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POWERS OF COMPANIES.

The recent case of *Edwards* v. *Blackmore*, 42 O.L.R. 105, can hardly be regarded as a satisfactory decision, because, owing to the diversities of opinion expressed by the learned Judges of the Appellate Division, instead of it being an authoritative interpretation of the recent amendment of the Companies Act whereby s. 210 was added to the Act, it has merely revealed the fact that there are grave doubts as to what is its real meaning and effect. 6 Geo. V. c. 35, s. 6, by its amendment of the Companies Act, gives to provincially incorporated companies the general capacity which the common law ordinarily attaches to corporations created by charter. The question before the Court arose in this way: A joint stock company, incorporated primarily to deal in real estate and erect buildings and act as brokers and agents, according to the plaintiff's contention, purchased a machine for pressing clothes for which a promissory note of the company was given, which was the subject of the action. The company set up (1) that the contract was *ultra vires* of the company as it was not authorised to buy clothes pressing machines. (2) That the debt if any was the individual debt of the officers of the company, and not of the company. Lennox and Ferguson, JJ., were of the opinion that the effect of s. 210 was to give the companies all the power and capacity of individuals, and enabled them to enter into any contracts they pleased, irrespective of whether or not they were within the purview of the charter, or Act of incorporation; and that the only result of their exceeding the objects of their charter, or Act of incorporation, would be a liability to have their charter forfeited by the Crown; but that the defence of *ultra vires* could not avail them. Rose, J., held that the charter was sufficiently wide to enable the company to enter into the contract in question, and,

therefore, it was needless to discuss the effect of s. 210; while Meredith, C.J.C.P., came to the conclusion that the real effect of s. 210 was merely to give companies the capacity of individuals so far only as might be necessary for the purpose for which they should be incorporated; and that, notwithstanding the Act, a company could not enter into contracts for purposes other than those for which they were incorporated; that the contract in question in this view was *ultra vires*, and, therefore, in his opinion the action should fail. What therefore is really the precise effect of s. 210 remains yet to be authoritively determined. If the ruling of Lennox, J., and Ferguson, J.A., should ultimately prevail, the question of *ultra vires* could hardly ever arise upon any contract entered into by a joint stock company in Ontario, however widely it might appear to have wandered from the purpose of its incorporation. In the meantime the profession is more or less at sea as to what advice on this important question they should give to their clients. The judgment in favor of the plaintiff it is true was affirmed but not on the ground on which the Judge at the trial proceeded, but by two Judges on that ground, and by one on the ground that the charter in fact warranted the contract. If the charter warranted the contract, then the opinions of Lennox, J., and Ferguson, J.A., seem to become mere *obiter dicta*. There is a majority of Judges, however, in support of the conclusion as to the effect of s. 210, but against this is to be set the weighty opinion of the learned Chief Justice—and, as we shall presently see, there is also the opinion of Mr. Justice Masten to the same effect.

Since the decision above referred to was given, judgment has been pronounced by Mr. Justice Masten in *Weyburn Townsite Co.* v. *Honsberger*, 15 O.W.N. 49. In this case a company incorporated in Saskatchewan, for carrying on a real estate and brokerage business made a contract in the Province of Ontario for the sale to the defendant, a resident of the latter Province, of land in the Province of Saskatchewan, for which he gave a promissory note for part of the price, and paid money on account. The plaintiff company as vendors brought the action for specific performance of the contract by the purchaser, who set up as a defence that the contract was *ultra vires* of the plaintiff company.

The transaction took place in 1912, but it was not until 1918, that the plaintiff company obtained any licence from the Province of Ontario to transact business in that Province. The learned Judge upheld the defence of *ultra vires* on the following grounds: (1) That the Province of Saskatchewan has not plenary, but only limited, power to grant incorporation to companies, and that its powers of incorporation are limited to those companies only having provincial objects. (2) That a company so incorporated cannot have or acquire the general capacity of an individual, but only such powers as individuals could exercise respecting provincial objects, and respecting which alone under the B.N.A. Act it has power to confer corporate rights.* (3) That in the case of companies brought into existence by a legislature with limited power, the comity of nations does not in the opinion of the learned Judge enable the Courts of other jurisdictions to give or concede to such companies any powers or capacities beyond what the constituting body was itself able to confer. (4) And as the Province of Saskatchewan could not itself incorporate a company for extra-provincial objects, it necessarily followed that the Courts of other jurisdictions could not concede that a company so incorporated had any capacity to acquire authority from any other jurisdiction to exercise or carry on extra-provincial objects. (5) That the licence of the Province of Ontario granted in 1918 could not, in any case, validate contracts made by the company in Ontario when it had no such licence. (6) And further, that a statute of the Province of Saskatchewan made in 1917, in somewhat similar terms to 6 Geo. V. c. 35 (Ont.), and purporting to give to all provincial companies as from their incorporation the capacity to acquire extra-provincial powers, was *ultra vires* in so far as it purported to affect the rights of residents of Ontario.

This is an important contribution to the learning on the subject, and it may be asked whether the principles on which the learned Judge has based his decision may not have an even wider effect than that which it was necessary to give them in the particular case. If the learned Judge is correct in his view as to the legal

*(On this point we may observe he has come to the like conclusion as that of Meredith, C.J.C.P., above referred to.)

effect of the limited powers of Provinces in regard to the incorporation of companies, it seems to follow that all incorporations by Provinces can only confer on the corporations a capacity to acquire powers necessary for provincial objects; and if the rights of the Provinces to incorporate companies is limited to those having "provincial objects," does not this result necessarily follow, that inasmuch as a Province cannot incorporate a company with extra-provincial objects neither can it validly by licence, or any other means, empower a provincial company to transcend the purposes for which it was incorporated? For, although a Province may possibly prevent an extra-provincially incorporated company from doing business without a licence, its licence may nevertheless be wholly inoperative to confer any additional powers on the licensee beyond what the incorporating authority had itself power to give or confer.

In the *Bonanza Creek Gold Mining Company* v. *The King* (1916), A.C. 566, the Judicial Committee of the Privy Council said in reference to the provincial legislative powers under the B.N.A. Act, s. 92 (11): "What the words really do, is to preclude the grant to such a corporation whether by legislation or executive act (according with the distribution of legislative authority) of powers and rights in respect of objects outside the Province, while leaving untouched the ability of the corporation, if otherwise adequately called into existence, to accept such powers if granted *ab extra*". From this it would appear that provincial corporations have no power by virtue of their incorporation to carry on business outside the limits of the Province by which they are incorporated, but may, "if adequately called into existence," acquire the capacity to accept such powers if granted *ab extra*. What is the meaning to be attributed to the words "adequately called into existence?" Does it not mean that the power calling the corporation into existence must at least have had the power to confer on the corporation the capacity to acquire extra-provincial powers? But that is just where provincial authority seems to fall short, it cannot directly confer on provincial corporations extra-territorial powers; *ergo*, it would seem to follow, it cannot confer on such corporations any capacity to acquire such powers; therefore a provincial licence

granted by one Province to a company incorporated by another Province would seem to be nugatory in so far as it purports to confer any additional power or authority on the company in whose favour it is issued—and any contracts entered into by virtue of such a licence would appear to be open to the objection that they were *ultra vires* of the company, notwithstanding the licence; and must not the same conclusion follow even in the case of provincial companies incorporated by Royal charter? The Royal prerogative exercisable by Lieutenant-Governors is not plenary, but is limited to the exigencies of the Province in which it is exercised: and it may be well argued that the exigencies of the Province do not require that the capacity to acquire extra-provincial powers should be given to the companies any Lieutenant-Governor may incorporate; more especially as the authority to confer such powers is amply vested in the Governor-General, whose exercise of the Royal prerogative in such matters is plenary as far as the Dominion is concerned.

On the other hand, it might be contended, if Mr. Justice Masten's reasoning is to be followed out to the bitter end, that inasmuch as the authority of even the Governor-General and Parliament of Canada is not plenary *quoad* the Empire, that, therefore, even Dominion incorporated companies are not entitled to recognition in the Courts of the United States or other foreign countries, under the comity of nations to which he refers. But this appears to be an undesirable and unreasonable conclusion and the authority of the Governor-General and Parliament of Canada, although not for all purposes to be regarded as plenary, is nevertheless plenary and ought so to be regarded as sufficiently so in this particular matter for the purpose of entitling corporations created thereunder to the benefit of international recognition.

In this view of the matter it would seem that it is only in case of companies incorporated by the exercise by the Governor-General of the Royal prerogative which have the capacity for acquiring extra-territorial rights Such a capacity, it would seem, may also be conferred by Dominion statute, but, at present, corporations incorporated under the Dominion statute are subject to the limitations thereby imposed as to their powers; and some amend-

ment in the Dominion Companies Act would be necessary in order to confer on such companies the capacity to acquire further rights such as chartered companies are held to possess by the common law.

ADDING PARTIES AS DEFENDANTS.

