enemy from being sued except the possible difficulty of serving him, and that as the plaintiff may sue so also the defendant is at liberty to appear and defend such an action, but whether an alien enemy could recover costs, if any, awarded him during the war, he doubted.

LANDLORD AND TENANT—AGREEMENT FOR LEASE—ASSIGNMENT BY DEED—NO ENTRY BY ASSIGNEE—PRIVITY OF CONTRACT—PRIVITY OF ESTATE—LIABILITY OF ASSIGNEE FOR RENT.

Purchase v. *Lichfield Brewery Co.* (1915) 1 K.B. 184. In this case the plaintiff sought to make the defendants, who were assignees of a term liable for the rent of the demised premises. Lumis, the original lessee for a term of 15 years, held under an agreement for a lease not under seal which he assigned by way of mortgage to the defendants, who neither executed the deed, nor made any entry on the premises. The County Court Judge, who tried the action, gave judgment for the plaintiff, thinking the case was governed by *Williams* v. *Bosanquet* (1819) 1 Brod. & B. 238; but the Divisional Court (Horridge and Lush, JJ.) held that the agreement under which the original lessee held was not a lease but merely an agreement for a lease, and that notwithstanding the lessee might have had an equitable right to demand a legal lease, yet the assignee of the agreement by way of mortgage had not necessarily that right; that as between the plaintiff and the defendants there was neither privity of contract nor privity of estate, and therefore the action could not be maintained. The case is distinguished from *Williams* v. *Bosanquet* because there the lease was under seal, and here no term was created, but merely an agreement for a term, and from *Walsh* v. *Lonsdale*, 21 Ch.D. 9, because there the assignee had entered into possession.

RAILWAY—CARRIAGE OF GOODS—SPECIAL CONTRACT—"OWNER'S RISK"—NON-DELIVERY OF ANY CONSIGNMENT—NON DELIVERY OF PART OF CONSIGNMENT.

Wills v. *Great Western Ry.* (1915) 1 K.B. 199. This was an appeal from the decision of Bray and Lush, JJ. (1914) 1 K.B. 263 (noted *ante* vol. 50, p. 224). The action was for damages for non-delivery of goods by a railway company. The goods were received by the company under a special contract which provided that the company should be relieved from "all liability for loss,

damage, mis-delivery, delay, or detention," unless arising from the wilful misconduct of their servants, but not from any liability they might otherwise incur in the case of "non-delivery of any package or consignment fully and properly addressed," and that "no claim in respect of goods for loss or damage during the transit" should be allowed unless made "within three days after delivery of the goods in respect of which the claim is made, or in the case of non-delivery of any package or consignment, within fourteen days after despatch." The goods in question consisted of a quantity of carcases, and on the arrival of the consignment at its destination some of them were missing, for which the plaintiffs made a claim within fourteen days of the despatch of the consignment. The majority of the Court of Appeal (Buckley, and Pickford, L.JJ.) agreed with the Divisional Court that the non-delivery of part of the consignment was "non-delivery of the consignment" within the meaning of the contract, and that the claim was made in time, and that the plaintiff was entitled to recover damages therefor. Phillimore, L.J., dissented, on the ground that he thought that as the bulk of the consignment was delivered the claim for shortage should have been made within three days after its delivery, and that it was only where the whole consignment was not delivered that 14 days was allowed for making the claim.

PRINCIPAL AND AGENT—SOLICITOR AND CLIENT—ORDER FOR PHOTOGRAPHS FOR DEFENCE OF CLIENT—LIABILITY OF SOLICITOR—KNOWLEDGE THAT SOLICITOR IN GIVING ORDER IS ACTING FOR A CLIENT.

Wakefield v. *Duckworth* (1915) 1 K.B. 218 is a case which will be of interest to the profession, inasmuch as the Divisional Court (Coleridge and Shearman, JJ.) have decided that where a solicitor orders photographs to be made for the purposes of a client's defence, and the photographer knows that the solicitor is acting for a client, the solicitor incurs no personal liability to pay for such photographs.

