THE NEW LAWS OF EMPLOYERS' LIABILITY IN ENGLAND AND FRANCE AND THEIR BEARING ON THE LAW OF THE PROVINCE OF QUEBEC WITH THE TEXT OF THE TWO ACTS

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WITH THE TEXT OF THE TWO ACTS

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PREFATORY NOTE.

This article is, with some additions, a lecture delivered to the "Junior Bar Association of Montreal.

An eclectic legal system, like that administered here, has the defects of its qualities. One of them is that English, French and American cases are thrown together pell-mell for the purposes of an argument. In the hurry of preparation it is very easy to overlook a difference of principle which may make the English case less applicable. I thought, therefore, that it might be useful to state the points of contrast in the two laws. As it stands, our law is in a curious position. A French writer, describing a similar state of affairs, wittily says: "les arrêts ne rendaient plus qu'un platonique hommage à la théorie classique du Code."

Lawyers are the most conservative of mortals. They cling with desperate tenacity to the formulæ of a past age. Even in countries where the law is not codified, its advance is almost imperceptible, unless the legislator rudely intervenes. Under a Code the judge is tied still more tightly to the formula. He must interpret and not make the law.

But it sometimes happens that the world moves too fast, or that the wheels of legislation are too slow. The old formula has got to appear so narrow and inadequate that the judge is as anxious as the counsel to give it a new interpretation. He expounds the texts as the ancients expounded the oracles. The oracle cannot have erred. That which has happened must have been the thing foretold.

If men expected something different it was because they misunderstood the dark saying.

So if the Code gets too narrow it must be read in another light. We must pour into it a new sense to fit it to a new world. In the following pages, I have tried to shew that this is our present condition as to this branch of the law.

The new English Act and the new French *Loi* are printed at the end.

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THE NEW LAWS OF EMPLOYERS' LIABILITY FOR ACCIDENTS IN ENGLAND AND FRANCE AND THEIR BEARING ON THE LAW OF THE PROVINCE OF QUEBEC.

It is a very important sign of the times that two of the chief industrial countries of Europe have lately been recasting the law of liability for accidents.

There is, I suppose, no more causal connection between the Workmen's Compensation Act 1897 and the "loi du 9 avril 1898" than if London and Paris were in different planets. But the problem to be solved was fundamentally the same in both countries, and if a closely similar solution has been found, there is at least a strong presumption that it is a solution which satisfies the popular sense of justice. Broadly speaking, both England and France have thrown overboard the traditional doctrine of the law, that a workman could never recover damages for injuries sustained through an accident, unless he could prove that the accident was caused by the fault of his employers.

The Roman law said *quae sine culpa accidunt a nullo præstantur* (*de reg. jur.* 23) and every modern system followed this general rule.

Under the new law the English workman must be compensated unless it is proved that the injury is attributable to his own "serious and wilful misconduct" s. 2, His Frenchbrother is only barred if he has "intentionally provoked the accident," s. 20 ; but the Court may diminish the damages if the accident was due to the "*faute inexcusable*" of the victim.

In this province the present law is stringent enough upon employers. Indeed, I venture to think that they