The question of parties rarely arose formerly at law, but in equity the question of parties was a very important branch of practice, and under the old Chancery procedure the omission to add necessary parties was often the subject of demurrer, as was also the fact that persons named as defendants were improper or unnecessary parties. At law if the plaintiff omitted to sue the right person his action failed. He might, both at law and in equity, select the person or persons to be sued, but there used to be this difference, at law, if he selected the wrong person, judgment went for the defendant; whereas in equity he was often permitted to amend by adding any necessary parties with apt words to charge them, so as to cure the defect in his proceedings; but if he failed to take advantage of that leave, his action would be dismissed for want of prosecution. The plaintiff was, however, always recognized both at law and in equity as the *dominus litis*—such an idea as the defendant adding parties was never dreamt of. Perhaps, because the old Courts of Law and Equity felt that it would be a futile proceeding because there was no power to compel the plaintiff to make any claim against any persons except such as he might himself select to sue, and the mere adding a defendant without "apt words to charge him" would be merely giving the person so added ground for coming to the Court asking to be dismissed from the action on the ground that the plaintiff made no claim against him.

But, judging from two recent decision of appellate tribunals, we have changed all that, and defendants are now allowed to add as co-defendants persons as against whom the plaintiff makes no claim, on the allegation by the defendant that if there is any liability to the plaintiff in respect of the claim sued, such other person is either solely, or jointly with the defendant, liable therefor. How

the plaintiff is to be compelled to make a claim against the added party is not explained, nor is it explained how any relief can be properly given against such added party without any claim being made against him by the plaintiff in the action.

The cases we refer to are (1) *York Sand & Gravel Co.* v. *Cowlin Co.*, 14 O.W.N. 189, in which the Appellate Division granted a new trial with leave to the defendants to add a company as defendants whom they claimed were the parties who really were liable to the plaintiffs for the goods sued for; how the plaintiffs are to be compelled to sue, or make a claim against the added defendants, and assume a liability to them for costs if they fail to establish it, if made, is not explained; nor is any suggestion offered as to how this can be properly ordered under the Judicature Act, or any Rule of Court. (2) The other case is *Norbury* v. *Griffiths*, Jour., [1918] 2 K.B. 369, where the English Court of Appeal made a somewhat similar order. In this case the defendant admitted that the sum claimed was due to the plaintiff, but he claimed that one V. was a joint contractor, and the defendant and V. counterclaimed for a larger sum due to them jointly from the plaintiff. The Master struck out the defence and counterclaim as embarrassing as V. was not a defendant and, of course, not in a position to make a counterclaim. The defendant then applied to compel the plaintiff to add V. as a defendant so that he might join in the counterclaim, but the plaintiff refusing to add V. the Master refused to make any order except that the defendant might deliver an amended defence. The Court of Appeal (Pickford, Warrington, and Scrutton, L.JJ.) however, reversed this order and held that the Court had jurisdiction to make the order asked by the defendant without the consent of the plaintiff: but in this case the order was made without prejudice to the question to be decided at the trial whether the contract was joint or not, and V. was to be added as a co-defendant without prejudice to the plaintiff's costs if it should prove that V. was not a joint contractor: but, of course, the Court could not in the absence of V. protect the plaintiff from liability to V. for costs, if he added him as a defendant: and if V. should claim to be dismissed from the action on the ground that he was added as a defendant and no relief was claimed against him, would

it be any answer to say that V. was added by order of the Court? If the order is erroneous the plaintiff ought not to act on it, and as no appeal lies from it, he is placed in a quandary. He cannot proceed with his suit without adding, at the risk of costs, a person against whom he makes no claim, and if he doesn't add him his action is liable to be dismissed for want of prosecution. Whether this is a proper method of carrying out the principles of the Judicature Act we think is fairly open to question. In the last mentioned case there was nothing to prevent the defendant and V. from bringing another action to enforce their alleged joint claim: and if the plaintiff failed to prove that the defendant was solely liable his action would fail: but to attempt to compel him to sue someone whom he considered he had no claim against seems a departure from sound principles, and the same observations apply with equal force to the first mentioned case.

We must confess that we think the old equity doctrines concerning the adding of parties, ought still, and we think under the Judicature Act, rightly construed, they do still prevail, and should be observed, and any attempt to depart therefrom, as in the cases above referred to, can only lead to confusion, and are made in forgetfulness of the dominant principle that the plaintiff is and always ought to be *dominus litis:* and to allow a defendant to add parties is an invasion of sound principles of litigation.

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*OUR COMMON INHERITANCE.**

By Hon. Hampton L. Carson, Philadelphia, U.S.A.

I thank you for your welcome, and in the name of the American Bar Association, whose representative I am, I address you, with all possible heartiness, as professional brothers:

"We band of brothers,
For he to-day that sheds his blood with me shall be my brother."

I come with a message from America, to take you by the hand, to look into your eyes, to give you assurance that we are pledged,

*This address was delivered at the Canadian Bar Association meeting, Montreal, September 4, 1918.

body and soul, to our last man and to our last dollar, to share with you the sacrifices, the perils, the glory and the inevitable victory of this abysmal war. We are men of the same race; we speak the same language; we occupy adjoining portions of the same continent divided by a line unguarded by fort or battleship for more than an hundred years; we enjoy the same freedom, we inherit the same traditions, and live under the protection of constitutions strongly alike. The goodfellowship between us has been sealed with the blood of our sons in a common cause. We have sworn a common oath that the hallowed graves of Vimy Ridge, of Soissons and of Chateau-Thierry shall never be shadowed by the black eagles of Germany and Austria. We stand with dear old Mother England and heroic France and faithful Italy, and loyal Australia, New Zealand, India and South Africa as stood Aëtius and Theodoric against Attila, and as stood Charles Martel against the Mahometan. The plains of Chalons and of Tours, which saw the rescue of the Western World from the fury of the ancient Hun and from the triumph of the Koran, will again witness the rescue of true civilization from the Satanic ambition of the Kaiser.

What is it that is threatened? What interest have we in a conflict whose uproar shakes the globe? It is our inheritance that is at stake, our common inheritance, an inheritance more than fifteen hundred years in the making, the precious fruit of the English, American and Canadian revolutions, which we had from our fathers, and which is the best birth-right of our children. It is an inheritance dear to us as lawyers, because as students and officers of government we best understand its origin, its development and its significance. It is Anglo-American freedom, radiant and hopeful, which, like the cross which blazed upon the cloud before the eyes of Constantine, is now upheld by patriot and Christian hands high in the van of universal liberty.

Stated in sober words, Anglo-American freedom means protection of the interests and rights of citizens who have an effectual share in the making and administration of laws "broad based upon the peoples' will," and guarded by constitutions, either written, statutory or customary, proclaiming the source and defining the boundaries of power, with bills of inviolable rights and suitable

provisions for amendment. It is a balanced system of checks to arbitrary power, whether proceeding from individuals, the mob or the government. It assures control to lawful majorities, but it protects minorities against destructive assaults upon personal and property rights. It is not a theoretical liberty, the outcome of philosophical disquisitions, but the seasoned product of struggles in the harsh school of experience. As a model worthy of study and of imitation, it will aid statesmen in the not distant future in building about a shattered world those ramparts which will stand as sentinels of the rights of an emancipated humanity.

In gazing backward into the gulf of time we see, at first dimly, but with increasing clearness, as the dial runs from the days of Alfred the Great to those of Edward the Confessor, the strong, majestic and ever youthful features of what we term personal rights—the right to one's body, limbs and strength which led in time to freedom of the person, to freedom of locomotion, to choice of occupation, to enjoyment of the products of one's labor whether physical or mental, to the right to think, to speak, to act, to worship without let or hindrance, save only as demanded by an enlightened sense of the general good.

We see, under the most sagacious and liberal of the Norman Kings, Henry II., the consolidation and expansion of the orderly administration of judicial affairs, through a proper shaping of remedial procedure, and the securing to each man the right to be heard, permeated by the sense of fair play, of openness, of vigorous, sensible justice which is the glory of our Courts.

We see, in the reign of John, upon the grassy lawns of Runnymede the signing of the Great Charter, whose 20th chapter has been woven into the text of every American State Constitution and the Constitution of the United States, and which, in the words of the Earl of Chatham, constitute a part of "the Bible of the British Constitution": "No freeman shall be taken, or imprisoned, or be dissesed of his freehold or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or delay to any man, either justice or right." These clauses, "the

essential clauses," as Mr. Hallam calls them, "protect the personal liberty and property of all freemen, by giving security from arbitrary imprisonment and arbitrary spoliation. . . . Interpreted by any honest Court of law (they) convey an ample security for the two main rights of civil society." And Lord Coke, in his commentary, quaintly says: "As the goldfiner will not cut of the dust, shreds, or shreds of gold, let passe the least crum, in respect of the excellency of the metal, so ought not the learned reader to passe any syllable of this law, in respect of the excellency of the matter."

We see in the reign of Henry III., a confirmation of the Great Charter, and the production of Henry de Bracton's monumental treatise upon the Laws and Customs of England which swayed the Judges for four hundred years, in which the author, although writing as far back as 1265, boldly declared: "The King has a superior, for instance God. Likewise the Law, through which he has been made King. . . . Therefore if the King be without a bridle, that is without law, they ought to put a bridle upon him."

We see in the reign of Edward I. the Statutes of Westminster, of Gloucester, of Marlbridge, of Quia Emptores, of Statutes Merchant, and Statutes Staple and of Elegit, by which more was done in settling and establishing, through the re-arrangement of the Courts, the distributive justice of the Kingdom than in all the succeeding reigns together until the time of Sir Matthew Hale. We see in the same reign the birth of the House of Commons, and the royal declaration, in 1297, that from thenceforth forever "no aids, tasks, nor prises shall be taken but by the common consent of the realm and for the common profit thereof."

