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MUST A PREFERRED BENEFICIARY ELECT UNDER A WILL?

A REVIEW OF THE ENGLISH AND CANADIAN AUTHORITIES

Fred L. Dreger

In Ontario we may take it as settled, that when life insurance for which a preferred beneficiary has been designated, is directed by a declaration in a will, to be paid to another, not being a member of the preferred class, and by the same will other benefits are given to the person who would be thus disappointed, that person need not elect between the benefits under the insurance and the will but may keep both.

On the face of it, the problem appears to coincide exactly with the general requirements for an election. The testator is attempting to give property over which he has no control (except among the preferred beneficiary class), that is, property which in effect is not his, and by the same instrument he is giving other benefits as compensation. Generally the recipient would have to elect to take under the will and abide by all its terms, or to keep what is his own property and to refuse the gift tendered by the will.

The Ontario cases negativing an election have secured support from a long line of cases dealing with the exercise of powers of appointment. To follow the analogy of these cases through the Ontario decisions is not very satisfactory. It is with the logical result and the true basis of what is now, and with respect, quite properly the Ontario law, that this essay deals.

The classic statement of election in what we may call the power of appointment cases comes from as far back as Whistler v Webster (1794) 2 Ves. Jr. 367: "When a person purports under a power of appointment to give property which is the subject of the power to persons who are not objects of the power, that is to say, in fact to exercise a power which he has not got; that if to the person who would be defeated by that gift, free disposable property belonging to the testator is given by the same instrument, that raises a case of election." It is the exception to this doctrine which forms the foundation for the present law of election in the cases dealing with life insurance. The exception has commonly been indentified with Wollaston v. King (1869) L.R. 8 Eq. 165 from which "a notable exception" has been deduced. It is submitted in this essay that the "notable exception" does not form the true basis for the present Ontario law on election.

Recently in In re Muliss (1933) O.R. 638, a Testator by his will directed his executors to arrange with the Insurance Companies in which he had life insurance policies to pay only the interest arising from these policies to his wife on a monthly basis, with a gift over to his estate upon her death. The insurance amounting to about $75,000 had been payable to her by the terms of the policy. Middleton J. A. in Weekly Court ruled that the wife need not elect but could keep both. The reasons for judgment are interesting since they appear to open once more the question of election. At page 641 he says:—

(Continued on Page 6.)

COMMON SENSE AND SECTION 98

A REPLY TO AN ARTICLE IN JANUARY ISSUE

(J. M. Godfrey).

In the January 15th edition of OBITER DICTA there appeared an article entitled "Liberty and Section 98," which only served to re-hash the trite and aged arguments which have been used in favour of this stupid and inane section of the Criminal Code for nigh unto seventeen years. How familiar is his discussion of freedom and security, how sometimes the former must be sacrificed for the latter! What an original contribution to current thought on this subject is his remark re the efficacy of the ballot in bringing about social reform! How interesting it was to learn that the people's first desire was to be protected from the lawless elements which threaten to overthrow constitutional government by force in Canada! May I at the outset, without referring to the Anglo-Saxon period or the reforms of Henry II., admit that there is no doubt that the people of this country desire both security and freedom. Is there any point in discussing these two prime requisites so necessary if we are to enjoy our existence upon this earthly orb?

The point under discussion then is not the desirability of security and liberty, but how we are to achieve a more bountiful supply of both. I submit that we have neither security nor freedom under Section 98. How inconsistent it is for those who support Section 98 to yet extole the merits of that unconstitutional aggressor who used force so effectively, and who is known to us as William of Orange. Should we recommend under Section 98 the immediate incarceration of the heads of the Loyal Orange Order, who so enthusiastically every 12th of July march in honour of a man who used force, violence and physical injury to bring about governmental change. By so enthusiastically condoning this aggression against law and order are they not by implication defending the adoption of similar tactics in Canada if the need should ever arise by reason of an overabundance of French-Canadian Catholic quintuplets.

Does Section 98 provide security for the people of Canada? The proof of the pudding is in the eating of it, and the proof that Section 98 does not provide security for Canada is the fact that one Tim Buck (late of Kingston) received no less than 20,000 votes last January 1st, when he was running for municipal office in Toronto on the Communist ticket. Advocates of a change in our social structure thrive on persecution. To send a man to jail for advocating such a change by force or any other means is merely playing into their hands. They receive much needed publicity and gain the sympathy and support of all those who are willing to help a course inspired by a martyr. As Christianty inspired people because of the martyrdom of its leaders, so will Communism inspire people on account of the incarceration of Mr. Tim Buck and his colleagues. At least that is the openly avowed hope of the Communists themselves, and so far their hopes seem to be bearing some fruit. The men at the head of the Communist party in Canada are for the most part honest and absolutely fanatical in their intentions. Surely those "masters of statecraft" who framed Section 98 did not believe that a few years in jail would turn such men from their purpose.

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Lord Tweedsmuir Called To Bar At Special Convocation

A Special Convocation of the Benchers of the Law Society of Upper Canada was held on Friday, February 21st, 1936. On that occasion, His Excellency, the Governor-General of Canada, was called to the Bar of Ontario and elected an Honorary Bencher in an interesting and unusual ceremony. Convocation was assembled in the Great Library of Osgoode Hall at 12 o'clock noon. The Library was filled to capacity by members of the Ontario Bar wearing robes and students of Osgoode Hall. The Judges of the Supreme Court of Ontario attended the Convocation and sat immediately in front of a raised platform, on which were assembled His Excellency and the Benchers of the Law Society.

His Excellency was presented for call to the Bar by Mr. Ludwig, K.C. His Excellency then signed the roll as a member of the Ontario Bar. At the conclusion of this ceremony, a resolution was presented by Mr. Hellmuth, K.C., to the effect that Lord Tweedsmuir be elected an Honorary Bencher of the Law Society, which was seconded by Mr. W. E. M. Sinclair, K.C., and unanimously carried by the Benchers.

Following this, His Excellency addressed the assembly and delighted his audience with his witty and interesting remarks. It is interesting to note that the only other Honorary Bencher of the Law Society of Upper Canada is His Majesty King Edward VIII., who was elected to that position in 1919.

Annual 'At Home' Proves Great Success

The Osgoode Hall "At Home" was an outstanding party. It upheld the best traditions of past years, maintained the standard set last year and firmly established a precedent which will be difficult to follow. If we have conveyed the impression that the "At Home" was an outstanding affair, we are satisfied. We are only reproducing the opinion held by all the members of the Bar and the students who were fortunate enough to attend the party.

The Social Director, Mr. Henry White, and his Committee are to be congratulated and thanked for their exceedingly fine effort. The success of the affair must compensate for the time spent and the tremendous amount of work done in the organization and arrangements for the evening.

The Annual "At Home" was held on Friday, February 28th, in the Ball Room of the Royal York Hotel. Tables were placed around the dance floor. The music was supplied by Don Romanelli and his Orchestra, and it was as excellent as the evening itself. There is no doubt about it. Music such as Mr. Romanelli supplied materially contributed to the enjoyment of the evening.