WILL—TRUST—LIFE INTEREST—PROVISION FOR CESSER IN CASE OF ATTEMPT TO ALIENATE—INCOME ACCRUING BEFORE BUT NOT RECEIVED TILL AFTER ALIENATION—APPORTIONMENT ACT (33-34 VICT. C. 35), S. 2—(R.S.O. C. 156, S. 4).

In re Jenkins, Williams v. *Jenkins* (1915) 1 Ch. 46. In this case it was attempted to apply the Apportionment Act (33-34 Vict. c. 35), s. 2 (see R.S.O. c. 156, s. 4), in the following circum-

stances: A testator gave a share of his estate to trustees upon trust to pay the income to his son for life, but directed that any income for the time being payable to him "shall only be paid to him so long as he shall not attempt to assign or charge the same." The son by deed purported to assign his life interest by way of mortgage to secure money lent. At the date of the mortgage the trustees had in their hands £356, representing income previously accrued to which the son was entitled, and received by them before that date; they subsequently received £393 of which, if apportioned. £254 would represent the part attributable to the period prior to the date of the mortgage. The mortgagee claimed that the Apportionment Act applied, and that he was entitled to the £254 as well as the £356. Sargant, J., however, held that the Apportionment Act did not apply, and though the mortgagee was entitled to the £356, he was not entitled to the £254, as, in his opinion, the effect of the clause in the will above referred to was to prevent the destination of the income being finally determined until it had actually become payable to the tenant for life.

ALIEN ENEMY—RIGHT OF ALIEN ENEMY TO SUE—RESIDENCE IN UNITED KINGDOM—REGISTRATION—ALIENS' RESTRICTION ACT, 1914 (4-5 GEO. V. c. 12)—ALIEN'S RESTRICTION ORDER, 1914.

Thurn v. *Moffitt* (1915) 1 Ch. 58. The plaintiff in this case was an alien enemy registered under the Alien's Restriction Act, 1914, and Aliens' Restriction Order, 1914. The action was for an injunction to restrain the publication of alleged libels against the plaintiff. The husband of the plaintiff was an alien enemy resident out of the United Kingdom. The defendant moved to stay the proceedings, on the ground that the plaintiff had no greater rights than her husband. But Sargant, J., held that as the claim of the plaintiff was one peculiar to herself individually, and as she had been duly registered, she was entitled to prosecute the action, and the application was therefore refused with costs.

ERRATUM.

P. 101, 1st par., 6th line from bottom, for "plaintiff's grandfather" read "plaintiff."

Reports and Notes of Cases.

England.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

ATTORNEY-GENERAL OF ALBERTA v. THE ATTORNEY-GENERAL OF THE DOMINION, CANADIAN PACIFIC RY. CO INTERVENANTS.

Railways—Powers of Dominion and Provincial Legislatures, B. & A. Act, sec. 91, *sub-sec.* 29, *sec.* 92, *sub-sec.* 10.

This was an appeal by the Attorney-General of the Province of Alberta from the Supreme Court of Canada.

It is *ultra vires* for the legislature of a province of the Dominion of Canada to pass an Act authorising a provincial railway to be carried across a Dominion railway.

By an Act of a provincial legislature a provincial railway company was empowered to "take possession of, use, or occupy any lands belonging to" a Dominion railway company, "in so far as the taking of such land does not unreasonably interfere with the construction and operation of" such railway.

Held, that this provision in the Act was *ultra vires* of the provincial legislature, and the omission of the word "unreasonably" would not take such legislation *intra vires*.

Decision of the Supreme Court of Canada affirmed.

Sir Robert Finlay, K.C., *S. B. Woods*, K.C. (Attorney-General of Alberta), and *Geoffrey Lawrence* for the appellants. *E. L. Newcombe*, K.C., and *Raymond Asquith* for respondent. *E. Lafleur*, K.C., for Canadian Pacific Ry. Co.

Dominion of Canada.

SUPREME COURT.

Alta.] [Feb. 2, 1915.