We see during the 14th and 15th centuries, the steady rise of the powers of Parliament, strengthening their control over taxation and appropriations, and establishing what we know so well as "the privileges of Parliament." We see in the De Laudibus Legum Angliae of Sir John Fortescue, the teacher of the young prince who was stabbed to death upon the field of Tewksbury by "false, fleeting, perjured Clarence," the striking declaration that "the King can neither make any alteration or change in the laws of the realm without the consent of his subjects, nor burden them against

their wills with strange impositions." We see the brave figure of Chief Justice William Gascoigne, who, when commanded by Henry IV. to pronounce a sentence of death upon the Archbishop of York and the Earl Marshal taken in rebellion, replied: "Neither you, oh! King, nor any of your subjects, can, according to the law of the realm, sentence any prelate to death, and the Earl has a right to be tried by his peers." We see in the Tenures of Littleton, containing the whole substance of the English land law, the mother of our law of real estate, the most complete and scientific book ever given to the law.

And then, while the common law was putting on flesh and Parliamentary freedom was hardening from gristle into bone, we see, as through a rift in the clouds which cover the past, the chivalric and romantic figures of Cartier, Champlain, Frontenac and Marquette pushing their daring discoveries up your great Gulf and river, and opening up the wilderness of a new world. We see mariner, priest and soldier facing hardships, privation and danger to make a new home for the common law in the centuries still to come.

We see the mightiest master of our science, Sir Edward Coke, act strenuously the various roles of barrister, Queen's Counsel, Attorney-General, Lord Chief Justice, legal author, law reporter, member of Parliament and champion of liberty, with a dauntless courage, a stainless integrity, tireless industry and prodigious learning. We see him refusing to a King's proclamation the force of an Act of Parliament, refusing to sit as a member of the Court of High Commission because it was in derogation of the common law; refusing to amend his reports and writings to suit the pleasure of the King; refusing to permit the common law Courts to fine and imprison a subject without due process of law; refusing to be interrogated in private as to his views of Peacham's case in advance of hearing; refusing to permit the King to sit in person and pronounce judgment in the case of Prohibitions, and, when asked by the indignant James I., what he intended to do, replied: "that which is it fit for a Judge to do."

We see a century of marvellous intellectual activity, filled with dreams of ideal States, the Utopia of Sir Thomas More, the New

Atlantis of Lord Bacon, "discourses which, like the stars, gave little light because they were so high," followed by practical treatises such as Sir Thomas Smith's Commonwealth of England, Statham's Abridgment of the Year Books, Plowden's reports, Sir Edward Anderson's reports, the weighty folios of Sir Anthony Fitzherbert, Coke's Commentaries upon Littleton, upon Magna Charta and other statutes, and his thirteen volumes of reports. These works, printed by the masters of the then new art of printing, by Wynkyn de Worden, a pupil of Caxton, by Tailleur, Tottell and Rastell, made men acquainted with their rights as subjects of a limited monarchy, and a great debate, which lasted for sixty years, ensued. We see the rise of the Puritans in Church and State, Richard Hooker at work upon his Ecclesiastical Polity, Hobbes upon his Leviathan, Harrington upon his Oceana, and the pedantic egotist, James I., declaring, in the Star Chamber, "As it is atheism and blasphemy to dispute what God can do, so it is presumption and a high contempt in a subject to dispute what a King can do, or to say that a King cannot do this or that." We see the rage that broke out in Parliament, and the introduction of the Petition of Right. We see the octogenarian Coke, and the eloquent John Pym rise in their places to support it. We see the quarrel carried into the next reign, the fatuousness of Charles I., the victories of Cromwell at Naseby, and Marston Moor, the opposition in the Courts by John Hampden to ship-money, and the head of Charles upon the block, the price paid for royal stubbornness and folly. We see the stern features of Cromwell as he seized the reins of power, in eleven years to drop them into the hands of a child too weak to hold them against the Restoration, and in the thick of the press we see the noble figure of Algernon Sydney ascend the scaffold because of his Discourses upon Government; the blind but enraptured eyes of John Milton as he dictated his Areopagitica or Essay upon the Liberty of Unlicensed Printing; the rugged features of the philosophic John Locke as he published his Civil Government, in which, for all time to come, he logically demonstrated the true basis of government to be the sovereignty of the people. We see the passage of the Habeas Corpus Act, that second chapter in the Bible of English Liberty, and pause to dwell upon

the benign face of Sir Matthew Hale as he completed his History of the Common Law which gave the highest legal sanction to the blood-bought rights of Englishmen.

We see a period of brief but violent reaction darkened by the cruel features of the bloody Jefferys, the unspeakable Scroggs and the pliant Wright, followed swiftly by the abdication of James II. and the settlement of the throne upon a free and lasting basis. We see the consummation of the independence of the judiciary, cleansing the purlieus of the law and invigorating the bench with a spirit which no King could.

We see a long and triumphant march of progress, the abolition of the slave trade, the reform and extension of the suffrage, the emancipation of Catholics and Jews, the rearrangement of the Courts, the improvement of administrative justice, the correction of Chancery abuses, the amelioration of the criminal law, the evolution of the Cabinet system, the responsibility of Ministries to the House of Commons, the shrinking of the power of the Lords, the protection of labour, of the poor and the aged. We see the expansion of the British Empire, following the charts of commerce, and encircling the globe with its morning drum-beat, the tocsin of equal rights before the law to dusky millions long enslaved. In this rapid perspective of fifteen centuries we see the noble and expressive features of the British Constitution towering like mountain peaks and ranging themselves so as to form the vertebrae and ribs of a political faith, the creed of a free race, the model of institutional freedom adopted by progressive peoples everywhere, from the Argentine to Japan.

And now, turning our eyes to this side of the Atlantic, we behold a spectacle both marvellous and inspiring. We see American civilization starting with the advantage of being a thousand years younger, inheriting the character and principles of a glorious past, building upon the rock of experience, but, freed from the fetters of restrictive habits and ancient prejudices, improving the boundless opportunities of a virgin continent to shape and solve the problems of self-government. We see the planting of thirteen colonies, each one of them a nursery of citizenship, preordained to grow into a mighty nation under a written Constitution made by the people in

their sovereign capacity, and happy in its divisions of power between legislative, judicial and executive departments, independent but co-ordinate, but happier still in the guardianship of a Supreme Court charged with the final and authoritative interpretation of the Constitution, presenting an archetype for the peaceful control of separate political sovereignties, a veritable *vinculum juris* and pledge of peace. We see the destiny of these colonies and your destiny rescued on the Plains of Abraham from the dreams of a Louis XIV., and rescued again at Bunker Hill and Valley Forge and Yorktown from the mistaken conception of a purblind King as to his right to rule colonies in disregard of their right to rule themselves, a mistake so costly as to teach a lesson which was so well learned that it was impossible as to yourselves to repeat in the days of Victoria the errors of George III. Under your great organizing statute of 1867—in substance a Constitution—you have greatly prospered and your young Provinces like our younger States have swung into the circle of light and life. Exhilarated by the "freshness, the fullness, the fairness" of freedom, and burning with high hope, we have both been treading side by side an ever-ascending and shining pathway along "the brimming river," seeking new vistas of achievement, exploring new fields of endeavor, opening new mines of wealth, converting buffalo ranges into granaries of the world, building cities by magic, crowding the lakes and rivers with our commerce, subduing mountain ranges by railroads and felling forests for the uses of man. To live and to let live, to be happy and to share happiness, to mitigate pain, to relieve the indigent, to care for the insane, to reform the criminal, to foster the arts, to preach the Gospel of peace on earth and goodwill towards men, to build the church beside the school-house and thus lift the globe by the telluric force of human sympathy and bind distant peoples by a bond of justice—these, under the Providence of God, have been the privileges of our race, and the fruits of the liberty that we have enjoyed. In the political heavens of those unhappy peoples still stumbling in the dark, the pathway of our progress must shine with the far-off radiance of the Milky Way.

In black and hideous contrast with all that we love and revere stands the German Government as perverted by the Kaiser; a

Government which, while in outward form much like our own, and in fact in large part modelled after our own, is cunningly pivotted upon responsibility to an autocrat. The Bundesrath and Reichstag present but a sham "facade of liberalism," for they are finally practically in the hands of the Chancellor who can triumph at will over parliamentarism. Imperial measures after passing the Bundesrath, or Federal Council, and the Reichstag, or Diet, must obtain the sanction of the Emperor in order to become law, and must be countersigned, when promulgated, by the Chancellor of the Empire. The Chancellor himself is but the creature of the Kaiser who can select him without confirmation and remove him in an hour. This is the concealed spring of the Kaiser's power. There is no pretense of a Ministry responsible to the people. There is no administration except a beaureaucratic administration responding from top to bottom to the pressure of the Imperial thumb. All Imperial administrative officers are either under the immediate authority of the Chancellor or are separately managed under his responsibility to the Emperor. The Kaiser's will is law however it may be tricked out in popular dress, and the Kaiser in the hands of the Junkers is an obdurate megalomaniac. His power rests upon the army. On the very day of his accession to the throne he said to his soldiers: "The absolute and indestructible fidelity of the army is the heritage transmitted from father to son from generation to generation. . . . We are made for each other, I and the army, and we shall remain closely attached whether God gives us peace or storm." The oath of the army's allegiance is personal to the Emperor. It is not taken to support the Constitution, nor is it taken upon the Constitution. It is a declaration of absolute loyalty and obedience to a feudal lord. It is the old oath *devenio vester homo—from this day forth I become your man.* In the Kaiser's ears a pleasing tribute to his omnipotence; in the eyes of philosophy a degrading confession of servitude. The reliance placed upon this relationship is disclosed by the Kaiser's own words: "The more people shelter themselves behind catchwords and party considerations the more firmly and securely do I count upon my army, and the more confidently do I hope that my army, either without or within my realms, will wait upon my wishes and my

behests." In talking to new recruits he said: "You have sworn loyalty to me; that means that you are now my soldiers, you have given yourselves up to me body and soul; there is for you but one enemy, and that is my enemy. In view of the present agitation it may be that I shall command you to shoot your own relations, brothers, yes parents—which God forbid—but even then you must follow my command without a murmur." This is not the language of a bloated personal egotism, it is the language of a coldly self-conscious tyrant; of a barbaric King, of a Gongis Khan, an Alaric, born a thousand years too late, a hopeless and shocking reversion to the type of Attila—the ancient Hun—who, in the fifth century, in ravaging Europe, declared: "What right has any city within the whole wide bounds of the Roman Empire to exist, if it be my will that it shall be destroyed?"