The Committee are indebted to the Patrons and Patronesses who graced the occasion with their presence. We were honoured to have Chief Justice and Mrs. Latchford, Mr. Justice Masten, Mr. Justice McFarland and Mrs. McFarland, Hon. Arthur Roebuck and Mrs. Roebuck, Mr. and Mrs. F. H. Barlow, K.C., Mr. and Mrs. M. F. Ludwig, K.C., Mr. and Mrs. R. S. Robertson, K.C., Mr. and Mrs. G. W. Mason, Mr. and Mrs. Geo. Uurquhart, and Dr. and Mrs. C. A. Wright, who acted as Patrons and Patronesses and who received with tthe President, Mr. John Anderson.

An excellent supper was served, after which the tables were hastily cleared away and the dancing resumed. As the official time for concluding the festivities approached, the Committee had a conference and announced that the dancing would continue for an extra hour.

THE LAW AND THE POVERTY PROBLEM

(By Peter Wright).

(Continued from Feb. issue)

At best, such a service is sporadic, unequal, and solves no community problem, but there exist at present two systems whereby members of the profession are regularly called upon to assist the poor. The first is the system established in 1923 by section 1021 A. of the Criminal Code, which enabled a convicted prisoner on application to the Registrar of the Supreme Court of Ontario to secure, in the discretion of a Judge of the Court of Appeal, the services of one of some eighteen lawyers who have signed a list "of Solicitors and Counsel, who are ready and willing to be assigned by the Court . . to represent indigent prisoners." Those "ready and willing" at the present time include several of the outstanding counsel, skilled in criminal law, and it is clear from the character of the list, that the prisoner's plea, "As I have no money I wish to appeal in forma pauperis," is answered by the provision of a capable lawyer. But the section applies only to appeals, and although no costs are allowed on either side no provision is made for disbursements for the prisoner.

The second regular system is that established in November, 1931, with the assistance of the County of York Law Association and the Toronto Bar Association. In connection with the Public Welfare department of the city some thirty-seven firms and lawyers offered to supply free legal advice only, to those deserving cases referred to them by the department. It was understood that such a service was for the currency of this unemployment crisis and that it involved no Court proceedings nor questions of domestic relations. At first, the department was deluged with applicants, but with the institution of The Mortgagors' and Purchasers' Relief Act, and the passage of time, the number of cases gradually adjusted itself so that in 1933, there were 450 cases, and in 1934 to date (March 27th), there have been 58 cases. Application is made either directly to the department's main office or to it through relief agencies in the city. There the need of the applicant and the nature of the particular problem is investigated and the applicant is directed to the proper office. If the question relates to impending foreclosure the applicant is directed to the Master's Clerk at Osgoode Hall; if it relates to what are properly relief matters such as non-payment of rent and similar difficulties, it is referred to a relief agency; if it relates to family difficulties, it is referred to the Family Court or to the particular charitable organization equipped to deal with it; and if it is a strictly legal question falling outside these classes the applicant is given a direction to one of the firms or lawyers on the panel, and may attend at their office for advice. The problems thus remitted relate chiefly to bailiff's seizures, back wages and debts, personal matters and legal rights in general. It cannot be denied that such a system has manifold advantages, but it, too, is crippled by serious limitations. From the busy lawyer's point of view the difficulties are apparent. The need of the applicant is immediate; he must be seen at once, if he is to appreciate the service and frequently his problem is one which requires immediate attention. Thus it may happen in the rush of a particularly busy day that the client cannot be seen or his problem, if appreciated, given the attention it deserves. In any event, it must be given attention between matters already pressing and onerous; nor can it, once the crusading spirit has weakened, compete in importance with the ordinary business of the office. Most important of all, the lawyer is restricted to an enormous extent by the lack of resources. He can neither learn the true facts by investigation nor act decisively upon them if he knows them. He can only advise, and advice, however sympathetic or accurate, is a poor substitute for justice.

In the city of Toronto, then, the position cannot be readily exactly estimated. One thing is clear; except under The Mechanics' Lien Act a man without the writ fee cannot use the civil Courts. He can if he is on relief savour their fragrance from afar, by having a lawyer sketch for him the garden of justice, open to more prosperous citizens. But, save for the mechanic's lien, the workmen's compensation and the complaint in criminal Courts, the poor person receives legal aid in the city as a matter of unorganized charity. If he has rights, they are inchoate and crystalize with the first few dollars he does not need for food or lodging.

Such is the situation in Toronto. It is not unique and it may be of value to learn in broad detail how a similar situation is met in other countries. Let us examine three

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Lit. Elections on Mar. 26

The annual elections of the Osgoode Hall Legal and Literary Society will be held on Thursday, March 26th, 1936, at 10 a.m. The attention of Osgoode students is drawn to the February issue of "Obiter Dicta," where the pertinent sections of the constitution governin the elections, are set out. The President, First Vice-President and Secretary - Treasurer must be a present second year student and the Second Vice-President and Second Year Representative must be a present First year student. The present rules governing the attendance at the Law School of Matriculants has raised an unusual situation. No matriculant is eligible for election to the two last mentioned offices unless he has served two years in an office under the old rules and will be in attendance at the Law School next year. Nominations must be in writing, signed by the candidate and two other members of the Society. These must be delivered to the Secretary-Treasurer, Mr. Gorden Bradshaw, before 5.45 p.m. on Friday, March 20th, and the names will appear on the ballot in the order they are received by Mr Bradshaw.

Student Rate Announced For Bar Review

Dr. C. A. Wright, the Editor of the Canadian Bar Review, has announced that a special subscription rate of $2.00 a year for the Canadian Bar Review has been arranged for law students. This price is substituted for the regular $5.00 subscription and it is expected that a large number of Osgoode students will take advantage of this offer.

The Canadian Bar Review is published in ten monthly issues a year. The articles, legislation notes and the annotations on current decisions should be of great benefit to law students from a practical as well as from an academic standpoint. Students who are interested in taking advantage of this student subscription rate may obtain full particulars from Dr. Wright.

Graduation Dinner

THIRD YEAR
SEE PAGE FOUR

OBITER DICTA

Published at Osgoode Hall Law School.

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TORONTO, TUESDAY, MARCH 17, 1936

EDITORIAL

4.40 LECTURES

Having experienced the 4.40 lecture for twenty-two out of thirty academic weeks, we are justified in making come comment on the result of the current system. Obiter Dicta has engaged in a widespread and impartial canvass of student opinion, and the result of this investigation has disclosed that the late lecture is definitely not popular amongst the student body.

The purpose of the 4.40 lecture is disclosed in the Report of the Special Committee on Legal Education, which was adopted by Convocation of the Benchers of the Law Society of Upper Canada on February 21st, 1935. On page 8 of the Report, it is written: "... your Committee is of the opinion that the tendency has been to emphasize unduly the academic training at the expense of efficient office training. . . . As a first step to this end, your Committee recommends that . .. a return be made to the practice formerly in vogue of giving at least one lecture a day to each class late in the afternoon. Thus, if lectures are at 9 a.m. and at 4.40 p.m., the student will be available for office work during office hours." Under the present system, a student can reach the office shortly after 10 o'clock and is, therefore, available when the different court offices open.

