

THE CANADIAN BAR REVIEW

THE CANADIAN BAR REVIEW is the organ of the Canadian Bar Association, and it is felt that its pages should be open to free and fair discussion of all matters of interest to the legal profession in Canada. The Editor, however, wishes it to be understood that opinions expressed in signed articles are those of the individual writers only, and that the REVIEW does not assume any responsibility for them.

Special articles must be typed before being sent to the Editor, Charles Morse, K.C., Room 707 Blackburn Building, Sparks Street, Ottawa. Notes of Cases must be sent to Mr. Sidney E. Smith, Dalhousie Law School, Halifax, N.S.

TOPICS OF THE MONTH.

The Seventeenth Annual Meeting of the Canadian Bar Association will be held in the City of Calgary on the 31st day of August and the 1st and 2nd days of September, 1932.

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INTERNATIONAL LABOUR DISPUTES.—The Right Honourable Lyman P. Duff, of the Supreme Court of Canada, William C. Coulter, First Vice-President of the Canadian Manufacturer's Association, and Controller James Simpson, Vice-President of the Trades and Labour Congress of Canada, have been chosen to represent the Dominion on a Special League of Nations panel designed to facilitate enquiry into international labour disputes.

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RECONSTRUCTION IN CHINA.—Mr. Archibald Rose, C.I.E., delivered an instructive address recently before the Royal Institute of International Affairs, in London, on the subject of Reconstruction in China. The causes of the present crisis in Chinese affairs in the opinion of Mr. Rose were, first, deep-seated economic pressure in Japan, and secondly, the breakdown of the rule of law in China resulting in the paralysis of authority in the Chinese government.

China at the present time is the largest undeveloped market in the world, and its development would prove an outstanding factor in restoring the economic equilibrium which the world has lost. Canada, Australia and New Zealand, with their long Pacific sea-boards, are vitally and peculiarly interested in the problem of China's reconstruction as a mechanized State. In answering the question how best this can be brought about, Mr. Rose's view is that it can only be done by the League of Nations in co-operation with the United States. As regards the method of constitutional and economic reforms he speaks as follows:

The first step or condition should be the voluntary co-operation of a number of Chinese Provinces, which would pledge themselves to joint action and mutual protection in a Federal experiment. Their adhesion must be voluntary, as no force is available to enforce it. They would probably require a guarantee, from the Central Government and from the assisting League, that they would receive a fair share of all revenues collected within their borders, including Customs and Salt surpluses and other revenues from the trade which they foster and protect. The objective of the League would be to strengthen all the existing machinery of government, whether Central or Provincial; to place at the disposal of every authority the information and technical experience accumulated throughout the world; and to give tangible evidence to the world of the security available in China. At every step and at every point the League representatives would work in the closest co-operation with the responsible Chinese authority.

As regards finance, the position is now understood with fair accuracy. The difficulties are considerable but not insuperable. The resources of China, if properly mobilised, are sufficient to place the country in a sound position within a reasonable time. No loan could be raised for China at present; the Chinese understand perfectly well that an acceptable arrangement about arrears must first be concluded with their creditors. The League would concern itself at once in helping the Chinese to mobilise their resources.

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ECONOMIC PROBLEMS OF LAW.—Some four years ago, and before the stern logic of cause and effect had taught a spendthrift age that penury follows hard upon prodigality, Dean Pound told one of his audiences that the problems of law are social because "the legal order is a social institution, a highly specialized form of social control." And he pointed out that the social problems of the nineteenth century gathered round the acquisition of property and the security of property transactions, so that the time-spirit called for stabilizing theories, for the supremacy of "judicial rather than administrative justice and a holding down of the administrative element in judicial justice to the minimum." To-day all this is changed. In Dean Pound's opinion the social problems of the time demand individualization in the application of law just as surely as the earlier prob-

lems which they supplant called for a generalized application. Our problems concern the adjustment of human relations in a "machine-dominated, specialized, crowded life." Human needs are unlimited, and the means of their satisfaction in their currents easily turned awry. Hence social problems demand a "recognition of the administrative element in all justice and not the least in judicial justice." And so Dean Pound counsels us that we can no more govern the swift-moving life of to-day by the deliberate and *ex post facto* judicial methods of last century than we could control modern motor-traffic by the ancient rule of the road.

* * As to the extensibility of our law in relation to social needs let us remember what Coke said of it 300 years ago: "The jurisprudence of the Common Law of England is a science sociable and copious."

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COMMON LAW CODIFICATION NOT YET.—It is rumoured that Sir Henry McCardie is about to retire from the English Bench and devote his energies to the cause of law reform. From his observations in a recent case involving a claim for damages by a woman for the loss of her husband who was killed by the collapse of a crane, one might gather that upon retirement he will don the mantle worn by Jeremy Bentham a century ago and go up and down in the earth preaching codification. So far as the law of negligence is concerned he is reported to have said: "If it were open to me I would wipe out two-thirds of these decisions and five-sixths of the *dicta*." It seems that his militant attack upon judicial ineptitudes in negligence cases provoked an enquiry in Parliament as to whether the government would favour the appointment of a commission to codify the whole body of case-law, but the enquiry was answered in the negative. So that for the present Themis need not worry about any purification of her temple in England.