SASKATCHEWAN LAND AND HOMESTEAD CO. AND TRUSTS AND GUARANTEE CO. *v.* CALGARY AND EDMONTON RY. CO.

Railways—Expropriation—Materials for construction—Statute —Railway Act, R.S.C. 1906, c. 37, *ss.* 180, 191, 192, 193, 194, 196—*Compensation — Date for ascertainment of value — Order for possession—Deposit of plans—Approval of Board of Railway Commissioners.*

With regard to obtaining materials for the construction of railways, the effect of sub-section 2 of section 180 of the Rail-

way Act, R.S.C., 1906, c. 37, merely requires the general provisions of the Act relating to the using and taking of lands to be observed in so far as they are appropriate to the expropriation of the lands and settling the compensation to be paid therefor; section 192 of the Act has no application to such a case.

Notices were given, in compliance with sections 180, 193, and 194 of the Railwey Act, and, before any change had taken place in respect to the value of the lands to be taken, the railway company obtained an order of a judge permitting it to do so, and took possession of the lands in question.

Held, that the title of the company to the lands, when consummated, must be considered as relating back to the date when such possession was taken and that the compensation payable therefor should be ascertained with reference to that time.

Judgment appealed from (6 Alta. L.R. 471) affirmed.

Appeal dismissed with costs.

Whiting, K.C., and *A. B. Cunningham,* for the appellants. *O. M. Biggar,* K.C., for the respondents.

Sask.] [Feb. 2.

TRUSTEES OF REGINA PUBLIC SCHOOL *v.* TRUSTEES OF GRATTON SEPARATE SCHOOL.

Education—School boards—Assessment and taxation—Taxes payable by incorporated companies—Apportionment—Shares for public and separate school purposes—Notice—Construction of statute—Legislative jurisdiction—B.N.A. Act, 1867, *s.* 92—*Saskatchewan Act,* 4 & 5 *Edw. VII., c.* 42, *s.* 17—*School Assessment Act, R. S. Sask.,* 1909, *c.* 101, *ss.* 93, 93*a.*

Sec. 93 of the Saskatchewan School Assessment Act, R. S. Sask., 1909, c. 101, authorizes any incorporated company to give a notice requiring a portion of the school taxes payable by the company to be applied to the purposes of separate schools, and section 93*a*, as enacted by section 3 of chap. 36 of the Saskatchewan statutes of 1912-1913, authorizes separate school boards themselves to give a similar notice to any company which fails to give the notice authorized by section 93. A number of companies neglected to give the notice provided for and the separate school board gave them notices requiring a portion of their taxes to be applied for the purposes of that board. In these circumstances the public school board claimed the whole of the taxes

payable by the companies in question and the separate school board claimed a portion of such taxes. On a special case, directed on the application of the municipal corporation, questions were submitted for decision, as follows:—(*a*) Had the Saskatchewan Legislature jurisdiction to enact section 93*a* of the School Assessment Act"; (*b*) If question (*a*) be answered in the negative, has the defendant (the separate school board), the right it claims to a portion of the said taxes; (*c*) If question (*a*) be answered in the affirmative, has the defendant the right it claims to a portion of the said taxes?

Per DAVIES and DUFF, JJ., (expressing no opinion as to the constitutionality of the legislation), that the effect of the enactments in question was not to give the separate school board any portion of the taxes claimed by it. The Chief Justice and Anglin, J., contra.

Per IDINGTON, J.:—The enactment of section 93*a* was ultra vires of the Legislature of Saskatchewan. The Chief Justice and Anglin, J., contra.

Per FITZPATRICK, C.J., and ANGLIN, J.:—The Legislature of Saskatchewan had jurisdiction to enact section 93*a* of the School Assessment Act, and the taxes payable by the companies in question should be apportioned between the public and the separate school boards in shares corresponding with the total assessed value of assessable property assessed to persons other than incorporated companies for public school purposes and the total assessed value of property assessed to persons other than incorporated companies for separate school purposes respectively.

Judgment appealed from, reversed, the Chief Justice and Anglin, J., dissenting.

