CASE AND COMMENT.

WILLS—EXECUTION—"IN THE PRESENCE OF THE TESTATOR."—Section 9 of the English *Wills Act* of 1837 (re-enacted in all the common law provinces of Canada) requires a testator to sign or acknowledge his will "in the presence of" two or more witnesses, and, in addition, requires such witnesses to attest and subscribe the will "in the presence of" the testator. Since "presence" was also required by section 5 of the *Statute of Frauds* in 1677, dealing with wills of realty, a plethora of decisions as to the meaning of this term has accumulated, which might well lead one to believe that the subject was satisfactorily settled. Such, however, is not the case. And even though one considers the matter as settled, it is the writer's opinion that the settlement is far from satisfactory.

On the whole, it may be said that the English courts have made "visibility" the test of presence, superadding to that, from practical necessity, the qualification that ability to see is tantamount to actual sight.[1] So liberal did the courts become in this connection, that a mere accidental juxtaposition of the parties, so long as visibility were possible, was considered a sufficient "presence."[2] It was not until the decision in *Brown* v. *Skirrow*[3] in 1902 that the necessary and self-evident limitation on this view was added, to the effect that in addition to possibility of seeing, there must also be added a knowledge of such possibility. In other words, as the provisions of the Act were passed to prevent a fraudulent substitution of documents, there can be no valid subscription by witnesses unless the testator knows they are signing and has a chance of seeing them do so.

What amounts to an opportunity of seeing, however, has led to divergent results. It seems to be admitted by all courts that if a man can see by lifting his eyes this will be a sufficient possibility. But what if he must move a curtain surrounding his bed? Or move one or two steps to left or right? Or lift his head? Or raise his

[1] "The Statute required attesting in his presence to prevent obtruding another will in place of the true one. It is enough if the testator might see, it is not necessary that he should actually see them signing; for at that rate if a man but turn his back, or look off, it would vitiate the will": *Shires* v. *Glascock* (1687), 2 Salk. 688.

[2] See the astounding result in *Casson* v. *Dade* (1781), 1 Bro. C.C. 99, where a testatrix, after signing her will in the office of her solicitor before two witnesses, retired to her coach outside as a relief for her asthma. The coach, being accidentally parked so as to command a view of the interior of the solicitor's office, it was held the witnesses had signed in her presence.

[3] [1902] P. 3.

whole body from a recumbent position? Is there not a possibility of sight in each case if we take that as our only guide? The decisions, however, differ. As to moving curtains surrounding a bed, it has been stated in three decisions at least,[4] that a will signed by witnesses who were obscured from the testator by bed curtains, was well executed, there being a possibility of sight. As to moving one or two steps, it has, on the contrary, been held that in the absence of evidence that such steps were actually taken so as to bring the witnesses into actual visual range, there was not valid execution.[5] So also *Tribe* v. *Tribe*,[6] where a testator in a bed curtained off from the rest of the room was held not capable of seeing the witnesses sign, there being the additional factor that the testator could not from the state of his illness have moved even if he had so desired. It was accordingly held that the witnesses had not signed in his presence.

In the recent case of *Re Woźciechowiecź*[7] a will was drawn for a man *in extremis* while he was lying in a hospital cot. The question before the Court of Appeal was whether the witnesses who subscribed the will in the same room did so in the testator's presence, the latter lying with his back to the witnesses and being so ill as to be unable to turn himself in bed. It was held, following *Tribe* v. *Tribe* (*supra*) that the witnesses did not sign in the presence of the testator and hence the will was not properly executed. The decision may, however, be supported on the ground that the testator did not know that he had an opportunity of seeing the witnesses sign, as the evidence indicated he did not know that witnesses were essential.

Such cases, although irreconcilable with the "bed-curtain" cases, may be stated as establishing the doctrine that a testator ought to be able, without any material effort or change of position, to see the witnesses in order to satisfy the requirement of presence.

