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LAWYERS IN PARLIAMENT.

We trust the politicians of the two political parties whose respective applecarts were so unceremoniously upset by the rural electors at the recent provincial election in Ontario are recovering from the stupor occasioned thereby.

One feature of this surprising political upheaval, whereby the hitherto politically submerged tillers of the soil have come to the top, is the fact that in the Farmer Cabinet there is only one lawyer to aid in steering the somewhat unwieldy or at least the untried barge that is to carry the new Government through the rapids and tortuous channels of its first political voyage. In the past the Premiers of this Province (with one exception) have always been lawyers. In the first Cabinet, led by John Sandfield Macdonald, there were four, all of eminent ability, and in the Government just defeated there were five.

To a professional man and to those versed in parliamentary procedure the reason for this preponderance is obvious. The work of the Government is very largely a question of law; and law, of all things, is a thing with which those who have no legal training are incapable of dealing; and the person who attempts so to do only gets himself and others into difficulties.

The administration of justice and the making of our statute law, confessedly two of the most important branches of the government of any country, are subjects with which only trained and skilful lawyers are competent to deal; any ignoramous assuming their control would flounder in the mire or would be practically at the mercy of others. We fear that this has been lost sight of by the new Government. To assume that a Government can be successfully carried on without the aid of a sufficient force of

trained legal minds is a false assumption, which is likely to lead to some fatal and disastrous mistake.

There are however amongst those who will sit to the left of the Speaker, or on the cross-benches, a few lawyers who have escaped the wreckage of the old political parties. Let us hope for the honour of the profession, and for the good of their country, that they will, with true patriotism and self abnegation, when occasion demands it, give a helping hand to the lonely lawyer who will as Attorney-General probably have much to say in steering the Farmer Government through the difficulties which it will meet with on this its first parliamentary voyage.

We understand that Mr. W. E. Raney, of Toronto, K.C., an occasional contributor to the columns of this journal, has been selected to fill the office of Attorney-General in the new Government. He is a capable and respected member of the profession, and, though without parliamentary experience, can be trusted faithfully to fulfil the duties of his difficult position. There is the consolation of knowing that the permanent heads of the legal departments of the Government are a competent body of men who will be able to some extent to make up for the lack of the usual quota of professional men in the new Cabinet.

The serious aspect to this question cannot be overlooked. The truth is that no Government can be carried on to the advantage of the public and with due regard to the stability of our institutions and the due administration of justice without the aid of professional lawyers of experience. There has been a feeling in the minds of farmers and others, who have no knowledge of the actual work of the Government, that there have been in the past too many lawyers in our legislative halls. This is excusable upon the grounds of ignorance, but it is an entirely false idea both in theory and practice. Once and once only in the history of the Motherland has such an idea prevailed; but the Parliament from which the lawyers had been excluded has ever since been known as the "lack learning Parliament."

It is well that the public should know that every lawyer of average experience must necessarily know much about almost every branch of business which calls for legislation; and, if he has ordinary

capacity, his training, experience and wide range of information will prove that he is better qualified than a man of any other class in the community to suggest and guide desirable legislation on any subject that may come up for discussion. And what perhaps is of more value than all, his training teaches him to know men, and gives him that habit of viewing things in a broad spirit, and with a proper sense of proportion, so necessary in a legislator.

We claim also for our lawyer legislators that as a class, in addition to other attributes, they exercise their acquirements and skill with a stronger sense of what is fair to others than appertains to those whose vision is confined to their own trade or calling to a smaller and more personal horizon.

We trust that our brethren realize something of the responsibility and duty which these advantages lay upon us. This duty is aptly expressed in the concluding words of a recent paper by Professor Swan, of the Yale School of Law, where he says: "This period of reconstruction should bring home to the legal profession, not only its duty to lead public opinion on the critical political and social problems which confront our nation, not only its duty to reform defects in the law and its administration, but also its duty to aid in so broadening and deepening legal education that the lawyers of the future may render a still larger public service."

INTERNATIONAL LAW IN RELATION TO INDIRECT BLOCKADE.

This subject was dealt with at some length by Viscount Finlay at the last meeting of the Canadian Bar Association.

This paper, coming as it does from such an eminent jurist, and occupying the highest judicial position in the British Empire, assumes the importance of a supreme judicial utterance. Especially is this so, as the paper was prepared in view of Lord Finlay's impending visit, not only to Canada, but also to the United States of America, which, during the first part of the war, was a neutral country, but later was, most happily, our warm and powerful ally. It will therefore be read with great interest by jurists there as well as here.

He spoke as follows:—

Gentlemen,

I propose to speak to you on some of the lessons of the war as to international law, especially on retaliation and the indirect blockade, as it has been called, which was carried on against Germany by Great Britain latterly in co-operation with the United States of America. My remarks will naturally fall under three heads:

1. The doctrine of retaliation and its effect on neutrals;
2. The doctrine of continuous voyage; and,
3. The system of rationing neutral countries in the vicinity of Germany.

1. RETALIATION. The first observation which comes to me is that it has been thought sometimes that neutrals are affected as regards their use of the high seas by the law only of contraband and of blockade in the strict sense of the term. It has, however, always been a part of international law that the position of neutrals might be affected by reprisals exercised by one belligerent against the other, and that neutrals might to some extent be prejudiced by such reprisals. There is nothing new in this doctrine—it is as old at least as the time of Lord Stowell. Lord Stowell had to deal with the orders-in-council passed by the British Government by way of reprisal for the decrees of Berlin in 1806, 21st November, and of Milan in 1807, 17th August. By these decrees Napoleon affected to put the British Isles into a state of blockade and prohibited all intercourse with them, and all traffic in British merchandise. Having regard to the predominance of the British navy at that time this proclamation of blockade was most audacious, but as the influence of Napoleon was predominant on the continent his decrees were obeyed by his allies and by those who dreaded his power.

Great Britain retaliated for the Berlin decree by the celebrated orders-in-council of 7th January, 1807, and 11th November, 1807. By the second of these orders there was proclaimed virtually a blockade of France and of the countries of her allies, and of all countries which submitted to Napoleon's decrees at Berlin and

Milan, a blockade which was partially relaxed by order-in-council of 26th April, 1809. A very lucid account of these various decrees and orders-in-council will be found in Manning's Law of Nations, Book III. c. 10, a work which I have found most useful.

In the very recent case of the "Leonora," in which judgment was given by the Judicial Committee of the Privy Council on the 31st July last, reference was made to these orders-in-council in the following terms: In delivering judgment, Lord Sumner said:

"With the terms of the proclamations and orders-in-council from 1806 to 1812, their Lordships are not now concerned. They were such that the decisions on them in many cases involved not merely the use of the term 'blockade,' but discussion of or at least allusion to the nature of that right. It is, however, in their opinion a mistake to argue, as has been argued before them, that in those decisions the right to condemn was decreed to arise from the fact that the cases were cases of blockade, although the occasion for the blockade was the passing of a retaliatory order. In their opinion Sir William Scott's doctrine consistently was that retaliation was a branch of the rights which the law of nations recognizes as belonging to belligerents and that it is as much enforceable by Courts of Prize as is the right of blockade. They find no warrant or authority for holding that it is only enforceable by them when it chances to be exercised under the form or conditions of a valid blockade. When once it is established that the conduct of the enemy gave occasion for the exercise of the right of retaliation, the real question is whether the mode in which it has been exercised is such as to be invalid by reason of the burden which it imposes on neutrals, a question pre-eminently one of fact and of degree."

There has been a great deal of controversy as to these orders-in-council. The right of retaliation, even to the prejudice of neutrals, is unquestioned. Sir William Scott asserted it in the case of the "Fox" (Edwards 311) and pointed out that retaliation might occasion inconvenience to neutrals, and that if the inconvenience occasioned was greater than was necessary and reasonable, it was not enforceable as against them.

The exercise of the right of retaliation is always subject to review in the Prize Court. This is a real safeguard, as is shewn by the decision in the case of the "Zamora" (1916), 2 A.C. 77, which was delivered by Lord Parker of Waddington. I may

pause for a moment to refer to the great loss which our courts in England have sustained by the untimely death of Lord Parker; his was one of the acutest intellects that has ever been brought to bear upon the study of law, whether municipal or international. It was decided in that case that there is no power in the Crown by order-in-council to prescribe or alter the law which Prize Courts administer. The decision on this point followed the principles which were often enunciated by Lord Stowell while it over-ruled a dictum to the contrary which proceeded from that great Judge on one occasion. What Lord Parker said was that the court will give the utmost weight to every such order, short of treating it as a binding declaration of law, and he defined the position of the courts with reference to orders-in-council in the following terms:

"An order authorizing reprisals will be conclusive as to the facts which are recited as shewing that a case for reprisal exists and will have due weight as shewing what, in the opinion of His Majesty's advisors, are the best or only means of meeting the emergency. But this will not preclude the right of any party aggrieved to contend, or the right of the Court to hold, that these means are unlawful as entailing on neutrals a degree of inconvenience unreasonable considering all the circumstances of the case."

If the right of neutrals to carry on trade were absolute, it would make the right of reprisals a mere simulacrum, to borrow a phrase once used in this connection by Lord Sumner. The question always is, is the amount of interference with neutrals unreasonable?

