Correspondence

Limiting Appeals to the Supreme Court

TO THE EDITOR:

The presidential address given by Mr. Arthur N. Carter, K.C., at the Joint Annual Meeting of the American and Canadian Bar Associations at Washington in September will be read by the profession with a great deal of interest and admiration (November issue, pp. 941ff.), but I must take respectful issue with his reference to what I presume is a resolution introduced by me and seconded by Mr. Joseph McKenna, K.C., at the last Annual Meeting of the British Columbia Law Society.

Mr. Carter states that the good feature of an orderly and coherent system of Canadian law deserves emphasis because of the "fact that only recently in one of the nine common law provinces the suggestion has been made that jurisdiction of the Supreme Court of Canada be limited to constitutional cases and to certain appeals in criminal cases", and he goes on to say that "by resisting at the outset such a backward step we can ensure the development of a unified system of Canadian jurisprudence such as we have now and one of unimpaired quality" (pp. 944-945). The resolution to which these strictures presumably refer was shortly to the effect that appeals to the Supreme Court of Canada from provincial courts "be limited to criminal cases and to cases involving constitutional questions and to causes where the question of litigation is important to some class or body of persons or to any minority". The reason behind this resolution was quite clear to the average practitioner: an appeal to the Supreme Court of Canada is not open to the ordinary litigant because he usually has exhausted himself financially by the time his case has reached the court of appeal, and too often in civil cases one litigant or the other may well be in a position to carry appeals to a point where the financial resources of the other are completely exhausted. No one can deny that in many cases large corporations, or insurance companies who have been subrogated in the rights of litigants, think that as a matter of principle and "good business" they should engage in appeals that have the effect of "wearing down" claimants with limited resources. The result is that the opposite parties often feel impelled to accept improvident settlements proposed by adjusters and others in order to avoid the expense of litigation which they are unable to finance.

In introducing this motion I stated: "The main reason I am bringing this resolution forward is that the courts should be readily accessible to the people, and when litigation is embarked upon there should be a reasonable limit of appeal within the control of their resources". I added that in criminal cases where the life or liberty of the subject was involved (cases containing a con-

stitutional element) appeals to the Supreme Court of Canada should, in my opinion, be continued, as also in cases involving the rights of any minority. I consider that where litigation involves something more than the mere rights of the parties, the case should go to the highest court. In short, I am of the opinion that the function of the Supreme Court of Canada should be somewhat the same as the Supreme Court of the United States.

The object of uniformity would not thus be destroyed. Uniformity of legislation would still have its effect without making the courts inaccessible to the people.

ROBERT D. HARVEY*

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TO THE EDITOR:

I have read with interest a copy of the letter Mr. R. D. Harvey, K.C., has written in support of his view that the jurisdiction of the Supreme Court of Canada to entertain appeals from provincial courts "be limited to criminal cases and to cases involving constitutional questions and to causes where the question of litigation is important to some class or body of persons or to any minority"; and I can understand his sympathy with parties to an action who are embarrassed by the expenses which attend litigation, especially when incurred in appeals to an extra-provincial court.

On the other hand, I am greatly concerned that we should have in the common law provinces of Canada one system of common law and equity and not systems differing with each province. That we have today by reason of the connection which Canadian law heretofore has had with the law of England. That system may be continued if the appellate jurisdiction of the Supreme Court of Canada is not curtailed.

However much we may feel for litigants who are confronted by heavy costs in determining their rights in courts of law, their numbers and their interests, in my view, are of small importance when weighed against the value to the public of a single and authoritative system of law throughout the nine common law provinces.

In relying upon the experience of the United States, where owing to the limited jurisdiction of the Supreme Court there are some forty-eight final courts of appeal on various branches of the law, surely Mr. Harvey is on doubtful ground.

A. N. CARTER

Recent Judicial Appointments

J. F. McMillan, Esquire, of the City of London, in the Province of Ontario, Barrister-at-law, to be judge of the County Court for the County of Elgin and also a local judge of the High Court of Justice for Ontario during his tenure of office as judge of the county court.

His Honour John Howard Sissons, a judge of the District Court of the District of Southern Alberta, to be Chief Judge of that court.

Manley J. Edwards, Esquire, of the City of Calgary, in the Province of Alberta, Barrister-at-law, to be a judge of the District Court of the District of Southern Alberta during his tenure of office as judge of the district court.

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Books Received

The mention of a book in the following list does not preclude a detailed review in a later issue

The Inheritance of the Common Law. The Hamlyn Lectures, Second Series. By RICHARD O'SULLIVAN, K.C. London: Stevens & Sons Limited. 1950. Pp. viii, 118. (8s. net)

International Legislation: A Collection of the Texts of Multipartite International Instruments of General Interest. Volume IX 1942-1945, Numbers 611-670. Edited by MANLEY O. HUDSON. With the collaboration of LOUIS B. SOHN. New York: Carnegie Endowment for International Peace. 1950. Pp. xxxvi, 962. ($4.00)

The Law. By FREDERIC BASTIAT. Irvington-on-Hudson, New York: The Foundation for Economic Education, Inc. 1950. Pp. 75. (No price given)

Luftrecht: Das internationale Recht der zivilen Luftfahrt unter besonderer Berücksichtigung des schweizerischen Rechts. By OTTO RIESE. Stuttgart: K. F. Koehler Verlag. 1949. Pp. xix, 565.

Negligence in the Civil Law. Introduction and select texts by F. H. LAWSON, D.C.L. Oxford: The Clarendon Press. Toronto: Oxford University Press. 1950. Pp. vii, 341. ($5.25)

Private International Law. By MARTIN WOLFF. Second edition. Oxford: The Clarendon Press. Toronto: Oxford University Press. 1950. Pp. xlvii, 631. ($7.75)

Self-Incrimination: What Can an Accused Person be Compelled to Do? By FRED E. INBAU. Springfield, Illinois: Charles C. Thomas. Toronto: The Ryerson Press. 1950. Pp. x, 91. ($3.25)

Social Meaning of Legal Concepts. No. 3, The Powers and Duties of Corporate Management. Edited by EDMOND N. CAHN. An annual conference conducted by the New York University School of Law in association with the Division of General Education. New York: New York University School of Law. 1950. Pp. iii, 289. ($1.50)

The Trial of German Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg Germany. Part 22: 22nd August, 1946 to 31st August, 1946, 30th September, 1946 and 1st October, 1946. London: His Majesty's Stationery Office. 1950. Pp. x, 556. (10s. 0d. net)

The Trial of Peter Griffiths (The Blackburn Baby Murder). Edited by GEORGE GODWIN, with an appendix by C. STANFORD READ, M.D. London, Edinburgh and Glasgow: William Hodge and Company, Limited. New York: The British Book Centre, Inc. 1950. Pp. 219. ($3.50)

Unraveling Juvenile Delinquency. By SHELDON AND ELEANOR GLUECK. New York: The Commonwealth Fund. 1950. Pp. xv, 399. ($5.00)