

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.

It is hoped that members of the profession will favour the Editor from time to time with notes of important cases determined by the Courts in which they practise.

Contributors' manuscripts must be typed before being sent to the Editor at 44 McLeod Street, Ottawa.

EDITORIAL.

GREETING FROM THE PRESIDENT OF THE CANADIAN BAR ASSOCIATION.

I have just returned from the meeting of the Alberta Bar in Edmonton. A few weeks ago I was at a similar gathering of lawyers in Manitoba. Both of those assemblages were composed in the main of the younger men. Those meetings were in themselves a prediction of better times and higher attainments for the profession and indeed for the people of Canada, of which the lawyers will be more than ever the leaders. The public business of Canada sorely needs their help. The important decisions in national affairs, which are more vital to the younger population, have been left too much to the dictation of older men. Those young men are not going to stand aloof from public service, cynical, despising and disbelieving, but will in peace time, as they did in war, "come to the help of the Lord, to the help of the Lord against the mighty"; the mighty forces of evil which are constantly threatening our national stability. As one thinks of the absorption of many of our seniors in briefs or large business for clients, somewhat forgetful of juniors, one wonders if the words of Barrie are not applicable—"Elders play for stakes, youth plays for its life." There are glorious years ahead of those well-equipped young men if they choose to make them glorious.

What each member of the Canadian Bar Association is wishing for the other is a good New Year,—Aye broader yet! for some of the lawyers in Canada are not members of the Association and do not

take the REVIEW (Aside:—*The more's the pity*)—"We're brithers a'!" What the lawyers in Canada, to whatsoever provincial Bar they belong, and whether senior or junior, are wishing each other is a happy and prosperous New Year. It will be made the happier if the youth and age, the boundless enthusiasm and adventurous energy of the one and the caution and experience of the other, band together, not for selfish aims, not defiantly of those outside the circle, but for the general good of our profession and nation. These recent meetings, and those at Quebec and on the *Montlaurier* demonstrate that. May one be pardoned for giving expression to some reflections arising from them. A Marcus Aurelius maxim is "Men exist for the sake of one another, teach thou them or bear with them." We cannot love everybody. God alone does. Our attachments are limited, limited largely to those with whom we come in contact. Our profession and its purposes, *i.e.*, the law and its administration, do bring us sympathetically together. If the principle of the maxim were allowed to prevail, it would remove asperities which sometimes exist in our inter-office practice and court work. We would not then use ugly names about an opponent or ascribe to him motives meaner than our own. Jealousy is the cut-throat of cordiality. Better results and more pleasant hours would come from mutual helpfulness. Cordial intercourse is one of the stated objects of the Canadian Bar Association. That object is last on the list, making the grouped purposes like a pyramid standing on its apex. It should be first, for given that heart to heart intercourse, there will result an atmosphere of mutual confidence, respect and esteem, a finer camaraderie and an intimate likemindedness. These will create an *esprit de corps*, enfold-ing and bringing into a soul-oneness the members of the profession in all Canada.

The pluck manifested at these meetings was admirable. There was no whining about hard times, which undoubtedly exist, to the discomfort of our members. I like that old Anglo-Saxon word "pluck," which, whatever it signified ages ago, now means confidence and spirit in the face of difficult and depressing circumstances, and resolution to overcome. One speaker at the Edmonton Bar banquet, a young man, called forth echoing applause when he derided the faint-hearted and the fearful brethren, and expressed the view that as a profession we should have greater courage in upholding the honour of the Bar, in repelling flank attacks on it, and in giving defiance to those who clothe themselves about in cheap and diaphanous popularity by threatening to destroy it.

Gentleness will not always deliver to us our rights—

“And he is dead who will not fight,
And who dies fighting has increase.”

Away, then, with apathy in respect to the welfare and good of our profession and of our people! It is a pernicious anaemia of the spirit. Let us “Put a cheerful courage on.” For the end has come to our bravery when we refuse to enter the lists. Let us all not only wish but help to make for each other an enjoyable New Year.