In the present war, Germany entirely threw into the shade the action of Napoleon and the decrees of Berlin and Milan. Napoleon's decrees, outrageous as they were, when compared with the submarine campaign seem innocence itself. The British waters were declared by the German Government to be a "military zone." All vessels trading within that area—British and neutral alike—were to be sunk. There was vast loss of life and untold suffering as the result of this submarine campaign. The provocation offered by Napoleon was nothing to that occasioned by these measures of the Kaiser. Any retaliation in kind by Great Britain was impossible, for two reasons: in the first place, there were no

German ships at sea, and in the second place no English Government could ever stoop to the commission of such outrages as disgraced the flag of Germany. The only possible reprisals were by cutting off the trade of Germany. That trade was carried on entirely through neutrals, as German merchant ships did not venture to cross the seas. Under these circumstances His Majesty's Government passed the order-in-council of March 11, 1915, which was a retaliatory order. It is mild and humane in its provisions, and presents a striking contrast to the German methods.

By this order all vessels sailing after the 1st of March, 1915, for or from any German port, were not allowed to proceed on their voyage—provision was made for their discharge in British or allied ports, and for the cargo being put into the custody of the Marshall of the Prize Court, and the goods or proceeds of the sale were ultimately to be dealt with as appeared just. This order further provided that goods which were enemy property, or of an enemy origin or destination found on any vessel sailing after the 1st March, 1915, from or for any non-German port, should be similarly dealt with.

The validity of this order was attacked in the case of the "Stigstad" (1916), P. 123 and (1919), A.C. 279, but it was upheld as against the neutral by Sir Samuel Evans, whose untimely death we all deplore, and who has left behind him an undying memory as a great Judge in prize cases.

The Stigstad was a neutral ship bound for Rotterdam from Norway. She carried goods intended for Germany and was compelled to discharge them at Middlesborough by an English man-of-war. It was held by the Privy Council affirming in precedent that the neutral shipowner was not entitled to any damages as there had been no unreasonable amount of inconvenience occasioned to him, and the principles laid down in Lord Parker's judgment in the "Zamora" were followed and applied.

In the judgment of the Privy Council, at page 287, after reference to the German outrages at sea, it is said:

"Neutrals whose principles or whose policy led them to refrain from repressive action on their own, may well be called upon to bear a passive part in the necessary suppression of courses which

are fatal to the freedom of all who use the seas. The argument principally urged at the Bar ignored this consideration and assumed the absolute right of neutral trade to proceed without interference or restriction unless by the application of the rules heretofore established as to contraband traffic, un-neutral service and blockade . . . For this contention no authority at all was forthcoming . . . To deny to the belligerent under the head of retaliation any right to interfere with the trade of neutrals beyond that which, quite apart from circumstances which warrant retaliation, he enjoys already under the head of contraband, blockade and un-neutral service, would be to take away with one hand what had been formally conceded with the other."

To put it shortly, the principle is that neutrals must submit to such inconvenience so long as it is not more than is necessarily incident to the exercise of retaliation.

The German submarine outrages continued and multiplied, and an order was made by the German Government on the 1st February, 1917, prohibiting all traffic in certain zones over widespread areas of the high seas affecting to regulate even trans-Atlantic traffic, prescribing zones and routes and enacting that vessels were to be painted in a special fashion like barbers' poles, as was said in the United States, and warning neutrals that if vessels entered the forbidden zones they would be there at their own risk. On the 16th February, 1917, His Majesty issued a second order-in-council, also by way of retaliation. It will be found in the London *Gazette* of 20th February, 1917. The effect of this order was:

"(1) To give effect to a very reasonable presumption by prescribing that any vessel going to or from any neutral port affording access to enemy territory without calling at a British or allied port, was, till the contrary was shewn, to be deemed to be carrying goods with enemy destination or of enemy origin, and was to be brought in for examination and, if necessary, for adjudication.

"(2) Any vessel carrying goods with enemy destination or of enemy origin was declared to be liable to capture and condemnation unless she called at a British or allied port for examination.

"(3) Goods of enemy origin or destination were declared to be liable to condemnation."

Every care was taken to minimize the inconvenience of calling

at British ports. Halifax was allowed as more convenient than Kirkwall and Falmouth.

The validity of this order was called in question in the case of the "Leonora," that very recent decision of the Privy Council to which I have already referred. In that case the vessel was carrying coal from Belgium (while in German occupation) for Sweden, and she had not called for examination at any British port. The ship and cargo were condemned and the validity of the order-in-council of 16th February, 1917, was upheld.

The "Leonora" is a leading case in international law, and I may be permitted to refer particularly to the scope and effect of the judgment of the Privy Council.

My references are to the printed judgment, delivered by Lord Sumner at the Privy Council; it has not yet been published in the law reports.

On page 3, he states what was the ground of attack on the order-in-council:

"The appellant's main case," he says, "was that the order-in-council was invalid principally on the ground that it pressed so hardly on neutral merchants and interfered so much with their rights that as against them, it could not be held to fall within such right of reprisal as a belligerent enjoys under the law of nations."

On page 4, he goes on to point out that:

"There are certain rights which a belligerent enjoys by the law of nations in virtue of belligerency which may be enforced by us against neutral subjects to the prejudice of their perfect freedom of action, and this because without these rights maritime war would be frustrated and the appeal to the arbitrament of arms made of none effect."

Again on page 4 he lays down what the sanction is:

"Disregard of a valid measure of retaliation is against neutrals just as justiceable in a Court of Prize as breach of blockade or the carriage of contraband of war. The jurisdiction of a Court of Prize is at least as essential in the neutral's interest as in the interests of the belligerent, and if the Court is to have power to release in the interest of the one, it must also have inherent power to condemn in justice to the other."

The appellants had argued that the order-in-council pur-

ported to create an offence in failure to call at a British or allied port, which is unknown to the law of nations, and on page 5 occurs a passage dealing with this point which from its importance I cite textually:

"In the terms of the present order, which says that a vessel shall be 'liable to capture and condemnation' and that 'goods should be liable to condemnation,' some argument has been found for the appellant's main proposition that the order-in-council creates an offence and attaches this penalty, but their Lordships do not accept this view. The order declares by way of warning and for the sake of completeness the consequences which may follow from disregard of it, but if the occasion has given rise to the right to retaliate, if the belligerent has validly availed himself of the occasion, and if the vessel has been encountered at sea under the circumstances mentioned, the right and duty to bring the ship and cargo before a Court of Prize, as for a justiceable offence against the right of the belligerent, has arisen thereupon, and the jurisdiction to condemn is that which is inherent in the Court."

Again on page 8 is found a statement of the principle:

"The right of retaliation is a right of the belligerent, not a concession by the neutral. It is enjoyed by law and not on sufferance and doubly so when, as in the present case, the outrageous conduct of the enemy might have been treated as acts of war by all mankind."

It must not be forgotten that while war brings upon neutrals a certain amount of hardship it may also give them the opportunity of making very considerable profits. I think that Sir Samuel Evans on one occasion remarked that neutrals said more about the former than about the latter.

II. Continuous Voyage. The application of reprisals directed against the trade of Germany was complicated by the fact that during the war Germany did not import directly to her own harbours, but drew her supplies through surrounding neutral countries—Holland, Sweden, Norway and Denmark. The problem was solved largely by the application of the doctrine of continuous voyage, in the establishment of which the Prize Courts of the United States have played so conspicuous a part.

The doctrine of continuous voyage had humble beginnings. In 1756, and later in the course of the great war between England

and France, it was applied in dealing with neutrals who took part in trading with the enemy's colonies, which, in times of peace, had been open only to French subjects. During the war French colonial trade was thrown open to the Dutch and to other neutrals, and the same thing occurred with the Spanish colonial trade. The English treated those neutral vessels which availed themselves of the enemy's permission so to trade, as siding with the enemy, and the neutral vessels were captured and forfeited. To avoid the danger of this it became a habit with the neutral merchants to make a colorable importation into a port from which the venture would be permissible. To take a concrete case: A cargo from La Guavra for Bilboa was landed at Marblehead, Mass., and re-embarked for Bilboa. The case came before Lord Stowell, who asserted the doctrine of continuous voyage in these words:

"It is an inherent and settled principle in cases in which the same question has come under discussion that the mere touching at any port without importing a cargo into the common stock of the country, will not alter the nature of the voyage, which continues the same in all respects, and must be considered as a voyage to the country to which the vessel is actually going for the purpose of delivering the cargo at the ultimate port." (The "Maria," 1805, 5 C. Rob. 368.)

In the case of the "Maria" the device was transparent, but the same principles will apply in the case of trans-shipment into another vessel. In the American Civil War the doctrine of "continuous voyage" leaped into fame. You are all aware that Nassau in the Bahamas became a great emporium. Ships came across the Atlantic Ocean bound for Nassau with cargoes which were there to be trans-shipped and taken to Confederate ports. In the case of the "Bermuda" (1865), 3 Wallace 551, the vessel was seized on a voyage from England to Nassau, and the Supreme Court of the United States decided that as the real ultimate destination of the goods was hostile, the interposition of another port between the neutral port of departure and the belligerent destination was of no avail. "A transportation from one port to another remains continuous so long as intent remains unchanged, no matter whether stoppages or trans-shipments intervene."

In the case of the "Springbok" (1866), 5 Wallace 1, the vessel was in like manner seized before arriving at Nassau and the cargo was condemned on the same ground as in the "Bermuda." The case is of some importance, because Lord Russell, the English Foreign Secretary, refused to intervene on behalf of the cargo owners on the ground that the real destination of the cargo was not Nassau, but for a belligerent port. These decisions gave rise to a great outcry and were denounced as involving "a violent extension" of the doctrine of continuous voyage. But it is now quite apparent that these decisions of the Supreme Court were based on common sense, and I think I may say that they are, at the present date, universally recognized as forming part of international law.