Does this "visibility" rule then, bar a blind man from making a will? Or, in the case of an injured testator who is compelled to lie on his back with his eyes fixed on the ceiling, must the witnesses affix their signatures from a suspended position above him, at the expense of holding that such a person can make no valid will? The English courts, if consistent, should so hold. On the contrary however, in the case of a blind man they have held that the test was whether if the particular testator had had his eyesight he could

[4] *Shires* v. *Glascock, supra; Davy* v. *Smith* (1693), 3 Salk. 395; *Newton* v. *Clarke* (1839), 2 Curt. 320.
[5] *Norton* v. *Bazett* (1856), Dea. & Sev. 259.
[6] (1849), 1 Rob. Eccl. 775.
[7] [1931] 4 D.L.R. 585 (Alta. C.A.).

have seen.[8] Surely, in the case of a man with a paralyzed neck we are not to have a rule of ability to see if he had not had a paralyzed neck! And yet if not, are the English courts to deny such person a right of testamentary disposition?

It is submitted that if, instead of adopting the visibility rule as the sole test of presence, with its resultant *reductio ad absurdum* in the cases mentioned, the courts had adopted the more rational view that two persons are in each other's presence through any of the senses, such as sound, touch or hearing, to such an extent as will convince a court that there has been a safeguard against substitution of documents, these absurdities would not arise, nor would the difficulties suggested present themselves in an aggravated form. This general test has been adopted by many of the courts of the United States[9] and an examination of the decisions involving the rule compare very favourably with the single test doctrine of English law.

An attempt was made in *Carter* v. *Seaton*[10] to induce an English Court to depart from the single test of visibility in favour of a more general rule but it met with no success, the Court firmly indicating that possibility of sight alone was the rule. With the "bed-curtain" cases and the blind testator situation as a foundation, it is to be hoped that such of our provincial courts as have not already committed themselves, may find themselves free to adopt an intelligible general rule of presence, that will embrace the cases of sight and lack of sight equally, and will not slavishly adopt the single test, for which there is no logical justification, and which is prone to become in many situations a legal monstrosity.

CECIL A. WRIGHT.

Osgoode Hall Law School.

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CONSTITUTIONAL LAW—CRIMINAL LAW—JURISDICTION—DOMINION PARLIAMENT.—The following excerpts, with respect to criminal law as a subject-matter of legislative jurisdiction, from cases decided by

[8] See *In Goods of Piercy* (1845), 1 Rob. Eccl. 278, where the Court indicated that even though blind, if there were curtains around the bed this might have prevented a valid execution, semble because if he had had his eyesight he could not have seen.

[9] "If they [witnesses] sign within his [testator's] hearing, knowledge, and understanding, and so near as not to be substantially away from him, they are considered to be in his presence:" *Cook* v. *Winchester*, 81 Mich. 581; 46 N.W. 106.

"As most men can see, vision is the usual and safest test of presence, but it is not the only test. A man may take note of the presence of another by the other senses, as hearing or touch:" *Riggs* v. *Riggs* (1883), 135 Mass. 238; 46 Am. Rep. 464. See also *Raymond* v. *Wagner* (1901), 178 Mass. 315; 59 N.E. 811; *Kitchell* v. *Bridgeman* (1928), 126 Kan. 145; 267 P. 26.

[10] (1901), 85 L.T. 76.

the Judicial Committee of the Privy Council clarify or becloud this problem in Canadian constitutional law. He who reads may speculate as to their individual or collective effect.

In *Attorney-General for Ontario* v. *The Hamilton Street Railway Co.*[1] Halsbury, L.C., said: "The fact that from the criminal law generally there is one exception namely, 'the constitution of Courts of criminal jurisdiction' renders it more clear . . . that with that exception . . . the criminal law in its widest sense, is reserved for the exclusive authority of the Dominion Parliament."

In *In re The Board of Commerce Act*[2] Viscount Haldane said: "It is one thing to construe the words 'the criminal law, except the constitution of the courts of criminal jurisdiction, but including the procedure in criminal matters,' as enabling the Dominion Parliament to exercise exclusive legislative power where the subject matter is one which by its very nature belongs to the domain of criminal jurisprudence. A general law, to take an example, making incest a crime, belongs to this class. It is quite another thing, first to attempt to interfere with a class of subject committed exclusively to the Provincial Legislature, and then to justify this by enacting ancillary provisions, designated as new phases of Dominion criminal law which require a title to so interfere as basis of their application."