The Kaiser's second reliance is upon his navy—not upon dreadnoughts and cruisers and battleships, daring in the open sea to meet their adversaries man for man and gun for gun, after the fashion of old heroic days—but upon serpents of the deep, outlaws and pirates, invisible, sneaking submarines, singling out as victims neutral traders, sloops, passenger ships carrying innocent men, women and infants, hospital ships and Red Cross convoys as the choicest objects of their prowess. It is the boar-hound turned fox, who fearing to encounter tusks prefers ignoble raids upon farm yards unguarded by dogs.

And all this in the name of "The old German god," a pagan tribal divinity, a rabid, insane, furious Odin, apotheosized as fit to be worshipped by Christians in the twentieth century!

It would stagger belief that such things could be, were it not for the paranoiac delusion as to the divinity of a Hohenzollern, and the grandeur of a house resting on a carefully cultivated worship of Frederick the Great, the robber of Silesia, whose chief reliance was upon his army and his treasury. "We, the Hohenzollerns," said the Kaiser, at Bremen, "regard ourselves as appointed by God to govern and lead the people whom it is given us to rule." Later he announced that his crown was "born with him," and that he would follow the same path as his ancestor Frederick I., "who of his own right was sovereign prince in Prussia"; still later he

spoke of his "fearful responsibility to the Creator alone, from which no human being, no Minister, no Parliament, no people can release the prince," and later still he declared: "You Germans have only one will, and that is my will; there is only one law and that is my law." The German people having been told that they were the chosen people of God, the salt of the earth, and never having had a John Locke, a George Washington, an Abraham Lincoln, a Strathcona, a Lloyd George, or a Wilson, accept these doctrines complacently, for they have been educated, under the Kaiser's watchful control of all the channels of enlightenment, the schools and the press, to believe that the Germans are the mightiest race and nation, hence Germany must seek unrestricted rule; that whatever means tend to promote this end, no matter how immoral, are right, and that all that stands in the way of this holy ambition is to be ignored or destroyed; that weak nations have no right to exist, and that if they stand in the path of German advancement they must be ruthlessly crushed; that the State, instead of being, as we regard it, a mere mechanism for the enactment and enforcement of law for the public good, is in itself the ultimate unit, and that duty to that unit is the final duty; that the German State as ruled by the Kaiser is perfect; that being perfect she is a law unto herself, and that as she is the source of all law she is consequently above law, and hence can do no wrong. Such is the logic of Kultur!

The best proof of these propositions is to be found in recent declarations of German philosophers, historians, statesmen and rulers. Lasson in his Das Kultur und der Krieg says: "Separate States are by nature in a state of war with each other. Conflict must be regarded as the essence of their relations and as the rule, friendship is but accidental and exceptional." Nietzsche admonished: "Ye shall love peace as a means to new wars, and the short peace more than the long one." Treitschke, in his Politik, declared: "The erection of an International Court of Arbitration as a permanent institution is incompatible with the nature of the State . . . We have learned the moral majesty of war precisely in those of its characteristics which to superficial observers seem bestial and inhuman." Bernhardi, in his Germany and the Next War announced: "The efforts directed towards the abolition of war

must be termed not only foolish, but absolutely immoral and must be stigmatized as unworthy of the human race. The weak nation to have the same right to live as the powerful and vigorous nation! Bah! War is a biological necessity." Colonel Kuhn declared: "Kultur must build its cathedrals on hills of corpses, seas of tears, and the death rattle of the vanquished." Lasson and Treitschke carried the argument still further: "Kultur exists," said the former, "for the purpose of making itself effective as power," and the latter added: "The State is, first of all, power to assert itself. . . . Hence the obvious element of the ridiculous that attaches to the existence of small States." Fryman exclaimed: "To-day only those States can assert a right to independence that can secure it by the sword."

These utterances were supplemented by incitements to violence. The Kaiser, in addressing his expeditionary forces to China, in 1900, instructed them: "Use your weapons in such a way that for a thousand years no Chinese shall dare to look upon a German askance." "Be as terrible as Attila's Huns." Lasson wrote: "There is no legal obligation upon a State to observe treaties. . . . A State cannot commit a crime. Treaty rights are governed wholly by considerations of advantage." Professor Flamm declared: "If neutrals were destroyed so that they disappeared without leaving any traces, terror would keep seamen and travellers away from the danger zones." Otto von Tannenburg moralized: "A policy of sentiment is folly. Enthusiasm for humanity is idiocy . . . Politics is business." Pastor Baumgartner, with eyes cast to heaven, exclaimed: "Anyone who cannot bring himself to approve from the bottom of his heart the sinking of the Lusitania . . . and give himself up to honest joy at this victorious exploit of German defensive power—such an one we deem no true German."

The Kaiser proclaimed at the outbreak of the war: "Remember that you are the chosen people." He was echoed by Lasson: "We are morally and intellectually superior to other nations; we are without equals." And then Ernest Haeckel: "One single highly cultivated German warrior . . . represents a higher intellectual and moral life value than hundreds of the raw children of

nature whom England and France, Russia and Italy oppose to them."

The conclusion followed, as stated by Grabowsky: "To-day nothing is more urgent than this—that the will to conquer the world should take possession of the whole German people:" or, as stated by von Tannenburg: "The German people is always right, because it is the German people and because it numbers 87,000,000." The cap-stone of the argument was then garlanded by sentiments from Karl Peters, who said: "It is foolish to talk of the rights of others," and from Thomas Mann, who asserted that, "Kultur is above morality, reason, science," from Clausewitz, that: "In war the errors which proceed from a spirit of benevolence are the worst," and, lastly, from Bernhardi: "Might is at once the supreme right," so that Stirner, looking on in rapture, asked: "What does right matter to me? I have no need of it. What I can acquire by force, that I possess and enjoy." The philosopher Rudolf Theuden then inscribed upon the pedestal of the argument these words: "In international relations magnanimity is wholly out of place . . . For the will of the State no other principle exists but that of expediency. Selfishness, far-seeing, shrewdly-calculating selfishness." Faith in these doctrines and blind obedience by the people to their masters has been solemnly inculcated in Germany. It is only the Germans themselves who have forgotten that it was Goethe who remarked: "The Prussians are cruel by nature; civilization will make them barbarians."

Let that picture stand: I shall not attempt to heighten the colors. Drawn by their own hands as a portraiture of themselves it cannot be charged with exaggeration or hostility. But, if it could be imagined by the reptile philosophers of the Kaiser that a ..ed so vile, so heartless, so maniacal, so fetid and so deadly, could escape damnation in the eyes of God and man: if it could be thought that Belgium, Serbia, Rumania, Armenia, Poland and even big, blind, staggering Russia could be forced to accept Kultur; if it could be foully fancied that saintly France, the shrine of Jeanne d'Arc, could be ravished, and Italy, the land of Columbus, of Gallileo, of Michael Angelo and Garibaldi, could be crucified; if it could be even conjectured that old England should be left to

guard the seas alone, and that Canada and the United States of America would remain passive in these hours of cataclysmic agony, and stand as silent and impotent witnesses of the destruction of our common inheritance, then would the hour have struck to call upon the Rocky Mountains and the flood of Niagara to cover our shame.

In solemn and holy duty to ourselves and to our children, for the sake of humanity, in the fear of God, and in the love of freedom we strike together in defence of our altars and our shrines, in defence of our homes, our institutions, the graves of our ancestors, and the hopes of the future, and we will never cease to strike with all our strength until the Powers of Hell and Darkness are vanquished by the Powers of Righteousness and Light.