The question arose again in 1900, during the war between England and the Boers. The Transvaal had no port, and consignments were made to the Portuguese port of Lorenzo Marquez, whence cargoes were to be taken to the Transvaal by rail. As Law Officer I had a great deal to do with the discussions which then arose. Great Britain claimed the right to seize such goods on their way to Lorenzo Marquez, and Lord Salisbury invoked the doctrine of continuous voyage. One precedent on which Great Britain relied was set in 1896 by the Italian courts, who applied the doctrine in the case of the "Doelwyck," a Dutch ship with a cargo of arms consigned to the French port of Djibutil in the Red Sea, but really intended for transmission to Menelik, King of Abyssinia, than at war with Italy, and, to conclude this historical sketch, I think I may say that the doctrine of continuous voyage has been finally established by the action of the allied powers in the course of the present war.

In an otherwise admirable work, "Hall's International Law," there occurs a strong attack on these decisions of the Supreme Court of the United States. This work has run through many editions. The passage still stands in the text, but it is in strong contrast with the notes which in the later editions trace the subsequent history of the doctrine and shew the triumph of the American view of continuous voyage. I should like to suggest for consideration whether, in the next edition of "Hall's Inter-

national Law" this passage should not be recalled. The work is a most valuable one. Every student of international law is proud to acknowledge his obligations to it, and I cannot help thinking that the emendation which I suggest would be the removal of a blot.

If follows from the doctrine of continuous voyage that goods consigned to ports in neutral countries in the neighborhood of Germany, and intended for transmission to Germany, might for the purpose of reprisals be treated as consigned to Germany just as much as if they had been bound direct for a German port. The doctrine of continuous voyage was of course also applicable in the case of contraband intended for Germany, and its scope in this respect was greatly increased by the disappearance of the importance of the distinction between conditional and absolute contraband. Take the case of foodstuffs. The question whether they were contraband might depend on whether they were intended for the use of the civil population in the enemy country, or for the enemy forces. This test was easy to apply in the days of Grotius, and for a long time afterwards, when one had to deal with relatively small standing armies, and, having regard to the want of facilities for transport in those days as compared with the present, it was comparatively easy to ascertain whether the foodstuffs were really intended for the use of the civil population, or for the use of the armed forces of the country. The distinction is not so easy to draw now that we have the spectacle of whole nations in arms.

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III. RATIONING. Germany had attempted to starve England into submission by the submarine campaign and the object which England had in view was to establish an indirect blockade of Germany. In other words, England proposed while avoiding, as far as possible, any interference with imports into neutral countries near Germany, so far as they were wanted for the supply of their own needs, to prevent these countries from being used as conduits for the supply of Germany. This object was achieved by the adoption of a system of rationing these neutral countries according to their normal supply in pre-war days. The restric-

tions of imports through neutral countries was effected by means of the prevention of trade in exercise of the right of retaliation and by the enforcement of the law of contraband. If, during the war, a neutral neighbor of Germany imported three or four times as much as she had imported before the war, the inference was obvious that the surplus would go to Germany. This excessive import to neutral countries was stopped by agreements entered into with bodies representing the traders of the neutral country. These neutral countries were rationed according to their pre-war standard, and the goods were imported on the terms that they should be used for the neutral's own wants and that they should not go to Germany.

This system of "rationing" was most effective. It was, in the great majority of cases, carried out by agreement, so that no difficulty could arise with regard to the question whether the destination of any particular consignment was hostile, as it might have arisen if the rationing had been carried out under compulsion. Such difficulties might not have been insuperable, but rationing by agreement was far more effective and worked more smoothly than rationing by compulsion could have done.

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The prime and decisive factor in the success of the pressure which the allies were able to bring to bear upon German trade was, of course, the predominance of British naval power. But it is mere justice to say that the successful conduct of the "indirect blockade" was very largely due to Lord Robert Cecil, who, during a long and critical period, was Minister of Blockade. He is, in my opinion, entitled to a great part of the credit for the triumph of civilization over barbarism in this great struggle, and he can with truth say that the weapons with which he fought were—unlike those of our opponents—not those of barbarism.

May I be permitted to observe in conclusion that one most conspicuous element in the defeat of the submarine campaign—the most notorious in the history of the world—has been the constant and unflinching courage of the sailors of the mercantile marine, of the British Empire, of the United States, and of the neutral as well as the allied nations. If Germany hoped that by

her brutal methods she might create a panic among sailors and prevent ships putting to sea, she must now realize how gross was the delusion in reliance on which she entered on her career of crime. It has ended as it deserved to end, in failure and in shame, and those who would have gloried in its success are fain to find apologies for their complicity.

THE LEGAL PROFESSION IN RELATION TO ETHICS, EDUCATION AND EMOLUMENT.

These subjects were dealt with by Sir James Aikins, President of the Canadian Bar Association, in a very happy manner in his Presidential address at the meeting in Winnipeg last August. Want of space prevents our giving his address in full, but we make room for its concluding pages as follows:—

Legal Education and Ethics.

As we are ministers or agents of the law, the habit of our thought in all our professional and public activities should be, "Does this serve the State?" To so regard our services is to put our profession on its true and best plane. That habit should be struck in early with our students that they may have the right spirit as well as the trained mind. It is the false notion of democracy that the right to practice law should be free for all, that anyone can practice it, and without serious loss to the public, operate or help to operate the expensive and intricate machinery of justice which the State creates for its safety and well-being. The administration of justice has always touched the nadir of its decline when the profession has been lowest in morals and least educated. In such times there is seen a tendency on the part of practitioners to regard the work of the Bar as a trade and not a profession, a thing to be bartered and not a national service to be sought after; then also is found the pettifogger, the ambulance chaser, the fabricator of evidence and the trickster, and the man who is alien to the professional spirit and its traditions, destitute of gentlemanly instincts, disrespectful to his seniors, and a slanderer of Judges. Students-at-law should know the ethics of the Bar.

Deficiency in legal education also causes serious public injury. How can one not versed in the law and the procedure of the courts wisely advise in the one or safely proceed in the other? Who of us has not too often seen through such ignorance needless loss of time and money, to say nothing of the loss of good feeling, from the clients' statements of claim and defences shewing no legal wrongs or rights, perhaps ignoring both even where they exist, needless and useless and ill-launched court motions, appeals and examination of witnesses, improper evidence tendered and vehemently urged upon the court, prolonged and lengthy arguments and citation of cases. What clogging of the wheels of justice, what extravagant abuse of an essential system of justice and court organization, for which the people pay, and this largely through both lack of character and knowledge of the law. How are we to maintain the efficiency of the profession and its honour save by care in selecting those as students who possess the qualifications of mind and character, and then training both with exactitude in the practitioner's office or in the law school, so that they, being masters of their calling, may be happy in their work at the Bar and helpful to the community?

It cannot be expected that the profession will attract those who when trained in the law and practice will make the most useful and successful lawyers unless there are adequate rewards for meritorious services. Such rewards have almost invariably been low, and at these times of soaring values for material things and doubling wages in trades and businesses are, to say the least, meagre. What if the lawyers at the Bar and on the Bench were to combine and strike for higher pay? What riotous joy that would bring to the law-breaker and the anarchist! Notwithstanding frequent jibes, the public regard of the profession is such that even to the veriest Bolshevist the idea is inconceivable. Yet there are individuals and corporations who would treat the members of the Bar as unskilled laborers, and endeavor to secure their highly-trained services at bargain-counter prices. In some cases this has been successful, but not infrequently in the end most expensive to the client. To guard against clients of that class in most Provinces there are Standard Solicitors' Tariffs,

indicating reasonable fees as a guide to both the public and the younger members of the profession, and which should be adjusted by the profession to suit the times. An educated and just public opinion will uphold the payment of such fair rewards for meritorious services.

Professional Rewards.

The Canadian Bench, by the high character and efficient work of the Judges, has had the confidence of the people; its integrity has not been impeached, yet when representatives of this Association pressed the resolution passed by it urging an increase of salary, they were met by curt remarks from some knocking members of Parliament that the Judges were well paid for the work they did; that if they did not like their jobs, others would be glad to take them and the accompanying pay; that half the number of vigorous men would be sufficient, while ill-disposed labour agitators point to the Judges as examples of wage-earners who work less than six hours a day and 44 hours a week. To us who know their intellectual and experienced service and the hours of work in court and study, the answers to these derogatories are obvious. Even if in individual cases such remarks were not devoid of truth, the remedy lies in reducing the number where there are too many, and in a more careful selection, if they do not possess all the physical, mental and moral qualifications, but not in maintaining discouragingly low salaries, or making any increase an excuse for taking the whole. If, when the judicial compensation is made adequate, the appointing authority would ask the official societies representing the legal profession in each of the Provinces for the names of a number of the leaders of the Bar from whom to select, and would appoint from that number, the Bench would be most ably filled and the Bar would be the interested defender of its dignity and efficiency. In the performance of this highest duty of government so fundamental to a nation's quietness and confidence, the influence of political partisans should be rigorously excluded. If the salaries are adequate and the selection and appointment is made as suggested, from among the leaders of the Bar, the effect will be, as experience has demonstrated, to create

a higher type of barrister and advocate, well skilled in the law, gentlemanly in conduct, kindly disposed to his fellow practitioners and of a public spirit. Generally tending toward the same end will be the frequent meetings of the members of each of the Provincial Bars. None can commend too highly the official law and Bar societies, those bulwarks protecting the people against incompetent and unscrupulous men posing as lawyers, and thus guarding the honour of the profession. Their functions are largely executive. They, however, do not bring together the legal units in the nation undoubtedly influential in the localities where they practice, but whose efficiency for good in advancing jurisprudence, perfecting the laws and the administration of them, and in other ways would be greatly increased by concerted effort. To secure such concentrated action; to support and encourage the excellent executive work of the official law and Bar societies; to develop the co-operative spirit of the profession, Provincial Associations have been formed, and this Association was called into existence. Let us hope that in these, all members of the Bar, the Judges included, will cordially join and co-operate.