In *Attorney-General for Ontario* v. *Reciprocal Insurers*[3] Duff, J., stated that, "it is no longer open to dispute that the Parliament of Canada cannot by purporting to create penal sanctions under s. 91. head 27, appropriate to itself exclusively a field of jurisdiction in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the Provincial sphere, to deal with matters committed to the Provinces, it cannot be upheld as valid . . . It is one thing, for example, to declare corruption in municipal elections, or negligence of a given order in the management of railway trains, to be a criminal offence and punishable under the Criminal Code; it is another thing to make use of the machinery of the criminal law for the purpose of assuming control of municipal corporations or of Provincial railways."

In *Proprietary Articles Trade Association* v. *Attorney-General for Canada*[4] Lord Atkin said: " 'Criminal law' is not confined to

[1] [1903] A.C. 524 at p. 529.

[2] [1922] 1 A.C. 191 at pp. 198-9. See also *Toronto Electric Commissioners* v. *Snider*, [1925] A.C. 396 at pp. 407-8.

[3] [1924] A.C. 328 at pp. 342-3. See also *Attorney-General for Quebec* v. *Attorney-General for Canada* (1931), 48 T.L.R. 73.

[4] [1931] A.C. 310 at p. 324. See also *Toronto Corporation* v. *The King* (1931), 48 T.L.R. 69.

what was criminal by the law of England or of any Province in 1867. The power must extend to legislation to make new crimes. Criminal law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State. The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one: Is the act prohibited with penal consequences? . . . It appears to their Lordships to be of little value to seek to confine crimes, to a category of acts which by their very nature belong to the domain of 'criminal jurisprudence'; for the domain of criminal jurisprudence can only be ascertained by examining what acts at any particular period are declared by the State to be crimes, and the only common nature they will be found to possess is that they are prohibited by the State and those who commit them are punished."

In *Canadian Pacific Wine Co.* v. *Tuley*[5] Birkenhead, L.C., said: "It was contended that the *Summary Convictions Act*[6] of British Columbia was *ultra vires* of the provincial Legislature, on the ground that it was an attempt to enact provincial legislation for 'criminal law,' including procedure in criminal matters, within the words of s. 91, head 27, of the *British North America Act* . . . Reading ss. 91, and 92[7] together, their Lordships entertain no doubt that the *Summary Convictions Act* was within the competence of the Legislature of British Columbia. It relates only to punishments for offences against the provisions of the statutes of the province, and is to be read as if the provisions to this end were expressly declared in some such statute."

In *Rex* v. *Nat. Bell Liquors, Ltd.*[8] Lord Sumner said: "Ought the word 'criminal' in the section in question[9] to be limited to the sense in which 'criminal' legislation is exclusively reserved to the Dominion Legislature by the *British North America Act,* s. 91, or does it include that power of enforcing other legislation by the imposition of penalties including imprisonment, which it has been held that s. 92 authorizes Provincial Legislatures to exercise? It may also be asked (though this question is not precisely identical) under which category does this conviction fall of the two referred to by Bowen, L.J., in *Osborne* v. *Milman,*[10] when he contrasts the cases 'where an act is prohibited, in the sense that it is rendered

[5] [1921] 2 A.C. 417 at pp. 422-3.
[6] B.C. 1915, c. 59.
[7] See heads 14, 15 and 16 of s. 92.
[8] [1922] 2 A.C. 128 at pp. 167-8.
[9] Supreme Court Act, R.S.C. 1906, c. 139, as amended by 10 & 11 Geo. V, c. 32.
[10] (1887), 18 Q.B.D. 471 at p. 475.

criminal,' and 'where the statute merely affixes certain consequences, more or less unpleasant, to the doing of the act.' Their Lordships are of opinion that the word 'criminal' in the section and in the context in question is used in contradistinction to 'civil' and 'connotes a proceeding which is not civil in its character.' "

In *Nadan* v. *The King*,[11] Cave, L.C., said: "Section 1025 is expressed to apply to an appeal in a criminal case from 'any judgment or order of any Court in Canada,' and this expression is wide enough to cover a conviction in any Canadian Court for breach of a statute, whether passed by the Legislature of the Dominion or by the Legislature of the Province."

In *Chung Chuck* v. *The King*, Sankey, L.C.,[12] said: "Are an offence under s. 20 of the *Marketing of Fruit and other Produce Act* of British Columbia and the proceedings consequent upon the offence criminal matters? It appears to their Lordships that they are criminal matters. The section speaks about an offence punishable on summary conviction, exposing an individual who has been found guilty of an offence not only to a fine but to imprisonment . . . The next case cited was *Rex* v. *Nat. Bell Liquors* (*supra*). Their Lordships think that Mr. MacMillan was right in saying that the Board, in that case decided . . . that there was a part of the criminal law which was within the competence of the Provincial legislature."