Viewing the situation in a different light from that of the Special Committee, as disclosed from the above extract, the practical training received between the hours of 10 and 11 o'clock is of no greater benefit than that received after 11 o'clock. A student will receive the same training by attending to some office matter at Osgoode Hall or the Registry Offices at 11.15 a.m., as can be received at 10 a.m. Therefore, it is not an unfair conclusion to state that the whole benefit to be derived from the present system accrues to the offices and not to the students.

A further point worthy of consideration is that we have even less opportunity to become acquainted with our fellow-students. The ten-minute interval between lectures under the old system did allow us to mingle and at least learn the names of our classmates. There is, then, no compensation for the common and everyday experience of attending one-half of the lectures at an hour when mind and body are fatigued.

This is the great objection to the 4.40 lecture and it is a valid objection. Assuming that a student is required to do nothing more than sit at a desk and run the occasional message, it cannot be doubted that even this is tiring. It is not strange, therefore, that if a student is busy, he or she is under a distinct disadvantage when the time comes to attend the late lecture. The most difficult task is not to pay attention to the lecturer; it is to keep awake, no matter how interesting the lecture. The 4.40 lecture must be just as difficult for the lecturer, but he is not required to pass the examinations.

If the 4.40 lecture is just an experiment, the consensus of student opinion is that it is not the best system available. We are not justified in stating in this column that the lecturers hold the same view, but we are justified in remarking that the proverbial three guesses are not necessary in order to have some idea of their opinions.

It may be said that students do not know what they want and can always find something about which to protest. While this may or may not be true, it must be admitted by all that this past year has not disclosed any adequate compensation for the fact that we are forced to attend 50 per cent. of the total number of lectures at a time when energies are spent and receptivity is at an ebb. While the 4.40 lecture is a great convenience for the office, it is not working out to be in the best interests of the student body.

Gladstone Club

Whatever the present statue of the Conservative Party may be at Osgoode Hall, the Liberal Party, as represented by the Gladstone Liberal Club, is certainly far from showing signs of decadence. On the contrary, throughout the entire school year, there has been fervent and enthusiastic interest on the part of all the Club members.

As soon as the two sessions of the Mock Parliament were over, the Gladstone Club sought a convenient way for carrying on it activities. As a result, it was decided to hold a series of weekly luncheons. These are being held in the Rose Room of the new Statler Hotel and have received the enthusastic co-operation of the members and other interested students.

Up to the present time there have been three luncheons, at each of which approximately forty persons were present. On Thursday, February 27th, Mr. Ian Strachan, M.P.P. for St. George's, Toronto, was our guest, giving the members an interesting talk on matters of Provincial concern. Mr. Salter Hayden, K.C., spoke to the Club on Wednesday, March 4th, when he gave a penetrating talk on tariffs and unwarranted protection of industries unsuitable to Canadian conditions. Mr. Dalton C. Wells, President of the Twentieth Century Clubs of Ontario, also attended this luncheon, bringing greetings to the Gladstone Club from the Provincial Association. On Wednesday, March 11th, the Club had the pleasure of hearing Major James H. Clark, K.C., M.P.P. of Windsor.

The Gladstone Club extends a cordial invitation to all students who are interested in politics and current events to attend the luncheons of the Club, whether they are members or not.

D. J. G.

February Luncheon Well Attended

Some hundred and fifty odd students filled the Oak Room at the Union Station to listen to Mr. R. S. Robertson, K.C., discuss the "Duties of a Lawyer to his Client" at the February luncheon of the Legal and Literary Society, held on Friday, March 6th. Mr. Robertson gave so interesting and entertaining an address to the society the last time he was invited to speak at a luncheon, that this address was in the nature of a return engagement.

Mr. Robertson warned the new lawyer to always get a written retainer from his client, in case his client may later on in the proceedings repudiate what he has been doing. He then went on to stress the fact that the relationship between the lawyer and his client is a highly fiduciary one. The lawyer must keep all secrets disclosed to him by his client, and must never betray the confidence that has been placed in him. Even if the lawyer is called upon as a witness he may refuse to answer questions if the answers reveal something his client has entrusted to him.

Mr. Robertson stated that the solicitor is the agent of his client and may bind him in any way. Notice to the solicitor, he said, was notice to the client. After giving his advice, the matter is that of the client and not the lawyer. The client is entitled to be the master of the litigation and he can direct what course he desires to take. The lawyer must also observe the rules and propriety of the Court at all times, and he must conduct himself in the proper way even if he has to lose a client that way.

The speaker then went on to discuss the situation of the barrister. The statements the barrister makes in court are not his, he stated, but his client's. He then went on to warn against the tendency of trying tricks to fool the court. A barrister, he said, should try hard to win his case, but if he attempts to fool the court he may lose the confidence of both the court and his client.

"Youth likes Romance and Chivalry," concluded Mr. Robertson, "and the practice of law looks like a great deal of drudgery. But always remember you are helping to win somebody's battle—right somebody's wrong. When you are trying to advance your client's interests there is room for plenty of chivalry there. And you'll find that all the drudgery of looking up cases and finding witnesses, can become inspiring and keep the young from growing old, if you do your work in this spirit."

MILTON SHULMAN.

APRIL LUNCHEON

The executive of the Osgoode Hall Legal and Literary Society are at the present time actively engaged in planning the final luncheon of the year. It is to take place some time next month and from all indications, should be one of the most interesting luncheons the Society has ever had. Tentative arrangements seem to indicate that the speaker will probably be none other than C. W. Bell, K.C., of Hamilton, whose fame as a criminal lawyer is known to us all. Mr. Bell's latest book, in which he discusses some of the sixty odd murder trials he has participated in as defense counsel, has brought him enthusiastic and popular acclaim. If his address follows the same vein as his book, which is extremely likely, the event should be a memorable one.

The Baffling Case of Rex vs. Olga Solved!

Some of our readers may remember the case of the Siamese Twins and the murder of the tatooed man which appeared in the November, 1935, issue. The facts of this difficult situation are reprinted here as follows:

The scene is laid in a circus among the side-show freaks. One of the best exhibits on the midway is that of the Siamese Twins — a pair of girls whose bodies were joined together at birth. They had a tent to themselves and they put on a little show for the gaping crowds that pushed through the canvas flaps. Their routine called for a song, a mouth-organ duet, some card tricks from the right-hand twin Hilda, and some revolver sharp shooting by the left-hand one, Olga. In the next tent was the tatooed man, a lanky, ugly individual, who was a walking picture gallery with a maze of different scenes and colours worked all over his body. He often slipped over to the twins' tent between shows, but devoted himself almost entirely to the right-hand twin Hilda, much to the chagrin of Olga, who was very jealous of the attentions being thus showered on her sister.

One evening, just after the last performance, when the twins were alone in their tent, the tatooed man came in to see Hilda. Olga's pent-up jealousy broke out, and snatching up one of her revolvers, she shot and killed the unfortunate fellow. The rest of the freaks, hearing the shot, ran in, and soon the police were on the scene, and Olga was lead away and Hilda had no choice but to accompany her.

The trial caused quite a sensation, though there was little doubt about the outcome. Olga made little attempt to defend herself and Hilda told the truth simply and straightforwardly. The jury were out five minutes and returned a verdict of guilty of wilful murder.