VISCOUNT FINLAY, AT OSGOODE HALL.

The Bar of Ontario had the pleasure and profit, last month, of meeting the ex-Lord High Chancellor of England, and hearing from him "a most instructive and interesting address" (as the Chairman appropriately styled it) on matters of interest to the profession. After a lunch given by the Benchers to their illustrious guest, he spoke to a large gathering of the Bar assembled in Convocation Hall, Osgoode Hall, Toronto. It is to be regretted that no arrangement had been made for a verbatim report of his address, for it was full of matters well worthy of being recorded in his own words. Dr. Hoskin, K.C., the Treasurer of the Law Society of Upper Canada, presided, and introduced the speaker in his own happy manner.

Among the subjects referred to by Lord Finlay was the Judicial Committee of the Privy Council. This was especially

interesting, as many of those present had secured the services of the then Sir Robert Finlay as leading counsel in cases on appeal to that august forum. He spoke very strongly of its helpfulness in cementing the ties which bind the Empire together. His reminiscences of the Inns of Court in England were very interesting, and led to his emphasizing the desirability of fostering the *esprit de corps* of the Bar, and increasing the cammaraderie of the English and Colonial Bars. Sir Robert Finlay having been retained in most of the cases which came before the Lords of the Privy Council in those days, had exceptional means of forming a judgment on the subjects referred to. He gave pointed attention to the subject of legal education, and the necessity of wide reading and literary culture outside the mere reading of law; "Students should not confine themselves to the study of law alone. If you do, you will not be a good lawyer. You must remember that the law concerns itself with mankind, and is as broad as that word." He referred in feeling terms to the kind reception he had everywhere received during his visit, and paid a graceful tribute to the part Canada had taken in the great war, and to the heroism of her sons.

CHANGING NAMES.

There has recently been an epidemic of name changing, largely among persons of foreign birth, which may perhaps be accounted for in some instances, though not in all, by the desire to obey the instinct of self-preservation which has induced some of them in such times as we have been passing through, to "stand from under" and get into good company; but this is by no means the only compelling reason. There have always been those who, for a variety of reasons, desire to be known by some name other than the one their fathers bore. It is surprising that there seems to be no general law governing and regulating such changes.

Difficulties and inconveniences, as may well be imagined, often arise from the changing of names, and this should, as far

as possible, be obviated or minimized. For example, complications, doubts and uncertainties naturally arise in reference to titles, as to executions against lands in a sheriff's office, and in numberless other ways. We are not at present prepared to suggest what legislation would be appropriate or helpful in the premises, but the subject certainly deserves the attention of the proper authorities.

We are not aware whether there is any legislation on the subject in other Provinces; but, in Ontario, there is none. A practice has, however, grown up there of filing in the Office of the Clerk of Records and Writs of the Supreme Court a deed poll executed by a person changing his name declaratory of his having done so and notifying the public thereof. This notice, by the way, is seen by no one but the man himself and the clerk, and is therefore valueless. Why filed there, no one knows. It might be of some use if filed in the Registry Office.

In the State of New York there is some legislation; for we find the following in Consolidated Laws, vol. II, 1909; Executive Law, sec. 34: "Provides that in reference to the publication of a statement of names changed, the Secretary of State must cause to be published in the next volume of the session laws following the report of names changed made to him by County Clerks pursuant to the County law, a tabular statement shewing the original name of each person and corporation and the name which he or it has been authorized to assume."

We should welcome any suggestions that might occur to any of our readers in reference to this matter.

LIABILITY OF CARRIER FOR LOSS OF BAGGAGE

In a recent case of *Wilkinson* v. *Westlake*, 17 O.W.N. 98, which was an action against a carrier for the loss of a trunk, it appeared that in the trunk in question there was contained an artificial limb belonging to the plaintiff's mother; and for this the learned Judge who tried the action held that the plaintiff could not recover.

A somewhat similar point arose in the recent case of *Jenkyns* v. *Southampton* (1919), 2 K.B. 135, where the lost suitcase of the

plaintiff contained, among other things, a pair of borrowed binoculars. As to them, Lush, J., said: "With regard to the glasses there is no ground whatever for saying that a borrowed article cannot be personal luggage. It is the property of the borrower for the time being and if it is lost a passenger can recover its value just as if it was his own." None of the other Judges who dealt with the case offered any dissent to this statement of the law. If this view of the law is correct, then it would appear that the plaintiff in the *Wilkinson* case was equally entitled, as the bailee of the artificial limb, to recover its value without any amendment.

FORTUNE-TELLING AND VAGRANCY.

If the law is as understood by the *Law Times* (Eng.), it is time it was changed. If *Davis* v. *Curry* is law it opens a wide door to criminals seeking to evade the law on other subjects besides fortune-telling. The writer says:

"Considerable prominence has been given in the lay press to the decision of Mr. Ralph Bankes, K.C., at the South-Western Police Court, dismissing a summons under the Vagrancy Act, 1824, for professing to tell fortunes with intent to deceive. The ground upon which the learned magistrate acted was that he was satisfied that the defendant believed that she had the power of foretelling the future. The dismissal of the charge was therefore the logical outcome of the decision of the Divisional Court in *Davis* v. *Curry*, 117 L.T. Rep. 716, where Mr. Justice Darling and Mr. Justice Sankey held that an intention to deceive was one of the ingredients of the offence, though Mr. Justice Avory thought otherwise, considering that the question of *bona fides* was irrelevant. The present case apparently was one of those referred to by Mr. Justice Darling when he said, 'I can imagine very few cases in which the magistrate would find it to be his duty to acquit,' but, owing to the undoubted harm that results from the actions of palmists, clairvoyants, and the like, an absolute prohibition would be welcome."

REVIEW OF CURRENT ENGLISH CASES.

FACTORY—FENCING MACHINERY—FENCING COMMERCIALLY IMPRACTICABLE—INJURY TO WORKMAN—LIABILITY OF EMPLOYER—FACTORY AND WORKSHOP ACT, 1091 (1 EDW. 7, c. 22), s. 10 (1) *c*—(R.S.O. 1914, c. 229, s. 55).

Davies v. *Thomas* (1919) 2 K.B. 39. This was an action by a workman against his employer for damages occasioned by a machine which was not securely fenced. It appeared by the evidence that it was commercially impracticable to fence the machine in question, but Salter, J., who tried the action, held that a breach of the Factory and Workshop Act (1 Edw. VII. c. 22), s. 10 (1)(*c*), had been committed and that the defendant was liable. Whether this decision would be applicable to the construction of R.S.O. 1914, c. 229, s. 55 (1) *a*, is open to doubt, having regard to the words "as far as practicable."

FIRE—LIABILITY FOR DAMAGE TO ADJOINING PREMISES—"ACCIDENTAL FIRE"—NEGLIGENCE IN NOT CHECKING SPREAD OF FIRE—FIRES PREVENTION ACT, 1774 (14 GEO. III. c. 78), s. 86—(R.S.O. c. 118).

Musgrove v. *Pandelis* (1919) 2 K.B. 43. This was an appeal from the judgment of Lush, J. (1919) 1 K.B. 314 (noted *ante* p. 184). The Court of Appeal (Bankes, Warrington and Duke, L.JJ.) affirmed the judgment, deciding in effect that if a fire accidentally begins on a man's premises and, by his negligence, it is not extinguished but spreads to and destroys his neighbour's property, he cannot rely on the above mentioned Acts as a protection on the ground that the fire was accidental. Their Lordships were of the opinion that the case came within the principle of *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, because the motor car in which the fire started was a dangerous article, and the defendant, having brought it on his premises, was responsible for the fire which resulted.

ROYAL NAVY—FREIGHT ON GOODS CARRIED—CLAIM BY OFFICER—FREIGHT FOR TREASURE ACT (59 GEO. III. c. 25)—ORDERS IN COUNCIL, AUG. 1, 1888, OCT. 26, 1914.

King-Hall v. *Standard Bank* (1919) 2 K.B. 52. This was an action by a commanding officer of the Royal Navy to recover freight on £8,000,000 bullion carried by his ship from South

Africa during the war, belonging to the Bank of England. The defendants were the bank by which the bullion was shipped. P ilhache, J., by whom the action was tried, held that under the statute 59 Geo. III. c. 25, no freight was recoverable for the service rendered: the Order in Council of Oct. 26, 1914, which annulled the prior Order in Council of Aug. 1, 1888, which allowed 1%, having made no provision for any other allowance.

PUBLIC HEALTH—FOOD—UNSOUND MEAT—DEPOSIT FOR SALE—PUBLIC HEALTH ACT, 1875 (38-39 VICT. c. 55) ss. 116, 117—53-54 VICT. c. 59, s. 28—(R.S.O. c. 218, s. 100 (1)).