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HEALTH INSURANCE IN ENGLAND.—Sir Walter Kinnear, Controller of Insurance, has reported that the claims of women for sickness benefit now constitute such a drain on the National Health Insurance Funds that the financial soundness of the scheme is seriously impaired. The surplus on the last valuation was shown to have diminished by seven millions of pounds, and for this drain on the funds it seems that married women are largely responsible. According to the Government Actuary married women have increased their claims during the last ten years by 106 per cent. as against a 41 per cent. increase in sickness claims by men. This disparity gives

rise to the inference that married women are using the funds as a means of increasing their income. Thus it is demonstrable that socialistic legislation may be used as a medium of fraud at the expense of the tax-payer, and altruistic endeavour made to serve sinister interests. But it is wiser to punish the abuse of a humanitarian law rather than repeal it.

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CLEANING UP CRIME.—England has awakened to the fact that both in London and the larger provincial cities the operations of thieves and receivers of stolen goods are more widespread, and conducted with more skill, at the present time than when Dickens described the doings of the underworld of Sikes and Fagin nearly one hundred years ago. According to the press reports, insurance companies have had to meet claims for losses from this cause for more than £1,000,000 in the metropolitan area alone during the past 12 months. While burglaries and robberies of all kinds are increasing, the value of stolen goods recovered is decreasing in proportion. The whole position has reached a point of anxiety for the insurance companies. They are all in favour of energetic police methods to deal with receivers who are carrying on a prosperous and untroubled business in the sale of stolen goods. Out of every million pound's worth of property stolen in London only about £250,000 worth—according to the latest official figures—is ever recovered. The rest is sold through the "fences."

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RETIREMENT OF LORD DUNEDIN.—Viscount Dunedin resigned his office as Lord of Appeal in Ordinary last month. He had attained the advanced age of eighty-two years. As Andrew Graham Murray he was called to the Scots Bar in 1874, and rapidly attained distinction. Entering political life he became Solicitor-General for Scotland (1891-2), Secretary for Scotland (1903-5), and Lord Advocate of Scotland (1896-1903). In 1913 he was made a Lord of Appeal in Ordinary. Sitting as a member of the Judicial Committee of the Privy Council, Lord Dunedin has heard many Canadian appeals. The last important Canadian case in which he delivered the judgment of the Committee was *The Attorney-General of Quebec v. The Attorney-General of Canada*, an appeal from the judgment of the Supreme Court of Canada on a reference touching the jurisdiction of the Parliament of Canada to regulate and control radio communication. It shows very clearly a present tendency on the part of the Judicial Committee to maintain the ascendancy

of federal powers over provincial interests where international questions arise. Lord Dunedin's opinion goes so far in this direction that we shall quote a portion of it for the benefit of readers who may not yet have seen a report of the case. It will be recalled that Canada sent representatives to Washington in the year 1927, to attend a meeting of all the powers to settle international agreements as to wireless. A Convention was arrived at, which was signed by the Canadian representatives, along with those of the other powers, on November 25th, 1927. On the appeal it was contended on the part of the Province of Quebec that the Convention dealt with certain matters that fell within the ambit of provincial legislative jurisdiction, and that so far as they were concerned the Parliament of Canada was incompetent to legislate. Of this argument Lord Dunedin spoke as follows:

Their Lordships cannot agree that the matter should be so dealt with. Canada as a Dominion is one of the signatories to the Convention. In a question with foreign powers the persons who might infringe some of the stipulations in the Convention would not be the Dominion of Canada as a whole but would be individual persons residing in Canada. These persons must so to speak be kept in order by legislation and the only legislation that can deal with them all at once is Dominion legislation. This idea of Canada as a Dominion being bound by a convention equivalent to a treaty with foreign powers was quite unthought of in 1867. It is the outcome of the gradual development of the position of Canada *vis-a-vis* to the mother country Great Britain, which is found in these later days expressed in the Statute of Westminster . . . It is Canada as a whole which is amenable to the other powers for the proper carrying out of the Convention: and to prevent individuals in Canada infringing the stipulations of the Convention it is necessary that the Dominion should pass legislation which should apply to all the dwellers in Canada.

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WOMEN AT THE BAR.—An English journalist has recently declared that the womens' challenge to men in the lists of Law and Medicine has brought triumph to lady doctors but only defeat to lady lawyers. He is familiar with the business of the Courts, and does not scruple to say that ever since the policy of admitting women to the Bar was introduced he has not heard one distinguished woman advocate. Having enquired as to the cause of this, he was informed by one of the professional sisterhood that the cause was the petty jealousy of the "men barristers," coupled with the disinclination of English solicitors to give briefs to women. We think too well of the men of the English Bar to accept this jealousy notion, and so far as the solicitors are concerned they would appear to be prudently waiting until the woman advocate has really arrived. One can take no chances in litigation.