J. A. M. AIKINS.

Winnipeg, December 31st, 1924.

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THE PRESIDENTIAL GREETING.—As is usual with his public utterances, the New Year's greeting of the President of the Canadian Bar Association to the members, published in the present issue of the REVIEW, needs no gloss to clarify its meaning. His words are winged with a true Homeric quality, and the thoughts to which they give expression are wise and inspiring. It is a genuine message to the younger members of the Bar, one which they cannot but have ears to hear if the profession is to function as a social force in this critical period in the history of the world. Sir James Aikins apparently shares the view expressed of late by certain prophets, priests and publicists overseas and in America—who are our real guides if we did but know it—that the nations will not raise themselves out of their present slough of despond except by the exercise of those spiritual forces, now so dormant, which made the civilized world a fairly decent habitation for man by the end of the nineteenth century. In other words, it is not some sudden achievement of economic thaumaturgy but rather the simple practice of industry on the part of all classes in the community, coupled with behaviour consciously recognizing that man is an ethical as well as a social animal, that will restore peace and prosperity to the nations which have been snarling at each others heels since the War. It is righteousness which exalts a nation at home and abroad. The President of our Association is full of a robust faith that this will not only come to pass soon but that it will be chiefly the work of the younger people. That is optimism of a constructive kind. However lacking the present age may be in the finer qualities of social living, we have at least seen the errors of “Bentham politics” and “Paley religion,” at which Froude launched his mordant fleers when the preceding century was still

young. Those things had their day when war-cries, both civil and international, were popular and it was considered part of the whole duty of man to chant them. We shall surely have no more of them in the English-speaking world, and other peoples will soon find that peace on earth is the most important factor in making human life endurable. We have no apologies to offer our readers for speaking in this strain at the opening of a New Year whose events cannot fail to be of supreme moment to civilisation.

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CRIME AND PUNISHMENT.—While the minds of all thoughtful citizens, lawyers and laymen alike, are at present much concerned with the problem of crime and its punishment—indeed the *REVIEW* itself has spoken a good deal about it lately—we think it well to quote some passages from a recent bulletin of the Council for Social Service of the Church of England in Canada on “Jails and Jail Reform,” compiled by the Rev. J. V. Young, of the Diocese of Fredericton, N.B. We invite opinions in our correspondence department on the suggestion of “a central jail system” for each of the provinces of the Dominion. It is necessary to bear in mind that Mr. Young is not referring at all to our penitentiary system, but to our jails where the lesser criminals are confined. The quotation follows:—

“The question now arises what is needed to make our Canadian jails better institutions? Very few really stop to consider what prisons are for, or whether they are doing the work they are supposed to be doing. We must get away from the old idea that to punish one who has done wrong we must detain him in jail for a certain period of time—and that is all. Imprisonment as a cure for crime has proved a terrible failure. Approximately 60 per cent. and over of our prisoners return to crime and prison. General Hughes, Chief Inspector of Prisons, told us some time ago that in one of our penitentiaries out of 197 prisoners, 164 were graduates of so-called reformatories and industrial schools. Is this not self-condemnatory of our system? Prison punishment as such is no cure. Our jails are not producing penitents—then what is wrong? . . . Crime is an intentional violation of duties imposed by law, which inflicts an injury upon others. Criminals are persons convicted of crime by competent courts. Punishment is suffering inflicted on the criminal for the wrongdoing done by him, with a special view to secure his reformation. The treatments of criminals by society is for the protection of society. But since such treatment is directed to the criminal rather than to the crime, its great object should be his moral regeneration. Hence the supreme aim of prison discipline is the reformation of