Ollett v. *Henry* (1919) 2 K.B. 88. This was an appeal from magistrates who refused to convict the defendant of a breach of the Public Health Act, 1875 (38-39 Vict. c. 55)ss. 116, 117, as extended by 53-54 Vict. c. 59, s. 28 (see R.S.O. c. 218, s. 100 (1)), in the following circumstances: The defendant was the secretary of a company of meat salesmen to whom the Ministry of Food caused to be consigned a quantity of meat for distribution to local butchers. The company had no choice or selection of the meat so consigned to them; their duty was to distribute it to local butchers, receive the price, and account therefor to the Ministry of Food who allowed them a fixed commission on the price of the meat distributed by them. Among the meat so consigned was found and seized as unfit for human food two carcasses of lamb. The magistrate held that these carcasses were not deposited with the defendant for the purpose of sale, and refused to convict; but the Divisional Court (Bray, Lawrence and Sherman, J.J.) held that the meat was deposited for sale and the defendant should have been convicted.

CARRIER — PASSENGER'S PERSONAL LUGGAGE — BAILMENT TO CARRIER—ARMY OFFICER'S BINOCULAR GLASSES, REVOLVER, EAR DEFENDERS, AND FLASH LAMP—LIABILITY OF CARRIER FOR LOSS OF LUGGAGE.

Jenkyns v. *Southampton etc. Steam Packet Co.* (1919) 2 K.B. 135. The plaintiff in this case was an army officer and claimed to recover from the defendants damage for the loss of his valise containing personal luggage. The circumstances were that the plaintiff became a passenger on the defendants' steamer; at the dock a person apparently a porter, but who was not in the defendants employment, took charge of the valise and deposited it on the boat where luggage was usually placed, and where it was seen by the plaintiff after the steamer had started. The vessel touched at a port before arriving at the plaintiff's destination, and when it

arrived there the valise had disappeared, having apparently been appropriated by some other person. The valise contained *inter alia* a pair of binocular glasses which had been lent to the plaintiff, a revolver, ear defenders and a flash light. The defendants sought to escape liability for the loss (1) on the ground of there having been no bailment of the valise to them, and (2) because the articles above mentioned do not come within the category of personal luggage. The County Court Judge who tried the action gave judgment for the plaintiff; and a Divisional Court (Lush and Sankey, JJ.) affirmed his decision, holding that there had been a reception of the valise by the defendants when it was placed in the customary place for stowing baggage and that it was immaterial that the man who so placed the valise was not in their employment: also that the articles in question were, having regard to the plaintiff's profession, properly "personal luggage."

SUNDAY—SALE OF MILK DURING PROHIBITED HOURS—ILLEGALITY —ADULTERATION—SUNDAY OBSERVANCE ACT (29 CAR. II., c 7), ss. 1, 3.

Elder v. *Kelly* (1919) 2 K.B. 179, was a prosecution for selling adulterated milk. The defendant sought to escape liability on the ground that the sale was illegal, having been made contrary to the Sunday Observance Act (29 Car. II., c. 7), ss. 1, 3, within prohibited hours; but a Divisional Court (Bray, Lawrence and Shearman, JJ.) held that that fact formed no defence.

GAMING—CHEQUES GIVEN IN PAYMENT OF BETS—CHEQUES INDORSED TO THIRD PERSON—KNOWLEDGE OF INDORSEE AS TO ORIGIN OF CHEQUES—PAYMENT TO INDORSEE BY DRAWER— CLAIM BY DRAWER AGAINST INDORSEE TO RECOVER AMOUNT OF CHEQUES—GAMING ACT, 1835 (5 & 6 W. IV., c. 41), ss. 1, 2 —(R.S.O. c. 217, ss. 2, 3).

Golding v. *Bradlaw* (1919) 2 K.B. 238. In this action the plaintiff claimed to recover from the defendant certain sums paid by the plaintiff to the indorsee of cheques drawn by the plaintiff to the defendant in settlement of racing bets, on the ground that the cheques were void under the Gaming Act, 1835 (5-6 W. IV., c. 41), s. 1, and under s. 2 the plaintiff was entitled to recover (see R.S.O. c. 217, ss. 2, 3). The cheques in question were indorsed to one Lee, who knew the purpose for which they were given, and he presented them at the plaintiff's bankers and received payment thereof. Bray, J., who tried the action, held that the remedy of recovery given by s. 2 of the Act (R.S.O. 217, s. 3) was not confined to a case where the payment had been made to an indorsee

for value without notice, but applied where payment had been made to any indorsee, and that the plaintiff was therefore entitled to judgment.

SALE OF GOODS—PASSING OF PROPERTY—PURCHASER FRAUDULENTLY PERSONATING ANOTHER PERSON—SUBSEQUENT TRANSFEREE FOR VALUE WITHOUT NOTICE.

Phillips v. *Brooks* (1919) 2 K.B. 243. This was an action by the plaintiffs, who were jewellers, to recover from the defendants, who were pawnbrokers, a valuable ring, in the following circumstances: A man named North, who represented himself to be Sir George Bullough, purchased some jewellery from the plaintiffs, including the ring in question. This he was allowed to take away with him on his tendering a cheque (which proved worthless), on the faith of his being the person he represented himself to be. This ring he subsequently pawned with the defendants who, *bonâ fide* and without notice of the fraud on the plaintiffs, lent £350 on it. The plaintiffs claimed that they had no intention of selling or parting with the ring to North. Horridge, J., who tried the action, came to the conclusion that the plaintiffs did as a matter of fact sell the ring to North, although they would not so have sold it to him, but for his misrepresentation as to who he was; he therefore found as a matter of law that the property in the ring passed to North and it was not the case of a thief selling stolen property. He therefore held that the defendants had acquired a good title to the ring, and dismissed the action.

PRIZE COURT—NEUTRAL VESSEL—"FLEET AUXILIARY" UNNEUTRAL SERVICE—TRANSFER AFTER OUTBREAK OF WAR—BONA FIDE TRANSFEREE—DECLARATION OF LONDON, 1909, ART. 56.

The Edna (1919) P. 157. The vessel in question in this action was at the outbreak of the war registered as a Mexican vessel and nominally owned by a Mexican company, but actually owned and controlled by a German subject, and was flying the German flag in order to avoid being requisitioned by either of the contending factions in Mexico. On her next voyage, which began August 23, 1914, she sailed under the Mexican flag with coal and other goods intended for the German cruiser "Leipzig," and eventually the coal after being put in lighters was delivered to the "Leipzig." The vessel was then requisitioned for over twelve months first by the followers of Carranza and subsequently by the followers of Villa, and was eventually sold *bonâ fide* to the claim-

ants, a San Francisco firm. In January, 1916, she was captured by a British cruiser, and her condemnation was claimed *inter alia* on the ground that the sale was invalid and that she having acted as an auxiliary to the "Leipzig" must be regarded as an enemy vessel. The Declaration of London, 1909, art. 56, provides "the transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void, unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed. Lord Sterndale, P.P.D., held that, assuming the vessel to have been an enemy vessel at the outbreak of the war, the claimants had established that the transfer to them was *bonâ fide* and not with the object of avoiding the consequences to which, as an enemy vessel, it was exposed. He also held that although a belligerent ship of war could not be transferred to a neutral during war time, the vessel could not be regarded as an auxiliary to the German navy by reason of her having shipped coal to be delivered to the "Leipzig." He therefore ordered her release.

WILL—CONSTRUCTION—GIFT TO SUCH PERSONS AS, ON FAILURE OF PRECEDING TRUSTS, SHALL BE "MY NEXT OF KIN AND ENTITLED TO MY PERSONAL ESTATE UNDER THE STATUTES OF DISTRIBUTION"—TIME FOR ASCERTAINING CLASS.

In re Hutchinson, Carter v. *Hutchinson* (1919) 2 Ch. 17. In this case a will was in question, whereby the testator after giving his wife a life interest in the whole of his estate gave his residue in trust for his three daughters and their respective children in equal shares with cross limitations which had the effect of preventing the failure of the trusts until all three daughters had died without issue, and he then directed "that on failure of all the trusts hereinbefore declared of the residue of my personal estate, such residue shall be in trust for such persons as on the failure of such trusts shall be my next of kin and entitled to my personal estate under the statutes for the distribution of the personal estates of intestates, such persons if more than one to take distributively according to such statutes." All the daughters having died without issue, the question arose whether the next of kin were to be ascertained as at the date of the testator's death or at the date of the last surviving daughter. Lawrence, J., held that the persons to take must be ascertained as at the death of the testator: and the Court of Appeal (Eady, M.R., and Scrutton, L.J., and Eve, J.) affirmed his decision.

ADMINISTRATION—ACCOUNT—ACTION BY BENEFICIARY—REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT. c. 57), s. 8—TRUSTEE ACT, 1888 (51-52 VICT. c. 59), s. 8 (1) (*a*) (*b*)—(R.S.O. c. 75, ss. 24, 47 (2) (*a*) (*b*)).

In re Richardson, Pole v. *Pattenden* (1919) 2 Ch. 50. This was an action for administration in the following circumstances: A testator who died in 1909, subject to payment of debts and legacies, left all his residue to his widow absolutely. He appointed the widow and the defendant in the present action his executors. The estate was administered and the functions of the executors came to an end in 1910, certain of the testator's property remaining by arrangement in the joint names of the widow and the defendant. The widow died in 1917, and the plaintiffs were beneficiaries under her will, the defendant being one of the executors of her will. The action was for the administration of the estate of the original testator. The defendant claimed the protection of the Trustee Act, 1888, s. 8 (1), (R.S.O. c. 75, s. 24 (1)). Peterson J., who heard the application, held that the action was to recover a legacy, and therefore s. 8 of the Real Property Limitation Act, 1874, applied (R.S.O. c. 75, s. 24), and as there was a subsisting Statute of Limitations applicable to the case, s. 8 (1) (*b*), of the Trustee Act, 1888 (R.S.O. c. 75, s. 47 (2) (*b*), did not apply; but he held that s. 8 (1) (*a*), (R.S.O. c. 75, s. 47 (2) (*a*)), applied to an action against an executor for an account, and therefore that the claim for an account was barred by the lapse of six years; but because it could not be ascertained without an account whether or not the defendant had any of the property of the original testator in his hands, he directed the usual accounts to be taken against the defendant as executor, leaving the question which items are barred by the Act of 1888 (R.S.O. c. 75, s. 47), to be dealt with after the facts had been ascertained.

