

CORRESPONDENCE.

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Editor of THE CANADIAN BAR REVIEW:

SIR.—I have read with great interest, the article in your January number, by Hon. Mr. Justice Mignault of the Supreme Court of Canada, on "The Authority of Decided Cases." At page 14 he says that, while the rule *stare decisis* has no legal force in the Province of Quebec, he thinks that the decisions of the Privy Council have been accepted by the Quebec Courts as conclusive. He mentioned certain decisions, but he does not make any reference to the Despatis-Tremblay case.

I noticed in the Quebec newspapers a few days ago, the report of a decision of Mr. Justice Belleau of the Superior Court, in an action of *Plante v. Zannis*, which deals with this question. His Lordship refers to the judgment of the Privy Council in the case above mentioned, and follows that decision. I understand however that other Judges in that Province have not considered themselves bound to follow it in similar cases.

I have heard various criticisms of these latter Judges by lawyers and others in the Province of Ontario, but one gathers from Mr. Justice Mignault's article that they were at least technically justified in refusing to be bound by it. I feel that, if some member of the Quebec Bar would undertake to deal with this subject in your columns, the result might be the removal of a certain amount of prejudice, as well as of uninformed criticism of the Quebec judiciary.

M. J. G.

 CURRENT EVENTS.

A memorial tablet to the members of the Bar and students-at-law from Toronto who fell during the Great War was unveiled at Osgoode Hall, Toronto, on the 14th November last by Chief Justice Sir William Mulock, who spoke as follows:—

Some years have now rolled by since the then misguided German nation, in its mad lust for power, plunged the world into a gigantic struggle accompanied by horrors then unknown in the history of nations, and as we contemplate, in the peaceful atmosphere of to-day, the contrast between the conditions which prevailed throughout the long years of the war, and those of to-day, our hearts are filled with deepest gratitude towards those who overthrew the enemy of mankind and saved civilization to the world.

Never before in its history had there been such a mighty stake in the balance or such long drawn out anxiety as to the possible result;

but brave altruistic men, with God's help, won the victory for the cause of right, and to-day freedom and peace reign throughout the world.

Alas many Canadian sons did not return, and now sleep their last sleep far from home and loved ones.

They left our shores in the flush of their youth and strength, fully realising what might be in store for them, and prepared to make the supreme sacrifice.

Those whose names are upon this tablet were known to all of us. Theirs were familiar faces. This Hall was associated with their labours and their ambitions, and it is fitting that we should here unveil this memorial on which, in letters of bronze, are inscribed the names of some of our legal brethren who fell in the great war.

May it meet the eyes of all who visit this temple of Justice, and be to them an incentive to live and if needs be to die for the sacred cause of Justice.

It is in no boastful spirit that we recall Canada's record from the outbreak of the war until its close, but we cannot, and ought not to forget it.

How came it that at the very outbreak of the war, when Britain threw her sword into the scales, our peace-loving Canadian nation sprang to arms; that our womenfolk, midst their tears, readily gave their menfolk to the great cause and that throughout the long years of the struggle one fixed and unalterable resolve to win or to die dominated the souls of Canada's soldier sons. It was the circumstance that Canadians are a liberty loving people, and are governed by that spirit to which Patrick Henry gave expression in his never-to-be-forgotten words: "Give me Liberty or give me Death." That spirit is an inseparable, an integral part of the nature of the Canadian people. It will ever live in their hearts, and must ever be reckoned with by the enemies of Justice.

On Thanksgiving Day I was present at the unveiling of a war memorial at Oshawa, one feature of the proceedings being the depositing of wreaths at its base by relatives and friends of those who had fallen. It was a touching scene; fathers, mothers, brothers, sisters, wives and children taking part. Their grief and sorrow were made manifest by their sobs, sighs, tears, and sad expressions. One poor old mother, having deposited a single little flower, tottered away sobbing. As she was passing me I pressed her hand, whereupon she looked up and whispered, her eyes full of tears, 'I am happier than if he had not gone'.

She reminded me of Cornelia, the mother of the Gracchi. Like Cornelia, she possessed no jewels, except her only son, and him, in sorrow, but willingly she gave to her country. The spirit of resignation gave her comfort. May it do so to any bereaved ones here to-day.

In all parts of our country war memorials are being erected and will serve many a good purpose. They will remind us of the attack upon the cause of freedom. They will remind us of the failure of that attack, and they will mark our gratitude towards those who died that we might live in freedom and in peace. May these memorials prove an inspiration to succeeding generations to be worthy of those who gave their lives, their all, in order to bequeath to them the priceless heritage of freedom.