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*LEGAL EDUCATION.**

In undertaking to address the Convention on the subject of Legal Education, it will be wise to confine myself to what I know about the matter in my own Province. I assume that what had been true of that Province would be found to have been at some time or another applicable to most of the Provinces in the Dominion. I have a very vivid recollection of the conditions when I was myself an articled student in the office of Mr. Oldright, then official reporter of the decisions of the Supreme Court. My experience was doubtless similar to that of the majority of my fellow students. What they got in the way of legal education they got by their own perusal of the books at their command and, as many of them, possibly the best of them, were obliged to earn their living while they were acquiring their profession, the opportunities for wide and close reading were none too favourable. The examinations for admission to the Bar were positively farcical as a test of wide reading or exact knowledge. They tended, like all such examinations, to run into grooves. When I was approaching the dreaded ordeal, I was very kindly taken by one of

*This was an address delivered at the meeting of the Canadian Bar Association at Montreal, September 4, 1914.

my fellow-students who was in like peril to the residence of the latter, where I was shewn a whole washtub full of old examination papers such as had been used by the examiners for the Bar Society and I was assured that the best possible preparation for the ordeal would be the diligent perusal of these papers and the preparation of appropriate answers. I have no doubt whatever that such an equipment, which could have been acquired in a couple of weeks, would have been for the purpose of final examination just as useful as a three years' course at Harvard University.

The wonder was that under such a system so many excellent lawyers had been produced. There could be no doubt whatever of the ability or the efficiency of the leaders of the Bar in those days. No one who remembered such men as Sam Rigby or Otto S. Weeks or John S. D. Thompson would question their professional capacity or their ability to serve the interests of their clients. Perhaps everyone of them would admit, as Sir John Thompson had admitted in my hearing on a notable occasion, that in the matter of legal knowledge he had been obliged throughout his professional career to live from hand to mouth. Perhaps, on the other hand, the admission only illustrated the extreme modesty with which that really fine legal scholar regarded his own attainments and ability. Those men whom he had named were among the leaders. They needed no facilities and would have made their own opportunities. For them the law was in very truth *leonum arida nutrix*. In their case we should lay special emphasis upon the first word of the phrase. For the generality of their contemporaries the conditions were such as to warrant the emphasis being laid on the adjective rather than either of the substantives.

I have alluded to these early conditions for the purpose of marking the contrast between those days and the conditions that prevailed after the establishment of the Law School in 1883. There never could have been such a faculty established as one of the faculties of the University if it had not been for the very unselfish and effective co-operation of the Bench and Bar. There never had been a time when learned members of the Bench and

leaders of the Bar could not be found ready to give their services gratuitously to the training of the students. Sir John Thompson, during the too few years in which he held office as a Judge of the Supreme Court, had given two lectures a week on the subject of Evidence. Sir Wallace Graham had for some years while at the Bar lectured on the subject of Marine Insurance, which was his specialty. At a later date Sir Charles Townshend had for several years lectured on Equity Jurisprudence and there were others from the Bench and the Bar whose services had been most cheerfully given to the school. But with all this most valuable assistance there must have been something scrappy and fragmentary about the institution if it had not been for the work of the two salaried professors. Of one of those it was of course impossible that he should speak. Mr. S.D. Scott, who was at t' at time the brilliant Editor of the *Morning Herald*, had produced a very amusing pen picture of the faculty in which, after referring to the denominational connections and personal characteristics of the members, he had described the Professor of Contracts as a man five feet four inches high who did not believe in God, and he suggested that this description probably added more to his stature than it deducted from his creed. Religiously, the Professor of Contracts was described as representing the Residuum. Taken seriously the picture would have been profoundly libellous, of course, but as a piece of fun it was immensely enjoyed, no less by the subject of it than by the community at large.

Of Doctor Weldon, the Dean of the Faculty, no eulogy that he could pronounce would be extravagant. His studies at Yale and Heidelberg on International Law had made him a master of the subject. His wide knowledge of Constitutional and General History had been followed by a close and thorough reading of the cases on the British North America Act, so that his lectures on Constitutional Law presented a completeness and thoroughness, a breadth and wisdom which had made them of a very exceptional value; and it had always been a matter of great regret to him that they had not been reduced to some more permanent form than the fragmentary notes which were sufficient for the full mind and ready tongue of the learned lecturer. But perhaps the subject

which better than any other displayed the intellectual power at the command of Dean Weldon was that of the Conflict of Laws. To read the questions in his examination papers on this subject was enough to give any ordinary person a headache, yet the lecturer on Conflicts threaded the complexities of the subject as easily and nimbly as if he had been going through the multiplication table. Far more than any intellectual qualities or scholastic attainments, however, what endeared Doctor Weldon to his associates and students was his magnetic personality. He had the gift of making and keeping friends, and among the old Dalhousie graduates scattered through Canada from border to border there was no name that was more warmly and affectionately cherished than that of Dean Weldon.

Coming to the discussion of methods, I desire to express my very decided preference for the so-called Langdell method, the reading and study of decided cases, as against the method of delivering lectures to the students. Emerson had somewhere said that we were all of us as lazy as we dared to be, and certainly the average law student was no exception to the rule. There were always temptations to him to postpone a difficult task and there were distractions of all kinds to divert him from his proverbially "jealous mistress" of the law. It was not an unknown thing for a man to listen passively throughout the term to a course of lectures and, when examination day approached, borrow a fellow-student's note book or one that had come down through a succession of former students, cram up on the professor's hobbies and pass a very creditable examination. Contrast the other method. A number of cases are set for discussion on a given day. Mr. Brown is asked to state the facts and the question or questions of law to be decided. Mr. Jones is required to argue one side of the case and Mr. Robertson to answer him, while a fourth will state the conclusion arrived at by the court. Mr. Brown may be the laziest man in the school and he may answer that his engagements did not afford him time to read the case. Very well. He will be called on at next sitting for a similar service and he will have the hide of the rhinoceros if he can stand this sort of thing for more than two or three successive sittings. He will either read his cases

or take up some other line of slouchiness and inefficiency. Then consider the case of the industrious and earnest student who has been intelligently interested in the work. A case once read, marked, learned and inwardly digested, discussed, challenged, defended, and thus carefully threshed out, would leave an ineradicable trace on the memory. Every session of the class was a moot court, every man had his chance, and men were taught to reason, to discover analogies, to detect fallacies. All this was real teaching.

One of the difficulties of using this method, said Mr. Justice Russell, was the want of suitable case books. Mr. Langdell's case book on Sales consisted of some twelve hundred pages of comparatively fine print and yet it covered one-fifth only of the topics dealt with in Benjamin on Sales. It would require the years of Methuselah to cover the whole field of English jurisprudence on such a scale as that. Even his book on Contracts was open to the criticism that it contained more than half a hundred pages of cases on both sides of a narrow question which had been definitively settled, and settled by a mere rule of thumb. Finch's cases on Contracts began well but it would never do to depend upon them as a complete exposition of the law of Contracts. Indeed, it would be a very useful and desirable thing if the teachers on this subject in the several law schools would put their heads together and make a selection of well-considered cases for common use in all our Provinces in which the common law prevailed.

Of course, there were some subjects that did not lend themselves to this system as well as the subject of Contracts, the leading principles of which had been developed without much "assistance" from the legislature. He would never recommend the use in class of Professor Ames' two great volumes of cases on Bills and Notes. The law had been codified and stated in clear and intelligible terms which really did not leave very much room for discussion. I wish the same could be said for the codification of the law of Sales, the first effect of which had been to add fifty per cent. to the volume of Benjamin on Sales and, in the evident opinion of the latest editors, to start more questions than it settled.

What I have thus far dealt with is only the preparation of the student for the work of his profession. But surely no system of

legal education would aim at so low an ideal as that. Our law students would be the law-makers of the future. Their education for the practice of their profession ended with their acquiring a full and accurate knowledge of the law as it actually was. Their business as legislators would comprehend the much more debatable and difficult question of what it ought to be. No Law School should attempt to cover so wide a field as this, but an education which should fail to awaken some desire and aspiration on the part of the student to leave his profession better than he found it would be very imperfect and very inadequate to the demands of the days in which we were now living. The papers that had been read and that would yet be read at this convention would open up various fields of desirable reform in the law on matters that were hardly debatable, but there was no kind of knowledge that could come amiss to the lawyer who would worthily respond to the calls that would be made upon him in the great days of social and political reconstruction upon which we were about to enter.

UNLICENSED PRACTITIONERS.

The practice of law by Corporations and other non-professional agents is referred to in an article in *Law Notes* (American) calling attention to the condition of things in some of the States. Attention has been called in these columns and by Law Societies to the unfairness to the profession and the injury to the public resulting from allowing unlicensed practitioners and collection agents to do work for the public which should be done by the profession. It is said to be useless to appeal to the Legislature for protection, as there are so many of these unprofessional agents who are in the Legislature, and the Government is not sufficiently strong or independent to do what is honest or desirable in the premises for fear of losing votes—another of the evils of contemptible party politics. As our contemporary carefully says: "The matter goes deeper than the dignity or the business interests of the profession," and in speaking of the practice of law by corporations the writer says: "Business honour has for centuries been the safeguard of clients, and a long step backward is taken when for the professional man is substituted a business man who employs a lawyer as a clerk."

REVIEW OF CURRENT ENGLISH CASES.

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DENTIST—UNREGISTERED PERSON—"NAME OR TITLE OF DENTIST"—WITNESS DESCRIBING HIMSELF AS A DENTIST—DENTISTS ACT, 1878 (41-42 VICT. c. 33), s. 3.—(R.S.O. c. 163, s. 25).

Blain v. *The King* (1918) 2 K.B. 30. This was an appeal on a case stated by justices. The appellant Blain was convicted of a breach of the Dentistry Act (41-42 Vict. c. 33); (see R.S.O. c. 163, s. 25). The evidence on which he was convicted was to the effect that he had in the course of the trial of an action, in which he had been summoned as a witness, described himself in the witness box as a dentist, he being in fact merely an artificial tooth specialist. The Divisional Court (Sherman, Avory, and Darling, JJ.) held that the conviction was right, but Sherman, J., dissented.