PATENT ACTION—INFRINGEMENT—PARTICULARS OF ALLEGED INFRINGEMENT—DISCOVERY.

Aktiengesselschaft etc. v. *London Aluminium Co.* (1919) 2 Ch. 67. This was an action for the infringement of a patent, and the question determined is in regard to the extent to which the plaintiffs were entitled to discovery, and though the case turns to some extent on special rules of practice governing such cases, the principle involved is deserving of attention. By the English Rules in patent actions the plaintiff is required to deliver with his statement of claim particulars of the alleged infringements. In the interrogatories for discovery the plaintiffs asked questions of a roving or fishing character with a view to finding out generally whether

the defendants had committed any and what infringements: this the Court of Appeal (Eady, M.R., and Warrington, L.J.) held could not be done before judgment, and that discovery must be confined to the particular infringements alleged in the plaintiffs' particulars; in short, that before judgment discovery must be limited to issues raised in the action.

TRUST DEED—REMUNERATION OF TRUSTEES—CONTRACT—CONSTRUCTION—APPOINTMENT OF RECEIVER OF TRUST PROPERTY—RIGHT OF TRUSTEES TO REMUNERATION AFTER RECEIVER'S APPOINTMENT.

In re British Consolidated Oil Corporation, Howell v. *The Company* (1919) 2 Ch. 81. By a trust deed made to secure second debenture stock issued by a company, it was provided that the trustees should be paid a specified remuneration in each year during the continuance of the trust. The company got into pecuniary difficulties and a receiver was appointed at the instance of the first debenture stock holders: the question to be determined was whether or not the trustees for the second debenture stock holders were entitled to their remuneration after the appointment of the receiver. Peterson, J., answered that question in the affirmative, he being of the opinion that, according to the true construction of the trust deed, the trustees were entitled to the remuneration specified, irrespective of what duties might actually be performed by them in any particular year, so long as the trust subsisted.

WILL—SALE OF TESTATOR'S BUSINESS—PURCHASE MONEY PAYABLE BY INSTALMENTS—APPORTIONMENT—TENANT FOR LIFE AND REMAINDERMAN.

In re Hollebone, Hollebone v. *Hollebone* (1919) 2 Ch. 93. In this case the trustees of the will of a testator had sold his business, the price for which was payable by instalments, and the question to be solved was how these instalments were to be apportioned as between a tenant for life and the remainderman. Eve, J., who heard the application, decided that the instalments must be apportioned between corpus and income by ascertaining the sum which put out at interest at 4% per annum on the day of the testator's death, and accumulating at compound interest calculated at that rate with yearly rests, and deducting income tax, would amount on the day the instalment was or shall be received to the amount received, including interest, if any; and the sum so ascertained must be treated as capital and the difference between it and the sum actually received, as income.

WILL—CONSTRUCTION—OPTION TO RESIDE IN FURNISHED HOUSE—EXERCISE OF OPTION—RESIDENCE FOR LIFE ON CONDITIONS—POWERS OF TENANT FOR LIFE—SETTLED LAND ACT, 1882 (45-46 VICT. c. 38), s. 51—(R.S.O. c. 74, s. 33).

In re Gibbons, Gibbons v. *Gibbons* (1919) 2 Ch. 99. By the testator's will which was in question in this case, after providing for the upkeep of his house, grounds and furniture as a residence for his family until the youngest of his children came of age, the testator gave to his eldest son as that event happened the option of occupying and enjoying the use of this house and furniture during his life, without payment of rent, but subject to his paying taxes, outgoings and keeping the premises insured and repaired; such option to be exercised by written notice to the trustees within three months from the time the right to exercise it arose. Subject to this, similar rights were given in succession to the testator's other two children, and there was an ultimate gift of the residue to the trustees in trust for his three children. The testator's youngest son attained 21 in January, 1913, and the eldest son then gave due notice of exercise of the option and went into possession and resided in the house until 1916, when he let it unfurnished for fourteen years and removed the furniture. The daughter of the testator, a residuary legatee, claimed that, by ceasing to reside in the house, the eldest son's rights under the option ceased, and both the house and furniture fell into the residue: and Eve, J., so held: although it seems to have been conceded that while in possession the eldest son had the powers of a tenant for life and was competent as such to make the lease he did. See R.S.O. c. 74, s. 33.

GIFT INTER VIVOS—ABSOLUTE ASSIGNMENT IN WRITING—MONEY ON DEPOSIT AT BANK—DELIVERY—RETENTION BY DONOR OF INDICIA OF TITLE—AUTHORITY TO BANK TO PAY—LEGAL CHOSE IN ACTION—JUDICATURE ACT, 1873 (36-37 VICT. c. 66), s. 25 (6)—(R.S.O. c. 109, s. 49).

In re Westerton, Public Trustee v. *Gray* (1919) 2 Ch. 104. The question in this case was whether a valid gift *inter vivos* had been made by a deceased testator of certain money deposited in a bank, and which so remained up to the time of his death in 1917. It appeared that the money in question was deposited by the testator in 1914, and for which he held a receipt. The testator had been in the habit of lodging with a Mrs. Gray for a few weeks in each year, and from December, 1913, until his death he had permanently lodged with her, and he appeared grateful for her attention to his comfort, and for her assistance in nursing him in illness. In the early part of 1916 he called her into his bedroom and handed her

an envelope addressed to her, and said, "Here's a present for you, Mrs. Gray; that is for you. I have given it into your hand." She took the envelope from him and said, "I will see what is inside," and was about to open it when he took it from her hand and said, "Remember I will keep it for you." She accordingly returned it to him and he put it in his despatch box. He then said, "Remember I'll keep it for you." She said, "Yes, keep it for me, I shan't miss anything, if it is like the old rubbish you generally give me." He replied, "Rubbish is it? It's worth £500." On his death the envelope was found in his despatch box containing the deposit receipts and a letter addressed to Mrs. Gray, dated in 1916, saying "You have been very kind to me and I desire to make some return by giving you the amount of £500 now on deposit in the London County and Westminster Bank as per receipt enclosed." There was also an order signed by the testator directing the bank to pay Mrs. Gray the money. Sargant, J., who heard the application, held that this constituted a valid assignment of the chose in action within the Judicature Act, s. 25 (6)—(see R.S.O. c. 109, s. 49), which enabled the assignee to sue in her own name at law, and therefore the absence of consideration, which might previously in equity have been fatal to the right of the assignee to recover, was no longer an obstacle.

COMPANY—WINDING-UP—PREFERENCE SHARES—PRIORITY AS TO CAPITAL—SURPLUS ASSETS—COMPANIES CONSOLIDATION ACT (1908) 8 EDW. VII. c. 69, s. 186.

In re Fraser & Chalmers (1919) 2 Ch. 114. This was a winding up proceeding and the simple question to be decided was whether preference shareholders were entitled to share with common shareholders in the surplus assets of the company. *In re National Telephone Co.* (1914) 1 Ch. 755 (noted *ante* vol. 50, p. 392). Sargant, J., held that the preferential rights accorded to preference shareholders on the creation of their shares, either with regard to the payment of dividends, or return of capital, is *primâ facie* a definition of the whole of their rights, and as the articles of association in that case expressly provided that the preference shareholders were not to share in the surplus assets, he disallowed the claim; but he went on to say that he thought the attachment of preferential rights to preference shares was *primâ facie* a definition of the whole of their rights; and negatived any further or other right to which, but for the specified rights, they would be entitled. This, Astbury, J., considered not to be a correct statement of the law, and in the present case where there was no express provision

excluding preference shareholders from participating in the surplus, he held them entitled to share therein with the ordinary shareholders.

RESTRAINT OF TRADE—CO-OPERATIVE SOCIETY—RULES RESTRICTING TRADE BY MEMBERS OF SOCIETY—ULTRA VIRES—MEMBERS DISPUTING VALIDITY OF RULES—ARBITRATION CLAUSE—ACTION IMPEACHING RULES.

McEllistrim v. *Ballymacelligott Co-operative Society* (1919) A.C. 548. This was an appeal to the House of Lords from the Irish Court of Appeal. The action was brought by a member of an incorporated co-operative society impeaching certain rules of the society as being in restraint of trade. The society was formed for carrying on the manufacture of butter and cheese from milk to be supplied by its members. The objectionable rules provided that no number should, without the consent of the society, sell milk or cream within a considerable area, extending to eighty townships, to any other company, person, or society. They also provided that a member could not withdraw from the society without its consent. The rules also contained an arbitration clause in cases of disputes between the society and its members. The defendants sought to stay the action on the ground that it was a dispute between a member and the society, and therefore within the arbitration clause, but this motion was refused in the Court below and as the House of Lords (Lord Birkenhead, L.C., and Lords Finlay, Atkinson, Shaw and Parmoor) held rightly so, on the ground that a contention that the rules of the society were *ultra vires* was not a dispute between a member and the society within the meaning of the arbitration clause. At the trial Barton, J., held that the rules were in undue restraint of trade and gave judgment in favour of the plaintiff, but this was subsequently reversed by the Irish Court of Appeal (Sir I. J. O'Brien, L.C., and Ronan and Maloney, L.JJ.). The House of Lords have now reversed the latter judgment and restored that of Barton, J., because for an indefinite time members were restrained from selling cream or milk except to the society; because they were restrained from withdrawing from the society without its consent: and although it was conceded that the society was entitled to impose some restraint on sales by its members, yet it was considered that the combined effect of the rules above referred to were in excess of what was reasonably necessary, and were therefore *ultra vires* of the society.