Appeal allowed with costs.

Nesbitt, K.C., and *Chris. C. Robinson*, for the appellant. *H. Y. Macdonald*, K.C., for the respondent.

War Notes.

LAWYERS AT THE FRONT.

We join in the loud acclaim of praise and admiration that has in all parts of the world greeted the news of the heroic devotion of the Canadian troops in the recent fighting at Neuve Chapelle and Ypres. But we in Canada, seeking as we do to emulate the highest ideals of British valour, do not care to make

too much of it, for—"How else did you think our boys would act"? A statue outside the Parliament Buildings in Ottawa tells of the heroism of one who refused to accept the advice of a friend not to sacrifice his life in a quixotic attempt to save the life of a drowning girl. He knew it was impossible, but he made the fatal plunge, simply replying, "What else can I do." The occasion came to our men at Ypres to do a seemingly impossible thing. Careless of all but their honour and the honour of their country they did the impossible; and, as recorded by such men as Field Marshall French and General Joffre, they "saved the situation" and blocked the road to Calais. The casualty lists tell the tale of what the sacrifice was. History does not accord a quicker grasp of a crisis, more dauntless courage, dash and endurance than what was done by these volunteer soldiers in their first hard fight.

The names of the members of the profession who have gone on active service in connection with the present war are of increasing interest, as we are beginning to hear, from day to day, of those who have been wounded or who have given their lives for King and Country.

It is difficult to get a complete record from the various provinces of the Dominion of those who have joined the ranks. At present we can only give lists from the Provinces of Ontario and Saskatchewan, as received from the Law Societies of those Provinces, made up about the middle of March last. These are as follows:—

PROVINCE OF ONTARIO.

STUDENTS—First Year:—J. R. Cartwright, Toronto; R. M. W. Chitty, London, Eng.; J. S. Ditchburn, Toronto; O. W. Grant, Toronto; H. E. M. Ince, Toronto; T. E. Kelly, Toronto; W. G. Kerr, Chatham; W. A. Kirkconnell, Lindsay; A. H. Lightbourn, Oakville; W. J. O'Brien, Peterborough, 7th Battery, 25th Brigade, University Section; A. R. M. O'Connor, Ottawa; H. E. B. Platt, Toronto; W. H. Schoenberger, Toronto; J. C. Tuthill, Toronto; C. C. Warner, Toronto; W. C. Hearn, Toronto.

Second Year:—R. T. Bethune, Toronto; R. B. Duggan, Brampton, 36th Peel Regiment, 3rd C. E. F.; E. A. H. Martin, Hamilton; K. H. McCrimmon, Toronto; Reginald J. Orde, Ottawa (Lieut. Royal Field Battery); M. F. Wilkes, Brantford; R. H. Yeates, Toronto, 8th Battery, Canadian Artillery.

Third Year:—H. R. Alley, Toronto; P. L. Armstrong, Ottawa; McGillivray Aylesworth, Newburgh; J. S. Bell, Chesley; W. D. Bell, St. Thomas; J. G. Bole, Toronto; C. W. G. Gibson, Hamilton; W. L. L. Gordon, Toronto; H. S. Hamilton, S.S. Marie; L. C. Jarvis, London; A. J. Johnson, Toronto; Keith Munro, Port Arthur; N. M. Young, Barrie.

BARRISTERS AND SOLICITORS:—W. S. Buell, Brockville; P. J. M. Anderson, Belleville; G. W. M. Ballard, Hamilton; Everett Bristol, Hamilton; G. T. Denison, Toronto; W. W. Denison, Toronto; R. M. Dennistoun, Winnipeg; F. B. Goodwillie, Melfort, Sask.; F. R. Forneret, Hamilton; H. W. A. Foster, Toronto; Walter Gow, Toronto; F. H. Greenlees, London; F. W. Hill, Niagara Falls; S. C. S. Kerr, Toronto; J. M. Macdonnell, Toronto; E. L. Newcombe, Ottawa; A. C. T. Lewis, Ottawa; W. A. Logie, Hamilton; T. B. Malone, Edmonton, Alta.; M. S. Mercer, Toronto; Frank Morison, Hamilton; Thomas Moss, Toronto; H. S. Murton, Toronto; N. S. Macdonnell, Toronto; D. H. McLean, Ottawa; L. C. Outerbridge, Toronto; E. D. O'Flynn, Belleville; Eric Pepler, Toronto; (Engineers); R. D. Ponton, Belleville; G. B. Strathy, Toronto; C. A. Thomson, Toronto; E. S. Wigle, Windsor; Chas. H. MacLaren; L. P. Sherwood; G. R. Geary, K.C.