PUBLIC HEALTH—FISH UNFIT FOR FOOD—FISH SENT IN FULFILMENT OF CONTRACT FOR SALE—REJECTION BY INTENDING BUYER—"EXPOSURE FOR SALE"—PUBLIC HEALTH ACT, 1875 (38-39 VICT. c. 55), ss. 116, 117.—PUBLIC HEALTH ACTS AMENDMENT, 1800 (53-54 VICT. c. 59), s. 28—(R.S.O. c. 218, s. 100 (2)).

Ollett v. *Jordan* (1918) 2 K.B. 41. This was also a case stated by justices. The defendant was prosecuted for exposing fish for sale which were unfit for food. The facts were that he carried on a wholesale fish business at Hull, and contracted to sell the fish in question to a lady at Eastbourne. The evidence shewed that when the fish were delivered to the railway at Hull for carriage to the intending buyer they were in good condition. On their arrival at Eastbourne station they were found to be tainted, and on their being tendered to the buyer she rejected them. They were subsequently seized and destroyed by the health officer and the defendant was sued for the penalty. The justices acquitted the defendant; but the Divisional Court (Darling, Avory, and Atkin, JJ.) held that he ought to have been convicted and that there had been an "Exposure for sale" within the meaning of the Act at Eastbourne where, until acceptance by the buyer, they continued to be the property of the defendant.

SOLICITOR AND CLIENT—COSTS—BILL DELIVERED MORE THAN TWELVE MONTHS—NO SPECIAL CIRCUMSTANCES—ACTION ON BILL—OBJECTION TO CERTAIN ITEMS—TAXATION.

Jones v. *Whitehouse* (1918) 2 K.B. 61. This was an action to recover the amount of a solicitor's bill. The writ was specially

indorsed. The signed bill had been delivered more than twelve months before action. On motion for judgment, the defendant objected to certain items and claimed to have the bill taxed. The Master refused the defendant's application and gave judgment for the amount claimed. Salter, J., on appeal, refused the defendant's application and affirmed the judgment for the full amount of the bill: and the Court of Appeal (Pickford, Warrington, and Scrutton, L.JJ.) dismissed an appeal from his order; at the same time saying that if special circumstances and a plausible defence to any specific items had been shewn as to those items the Court might have permitted the defendant to defend.

PAYMENT—REMITTANCE BY POST—IMPLIED REQUEST.

Mitchell-Henry v. *Norwich Union L. I. Co.* (1918) 2 K.B. 67. This was an appeal from the judgment of Bailhache, J. (1918) 1 K.B. 123 (noted *ante* p. 217). The Court of Appeal (Pickford, Warrington, and Scrutton, L.JJ.) affirmed the decision.

DISTRESS—EXEMPTIONS—VALUE OF EXEMPTIONS LEFT AFTER DISTRAINT—ONUS OF PROOF—LAW OF DISTRESS AMENDMENT ACT, 1888 (51-52 VICT. c. 21), s. 4—County Courts Act 1888 (51-52 Vict. c. 43) 147.—(R.S.O. c. 80, s. 3 (*f*); c. 155, s. 3C (1)).

Gonsky v. *Durrell* (1918) 2 K.B. 71. This was an appeal from the decision of a Divisional Court (1918), 1 K.B. 104, noted *ante* p. 216: The Court of Appeal (Pickford, Warrington and Scrutton, L.JJ.) affirmed the decision.

INSURANCE (MARINE)—PERILS OF THE SEA—"FREE OF CAPTURE AND SEIZURE" CLAUSE—PROXIMATE CAUSE OF LOSS UNASCERTAINED—BURDEN OF PROOF.

Munro v. *War Risks Association* (1918) 2 K.B. 78. This was an action on two policies of insurance; one of which contained a "free of capture and seizure" clause; and the other was against loss or capture, seizure and consequences of hostilities. The evidence shewed that the vessel insured had been lost, but there was no evidence as to the proximate cause of loss. Bailhache, J., who tried the action, held that on the evidence adduced the probabilities were equally in favour of the loss having arisen either by hostilities, or by other causes, and therefore the plaintiff could not recover on the policy insuring against war risks; but that he was entitled to recover on the other policy, as it was not necessary for the plaintiff to shew that the vessel had not been lost by the excepted clauses. The learned Judge entered into a discussion as to the burden of proof in such cases which will be found useful.

Bench and Bar.

Canadian Bar Association.

At the recent meeting in Montreal the desire was expressed that there should be a more careful selection from the Bar to fill judicial vacancies. The officers of the Association have been selected with the thought of getting the best men for all prominent positions. In this connection the Government is to be congratulated upon the appointment of Mr. P. B. Mignault, K.C., Vice-President of the Association, to the Supreme Court. The appointment is an admirable once in itself. This is also evidenced by his occupying the honourable position of a Vice-President of the Canadian Bar Association.

Similar remarks apply to the appointment of Mr. J. E. Martin, K.C., another member of the Association, to the Quebec judiciary.

The Association has suffered a great loss by the death of Mr. T. S. McMorran, of Regina. He took an active and most intelligent interest in the proceedings of the Association at the Montreal meeting.

Appointments to Office.

Rt. Hon. Sir Charles Fitzpatrick, K.C.M.G., P.C., to be Lieutenant-Governor of the Province of Quebec, vice Sir Pierre Evariste LeBlanc, deceased. (Oct. 21.)

Hon. Sir Louis Henry Davies, K.C.M.G., P.C., one of the Judges of the Supreme Court of Canada, to be Chief Justice of that Court, vice Rt. Hon. Sir Charles Fitzpatrick, resigned. (Oct. 23.)

Pierre Basile Mignault, K.C., to be a Puisne Judge of the Supreme Court of Canada, vice Sir Louis Henry Davies, who has been appointed Chief Justice. (Oct. 23.)

English exchanges speak with much regret of the death of Mr. Justice Neville and with much appreciation of the appointment of Lord Justice Pickford to the Presidency of the Probate, Divorce and Admiralty Division. The death of Lord Robson, who was for a short time in the final Court of Appeal, and of Sir Samuel Evans, President of the Prize Court, is also announced.

War Notes.

LAWYERS AT THE FRONT.

KILLED.

R. W. Maclennan, Flight-Lieut., R.F.C., Toronto, Law Student, only son of R. J. Maclennan, Secretary of Canadian Bar Association. Killed in France, December 23, 1917.

A recent number of the *Queen's University Quarterly* contains an article giving a sketch of the career of this brilliant young soldier in the British air service, consisting mainly of his home letters. This, supplemented by other letters and incidents, has been published by his father for private circulation under the title, "Ideals and Training of a Flying Officer, R.F.C." It furnishes most interesting reading, and his letters, which manifest much literary ability, give the clearest insight we have seen of the ideals, the training and the camp life of those engaged in this fascinating but most dangerous service.

Bruce F. Fisher, Lieut., Barrister, of Gregory, Gooderham & Fisher, Toronto, 57th Battery C.F.A. Killed in action, Aug. 19.

Elmer Jones, Lt.-Col., Barrister, Vancouver, B.C. Killed in action.

F. J. Ap John, Barrister, Edmonton, Alberta. Killed in action.

Alexander W. Milligan, Capt., of Victoria, B.C. Killed in action.

James Wylie Raeburn, Barrister, of Vancouver, B.C. (with William Walsh & McKim). Killed in action.

John MacPherson, Gunner, Student-at-Law, Edmonton, Alberta. Died of wounds.

Charles Arnold Grant, K.C., Lieut., of Edmonton. Died of wounds.

Alex. MacFarlane Seaman, Student-at-Law, of Amherst, N.S. Killed in action.

Jeffrey Harper Bull, Major, D.S.O., Law Student, Toronto. Killed in action.

Gordon D. McLean, Lieut., Imperial Tanks, Calgary. Killed August 28.

F. J. S. Martin, Lieut., 119th Battalion, S.S. Marie. Killed in August.

James G. Bole, Lieut., 133rd Battalion, Toronto. Killed in September.

W. E. Morrison, 87th Machine Gun Corps, Callander. Died in military service in September.

S. B. VanKleek, Major, 62nd Battalion, Vancouver. Killed in October.

J. P. Crawford, Lieut., 166th Battalion, Toronto. Died of wounds in October.

W. E. Brown, Lieut., 227th Battalion, S.S. Marie. Died of wounds in October.

L. W. Wood, Lieut., Fort William. Killed in October.

Matthew Maurice Wilson, Lieut., of Chatham, Ontario, Law Student, 186th Kent Battalion. Killed in action, October 10.

Lieut. Wilson was the only son of Matthew Wilson, K.C. He enlisted at the age of 17, in 1815, and was given a commission as lieutenant in the Kent Battalion. His only chance, however, to go to the front was to enlist as a private, which he did. He was subsequently given back his commission, to the delight of his men, by whom he was greatly beloved as a capable officer and as a courteous Christian gentleman. Another of those splendid boys of ours who, though their lives and energies have been lost to Canada, have not died in vain.

PEACE AT LAST.