Now put yourself in the judge's place—what sentence are you going to pronounce on Olga, remembering that anything imposed on the guilty Olga, is equally imposed on the innocent Hilda? Will you let the innocent Hilda suffer for the wrongs of her sister, or will the

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THE LAW AND THE POVERTY PROBLEM

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distinct systems which for convenience we may call the Continental, the English and the American.

PART II.

The Continental system as it exists in one form or another in many civil law countries is a rigid codified system providing generally for application by anyone who cannot "pay the costs of an action without encroaching upon the resources necessary for the maintenance of himself or his family," or whose "income does not exceed the current day labourer's wage in his place of residence." Such application is made to the Court or to an Advocates Committee charged with such duties and staffed by the local College of Advocates or similar body, or to the Minister of Justice. The evidence required is usually a certificate of lack of means by the local authority or a declaration to the same effect. The case is then examined and if the application succeeds, the applicant is entitled to free legal assistance, exemption from posting security, remission of fees and, in the Scandinavian countries and Hungary, payment of disbursements.

The English system has a long and disappointing history. The spirit of the Chancery Court and the statutes of Henry VII. and Henry VIII. gradually succumbed to the disrelish of the judges for any system which encouraged litigation. In 1883 these statutes were repealed in England and provision was made in the Supreme Court Rules of that year granting aid on the ceritificate of a counsel. But since the certificate of a counsel was as hard for a pauper to secure as aid from a counsel, it was not until 1914 that a working system was adopted. The present system is based largely on the Rules of 1914. It provides application by the poor person to an official committee of the Law Society or local Society which, if satisfied of the facts, gives its certificate:

(i) that the applicant is not worth £50 (or in special cases £100);
(ii) that his weekly income is not over £2(or in special cases £4);
(iii) that there are reasonable grounds for his suit;
(iv) of the name of the conducting solicitor.

The conducting solicitor then files this certificate in the Court registry and receives a memorandum of filing which throughout the litigation relieves him from fees or costs. In matrimonial causes he may receive a deposit of £5 for disbursements, but otherwise except by special leave neither counsel nor solicitor receive any fee.

In 1925 a committee was appointed in England "to enquire what facilities exist for giving poor persons advice with respect to their legal rights and liabilities" outside the scope of the Poor Persons' rules outlined above. In 1928 the committee reported that "we are not prepared, except in the matter of the remitted actions, to recommend that any changes in the law and practice at present prevailing are necessary or desirable." The system then prevailing was an unorganized one of Poor Man's Lawyers. In the provincial centres such as Leeds, Bristol, Liverpool or Birmingham, local societies of from one to twenty solicitors in conjunction with social organizations and sometimes the local law society, attended regularly in the evenings to give legal advice to those who, they were satisfied, could not afford legal aid. In London, similar societies, co-operating with the London Council of Social Service, were found in the poorer districts, and the Conservative, Liberal and Labour parties sponsored their own Legal Aid Societies. It is interesting to note that in September, 1933, a legal aid office was opened in Saskatoon conducted by members of the Junior Bar on the same lines as the Poor Man's Lawyers of England.

Although many of the United States have legislation similar to the Continental model the great feature of the American System is the strong, highly-organized, independent, Legal Aid Society. This name so justly suspect in England is the usual title in many American cities of a series of organizations, which, in 1932, handled 307,673 new cases for the poor. The source of the series was the German Society of the city of New York, which in 1876 established "der Deutsch Rechsschutz Verein" to render free legal aid to the worthy poor of German birth. To-day that body, no longer restricted, is the Legal Aid Society, ready "to render legal gratuitously, if necessary, to all who may appear worthy thereof and who are unable to procure assistance elsewhere, and to promote measures for their protection." In 1931 it expended $145,900, and collected for clients $146,000, employed nineteen lawyers, several law clerks, and a staff of fourteen, maintained four branches and received 38,971 new cases. The history and nature of this development is fully set out in classic form elsewhere; indeed, in sharp contrast with other countries, the mass of material in the States on the subject of Legal Aid is so extensive as to be at once the joy and obstacle of the student.

The American Legal Aid Society is organized on a permanent, business-like basis. It has regular well-equipped offices in good locations staffed and run much as the ordinary lawyer's office. The client is interviewed and his case considered just as it would be in the usual course of a lawyer's business. But the applicant must show that he is unable to afford the services of a private attorney; if he can afford them, he is referred either to a lawyer he knows or to a list furnished by the local Bar Association. Even if the applicant proves his lack of means, his case may be refused. If he is actuated by malice and seeks to profit by a dishonest act, if he seeks to transfer an action from a private attorney, if his remedy at law would be futile, if the case is of a sensational nature as breach of promise, divorce, libel and slander, in all these and in several other situations his case will usually be refused. Applicants are usually charged a retainer of 10c to 50c, and if they can, pay the necessary disbursements. The Society keeps costs recovered less disbursements advanced by the client and in collection cases retains a commission usually of ten per cent. But it is far from being a "common mover of trials." Less than 10% of the cases received are taken to Court and although

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The Baffling Case of Rex vs. Olga Solved

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guilty Olga escape scott free the vengeance of the law?

The following solution has been submitted by Mr. Clarence Cooper:

REX v. OLGA

(Clarence Cooper).

In this perplexing situation, justice done to one party would be an equally great injustice done to the other. The law requires that the guilty must be punished and the innocent to go free.

The law is mandatory in its requirement as to the punishment of one found guilty of murder. Section 263 of the Criminal Code provides that anyone convicted of murder shall be sentenced to death. There is no alternative sentence in such a case. The form of sentence is set out in Section 1062 of the Criminal Code — it provides that ". . . the sentence or judgment to be pronounced against him shall be that he be hanged by the neck until he is dead. . . ."

Section 1004 requires a judge before passing sentence on the accused ". . . shall ask him if he has anything to say why sentence should not be passed upon him according to law. . . ."

The above paragraphs set out the law that should be applied. But in this case, there seems to be a reason why sentence should not be passed. The sheriff is justified, pursuant to Section 25 of the Criminal Code, in carrying out the sentence. But in so doing he would either find it impossible to carry out such sentence, or by so doing it, he would kill the other twin Hilda, for which Section 23 above would give him no protection. He would then be guilty of a culpable homicide. The law would not justify such a crime, so that it would not put its officer in such a position that to do his duty he has to commit a crime for which he would be liable; such would be against public policy. A situation did arise once, in which case it was found impossible to hang a man named ohn Lee. The court did not know at the time of passing sentence that he could not be hanged. The alternative remedy given in that case was imprisonment. Unfortunately, that case came up in the last decade of the nineteenth century, I do not know the procedure that was followed.

There is no power in our Criminal Code given to a judge to pass any other sentence than the sentence of death in a case of murder. The Crown can commute such sentence. Section 1077 provides that the Crown can commute it to a period of life imprisonment or for a period of not less than two years, or for a period of less than two years, with or without hard labour.

This seems only to apply after the sentence has been passed, so that it would be of no assistance to avoid passing sentence. But, on the other hand, it would be of some assistance in the report to be made as required by Section 1063. Similarly, Section 1008, which provides that a woman on whom the sentence of death has been passed may move in arrest of execution on the ground that she is pregnant. This, though of no assistance to avoid passing sentence, would indicate a procedure that might be followed in this case.