S. E. S.

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PROMISSORY NOTE—LIABILITY OF A SURETY WHO SIGNS HIS NAME BELOW THAT OF THE MAKER—ACCEPTANCE OF INTEREST IN ADVANCE AS A BINDING AGREEMENT TO GIVE TIME.—In *Kupferschmidt* v. *Ammoneit and Russwurm*,[1] recently decided by Raney, J., the plaintiff sued as payee on a promissory note signed by Ammoneit and Russwurm, the signature of Russwurm appearing immediately below the signature of Ammoneit. Russwurm signed as surety for Ammoneit, to the knowledge of the plaintiff. The note was not met by Ammoneit at maturity, and the plaintiff delayed taking any action until between three and four years after the maturity of the note when the present action was brought. Ammoneit, who in the meantime had become insolvent, made no defence. Russwurm defended, and the principal grounds of defence were: (1) lack of presentation for payment; (2) non-receipt of notice of dishonour; (3) that the plain-

[11] [1926] A.C. 482 at p. 489.
[12] [1930] A.C. 244 at pp. 250, 254.

[1] [1931] O.R. 678.

tiff gave an extension of time to Ammoneit without the knowledge and consent of Russwurm.

Throughout his judgment, the learned judge appears to have been almost entirely concerned with the problem whether the law of negotiable instruments or the law of suretyship was applicable, treating it almost as a matter of law that, if the former were applicable, Russwurm was an endorser. He stated: "The validity of defences (1) and (2) depends on the question whether the defendant was an endorser of the note, or merely a surety for its payment—in other words, whether the law of negotiable instruments is applicable, or the law of principal and surety,"[2] and again "Either the surety is within the sections of the *Bills of Exchange Act* which protect an endorser, or he is not. The test appears to be whether his name is endorsed on the note."[3] The position of Russwurm's signature was disposed of by Raney, J., as follows:[4] "It is of no consequence that the defendant Russwurm in this case signed, not on the back of the note, but on its face, under the name of the principal debtor. 'Endorsement' literally means writing a name on the back of a bill or note, but the endorsement may be on any part of the instrument, even on the face: *A. D. Gorrie Co. Ltd.* v. *Whitfield and Michaud.*"[5]

Deciding that the law of negotiable instruments was applicable, the learned judge held that Russwurm would be liable under section 131 of *The Bills of Exchange Act*,[6] but that as he had not received notice of dishonour, he was discharged. *Hough* v. *Kennedy*[7] and the statement in Falconbridge on *Banking and Bills of Exchange*[8] based thereon to the effect that an accommodation co-maker was not entitled to notice of dishonour were dismissed on the ground that *Robinson* v. *Mann*,[9] and cases following it were not discussed in *Hough* v. *Kennedy*.[10]

The third defence was held to be without foundation as the facts alleged did not constitute a binding agreement to give time. Leave to amend was, however, given Russwurm to raise the defence of receipt of interest in advance by the plaintiff, which Raney, J., apparently considered would also discharge Russwurm on the authority of *Ryan* v. *McKerral*.[11]

[2] [1931] O.R. 678 at p. 680.
[3] [1931] O.R. 678 at p. 684.
[4] [1931] O.R. 678 at p. 681.
[5] (1920), 48 O.L.R. 605.
[6] R.S.C. 1927, c. 16.
[7] (1910), 3 Alta. L.R. 114.
[8] 4th ed. (1929), p. 701.
[9] (1901), 31 Can. S.C.R. 484.
[10] *Supra*.
[11] (1888), 15 O.R. 460.