The end of the war of 1914-1919 is in sight. Bulgaria and Turkey have surrendered unconditionally to the Allies. The dual Empire of Austria-Hungary has broken up and its shattered pieces are crying for mercy. Chaos reigns in Russia and under the guidance and tutelage of Germany dregs of humanity are committing atrocities worthy of their masters and exceeding in violence and volume the horrors of the French Revolution. The arch fiend Wilhelm the Murderer and his consenting demon-possessed people alone are left, and these are now struggling for undeserved breath in the sea of blood they have mercilessly shed. The names of Germany and Prussia stink in the nostrils of the civilized world and should be blotted from the map of Europe. As to the crimes they have committed, we discuss what punishment should be awarded; but nothing that would be possible for the Allies, as civilised people, to inflict would be adequate for those who are wild beasts rather than human beings. The worst punishment ought to be to leave them to the remorse of a guilty and tormenting conscience, but this would not come to them until "the devil had gone out of them." There is one who said of old, and says still, "Vengenace is mine, I will repay, says the Lord." His punishment will be adequate and just and inexorable.

In the meantime, murderers and other atrocious criminals of Germany and Austria should be brought to trial, and, if found guilty, suffer the extreme penalty of the law. This appears to be the intention of the British Government, and it is a necessity if civilization is to be maintained. Justice must be enforced and

crime punished. If the Kaiser is a party to a cold-blooded murder, which is not an act recognized as a war necessity, he should be hanged as well as the one who actually did the deed.

Since the above was written—the news comes that Germany, like Bulgaria, Turkey and Austria-Hungary, has surrendered unconditionally, for that is the meaning of the terms, the only terms, upon which the Allies would consent to grant the request of Germany for an armistice. At the hour of about 6 a.m. on November 11th, the representatives of the German Government formally accepted, without qualification, the terms imposed. This is virtually the end of the greatest war in the world's history. Right has triumphed, and the reign of terror, tyranny, murder, rapine, duplicity, and Satanic horrors has ceased, so far as this war is concerned. And it has come to its desired and expected end. The Kaiser abdicates and flees to Holland.

For all this devout thanks are due to Him who is the alone Giver of Victory; and who will, in due time, come Himself to reign in righteousness and "rule the nations with a rod of iron."

TERMS OF THE ARMISTICE.

We publish for the greater convenience of our readers, and as the conclusion of our "War Notes," the most important document of modern history. It gives, doubtless, the general terms of the treaty of peace which will probably follow in due course. As announced by President Wilson, it is as follows:—

I.—Military Clauses on Western Front.

1.—Cessation of operations by land and in the air six hours after the signing of the armistice.

2—Immediate evacuation of invaded countries, Belgium, France, Alsace-Lorraine, Luxemburg. So ordered as to be completed within fourteen days from the signature of the armistice. German troops which have not left the above-mentioned territories within the period fixed will become prisoners of war. Occupation by the Allied and United States forces jointly will keep pace with evacuation in these areas. All movements of evacuation and occupation will be regulated in accordance with a note annexed to the stated terms.

Repatriation.

3.—Repatriation beginning at once, and to be completed within fourteen days, of all inhabitants of the countries above-mentioned, including hostages and persons under trial or convicted.

4.—Surrender in good condition by the German armies of the following: Five thousand guns (two thousand five hundred heavy, two thousand five hundred field). thirty thousand machine

guns, three thousand minenwerfer, two thousand airplanes (fighters, bombers—firstly, D; seventy-three's and night bombing machines). The above to be delivered in situ to the Allies and the United States troops in accordance with the detailed conditions laid down in the annexed note.

EVACUATION OF RHINE BANK.

5.—Evacuation by the German armies of the countries on the left bank of the Rhine. These countries on the left bank of the Rhine shall be administered by the local authorities under the control of the Allies and United States armies of occupation. The occupation of these territories will be determined by Allied and United States garrisons holding the principal crossings of the Rhine, Mayence, Coblenz, Cologne, together with bridgeheads at these points in thirty kilometre radius on the right bank and by garrisons similarly holding the strategic points of the regions. A neutral zone shall be reserved on the right of the Rhine between the stream and a line drawn parallel to it forty kilometres to the east from the frontier of Holland to the parallel of Gernsheim and as far as practicable a distance of thirty kilometres from the east of stream from this parallel upon Swiss frontier. Evacuation by the enemy of the Rhine lands shall be so ordered as to be completed within a further period of eleven days, in all nineteen days after the signature of the armistice. (Here the President interrupted his reading to remark that there evidently had been an error in transmission, as the arithmetic was very bad. The further period of 11 days is an addition to the 14 days allowed for evacuation of invaded countries, making 25 days given the Germans to get entirely clear of the Rhinelands.) All movements of evacuation and occupation will be regulated according to the note annexed.

6.—In all territory evacuated by the enemy there shall be no evacuation of inhabitants, no damage or harm shall be done to the persons or property of the inhabitants. No destruction of any kind to be committed. Military establishments of all kinds shall be delivered intact as well as military stores of food, munitions, equipment not removed during the periods fixed for evacuation. Stores of food of all kinds for the civil population, cattle, etc., shall be left in situ. Industrial establishments shall not be impaired in any way, and their personnel shall not be moved. Roads and means of communication of every kind, railroads, waterways, main roads, bridges, telegraphs, telephones, shall be in no manner impaired.

7.—All civil and military personnel at present employed on them shall remain. Five thousand locomotives, fifty thousand wagons and ten thousand motor lorries in good working order with all necessary spare parts and fittings shall be delivered to the associated powers within the period fixed for the evacuation

of Belgium and Luxemburg. The railways of Alsace-Lorraine shall be handed over within the same period, together with all pre-war personnel and material. Further material necessary for the working of railways in the country on the left bank of the Rhine shall be left in situ. All stores of coal and material for the upkeep of permanent ways, signals and repair shops left entire in situ and kept in an efficient state by Germany during the whole period of armistice. All barges taken from the Allies shall be restored to them. A note appended regulates the details of these measures.

8.—The German command shall be responsible for revealing all mines or delay-acting fuse disposed on territory evacuated by the German troops, and shall assist in their discovery and destruction. The German command shall also reveal all destructive measures that may have been taken (such as poisoning or polluting of springs, wells, etc.) under penalty of reprisals.

9.—The right of requisition shall be exercised by the Allies and the United States armies in all occupied territory. The upkeep of the troops of occupation in the Rhineland (excluding Alsace-Lorraine) shall be charged to the German Government.

10.—An immediate repatriation without reciprocity, according to detailed conditions, which shall be fixed, of all Allied and United States prisoners of war. The Allied powers and the United States shall be able to dispose of these prisoners as they wish.

11.—Sick and wounded who cannot be removed from evacuated territory will be cared for by German personnel who will be left on the spot with the medical material required.

12.—All German troops at present in any territory which before the war belonged to Russia Roumania or Turkey shall withdraw within the frontiers of G rmany as they existed on August 1, 1914.

13.—Evacuation by German troops to begin at once, and all German instructors, prisoners and civilian, as well as military agents, now on the territory of Russia (as defined before 1914) to be recalled.

14—German troops to cease at once all requisitions and seizures and any other undertaking with a view to obtaining supplies intended for Germany in Roumania and Russia (as defined on August 1, 1914).

II.—Abandonment of Treaties.

15.—Abandonment of the Treaties of Bucharest and Brest-Litovsk and of the supplementary treaties.

16.—The Allies shall have free access to the territories evacuated by the Germans on their eastern frontier either through Danzig or by the Vistula in order to convey supplies to the populations of those territories or for any other purpose.

III.—Clause Concerning East Africa.

17.—Unconditional capitulation of all German forces operating in East Africa within one month.

IV.—General Clauses.

18.—Repatriation, without reciprocity, within a maximum period of one month in accordance with detailed conditions hereafter to be fixed of all civilians interned or deported who may be citizens of other Allied or associated States than those mentioned in Clause III., paragraph 19, with the reservation that any future claims and demands of the Allies and the United States of America remain unaffected.

19.—The following financial conditions are required: Reparation for damage done. While such armistice lasts no public securities shall be removed by the enemy which can serve as a pledge to the Allies for the recovery or reparation for war losses. Immediate restitution of the cash deposit in the National Bank of Belgium, and in general the immediate return of all documents, specie, stocks, shares, paper money together with plant for the issue thereof, touching public or private interests in the invaded countries. Restitution of the Russian and Roumanian gold yielded to Germany or taken by that power. This gold to be delivered in trust to the Allies until the signature of peace.

V.—Naval Conditions.

20.—Immediate cessation of all hostilities at sea and definite information to be given as to the location and movements of all German ships. Notification to be given to neutrals that freedom of navigation in all territorial waters is given to the naval and mercantile marines of the Allied and associated powers, all questions of neutrality being waived.

21.—All naval and mercantile marine prisoners of war of the Allied and associated powers in German hands to be returned without reciprocity.

22.—Surrender to the allies and the United States of America of one hundred and sixty German submarines (including all submarine cruisers and mine-laying submarines), with their complete armament and equipment in ports which will be specified by the Allies and the United States of America. All other submarines to be paid off and completely disarmed and placed under the supervision of the Allied powers and the United States of America.

Surrender of High Seas Fleet.