criminals, not the infliction of vindictive suffering. A criminal must be put in jail for the safety of society, but not with the predecided theory in our minds that a criminal is irreclaimable . . . To this end each province in the Dominion should aim to have one central jail. In some cases one would be sufficient for one or more provinces, for instance one institution would be sufficient for the three Maritime Provinces. We have jails and "lock ups" in every county and municipality which have all to be kept up. Even though some may seldom, if ever, be used for many years at a time, still they cost money . . . General Hughes informs us that the average cost to the taxpayer to secure the conviction only of a prisoner in Canada is \$1,200, and in addition to this we have to maintain him, and often his family, while he is so detained. The total average cost of a convict, including all penitentiary costs, is \$2,800. This is no small matter, so that anything that will reduce the figure is a gain in the right direction."

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THE LAUSANNE TREATY AND CANADA.—In the course of his interesting "Notes on Imperial Constitutional Law" in the November number of *The Journal of Comparative Legislation and International Law*, Professor A. Berriedale Keith observes upon the Treaty of Lausanne and the formal gesture of Canada in relation to it. Adverting directly to the fact that the Dominions were not invited to be separately represented at the negotiation of this Treaty, he makes the following very important statement:—"It is now clear that, for reasons which are not public property, though they are well known, the Dominions were not invited to be separately represented . . . The step was clearly a concession to difficulties raised by France, and was a distinct derogation from the position attained by the Dominions at the Peace Conference of 1919, at that of Washington in 1921, and ascribed to them in the League of Nations." He then proceeds to point out that while Canada did not protest her exclusion from the deliberations that resulted in the Treaty, she made that the ground of her refusal to accept any responsibility for it after its consummation. Professor Keith seems to think that Canada's conduct throughout was nothing but prudent and correct. The issue must be faced sooner or later. Canada must have international equality with the United Kingdom in such matters, and cannot be satisfied with a policy of opportunism and "make-shift arrangements." To quote the learned Professor again:—"These rest essentially on the old idea of the British Government as in the ultimate issue supreme in respect of the foreign relations of the whole of the

Empire; a new orientation of outlook demands further concession by the British Government which it is probably too early for any Conference to determine."

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CONTEMPT OF COURT.—There happened in Ontario the other day a case of contempt arising out of some contumelious strictures on a pending case by a journal, not on our exchange list, where the poet's words:

"Contempt and beggary hang upon thy back "

very aptly describe the situation. The editor has been sentenced to a long term in jail and the journal itself condemned in a fine of \$1,000, and subjected to sequestration. We understand this means its final suspension from publication. We omit here the details of the case for lack of space; and it is not our purpose in making editorial reference to the episode to speculate upon the loss to polite literature involved in the purgation of the contempt, but to express our very great satisfaction in realizing that there are Judges on the Canadian Bench who are not afraid to vindicate the majesty of the law in the fullest measure when occasion invokes such vindication. This summary power of punishment has been given to the courts not "to keep a blaze of glory around them," as an old case quaintly puts it, but as Lord Bowen once said, to prevent "any attempt to interfere with the administration of justice." It is primarily protection for the public, whose interest it is that the course of justice should not be impeded by the scandalous behaviour of any one. It is well known that many Judges—e.g. Sir George Jessel, M.R.—have let observations fall from the Bench concerning punishment for contempts of court by newspapers which have only lent boldness to irresponsible writers in irresponsible sheets. This recent Ontario case seems to indicate a return to the judicial temper of Willes, J., who some sixty odd years ago in a case of the kind expressed the aspiration to be "even valiant in preserving and handing down those powers to do justice and to maintain truth, which, for the common good, the law has intrusted to the Judges."

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HONOURS FOR THE CHIEF JUSTICE.—The REVIEW has much pleasure in congratulating the Chief Justice of Canada on his recent honours. On the 19th December he was notified that His Holiness the Pope had created him a Knight Commander of the Pontifical Order of St. Gregory the Great; and on the 23rd of the same month he was advised of the King's approval of his being sworn of His Majesty's Most Honourable Privy Council.