PROVINCE OF SASKATCHEWAN.

John Muir (of Broatch, Lennox, Muir & Co.), Moose Jaw; Peter McLellan (of Archer & McLellan), Arcola; M. A. McPherson (of Buckles, Donald & McPherson), Swift Current; Norman Gentles (of Seaborn, Taylor, Pope & Co.), Moose Jaw; A. W. Goldsworthy (with O. D. Hill), Melfort; Robt. M. Cunningham (Murray & Munro), Saskatoon; Harold E. Hartney, Saskatoon; Archibald McLean, Kerrobert; Alexander Ross, K.C., Regina; Maughan McCausland (of Wood & McCausland), Regina; William S. Walker, Battleford; J. F. L. Embury, K.C. (of Embury, Scott & Co.), Regina; F. B. Goodwillie, Melfort; Russell A. Carman, Balgonie; F. B. Bagshaw (of Anderson, Bagshaw & Co.), Regina; Alister Fraser (of Knowles, Hare & Benson), Moose Jaw; Austin S. Trotter, Melville; George C. Thomson, Swift Current; John Munro (of Murray & Munro), Saskatoon; William A. Reeve, Qu'Appelle; F. G. D. Quirk (of Seaborn, Taylor, Pope & Quirk), Moose Jaw; E. M. Thomson (of Torney & Thomson), Moose Jaw.

CASUALTIES.

Lists of casualties in the recent battles near Neuve Chapelle and Ypres are coming in from day to day, but, so far as the profession is concerned, they are by no means either full or accurate.

The names of those who have been killed so far as ascertained at the time of writing are as follows:—

LT.-COL. W HART MCHARG.

He was the son of a British Army officer. He resided for some time at Rossland, B.C., removing in 1903 to Vancouver, where he practiced law in partnership with Mr. Hume Abbott. At the time Canada's First Contingent was formed for South Africa he was among the first to apply for a commission in the Canadian force; but, failing to secure that, he promptly enlisted as a private. He went through the war returning as a sergeant. His account of the South African war, as seen by a Canadian (known as "Quebec to Pretoria") is very interesting reading. In Vancouver he was the most active officer in the Duke of Connaught's Corps and was an extremely popular officer as well as a prominent and highly esteemed citizen. He acquired a great reputation as a marksman, and, in 1913, won the title of champion rifle shot of this continent. He had previously represented Canada at Bisley where he made a great record, and on two occasions won the Governor-General's prize. His death is a serious loss to his country and to the profession.

CAPTAIN WALTER LESLIE LOCKHART GORDON

Was the fourth son of W. H. Lockhart Gordon, Barrister, Toronto. He was in his 25th year, was educated at Ridley College and afterwards at the Royal Military College, Kingston. At the conclusion of a distinguished career at R. M. C., where he was battalion Sergeant-major, he graduated in 1911, winning the sword of honour, the highest award in the gift of the College, and was honour man of his year. When he volunteered for the front he was an officer of the Mississauga Horse. He went to Valcartier as a lieutenant, and at Salisbury Plain he was promoted to a Captaincy. In the action near Ypres where he was killed he was in command of "B" Company in the Second Battalion of the First Canadian Division. Captain Gordon after completing his course at the Law School, in 1914, was connected with the firm of Bain, Bicknell, Macdonell and Gordon. His elder brother, Lieut.-Col. H. D. Lockhart Gordon, is

squadron commander with the 4th Canadian Mounted Rifles. Another brother, Maitland Lockhart Gordon, who went over with the first contingent, recently received a commission in the Gordon Highlanders; while Lieut. Molyneaux Lockhart Gordon is now in the Southern States convalescing after a serious accident at the Cavalry School—four splendid fellows from one household upholding the honour of the Flag. Captain Gordon was a young man of great promise with a brilliant career before him. A large circle of friends will deplore his loss and sympathise with the bereaved family.