23.—The following German surface warships which shall be designated by the Allies and the United States of America shall forthwith be disarmed and thereafter interned in neutral ports, or for the want of them, in Allied ports, to be designated by the Allies

and the United States of America, and placed under the surveillance of the Allies and the United States of America, only caretakers being left on board, namely, six battle cruisers, ten battleships, eight light cruisers, including two mine-layers, fifty destroyers of the most modern type. All other surface warships (including river craft) are to be concentrated in German naval bases to be designated by the Allies and the United States of America, and are to be paid off and completely disarmed and placed under the supervision of the Allies and the United States of America. All vessels fo the auxiliary fleet (trawlers, motor vessels, etc.) are to be disarmed.

24.—The Allies and the United States of America shall have the right to sweep up all minefields and obstructions laid by Germany outside German territorial waters and the positions of these are to be indicated.

25.—Freedom of access to and from the Baltic to be given to the naval and mercantile marines of the Allied and associated powers. To secure this the Allies and United States of America shall be empowered to occupy all German forts, fortifications, batteries and defence works of all kinds in all the entrances from the Cattegat into the Baltic, and to sweep up all mines and obstructions within and without German territorial waters, without any question of neutrality being raised, and the positions of all such mines and obstructions are to be indicated.

Blockade Remains.

26.—The existing blockade conditions set up by the Allied and associated powers are to remain unchanged and all German merchant ships found at sea are to remain liable to capture.

27.—All naval aircraft are to be concentrated and immobilized in German bases to be specified by the Allies and the United States of America.

28.—In evacuating the Belgian coasts and ports, Germany shall abandon all merchant ships, tugs, lighters, cranes and all other harbor materials, all materials for inland navigation, all aircraft and all materials and stores, all arms and armaments and all stores and apparatus of all kinds.

29.—All Black Sea ports are to be evacuated by Germany; all Russian war vessels of all descriptions seized by Germany in the Black Sea are to be handed over to the Allies and the United States of America; all neutral merchant vessels seized are to be released; all war-like and other materials of all kinds seized in those ports are to be returned and German materials as specified in Clause 28 are to be abandoned.

30.—All merchant vessels in German hands belonging to the allied and associated powers are to be restored in ports to be specified by the Allies and the United States of America without reciprocity.

31.—No destruction of ships or of materials to be permitted before evacuation, surrender or restoration.

32.—The German Government will notify the neutral Governments of the world, and particularly the Governments of Norway, Sweden, Denmark and Holland, that all restrictions placed on the trading of their vessels with the Allied and associated countries whether by the German Government or by private German interests, and whether in return for specific concessions, such as the export of shipbuilding materials or not, are immediately cancelled.

33.—No transfers of German merchant shipping of any description to any neutral flag are to take place after signature of the armistice.

VI.—Duration of Armistice.

34.—The duration of the armistice is to be thirty days, with option to extend. During this period, on failure of execution of any of the above clauses, the armistice may be denounced by one of the contracting parties on 48 hours' previous notice.

VII.—Time Limit for Reply.

35.—This armistice to be accepted or refused by Germany within 72 hours of notification.

SUBSEQUENT ALTERATIONS.

The above were the terms cabled to President Wilson, but it appears that some changes were made by Marshall Foch before the document was signed. The following is a summary of the changes:—

Article 3—Fifteen days, instead of 14, are allowed for the repatriation, beginning at once, of all the inhabitants removed from invaded countries, including hostages and persons under trial or convicted.

Article 4—Providing for the surrender of munitions and equipment, reduces the number of machine guns to be delivered from 30,000 to 25,000, the number of airplanes from 2,000 to 1,700.

Article 5—Providing for the evacuation by the Germans of the countries on the left bank of the Rhine, stipulates that these countries shall be administered by "the local troops of occupation," instead of by the local authorities under the control of the Allied and United States armies, and the occupation is to be "carried out by," instead of "determined by," Allied and United States garrisons holding strategic points and the principal crossings of the Rhine. Thirteen days instead of twenty-five are allowed for completion of the evacuation.

Article 6—Providing that no damage or harm shall be done to persons and property in territory evacuated by the Germans has

a sentence added specifically stipulating that no person shall be prosecuted for offences of participation in war measures prior to the signing of the armistice.

Article 7.—Providing for the abandonment or delivery in good order to the associated powers of all roads and means of communication and transportation in evacuated territory, calls for 150,000 wagons (railroad cars) instead of 50,000; 5,000 motor lorries instead of 10,000, and requires that all civil and military personnel at present employed on such means of communication and transportation, including waterways, shall remain. Thirty-one instead of twenty-five days are allowed for handing over the material. Thirty-six days are allowed for the handing over of the railways of Alsace-Lorraine, together with the pre-war personnel.

Article 8.—Forty-eight hours is given the German command to reveal destructive measures, such as polluted springs and wells and to reveal and assist in discovering and destroying mines or delayed action fuses on evacuated territory. No time limit was fixed originally.

Article 9.—Providing for the right of requisition by the United States and Allied armies in occupied territory, has the clause added: "Subject to regulation of accounts with those whom it may concern."

Article 10.—Providing for the repatriation without reciprocity of all Allied and United States prisoners of war, including persons under trial or convicted, has the following added: "This condition annuls the previous conventions on the subject of the exchange of prisoners of war, including the one of July, 1918, in course of ratification. However, the repatriation of German prisoners of war, interned in Holland and in Switzerland, shall continue as before. The repatriation of German prisoners of war shall be regulated at the conclusion of the preliminaries of peace."

Article 12.—Providing for the withdrawal of German troops from territory which belonged before the war to Russia, Roumania and Turkey, is rewritten. Territory which belonged to Austria-Hungary is added to that from which the Germans must withdraw immediately, and as to territory which belonged to Russia, it is provided that the German troops now there shall withdraw within the frontiers of Germany "as soon as the Allies, taking into account the internal situation of those territories, shall decide that the time for this has come."

Article 15.—"Renunciation" is substituted for "abandonment" in stipulating that the teraties of Bucharest and Brest-Litovsk are nullified.

Article 16.—Providing free access for the Allies into territory evacuated through the German eastern frontier, is changed so as to declare such access is for the purpose of conveying supplies to the populations "and for the purpose of maintaining order," instead of "or for any other purpose."

Article 17.—Originally providing for the "unconditional capitulation" within one month of all German forces operating in East Africa, is substituted by a clause requiring only "evacuation by all German forces operating in East Africa within a period to be fixed by the Allies."

Article 18.—Providing for the repatriation of all civilians belonging to the Allies or associated powers other than those enumerated in article three, is amended to eliminate a reservation that any future claims or demands by the Allies and the United States shall remain unaffected.

Article 22.—Providing for the surrender of 150 German submarines is changed to read "all submarines now existing" with the added stipulation that "those which cannot take the sea shall be disarmed of their material and personnel and shall remain under the supervision of the Allies and the United States."

Further provisions are added requiring that all the conditions of the article shall be carried into effect within fourteen days; that submarines ready for sea shall be prepared to leave German ports immediately upon orders by wireless and the remainder at the earliest possible moment.

Article 23.—Providing for the disposition of German surface warships, has additional clauses requiring that vessels designated for internment shall be ready to leave German ports within seven days upon directions by wireless, and that the military armament of all vessels of the auxiliary fleet shall be put on shore.

Article 26.—Providing that the Allied blockade remains unchanged has this sentence added: "The Allies and the United States should give consideration to the provisioning of Germany during the armistice to the extent recognized as necessary."

Article 28.—Providing conditions of evacuation of the Belgian coast (from which the Germans actually had been driven before the armistice was signed), was changed in minor particulars.

Article 34.—Providing that the duration of the armistice shall be thirty days, and that if its clauses are not carried into execution, it may be renounced upon forty-eight hours' warning, has the following added: "It is understood that the execution of articles three and eighteen shall not warrant the renunciation of the armistice on the ground of insufficient execution within a period fixed except in the case of bad faith in carrying them into execution. In order to assure the execution of this convention under the best conditions the principle of a permanent international armistice commission is admitted. This commission shall act under the authority of the Allied military and naval commanders-in-chief.

God Save The King!

Flotsam and Jetsam.

Rhymed Wills.

The following will have to be added to the collections of rhymed wills. It is the will of Mr. Joseph Bell, of Ambleside-gardens, Streatham, S.W., and Cannon street, E.C., who died on March 18. It was proved at £1,164 by the executrix and executor named therein:—

"I will and bequeave
To her I bereave,
Rose Georgina Bell,
About whom ALL speak well,
My CHUM and my WIFE,
My soul and my life,
ALL MY ESTATE.
So make NO mistake,
My worthy solicitor,
Lest o' nights unadvised I frequently visit yer.
As straw was required in the making of bricks
It is needful to have an executrix;
So I appoint Miss Jane Fordham, provided she'll act,
And as my executor, the work to enact,
My brother Frank Bell, who's acutely exact."

With Apologies to Lord Tennyson.

Suggested by a day lost in Court at Osgoode Hall owing to the whole time being taken up by a long-winded K.C. in another case.

Talk, talk, talk,
At the Full Bench Court, K.C.—
And would I could carry out
The thoughts that arise in me.

Oh! well for the suave C. J.,
That he peacefully nods in his chair,
Oh! well for the Junior J.'s,
For never a cent they care.

And the stream of talk goes on
Like a tide through an empty mill,
But, oh! for a club to crack his head,
And make him sit down and be still.

Talk, talk, talk,
All day, if you must, K.C.—
But the chance for a fee for a day that is gone
Will never come back to me.