STOCK EXCHANGE—MEMBER—RE-ELECTION—NATURALIZED BRITISH SUBJECT—OBJECTION OF ENEMY BIRTH—DISCRETION OF COMMITTEE.

Weinberger v. *Inglis* (1919) A.C. 606. This was an appeal to the House of Lords (Lord Birkenhead, L.C., and Lords Buckmaster, Atkinson, Parmoor and Wrenbury) from the decision of the Court of Appeal (1918) 1 Ch. 517. By the rules of the London Stock Exchange members have to be annually re-elected by a committee; the plaintiff who was of enemy birth; but a naturalized British subject, applied for re-election. His re-election was objected to on the ground of his enemy birth; he was called on and heard in answer to the objection, and after due consideration the committee refused to re-elect him. Of 107 members of enemy birth it appeared 50 were re-elected and 57 rejected. The plaintiff complained that in his case the committee had acted arbitrarily and capriciously, but the Court below thought that the committee had *bonâ fide* exercised its discretion, and that there was therefore no jurisdiction to interfere with its decision, and the House of Lords was of the like opinion.

EXPROPRIATION OF LAND FOR PUBLIC PURPOSES—OBJECTION BY OWNER THAT HIS LAND IS NOT NEEDED FOR PUBLIC PURPOSES.

Wijeyesekera v. *Festing* (1919) A.C. 646. This was an appeal from the Supreme Court of Ceylon, but the point decided is of general application. It is in effect this: that where under a statute appropriate proceedings are taken for the expropriation of land for public purposes, it is not open to the owner of the land in question to contend in any Court that it is not needed for public purposes.

BANKER—DRAFTS BY AGENT—CREDITING AMOUNT OF DRAFTS TO AGENT'S PRIVATE ACCOUNT—MISAPPLICATION OF TRUST FUND—MEASURE OF LIABILITY.

British America Elevator Co. v. *Bank of British North America* (1919) A.C. 658. This was an appeal from the Court of Appeal of Manitoba. The action was brought by the plaintiffs against the bank to recover moneys of the plaintiffs misapplied in the following circumstances: The plaintiffs were dealers in grain, and they had a purchasing agent named Youngberg at a place called Waldheim; his duty was to buy grain from farmers and give them tickets for the prices; these tickets on presentation were to be paid in currency. In order to enable Youngberg to meet these payments the plaintiffs arranged with the bank to furnish the necessary currency at a

specified commission. Youngberg had a private account and also a firm account at the Rosthern branch of the defendant bank, from which the currency was to be furnished; these accounts were frequently overdrawn, and the bank's agent, knowing the purpose for which the currency was to be furnished for the plaintiffs, placed the amount of several drafts drawn by Youngberg on the plaintiffs to the credit of Youngberg's private, or firm, account with the result that the money was misapplied. Galt, J., who tried the action, held that the bank was liable for all sums so placed to Youngberg's private or firm accounts. The Court of Appeal directed a reference to ascertain what damage the plaintiffs had actually sustained by the bank's action, but the Judicial Committee of the Privy Council (Lords Haldane, Finlay and Phillimore) have restored the judgment of Galt, J., their Lordships being of the opinion that the Court of Appeal should have treated the claim as one for the replacement of trust funds and not for damages. Their Lordships intimate that perhaps the bank might be entitled to some relief in possible proceedings against the present plaintiffs and Youngberg, to which Youngberg's assignee in insolvency might be a necessary party, but that on the present record no such relief could be given.

ALBERTA — TAXATION — SUCCESSION DUTY — REGISTERED MORTGAGE—PROPERTY IN PROVINCE—SUCCESSION DUTIES ACT, 1914 (5 GEO V. c. 5, ALTA.), s. 7.

Toronto General Trusts Corp. v. *The King* (1919) A.C. 679. This was an action by the Crown in the Province of Alberta to recover succession duties in respect of a certain mortgage registered in that Province and owned by a deceased person at the time of his death in the Province of Ontario, where he had his domicile. The representatives of the deceased claimed that the mortgage debts were not property within the Province of Alberta, and that the situs of a specialty debt was where the document evidencing the debt happened to be, which they claimed was the Province of Ontario. The Judicial Committee of the Privy Council (Lords Haldane, Finlay, Cave, Dunedin, and Shaw) however, affirmed the judgment of the Supreme Court of Canada in favour of the plaintiff and held that, when a mortgage is made in duplicate, and one of the duplicates is registered in one Province and the other is found at the mortgagee's death in another Province, the situs of the debt cannot be properly said to be in both Provinces, but must rather be deemed to be in that Province according to whose laws the mortgage was created and by which laws also it would have to be enforced.

CANADA—ACTION COMMENCED WITHOUT CONSENT OF ATTORNEY-GENERAL REQUIRED BY STATUTE—SUMMARY DISMISSAL OF ACTION—ULTRA VIRES—ONT. RULE 124—R.S.O. c. 39, s. 16.

Electrical Development Co. v. *Attorney-General (Ont.)* (1919) A.C. 687. This was an appeal from an order of the Appellate Division of the S.C.O., 38 O.L.R. 383, affirming an order of Middleton, J., dismissing an appeal from an order made by the Master in Chambers dismissing the action summarily before the filing of a statement of claim on the ground that the writ was improperly issued, the action having been commenced without the consent of the Attorney-General as required by R.S.O. c. 39, s. 16. The Judicial Committee of the Privy Council (Lords Haldane, Finlay, Cave, Shaw, and Phillimore) allowed the appeal, being of the opinion that the question proposed to be raised in the action ought not to be summarily dealt with, and that the action should be suffered to proceed to trial and to be there dealt with in the ordinary way. Their Lordships express no opinion on the merits of the case.

Bench and Bar.

CANADIAN BAR ASSOCIATION.

We are informed that His Royal Highness the Prince of Wales, on his recent visit to Winnipeg, at the request of Sir James Aikens, President of the Association, has graciously accepted honorary membership in the Association.

The President, with his constant attention to the welfare of the Association, has recently visited British Columbia in connection therewith. On November 4th he was entertained at dinner by the Vancouver Bar Association and on November 6th by the Victoria Bar Association. On both occasions Sir James addressed the members of the Bar dealing with the objects of the C.B.A. and outlining the work which has already been accomplished. Very keen interest in the Association was manifested by the members of the Bar both at Vancouver and Victoria and active steps are being taken to develop the organization to a greater degree in British Columbia. Mr. L. G. McPhillips, K.C., of Vancouver, is Vice-President for British Columbia, and Mr. Clarence Darling, of Vancouver, is Secretary for the Council in that Province.

The Deputy Attorney-General for Ontario.

It is our pleasure to record the appointment of Mr. Edward Bayly, K.C., as Deputy Attorney-General for Ontario. The Psalmist, many years ago, said: "Promotion cometh neither from the east nor from the west, nor yet from the south." In this case it came from the north, namely, from the late Premier, who himself failed to return from his erstwhile northern fastness. The appointment of Mr. Bayly will meet with general approbation from those whose opinion is of value. His promotion from the position of Solicitor to the Attorney-General's Department was expected by those who knew the quiet but tenacious force behind the actions of that Department during recent regimes; and moreover it is the right thing to promote an official if competent. To a sound knowledge of those branches of the law with which he is immediately concerned, Mr. Bayly adds a capacity to rapidly grasp the salient points of matters which come before him; no small advantage to those having dealings with that Department. We wish him continued success.

Lord Halsbury.

There may be a difference of opinion as to whether Lord Halsbury looks so old as he actually is, but most certainly his movements and interests are quite exceptional for one who has reached his ninety-fourth year. His Lordship celebrated his birthday last week, and many and hearty were the congratulations that reached him from men of all complexions in political life, and from a wide circle of Christian friends. In all his affairs, political, social and intellectual—his Lordship is a Christian of decided faith, and a worthy standard-bearer among trusty stalwarts of the Gospel.—*Ex.*

Judicial Appointments.

Hon. R. A. E. Greenshields, Judge of the Superior Court of the Province of Quebec, to be a Puisne Judge of the Court of King's Bench in said Province, vice Mr. Justice Cross, deceased (Sept. 26).

E. E. Howard, of Montreal, K.C., to be Puisne Judge of the Superior Court of Quebec, vice Mr. Justice Greenshields (Sept. 26).

Harold E. Maulson, K.C., of Minnedosa, Manitoba, to be Judge of the County Court of the Northern Judicial District of the Province of Manitoba, vice Judge Mickle, retired. (Oct. 10.)

James Murdock, of the City of Toronto, to be a member of the Board of Commerce, vice F. A. Acland, resigned. (Sept. 30.)

His Hon. J. J. Coughlin, Junior Judge of the County Court of the County of Kent, Ontario, to be Judge of the County Court of the County of Essex, Ontario, vice Judge Dromgole, deceased. (Sept. 29.)

His Hon. R. D. Gunn, Junior Judge of the County Court of the County of Carleton, Ontario, to be Judge thereof, vice Judge McTavish, deceased. (Sept. 30.)