Rising, roaring, rushing like the tide
(Gay go the Gordons to a fight)
They're up thro' the fire zone, not to be denied,
(Bayonets! and charge! by the right!)

There are bullets by the hundred buzzing in the air,
There are bonny lads lying on the hillside bare;
But the Gordons know what the Gordons dare
When they hear the piper playing!

(NEWBOLDT.)

LIEUT. JOHN L. REYNOLDS

Of Winnipeg. He had just completed his last year as a law student, but left for the front before being called to the Bar. Was a son of Capt. Reynolds, now in France on the General Staff.

THE WOUNDED AND MISSING.

Amongst the wounded is Lt.-Col. W. S. Buell, of Brockville. He commenced the practice of law in Vancouver, but upon his father's death returned to Brockville where he acquired a large practice. In 1897 he joined the 41st Regiment as lieutenant and rose to the position of its Commanding Officer. He was on the staff of the Canadian Militia officers sent by the Dominion Government to the manœuvres of Britain and France in 1913.

Major A. T. Hunter was wounded in the same fight. A lawyer by profession and one of the most popular officers of the York Rangers, he was well known both in legal and military circles. His cablegram to his family telling them that he was in the hospital at Boulogne-sur-mer is so characteristic as to be worth quoting:—"Shrapnel bounced off. Head as usual unreceptive. Convalescent."

Captain G. H. Ross, attached to the 16th Battalion and Captain of the 72nd Regiment, is reported as wounded and missing.

He enlisted in Winnipeg with the 79th Cameron Highlanders, but was subsequently transferred to the Vancouver Regiment. He is a member of the law firm of Macdonald, Tarr, Creig and Ross of Winnipeg. We trust he will turn up soon not much the worse, but the report is not reassuring.

Lieut. G. L. DeCourcy O'Grady is reported wounded. He was formerly of the 90th Winnipeg Rifles, but now attached to the 8th Battalion. He is said to be in a hospital at Boulogne.

Amongst the wounded we also record the names of Captain G. W. Jameson, of Winnipeg, G. M. Ballard, of Hamilton, N. M. Young, Barrie, and Lt.-Col. J. J. Creelman, of Montreal. Lieut. R. R. McKessock, K.C., of Sudbury, and Lieut. John Kidd Bell, of Winnipeg, are reported as missing.

NEUTRALITY.

A leading journal thus arraigns the President of the United States as to his attitude on this question:—

"But there is another person who must in a way share some responsibility for the devilish methods to which Germany is resorting. That is the President of the United States. He has made it abundantly clear that no 'frightfulness' which Germany may employ will cause him to express his country's disapproval. He will remain neutral to the end, even if the Germans should poison all the springs and rivers in France and Belgium and burn civilians at the stake. He has been dumb in face of the gigantic wrong done Belgium, and in face of one violation after another of the rules of civilized warfare. Germany, therefore, knows that she does not risk loss of the official and formal friendship of the United States, no matter what horrors are committed in her name. If President Wilson, having first satisfied himself that the charges made against the German soldiers are well founded, should speak for his country and express his indignation at the crimes, we believe they would be repudiated and their repetition made impossible. President Wilson has only to speak. Not an American bullet need be fired."

These are the sentiments not merely of a Britisher, but, we understand, of the thinking men and women of America. President Wilson and his confrères are soiling the honour and reputation of the great nation they now *mis*-represent.

Professor Ladd, of Yale, strikes the true note when he says that a nation which is neutral under present conditions "is not a nation fit to live" and "gives evidence of moral degeneracy."