It is most respectfully submitted that on the facts stated in the judgment the learned judge failed to give due effect to the decisions on the liability of a person who signs a note on its face, apparently as maker. *A. D. Gorrie Co. Limited* v. *Whitfield and Michaud*[12] is admittedly authority for the proposition that an endorsement may be on the face of the note. The writer is not, however, prepared to assent to the doctrine that "It is of no consequence that the defendant, Russwurm, in this case signed, not on the back of the note, but on its face, under the name of the principal debtor." The *Gorrie* case was concerned with that very point, whether a person who signed apparently as a maker could be treated as an endorser and as such entitled to notice of dishonour, and the decision was that on the facts he was really a maker. The *Gorrie* case also affirms *Carrique* v. *Beaty*.[13] Osler, J.A., in that case stated: "There is no evidence that he intended to sign as endorser, nor is there anything on the face of this note to throw doubt upon or qualify the character in which it purports to be signed by him, which is that of maker."[14] The statement of Maclennan, J.A., is even stronger to the same effect: "One of two or more makers of a promissory note may be a surety for the other or others; and the fact of his being a surety is no evidence that he signed otherwise than as a maker."[15] The rule in *A. D. Gorrie Co. Limited* v. *Whitfield and Michaud*[16] and *Carrique* v. *Beaty*[17] has been repeatedly recognized in subsequent cases, among others, *Triggs* v. *English et al*[18] and the cases mentioned below.

It is submitted that on the facts shown in the present case there is nothing to qualify the character in which the note purported to be signed by Russwurm, namely that of maker. He should thereof on the facts have been treated as a maker, and the defence of lack of non-receipt of the technical notice of dishonour under the *Bills of Exchange Act*[19] would not have been available to him.[20] He might have succeeded on the ground that as a surety he was entitled to notice of his principal's default—not the technical notice under the Act, but notice in fact—and was prejudiced by non-receipt of such notice, but it seems impossible to say definitely in the present state

[12] *Supra.*
[13] (1897), 24 O.A.R. 302.
[14] (1897), 24 O.A.R. 302 at p. 305.
[15] (1897), 24 O.A.R. 302 at p. 310.
[16] *Supra.*
[17] *Supra.*
[18] [1924] 3 W.W.R. 566.
[19] *Supra.*
[20] See *Hough* v. *Kennedy, supra*; *A. D. Gorrie Co. Limited* v. *Whitfield and Michaud, supra*; *Codville Company Limited* v. *Jordan et al*, [1922] 1 W.W.R. 1280; *Triggs* v. *English et al, supra*; *Royal Bk.* v. *McEachern et al*, [1929] 4 D.L.R. 978.

of the authorities whether such a defence is available.[21] In any event it is not clear from the facts whether he was so prejudiced, but it is unlikely that he was, as Raney, J., stated that it was entirely problematical whether the plaintiff could have recovered the whole or even a portion of the amount of the note if he had sued at maturity.

Even assuming that there were facts present entitling the learned judge to treat Russwurm as an endorser, it is extremely difficult to see the relevance of the decisions in *Robinson* v. *Mann*,[22] *Grant* v. *Scott*,[23] and *Gallager* v. *Murphy and Gilroy*,[24] dealing with the liability of an anomalous endorser to *Hough* v. *Kennedy*,[25] which dealt only with the right of an accommodation co-maker, as a maker, to notice of dishonour. The reference to *Hough* v. *Kennedy* in this connection was either entirely unnecessary, as Raney, J., was then dealing with the liability of Russwurm as an endorser, or else the learned judge must have considered that the effect of the Supreme Court of Canada decisions mentioned above was to render it impossible for a surety to be a co-maker,—a rather startling result, which does not appear to be justified by those decisions.

The result may perhaps be supported by Russwurm's contention that he was discharged by the plaintiff's accepting interest in advance from Ammoneit. Raney, J., in granting leave to amend, apparently treated *Ryan* v. *McKerral*[26] as laying down a rule of law that "this was such a giving of time for valuable consideration as discharges the defendant as surety from liability on the note."[27] If *Ryan* v. *McKerral* lays down an inflexible rule of law to that effect it was no doubt binding on Raney, J., in this case. It is doubtful, however, whether *Ryan* v. *McKerral* goes that far. In the earlier English case of *Rayner and others* v. *Fussey*[28] the plea by the accommodation co-maker was that he had been discharged by the plaintiff's making a binding agreement with the principal debtor to extend the time. At the trial the only evidence in support of the plea was that the plaintiff had on several occasions accepted interest in advance from the principal debtor. The jury, on the direction of Bramwell, B.,

[21] Cf. *Hough* v. *Kennedy, supra; Codville Company Limited* v. *Jordan et al, supra; Royal Bk.* v. *McEachern et al, supra.* But see *Mallough* v. *Dick* (1927), 22 Alta. L.R. 425; Falconbridge on Banking and Bills of Exchange, 4th ed. (1929), p. 702; Rowlatt on Principal and Surety, 2nd ed., p. 150 *et seq.*

[22] *Supra.*

[23] (1919), 59 Can. S.C.R. 227.