His Hon. C. H. Widdifield, Junior Judge of the County Court of the County of Grey, Ontario, to be third Junior Judge of the County of York, Ontario, vice Judge Denton appointed Junior Judge thereof. (Sept. 30.)

His Hon. E. J. Hearn, Junior Judge of the County Court of the County of Waterloo, Ontario, to be Judge thereof, vice Judge Reade, deceased. (Sept. 30.)

Lt.-Col. J.D.R. Stewart of the City of Calgary, Alberta, Barrister at law to be Judge of the District of Acadia in the said Province (Nov. 15).

Flotsam and Jetsam.

High Wages and the Legal Profession.

At the present time workers at trades requiring but moderate intelligence and skill are receiving remuneration exceeding that of the average young lawyer. Just what effect is this going to have on the future of the legal profession? The average healthy young man of eighteen can see how with a few months' preparation for a trade he can become the recipient of a "union scale" wage of thirty or forty dollars a week. Four years in college, three in a law school and two or three starvation years waiting ethically for clients may bring him an equal income at the bar. Will not a great many "take the cash and let the credit go"? There is of course the feeling which makes a man prefer a ten dollar "position" to a thirty dollar "job," but it is steadily weakening under the pressure of increasing prices. Talk with the young men of this generation discloses an increasing tendency to regard education as of little value in the struggle for

success. If this condition persists it will mean that the legal profession will in the future be recruited largely from the sons of the wealthy, a condition far from desirable, and one which tends rapidly to the establishment of a caste system. The solution of the problem, if problem there be, is somewhat difficult. It is not to be found in the reduction of wages or in the increase of fees. It lies rather, as does the solution of many of our problems, in the cultivation of an ideal; in the increase of the belief that learning is worth while for its own sake, that service and not acquisition is the law of life, and that professional position is worth effort and sacrifice not for its financial rewards but for the unequalled opportunity which it offers to serve the common good. When the man who maintains the nation's justice in peace receives something of the honor paid to him who maintains its honor in war the bar will never lack for worthy candidates, however poor its financial reward may be.—*Law Notes.*

Confidential Communications.

The present state of the law with respect to the communications which are privileged from disclosure on the witness stand is not wholly logical. The rule of privilege rests wholly on public policy, and the doctrine is that the public welfare requires that a man shall be able in confidence to talk with his wife and to seek legal, medical and spiritual counsel. The theory seems a sound one, despite the vigorous effort of Mr. Wigmore to minimize it in some respects, but if it is to be admitted, there are other occasions of confidence which stand in like reasons. If a man confesses his sins to a priest, the communication is privileged, but if he follows the divine injunction to go into his closet and shut the door and pray to his Father which is in secret, a listener outside the closet door may repeat the prayer in court. *Woolfolk* v. *State*, 85 Ga. 69. Some of the great fraternal Orders play a large part in our social organization and establish for many men not only the most confidential personal relation but the most potent religious influence in their lives. Certainly public policy requires the maintenance of that fraternal tie, yet it has been held that a communication made in reliance on the Masonic obligation is not privileged. *Owens* v. *Frank*, 7 Wyo. 467. A striking illustration of the denial of a privilege which is demanded by every consideration of reason is found in the case of *Lindsey* v. *People*, 181 Pac. 531 (abstracted elsewhere in this issue), wherein it was held by a divided court that Judge Lindsey

of the Juvenile Court of Denver could be compelled to testify to disclosures made to him in confidence by a juvenile delinquent under his jurisdiction. It is hard to imagine a requirement of public policy more stringent than that which protects and promotes the work of a well conducted juvenile court. It is hard to imagine a relation more confidential than that between Judge Lindsey and the boys whom he is seeking to rehabilitate or one that is used for nobler ends. That a communication made in the confidence of that relation should not be privileged, while those of a profiteering merchant seeking to learn from his attorney how far he can gouge the public without getting into jail are privileged, may be law but it certainly is not justice. If it is conceded that any communication is to be privileged from the demands of a legal inquiry it is time that the privilege should be extended to other relations produced by modern civilization which stand on the same footing in point of reason as those now recognized. The commitment of the entire matter, including privileges now legislatively established, to judicial discretion, might be the ideal solution, but it is probably useless to expect any Legislature to shew that much confidence in the judges on whose intelligence and integrity the entire administration of justice depends.—*Law Notes.*

Wills of Property Abroad.

Practitioners are occasionally told, when instructed to prepare wills, that the testator has some land in a British colony, or elsewhere abroad, and that he wishes to dispose of it in common with his property in England. When that is the case it becomes necessary to consider the law of the country in which the property is situated, and more particularly the manner of executing and attesting wills of property there. As a rule, there is no great difficulty in ascertaining this from text books, such as Jarman on Wills, 5th ed., vol. 2, Appendix A, where there is a very useful summary of the law on the subject, or from the statutes of the colony. The English Wills Act (1 Vict. c. 26), as regards the execution and attestation of wills, has been adopted in most of the colonies and dependencies of this country, including the Australian settlements, Upper Canada, India, Barbados, Jamaica. If, however, the property abroad is considerable, and there is any serious doubt as to the law applicable, it is advisable that the will should be settled by a person acquainted with the law of the place in which it is situate. It is sometimes suggested that there should

be two wills, one of the property abroad, and the other of the property here, but that course is not recommended, if it can be avoided, as it may lead to difficulties. It is hardly necessary to point out that, if two wills are resorted to, care must be taken that their provisions are not cumulative, unless of course so intended. In simple cases it is thought that it is better to include the property abroad in the devise of the property in England, and to insert power to the trustees or executors in England to appoint agents to act with regard to the property abroad: (see forms for that purpose in Key and Elphinstone's Precedents, 10th ed. vol. 2, p. 931).—*Law Times.*

Instructions for Wills.

How far a solicitor, when taking instructions for a will, should make suggestions to a testator as to the mode of disposing of his property is a question not free from difficulty. Testators are apt to resent any interference with their testamentary intentions. As, however, but few laymen can know enough of the technicalities of English law to keep them straight in the matter of will-making, it is submitted that a solicitor is quite justified in pointing out to a testator the possible effect of his dispositions in certain contingencies which may not have occurred to him; and if any of such dispositions infringe any rule of law, of course it must be pointed out to him. There are three obvious points on which testators may unintentionally go wrong. Owing to the doctrine of ademption, that is, the rule that a specific gift is adeemed, or revoked, if at the testator's death the thing given has been destroyed by the act of God, or converted into something else by the act of the testator, or by duly constituted authority: (Theobald on Wills, 7th ed., p 164). This not infrequently happens with regard to bequests of stocks, shares, and securities which are changed in the lifetime of the testator, after the date of his will. It is not possible to lay down any hard-and-fast rule as to what amount of change is necessary to cause ademption. If, therefore, a testator intends to benefit a legatee by bequeathing to him stocks, shares, or securities of a particular denomination, held by the testator, he should consider the possibility of the same being adeemed, and, if so minded, he should provide against it by substituting in that event a general legacy for a specific one. Another point upon which testators require guidance is as to income during the first year after their death. As a rule, legacies do not carry interest till the expiration of one year after the death of the testator; and in the case of gifts of residue the income of it is not likely to be available for some

months after death. Therefore, if a testator intends it, he should make some provision for the period which will elapse before the income becomes available, particularly in the case of a provision for his widow. The third point to be considered is whether a legacy should be given to the executors for their trouble. Unless they are near relatives, they are apt to renounce probate if no legacy is left to them.—*Law Times.*

A Purchaser's Costs.

The vendor has the advantage over the purchaser that he, when the sale is by auction, can insert conditions which the purchaser, if he is anxious to buy the property, must accept, and when the sale is by private contract can, at any rate, suggest them. Consequently, many of the conditions which are to the disadvantage of the purchaser were generally inserted in conditions of sale or contracts for sale. One great object of the Conveyancing Act, 1881, was to shorten documents and to imply what was generally expressed in them. Sec. 3 (6) of that Act accordingly throws on to the purchaser the cost of many things which we should naturally expect the vendor to bear, with the result, at any rate, that the purchaser frequently waives what he would have required, if the costs had been thrown on to his vendor. The vendor must furnish a complete abstract of all documents from the commencement of title (*Re Stamford Banking Company and Knight's Contract*, 81 L.T. Rep. 708; (1900) 1 Ch. 287), even though they are not in his possession: (*Re Johnson and Tustin*, 53 L.T. Rep. 281, 30 Ch. Div. 42). So that, if he is a sub-vendor, he must abstract the contract which he made with the original vendor: (*Hucklesby and Atkinson's Contract*, 102 L.T. Rep. 214). He should state the facts of heirship in the abstract: (*Re O'Conlon and Faulkener's Contract*, (1916), 1 I.R. 241). Proof of the statements in the abstract has to be paid for by the purchaser. Thus, he has to pay for statutory declarations (*Re Judge and Sheridan's Contract*, 96 L.T.R. p. 451), for proving the heirship (*Re O'Conlon and Faulkener's Contract, sup.*), and, as Mr. Justice Astbury has just decided, for proving that his vendor was a mortgagee in possession before the coming into operation of the Courts (Emergency Powers) Act, 1914: (*Re Wright and Thompson's Contract*, noted *ante*, p. 114). To the list of those things which are enumerated in Wolstenholme's Conveyancing Acts, 10th ed., p. 27, as "cases not within this sub-section," since they are part of the title rather than proof of it, should be added proof of payment of estate and succession duties, or of their not being payable: (*Re O'Conlon and Faulkener's Contract, sup.*).—*Law Times.*