Professor James W. Garner, of the University of Illinois, has an interesting article on the Geneva Protocol in the January issue of the *American Journal of International Law*.

THE GENEVA PROTOCOL.—This contribution is an exposition of the Geneva Protocol for the Pacific Settlement of International Disputes by James W. Garner, one of the editors of the *Journal* and recently President of the American Political Science Association. Professor Garner considers that the Protocol "represents by far the most advanced step yet taken in the direction of the peaceable settlement of international differences and the outlawry of wars of aggression." "No one can study the Protocol," he says, "without being impressed by its completeness as a scheme for the accomplishment of the objects which are contemplated." In his opinion, it "embodies a practical, safe and reasonably effective plan for the achievement of three great ends which the world professes to cherish. Its acceptance will necessitate, it is true, the assumption of what will be regarded by some states as heavy obligations and for this reason it will probably not be acceptable to them. Their rejection of it will, it may be assumed, be accompanied by the usual professions of 'keen interest and profound sympathy.' The old illusion that common objects such as those contemplated by the protocol can be achieved without common obligations will continue to persist in many quarters. But it is submitted that the true test in determining whether obligations of this kind can be safely assumed is to be found not so much in their character or extent as in the value of the objects to be accomplished. The value to Europe, in particular, of a guarantee of security; the economy to the world in a general reduction of armaments; and the benefit to mankind from the abolition of wars of aggression would be incalculable, and for the accomplishment of which states could well afford to assume large obligations and responsibilities. It is not improbable that if the Protocol were generally ratified and its obligations assumed with a sincere determination to perform them, in case performance were required, there would in practice be few occasions when the duty of mutual assistance would be necessary. The very knowledge of the existence of such an obligation, if there were a general conviction that it would be faithfully performed whenever the occasion required, would, it may be fairly assumed, serve as a powerful deterrent to acts of aggression and make actual resort to measures of repression relatively rare."

Regarding the effect of the Japanese amendment which Mr. Garner says has been greatly exaggerated in the public mind, he thinks it is "of no great consequence and was added largely as a concession to Japanese sensibilities. The fact still remains that the party denying the obligation to arbitrate a dispute for the reason that it arises out of a domestic matter, will, if the claim is sustained by the Court be relieved of the obligation to do so, and it cannot be bound by any action taken by the Council or the Assembly in respect to the dispute."

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CODIFICATION OF INTERNATIONAL LAW.—In his contribution to the last number of the *American Journal of International Law*, Mr. Arthur K. Kuhn points out that President Coolidge, in his recent annual message

to Congress, approved of the movement now going on for the codification of international law. Although not mentioning the League of Nations in this connection, the President looked more hopefully in the first instance "to a co-operation among representatives of the bar and members of international law institutes and societies." This is, in effect, the method adopted by the League at Geneva, in September last, when it appointed a committee of unofficial experts and authorised them to consult "the most authoritative organisations which have devoted themselves to a study of international law." Mr. Kuhn emphasises the fact that in this way, American organisations may co-operate in the important work of the codification of certain branches of international law, though the United States is not a member of the League of Nations.

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LAW AND PUBLIC OPINION.—Senator Borah, Chairman of the United States Senate Committee on Foreign Relations, comments as follows in the January *Scribner* on present conditions relating to the enforcement of law in the United States:—

"Law enforcement has become a great national problem. This government was founded upon the theory that the people would obey the laws which they help to make. Upon no other theory can it be maintained. The basis upon which the whole structure rests is obedience to the law because it is the law. This principle is being sadly challenged by actual facts. I do not know of a more startling document than a report lately made by a special committee of the American Bar Association. According to this report, in 1920 there were 9,000 homicides in the United States; in 1921, 9,500. During the last ten years 85,000 people from poison, the pistol, the knife, or other unlawful means have suffered death. That seems inconceivable in a government less than one hundred and fifty years old founded upon the will and loyalty of the people and expressing through its institutions the highest exemplification of law and order. In 1922 there were 17 murders in the city of London, 260 in the city of New York, 137 in the City of Chicago. In 1921 there were 121 robberies in all of England and Wales combined, 1,445 in New York City, 2,417 in the city of Chicago. This presents a great national problem which can never be remedied except through the invincible power of public opinion."