[24] [1929] S.C.R. 288.

[25] *Supra.*

[26] *Supra.*

[27] See *Ryan* v. *McKerral* (1888), 15 O.R. 460 at p. 468.

[28] (1859), 28 L.J. Ex. 132.

to the effect that there was no such binding agreement for giving time as was required to discharge a surety, found for the plaintiff. On motion for a new trial, or to enter the verdict for the defendant, the Court of Exchequer unanimously decided for the plaintiff. The effect of the decision may be stated in the words of Martin, B.: "The jury must be taken to have found that, notwithstanding the payment of interest in advance, the plaintiff's hands were not tied up, so as to prevent them from suing . . ."[29]

No authority is cited by the Court in *Ryan* v. *McKerral* for its decision on this point, and it may well be questioned whether the Court intended to depart from *Rayner and others* v. *Fussey*. *Rayner and others* v. *Fussey* was not cited to them, but the case was referred to in *Greenough* v. *McClelland*,[30] which was cited to them, and they may have considered it. It is true that in *Ryan* v. *McKerral* the Court stated the question: "Is the endorsement on the back of a note of interest paid up to a future time, in the absence of evidence of mistake, to be taken as conclusive evidence that the time for payment of the note was extended up to the time to which the interest purports to have been paid, so as to discharge a surety for the payment of the note?"[31] But it is to be noted that the reference to "conclusive evidence" is in respect of the endorsement on the note.

J. T. MacQuarrie.

Dalhousie Law School.

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Company — Director—Removal—Articles of Association.—In *Fell* v. *Derby Leather Co., Ltd.*,[1] the Court had to construe one of a company's articles of association, and based its construction on a section of the *Interpretation Act, 1889* It is submitted that the Court would have been much better advised if instead of looking for a statutory guide, it had simply had regard to the dictates of common sense. The construction that was decided upon seems to border on absurdity.

The article in question reads as follows: "The office of director shall be vacated . . . (4) if he is requested in writing by his co-directors to resign." The difficulty which arose was that the company in question had only two directors; one director had received a request in writing from his co-director to resign; and the

[29] (1859), 28 L.J. Ex. 132 at p. 133.

[30] (1861), 30 L.J.Q.B. 15, incorrectly cited as 30 L.J. Ex. 15 in *Ryan* v. *McKerral*.

[31] *Ryan* v. *McKerrall* (1888), 15 O.R. 460 at p. 464.

[1] [1931] 2 Ch. 252.

question was whether this notice was effective. Bennett, J., held that it was, invoking section 1, sub-section 1 of the *Interpretation Act, 1889*, which provided: "In this Act and in every Act passed after the year 1850 . . . unless the contrary intention appears . . . (b) . . . words in the plural shall include the singular." He held that as the Company had adopted Table A, and this Act would apply to Table A, it should also apply to any special articles adopted, so that the same language should have the same meaning in each.

Assuming that this reasoning is sound, still the Act only applies "unless the contrary intention appears"; and to apply it to that article involves such curious results that, it is submitted, a contrary intention does appear. The effect of holding that the article applies where there are not "co-directors," but only one co-director, is, that whenever two directors quarrel, they will have a race to see which can be the first to serve the other with a notice, the slower being thus forced to resign.

It is difficult to believe that any such result was contemplated by those who adopted the article. The purpose of the article seems obvious enough. It was meant to apply literally, where any obnoxious director has "co-directors"; where, in other words, there are at least three directors. Then its operation is quite rational; it merely follows the principle that the wishes of the majority shall govern. It is understandable that the framers of the articles should desire to empower directors as a body to remove any single member who should disturb their harmony. But where there are only two directors, and they quarrel, one is as much an offender against harmony as the other. To say that the framers of the article contemplated a power of removal being exercised by either of two directors attributes to those framers an intention not very flattering to their intelligence—unjustly, it is submitted. Impasses have to be overcome somehow, but a more irrational method could hardly be conceived.

D. M. Gordon.

Victoria.