The other twin Hilda can bring a Habeas Corpus proceeding, which would complicate matters to a state of confusion. However, we are not concerned with that at the moment, as she is not before the court.

Then sentence of death will have to be passed on Olga, and execution stayed until Hilda's rights are determined.

The matter of the sentence is for the Crown to deal with in the exercise of Royal Mercy, possibly it will see fit to give a reduced sentence of imprisonment, even if the other twin's rights are taken away. If no punishment were given, the accused could shoot anyone in her audience to whom she happened to take a dislike; society should be protected from the possibility of such an occurrence.

If the Crown does nothing in regard to this matter, the sheriff may follow the procedure as outlined above. That is, the sheriff can send a declaration as required by Section 1068 (2) and Section 1072 to the Secretary of State, stating that execution cannot be carried out.

DEBATES

A spirited debate between O. A. C. and Osgoode Hall took place at the Hall last Friday. The visitors succeeded in persuading half the house and also the Speaker, John Anderson, and so the laurels are theirs. John Parker and Lloyd Goodwin supported the resolution that "The League of Nations is a Failure."

They urged that the League had not brought an assurance of peace —that it had not met the challenge that it had been formed to meet. That it had done nothing effective about removing the causes of war, that it had failed dismally in any attempts it had made to bring out any general disarmament. Further they tried to persuade the house that the League had completely failed to use the machinery incorporated in its very constitution for revising treaties that had become inconsistent with changed conditions. Also it was strenuously insisted that the League had developed into an instrument controlled by a few great powers and lived principally to further the ends of those powers. No denunciation of the collective system was included in their attack—it was simply that the present League had not accomplished those results it was created to achieve.

The opposition pointed out very effectively that much good had been done by various commissions of the League in the suppression of the white and black slave trades, in controlling the opium traffic and in conducting elections envisaged by the Treaty of Versailles. They stressed the extreme youth of the League, admitted there had been

(Continued on Page 6.)

"AS OTHERS SEE THEM"

"JUDGMENT PROOF" EDITORIAL BOARD CALMLY AWAITS LIBEL ACTIONS

For the following, we are indebted to Dick Reville, Stu. MacKenzie and Nat. Shaw, for whose maunderings, neither this publication, nor Ye Ed. will (while conscious) accept any responsibility.
"A chiel's amang you taking notes,
And, faith, he'll prent it."
—Burns, On Capt. Grose's Peregrinations.

Abraham Acker:
"Alone I did it."
—Shakespeare; Cariolanus, V., vi., 117.

Were Abe not an extremely quiet, modest, and unassuming young man, he might well exclaim with Cariolanus, "Alone I did it." For Abe in the face of the fiercest competition, has nosed out all the runners to the tape in the twice-yearly examinations, not once, but five times. It is safe to prophecy that he will make it a grand slam at the finals this year, and receive his call with an unblemished record of firsts.

One would have thought this quite sufficient for any man, but Abe, in addition to working hard and daily for Mr. McRuer, K.C., has played a leading role in Mock Parliaments, and Moot Courts. Nor has he neglected the lighter side of life. Every now and then he may be seen, with his usual gravity and precision, carefully treading the measures of a gavotte or polka with a very charming young lady.

To conclude, Abe's ancestors must have been seamen, for frequently he is called upon to give a really remarkable display of nautical skill in handling the intricate series of ropes and pulleys that let air into the foetid classrooms of Osgoode Hall.

Bora Laskin:
"And he is oft the wisest man
Who is not wise at all."
—Wordsworth, The Oak and the Broom.

We do not remember associating with anyone who is more truly wise, or one who flees more vigorously from the appellation "wise" than Bora, or "Butch," as he is familiarily called. For "Butch" is no mere "gatherer and disposer of other men's stuff," no mere human dictaphone, as are so many so-called students at Osgoode. "Butch" has a keen mind, an originality and literary flair that makes him out from the common run of fact-grinders. He is widely read, has a vigorous vocabulary, and speaks in the Burkian tradition. Politically, "Butch" is mildly socialistic. We have often heard him expatiate, calmly and dispassionately, on the absurd paradox of people starving in the midst of plenty, and the inhuman gulf that exists in society between extreme penury and extreme opulence. We have approved his sane views on the need for reform and the means by which reform can be sanely introduced. "Butch" is not a bomastic Bolshevik with a bomb, but rather a sane sage with a sedative. We predict that he will be Canada's belated but much needed "first" statesman.

Moffat Hancock:
"Ah me, I was a pale young Curate then."
—Gilbert and Sullivan, The Sorcerer, Act I.

Could some Sorcerer transplant Moff to the eighteen-fifties when Curates were all the rage, especially pale and ethereal young ones, he would be our nomination for the office.

What a sensation he would make, with his long, thin frame draped in cassock and surplice, the sun shining through stained glass windows on his pale aesthetic features, glinting on his spectacles, and lighting up his halo of blonde wavy hair. "Just too perfect," we can heart the bustles and hoop-skirts saying at the sewing-bee, as they wear their fingers to the bone knitting socks and cravats, and making crochet tea-caddies and egg-warmers for "their" Curate.

But "O Tempora, O Mores," Curates are no longer "soignee," in fact slightly "de trop." So perhaps it is just as well that Moff has embraced the Law. And just as well for the Law too, for a more accurate, analyical and far-seeing interpreter of the Law could not be found. Moff will undoubtedly grace a lecturer's chair, and advance the cause of legal scholarship, both from the dias and through the medium of legal publications.

Graduation Dinner to be Outstanding Affair

Extensive Plans for Mar. 19th

The Graduation Dinner is to be held at the Piccadilly Hotel, on Thursday, March 19th, 1936, at 7.15 p.m. It is one of those events which cannot be missed by any male member of the Third Year. It represents the last function at which all the members of the year will foregather before spreading all over the Province. Ask any graduate of Osgoode Hall and he will tell you that his graduation dinner was the best ever. It is something he can still remember with a vividness that is surprising. The Committee this year is striving to emulate the misdeeds of the past and is bending all its energy to make the evening of March 19th a memorable occasion and a happy reflection during the strenuous years at the bar. The dinner is said to bring out hidden depths in some that have hitherto lain dormant. Publicity is scorned and events are treated with the utmost secrecy and confidence. There are approximately 96 men in Third year and everyone must turn out. It is not a party nor a mere dinner: it is a ritual. The few toasts, while sincere, are short. Academic pursuts and examinations are forgotten. Surely there will be no one so foolish as to miss this dinner.

Alex. Gray:
"I am his Highness' dog at Kew
Pray tell me, sir, whose dog are you?"
—Pope, Epigram engraved on the colar of a dog.

Something about Alex reminds us of a man's best friend—his dog. He is big, good-natured, perseverant, steady, and the soul of loyalty and honesty. He is the kind of lad one wants to, almost instinctively, pat on the head. When he smiles, in his jovial way, one almost expects to see a tail appear and wag vigorously. Somehow it never does.