* * Apropos of the subject, it is interesting to note that while women were not denied the privilege of pleading their own causes in Imperial Rome they were prohibited from appearing as advocates for others. According to Valerius Maximus this prohibition was brought about by the conduct of a woman advocate named Cafrania, who made verbal onslaughts of so violent and so improper a character on a certain praetor whenever she appeared before him that he issued an edict forbidding all females to plead for other persons in the courts of Rome. That this embargo upon the ladies found its way into the Pandects will be seen by a reference to Dig. 3, 1 § 1, in Galisset's *Corpus Juris Civilis*.

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INTERNATIONAL LAW ASSOCIATION.—The International Law Association will hold its 37th Conference in Oxford, beginning on Monday the 8th of August next. It is announced that the inaugural session will be held in the Debating Hall of the Union Society. The provisional programme includes discussions of the following subjects: Neutrality, Effect of War on Contracts, Codification, Insolvency, Minorities, Cartels, Sale of Goods, Divorce and Nullity and Insurance. The Conference will take place immediately after the close of the meeting of the International Congress of Comparative Law at the Hague. As the Conference occurs in August, it will be convenient for Canadian Lawyers attending before the Privy Council to be present at some of the meetings.

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GOETHE AS A LAWYER.—We are inclined to forget that Johann Wolfgang von Goethe, the centenary of whose death occurred on the 22nd of March, was educated for the profession of the law and actually practised it for a time before he became absorbed in the great literary work that has immortalized his name. Tradition has it that he fought a pretty stiff fight in the courts for one of his clients. But, as he said, *Man lebt nur einmal in der Welt*, and he wisely sought an intellectual domain that offered a greater play for his genius than the law. Whatever may be said of the way in which he favoured individual freedom above the constraints of society in some of his earlier writings, in his later work he manifested a firm regard for the formal rules of social order in which morality was to be regarded as subsumed.

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NO ALL FOOL'S DAY FOR INDIA.—The Chamber of Princes, meeting in New Delhi on April 1st, gave a decided stimulus to the movement for a Federal India in adopting unanimously a resolution declaring the readiness of the native States to join in an all-India federation. The resolution proceeded upon the assumption that the Crown will accept responsibility for securing to the States specific guarantees regarding the existing treaties which give them internal sovereignty. The British Government will be asked to arbitrate regarding a clash of interests concerning the exact representation of the States in the proposed Federal Legislature. This is in line with the suggestion of the Maharajah of Bikaner at the Round-Table-Conference in London, when he successfully pleaded that the States should be given until March 31, to endeavour to settle the problem among themselves, failing which the British Government should automatically assume control of the question for arbitration with the representatives of British India.

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APPOINTMENTS TO JUDICIARY OF MANITOBA.—S. Elswood Richards, K.C., and Colonel P. J. Montague, K.C., were appointed to the Court of Appeal of Manitoba and the Court of King's Bench of Manitoba, respectively, on March 12th. Each of the new justices has enjoyed a distinguished legal career in his Province.

Stephen Elswood Richards will fill the vacancy in Manitoba's appellate tribunal caused by the resignation of Mr. Justice Fullerton on his appointment as chairman of the Board of Railway Commissioners. The new justice comes of a family of lawyers and judges, his father's uncle, Sir William Richards, being the first Chief Justice of the Supreme Court of Canada following Confederation. His grandfather was a prominent lawyer in Toronto and his father was a leading member of the Manitoba Bar, serving for many years as a judge of the Manitoba Court of Appeal. Mr. Justice Richards was born at Brockville, Ontario, August 28th, 1878, and came to Winnipeg with his parents when he was four years old. He was educated in Winnipeg, admitted to the Bar in 1900 and created a King's Counsel in 1916. Since 1907 he has been head of the firm which is now known as Richards, Sweatman, Fillmore and Riley.

Colonel Price J. Montague, K.C., the new judge of the Court of King's Bench, was born in Dunville, Haldimand county, Ontario. He is the elder son of the late Hon. W. H. Montague, P.C. Following a preliminary education in his native town and at Upper Canada College, he graduated from the University of Toronto in

1904 and from Osgoode Hall in 1907. In the same year he was admitted to the Bars of Ontario and Manitoba and came to Winnipeg where he became associated with the firm of Campbell, Pitblado and Company. He remained with this firm, which is now known as Pitblado, Hoskin, Grundy, Bennest, Montague and Drummond-Hay, through its various changes and enjoyed a wide practice. He took silk in 1928.

The new justice enjoyed a distinguished military career. Enlisting for active service in the autumn of 1914 he went overseas as a staff captain with the sixth Canadian Infantry Brigade. In France he served on the staff of the second Canadian Division until February, 1919, when he was appointed by Lieut.-General Sir Arthur Currie to demobilize the Canadian army. He was awarded the M.C. and D.S.O. and made a Companion of the Order of St. Michael and St. George. He was five times mentioned in despatches "for distinguished conduct on the field."

In 1928 he was promoted to the rank of Colonel, and in 1931 made honorary A.D.C. to His Excellency the Governor-General of Canada. He now ranks as one of the senior non-permanent officers of the Canadian militia.

Always interested in the affairs of the Manitoba Bar Association, he was for several years a member of its executive and at the annual meeting in November, 1931, was unanimously elected president.—J. R. J.