Alex. has that type of sturdy, broad-shouldered bulk that is the pride of women and the despair and envy of less-favoured men. His good nature is exemplified every day when he allows the rather puerile chaff of Comrades Houser, Robertson, Abraham, and his biographer, to roll off him like perspiration off a Turkish bather. His steadiness is shown by his almost perfect attendance at lectures, and his perseverance, by his refusal to give up before contumacious lecturers who ignore or fail to see his point.

Alex has but one eccentricity—his haircut. Every two weeks Alex appears with just one tuft of hair at the top of his head, the rest completely shaved. Whether he employs a surgeon (no barber could shave that close) or whether he himself wields the scalpel in a sadistic frenzy, is a mystery.

Nat. Shaw:
"I am not only witty in myself,
But the cause that wit is in other men."
—Shaskp.; II. Hen. IV., I., ii. II.

When Nat enters a room it is always a dramatic moment. No matter how sombre the gathering assembled, be it the National Society of Presbyterian Elders at the Kirk, or only a group of students in the third year common room on a wet Monday morning, faces light up, eyes sparkle, and anecdotes spring to lips that a moment before had been uttering jeremiads on the folly of youth, or denunciations of all things Osgoodian.

When Nat speaks, which he often does, regardless of his topic, (which is usually immaterial anyway) spontaneous laughter is inevitably evoked. For Nat is a joy-dispenser par excellence. Were he not a lawyer—the greatest living defender of Hydro-poles, and an organizer sans pareil—everything from Sunday school treats to hunger marches on Ottawa, a career on the vaudeville stage or before the microphone would be inevitable.

As it is, we suggest that Nat be the first incumbent of a new Dominion portfolio—Minister of Mirth—and in that capacity sent out on triumphal tours of laughter-making, and better still, laughter-teaching. Nat is our palliative for Depression.

Jack Graham:
"A sadder and a wiser man
He rose the morrow morn."
—Coleridge, The Ancient Mariner, pt. VII.

Jack must be, by this time, both the saddest and wisest of men. For Jack is indubitably the justification, if not the origin of the expression, "Night Hawk." Almost any morning about six a.m., Jack can be seen, sometimes in high-hat, sometimes in high dudgeon, wending his uncertain way along the cobblestones, crooning softly, or raucously, as the case may be, to the desert air. And to reverse a popular legend, the early worm gets the bird. Jack's biographer can vividly remember, with mingled sentiments of pleasure and regret, sitting up with Jack till rosy-fingered dawn (Homer) discussing everything from (the usual cycle of male conversation) wedlock to women.

But Jack, mirabile dictu, always manages, Pheonix-like, to rise from the ashes of the night before. He not only manages to rise, but also to confound lecturers with his convenient knowledge of unknown and abstruse systems of Law. No one who was present (and who was not?) will forget Jack, when unprepared and unread, and all but bested by the Dean's persistent questioning, he retorted, "But sir. I was referring to the Roman Law." Such ingenuity and quickness under fire, will doubtless earn for Jack both fame and fortune at the Bar.

Fred Hume:
"Why then, the world's mine oyster."
—Shaskp., Merry Wives of Windsor, II., ii., 2.

The world is certainly Fred's oyster. He has all the ingredients of success—good looks (not his fault the lucky dog), a winning personality, intelligence, and an ebullient energy.

The first two aforementioned qualities are self-evident. The third expresses itself in divers ways, but notably in the ease with which he solves such baffling conundrums as,—if the train is going 55 m.p.h., two of the passengers, Juggins and Droppsy, have jaundice and housemaid's knee, respectively; it is raining, and the engine is a Vx34q diesel; then what is the name of the engineer's mistress' husband? (Ans. p. 16 n.r.—Hume).

Fred's fourth quality can be no better illustrated than by taking a typical page out of his daily diary: Rise at 7 a.m. read cases for day, attend lecture, massacre Mortgagor, take Taxing Officer to task, mystify Master, mesmerize Mortgagee, dumfound Division Court, petrify Police Court, confound Central Officer, attend lecture, edit Obiter, trip the light fantastic, hypnotize Her retire 3 a.m.—rise 7 a.m., etc.

If Fred has a fault, it is his dogmatism. Fred is a very definite person. We envisage him on the Bench, saying severely, "Mr. Barrister, the law is clear," and then going on for 150 pages to clarify the clear.

John Anderson:
Hailing from Stratford John has had what might justly be referred to as a brilliant school and university record. Besides the academic honours which he picked up while sojourning in Trinity he was well known as an enthusiastic and determined speaker and debater. Early in his career he succumbed to the lure of politics and his zeal for the Conservative party has been known on more than one occasion to colour his better judgment. John has continued his association with the Conservative party while at Osgoode Hall, and although he is rather quiet this year in consideration of the results of the recent elections he assures us that this is merely the lull before the storm. On his call to the bar he is quite ready and willing to accept the leadership of the party in Ontario. John has directed the activities of the Legal and Literary Society this year with a benign, but firm hand. At present he is concentrating all his energies on making the Graduation Dinner the best event of the year.

Gordon Bradshaw:
Gord. attended Victoria College, and while there managed to get himself into as many organizations as he had time for. It is even rumoured that at one time he was one of the outstanding lights of the Victoria Dramatic Society. Gord. played Water Polo for his college and for the University, and rowed in the first crew. He still seems to spend a lot of time around the waterfront. After four years of Law at the University, Gord. decided to come to Osgoode Hall and put in the necessary time to get his call to the bar. He still maintains that is all that he is doing—putting in time. He is Secretary-Treasurer of the Legal and Literary Society, and his chief task has been to restrain the extravagant demands made on the exchequer by Messrs. Anderson and White. However by skillful manipulation and the delicate balancing of one against the other he has managed to keep the society in a state of semi-solvency.

Lawrence Deziel:
After being chased out of Windsor and stirring the quiet cloisters of Assumption College to dignified protest, Lawrence Deziel (known to his familiars as "The Scuttler"), arrived at Osgoode Hall ready to let the world know he was here or else. Three years in this sombre and depressing atmosphere have so blighted an otherwise promising spirit that it is only occasionally that a flash of the old dare-devil recklessness is discernible. When some subect, such as the type of entertainment to be presented at the Graduation dinner, is broached a momentary flicker of interest may be noticed before he sinks back into that comatose state which is the inevitable result of three years at Osgoode Hall. Lawrence is always ready to promote and manage anything for anybody, anytime, anywhere and furthermore

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TOASTS.

THE KING.

THE LAW SCHOOL.
F. R. HUME.
DR. MACRAE.

THE LEGAL PROFESSION.
G. BRADSHAW.
J. J. ROBINETTE.

HIS HON. JUDGE IAN MACDONALD,
GUEST SPEAKER.

"AS OTHERS SEE THEM"

(Continued from Page 4)

to do a good job of it. One wonders how long the practice of law will hold him before the more lucrative field of business promotion will lure him away.

Don Grant.

A memorable career at U.T.S. and Varsity and a deep-rooted conviction in the ultimate triumph of Liberal policies have enabled Don to consider himself well in line to shape the destinies of the province and the Dominion. He has served for two years on the executive of the Gladstone Club and is now its President. After campaigning in Parkdale riding in the last Dominion elections, Don decided to get away from practical politics so he accepted the premiership in the Osgoode Hall Mock Parliament. There he is hoping to round out his training for the field of active politics, which he is determined on entering at graduation. But Don is also interested in law—with the able assistance of Abe Acker he was able to steer J. C. McRuer through the pitfalls of a crown prosecution and end up with a conviction at the recent assizes.

Henry F. White:

Hank White, otherwise known as the "Iron Man," is justly noteworthy for his remarkable ability to carry on for any given length of time without food, sleep or drink. It has long been suspected by some of his more intimate friends that the man is not quite human, but must have entered into some nefarious compact with the Powers of Darkness, to possess such limitless energy and vitality — truly it can have been bestowed for no good purpose. Hank breeezes into a peaceful gathering and immediately all is uproar—five minutes later he depart, leaving everyone totally incapacitated, weakly breathing maledictions on his name. When not otherwise engaged, Hank spends his time in the office of the Public Trustee administering the estates of lunatics, etc., however we will refrain from drawing any analogy therefrom. Suffice it to say that one of the more notorious and outspoken members of the year has been known to mutter under his breath on more than one occasion: "Pure case of the blind leading the blind." Hank's able management of the Osgoode Hall dances this year has been insrumental in making those functions the best in years, despite the profusion of patrons at the formal.

Dick Reville.

Known as the Brantford Bluebeard when he came to Varsity. Now most of us have forgotten that he came from Brantford. A brilliant career as a scholar and debater both at the University and Osgoode, together with a mind which sees possibilities in the most unlikely quarters, promise the legal world one of the most scintillating Divorce Court careers it has seen. During his first two years down here his appearances were few, due to a deep-seated conviction that no gentleman ever rises before 11 o'clock in the morning. Now that we have lectures at 4.40 he gets to half of them anyway and sometimes more if he doesn't have to change before coming down. This is the one benefit the afternoon lecture has given us.

In spite of his unobtrusive ways, Ridley's favourite son has carved a niche in the Hall of Fame for his article on K.C.'s if for no other reason, and we shall be sorry to see him glide gracefully as ever from our midst at the end of the year.

Stu. Mackenzie.

Widely known in the third year as the Pride of the Sewing Circle. Seated high up in the fifth row, his sonorous whisper, steady, ever-flowing, disputes on even terms with the machine gun fire of Dr. Wright, battles manfully with the boom of Dr. Mac Rae, and has Mr. Clute on the ropes in the first five minutes. Visitors in the Secretary's office have been known to ask why the radio wasn't shut off during lectures.

A solid citizen and a pillar of society, his aim in life has ever been to stand as an example of decorum and sobriety for the slighter members of the community. Only occasionally does he descend from the pedestal upon which his admirers have placed him, and that for good cause. During ticket selling season his energy has no bounds, and woe betide the luckless wight who ventures within his range with sufficient cash or credit to satisfy him.

Long may he live—his country has need of his solid yet simple virtues.

John Abraham.

He is an economist from 'way back with his first love's usual offensive views on law and the future of the nation. By actual observation the first and only man, as a first year student to disagree with a Privy Council decision in a Torts class. He has also been known to disagree with our own Court of Appeal. With sufficient incentive he will disagree with almost anything including life, love and morals. He has been suspected of having a first class mind.

His most prominent use at Osgoode Hall has been as a counter-irritant to Mackenzie and Clark, though it may be doubted whether his clarion call of "Quiet please!" does as much to disorganize the class as their less showy but more sustained efforts. As a bland heckler of lecturers he is in a class by himself, or at any rate they wish he were.

Give us more like him—he keeps the mould off us as much as Osgoode tradition will let him.

John Denison.

As you sit at the back of the lecture room day after day, you gradually becme aware of an angelic head bent piously over an open notebook, gaze fixed earnestly either on the book or rooted to the face of the lecturer. Close inspection would show the notebook a beautful blank, or covered with drawings of surrounding things of interest done in the modernistic manner. The stare bent so fixedly on the lecturer originates from a pair of cloudy blue eyes filled with visions of other and better things than their owner's mundane surroundings. John is not to be blamed for these things—we merely mention them in passing so as to destroy finally an illusion that has persisted for three years—that Denison thinks of nothing but his work. Remove him from his academic background and he becomes almost human, chatty, talkative, with more than one attempt at wit. It is strongly suspected that our eminent Editor has pinched more than one of his ideas as the basis for an editorial, but the Editor has never yet admitted it. This is just an example of the sterling influence John exercises in spite of his quiet ways. May this brief tribute be the means of raising him from the oblivion, if indeed any such oblivion exists. We hope it does exist because we'd hate to see our efforts wasted.

Max Rappaport.

Well known to the ladies of the year as the chief distraction in one long lecture after another. If this fatal fascination had been spotted earlier, steps might have been taken to remove to another part of the room the sinister influence which has thrown the rest of us into an undeserved eclipse.

He descended on us from Queen's with a reputation as a debater and his record at Osgoode has shown that if anything they underrated him down there. To the confirmed lecture goer, his masterly attacks on the theories of the lecturer, always put forward under the guise of an ardent thirst for information, have always been a source of unalloyed delight. His scholastic record makes us suspect that the thirst for information is not entirely assumed and not easily satisfied. His severe attention to business while at Law school, makes it difficult for us to add those intimate details which are calculated to make their subject writhe in impotent rage, and since this is the obect he has probably striven to attain, he is undoubtedly thanking his stars for it at present.

Law and Poverty Problem

(Continued from Page 3)

the possibility of Court action is a mighty aid to settlement, the spirit of the societies is expressed in Lincoln's words "Discourage litigation. Persuade your neighbors to compromise when ever you can. Point out to them how the nominal winner is often the real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man."

Several important variations of this type exists in the United States. Most of the Societies are private charities depending for financial support on the public and the bar; some are public offices supported by municipal grants; some are private offices maintained by large industries or trade unions; some of the weakest are committees of Bar Associations; and some are legal aid clinics attached to full-time law schools and forming part of their work.

Before considering the application of these various systems to this province and particularly, Toronto, it might be well to review the situation in Canada. In 1923, the Canadian Bar Association appointed a committee to report on the subject of Public Defenders and Legal Aid, but although the Committee functioned until 1929, its activities seem to have aroused no general interest and its final report in 1929 was not discussed, but was passed perfunctorily. It was not until 1934 that the Bar Association again took up its enquiry, "as present conditions demand in an acute way the attention of the Association" and appointed a new standing committee, to report on the steps already taken to provide legal aid. Two articles on the subject have appeared in the Canadian Bar Review," contributed by Jules Prud'homme, of Winnipeg, and Magistrate Jones, of Toronto. There is already some provision made in the cities of Montreal, Toronto, Saskatoon and Windsor.

(To be Concluded).

"KING'S ENGLISH."

From a form issued to employers by the Ministry of Labor, London: "Separate departments in the same premises are treated as separate premises for this purpose where separate branches of work which are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises."

MUST A PREFERRED BENEFICIARY ELECT UNDER A WILL?

(Continued from Page 1)

"The inclincation in my own mind is somewhat strongly in favour of the contention that the doctrine of election will yet apply. I can see no reason why the testator who has insured his life for the benefit of his wife, may not by his will put the wife to her election and compel her to choose between the benefit which is hers under the policy and the benefit which he proposes for her under the will. That would not appear to me to be in contravention of the general law of the land. It recognizes the absolute right of the wife to the insurance money and gives her the choice of retaining that which is hers or bringing it in to the alternative scheme proposed by the will. I am, however, precluded from giving effect to my own views by the decision of my brother Riddell in the case of Re Edward (1910) 22 O. L. R. 367. It might be possible to distinguish this case both upon the ground that the general law of election has since that decision been placed upon a more sure footing in the case to which I have referred and upon the ground that the exception itself has been somewhat clarified and has been demonstrated to rest upon a narrower footing than my learned brother seems to have thought, upon illegality, but I think it is better to leave this task to an Appellate Court if the parties desire to carry the matter further. In re Ogilvie, Ogilvie v Ogilvie (1918) 1 Ch. 492 shows that in the opinion of Mr. Justice Younger the discussion is not yet ended but it is on the other hand significant that the comments of Theobald in the preface to his 7th edition have been omitted by the editor of the 8th edition.

I therefore following the case of re Edwards declare that the widow is not put to her election and can retain the insurance money as her own and in addition receive all the benfits provided (for her by the will."

It may be worthy of note that here the insurance money was to go outside the class of preferred beneficiaries after the death of the wife.

In the Edwards case the facts were similar. A policy payable to the wife was declared by the will to be held by the executors in trust for the maintenance of the wife during her life, and on her death a gift over to the residuary legatees none of whom was within the preferred beneficiary class. Riddell J. A. also in Weekly Court, held that this case was within the "notable exception" to the doctrine of election which was stated by Sir W. M. James V. C. at p. 173 in Wollaston v. King (1869) L. R. 8 Eq. 165. "The ordinary principle is clear that if a testator gives property by design or mistake which is not his to give, and gives at the same time to the real owner of it, other property, such real owner cannot take both. And the principle has been applied where the first gift is made purporting to be in execution of a power; so that, if under a power to appoint to children, the donee of the power appoints to grandchildren, which is bad, and the children who are entitled to claim by reason of the badness of the appointment also take under the will other property, the grandchildren are entitled to put them to an election. But to this rule so far as regards appointments, a notable exception is taken, viz., that when there is an appointment to an object of the power, with directions that the same shall be settled, or upon any trust, or subject to any condition, then the appointment is held to be a valid appointment, and the super-added direction, trust, or condition is void, and not only void but inoperative to raise any case of election."

Riddell, J.A., does not agree with the reasoning in Griffith v Howes (1903) 5 O. L. R. 439, nor in In re Shafer (1907) 15 O.L.R. 266 at 273 nor in In re Anderson's Estate (1906) 16 Man. L. R. 177 although the results in these cases are the same as in Re Edwards. The quarrel is under the statement from In re Warren's Trusts (1884) 26 Ch. D. 208 where under a marriage settlement a wife had power to appoint by will among the issue of the marriage. She appointed in part in favour of the children of a deceased son, and in part of another son living, with remainder to his child or children who should attain 21 years. The gift in favour of the children of the living son was void for remoteness and the question was whether those entitled in default were put to their election. Pearson J. at 219 gives this statement which Riddell J. A. says is the basis of Griffith v. Howes, and with the use of which in the insurance cases he disagrees. "How can there be any question of election? I must read the will as if the invalid appointment was not in it at all. The ordinary case of election is when a testator attempts to give by his will property which belongs to someone else. Such a gift is not ex facie void. In the present case it is the law which disappoints the appointee. The gift is ex facie void." The learned Justice of Appeal thinks that the real ground for defeating the election in the Warren's case is the same as that in Wollaston v. King.

Thus we may say that this preliminary examination gives us three choices to apply in the insurance cases.

(1) The view of Middleton J. A. (not given effect to) that an election will still arise.

(2) The view that an election will not arise because the facts are by analogy within the notable exception as stated by James V. C. in Wollaston v. King.

(3) The view that an election will not arise because the facts are by analogy within the exception as stated by Pearson J. in In re Warren's Trusts.

Let us examine the power of appointment cases more minutely in an effort to deduce which of the two last stated views of the exception express the law and then let us attempt to affirm or disaffirm the inclusion of the insurance cases within that principle.

In re Warren's Trusts of which the facts were briefly stated above was a case reported largely for its determination of the word "issue" which is interpreted as children in one part of the same instrument. Having found that the trust for the child or children of the living son who should attain 21 years was void for remoteness, the question of election was decided very quickly by Pearson J. who thought that the statement quoted above was sufficient to dispose of the matter. Wollaston v. King was cited by counsel but the statement by James V.-C. was dismissed as an obiter dictum.

A comprehensive review of the authorities is given by Farwell J. in Oliver's settlement, In re Evered v. Leigh, (1905) 1 Ch. 191 at p. 196. "The testator in this case has exercised a limited power of appointment vested in him in such a way as to contravene the rule against perpetuities, and has by the same instrument given to the persons entiled in default of appointment benefits out of his own property. The question for my determination is, Does this raise a case of election? At p. 197, "The doctrine of election is a rule of equity by virtue of which the Court of Equity compels a recipient of the testator's bounty to conform to all the legal provisions of the will. It it somewhat startling that this Court should be asked to extend it to illegal provisions, and to apply its doctrines for the purpose of enabling a testator to evade a rule of law founded on public policy."

Note that in the first sentence of this latter quotation he speaks of "legal" provisions. Does he then place emphasis on legality or illegality or on the other hand has he anything at all in his mind approximating the limited power of appointment concept of James V.-C.?

(To be concluded)

DEBATES

(Continued from Page 3)

mistakes, but asked the house to recognize that the League was an instrument for peace for which the future was brighter than the past.

Several interesting and amusing speeches were contributed from the floor.

OSGOODE vs. O.A.C. (AT O.A.C.)

The second half of the Osgoode Hall-O.A.C. debating double-header, on the question "Resolved that the League of Nations has failed," was staged at Guelph, on Friday, March 6th. Upholding the negative on behalf of Osgoode were Messrs. T. G. Spencer and W. J. Smith. For O.A.C., the representatives were Messrs. S. Gray and J. Bromley. The resolution was sustained by a majority of two judges to one, but the margin of victory for O.A.C. was so close that on total points the local boys enjoyed a slight superiority.

SECTION 98

(Continued from page 1).

England, a country which provides more security for her subjects than any other in the world, has not found it necessary to enact a similar statute to protect her citizens from the menace of Communism. The section was passed in Canada during a period of post war hysteria when the Communists, drunk with their recent victory in Russia, were confidently proclaming that the rest of the world would follow suit. It was during the Winnipeg strike riots that our "masters of statecraft" (not merely politicians) were stampeded into passing that boon to Communism in Canada, familiarly known as Section 98.

If they (the masters of statecraft) had been a little more practical and not so theoretical, if they had been more familiar with the causes of the French Revolution and the Russion Revolution, than with the reforms of Henry II., there is no doubt that this eternal blot on the common sense of the Canadian people would never have been perpetrated.