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.

WINNIPEG MEETING OF THE C. B. A.—The Tenth Annual Meeting of the Canadian Bar Association was held at Winnipeg on the 26th, 27th and 28th days of August. In every respect—the number of members in attendance, the presence of representative men from abroad as guests, the high quality of the addresses delivered, and the utility of the reports reflecting the operations of the Association for the past twelve months—the meeting was an unqualified success and well maintained the traditions of value that began with the first of such occasions and have kept even pace with the growth of the organisation in the intervening years.

There is no single feature of these meetings more conducive to the corporate welfare of the Association than that which makes a demand upon each individual member for the gesture of friendship toward his fellow-members; and the measure of realisation of that demand depends much upon the atmosphere of welcome and hospitality supplied by the local Bar at the place of meeting. It is safe to say that the element of good fellowship was never more in evidence than in Winnipeg last month; and in this respect the occasion was given a happy impulse by the cordial reception and unremitting entertainment of the visitors by the Winnipeg lawyers. As a result the public proceedings were infused with a fine spirit of concord, and events of a purely social character took on a quality of *camaraderie* that will set the fashion for future gatherings. No one could have left Winnipeg without sheltering in his heart a deeper sense of unity

with his confrères and of loyalty to the Association than he confessed before he attended the meeting.

And so from the vantage-ground of the Annual Meeting of 1925 our survey of all the events and influences that have led up to it as an outstanding proof that the Association has come to stay induces us to suggest that across the historical scroll of the first decade of our corporate life should be written: "*Ibi semper est victoria ubi concordia est.*" It was the principle of one-mindedness in moulding and working out its aims that has enabled the Association to overcome the obstacles to success confronting its inception. And it is that principle alone which will make it live on.

It is our privilege to publish two of the admirable addresses delivered at the meeting in our present number—those of the President and the Right Honourable Lord Buckmaster of Cheddington. The contents of our next number will include the addresses of Maître Fourcade, the Honourable G. W. Wickersham, and the Honourable Geoffrey Lawrence, K.C., representing respectively the French, the American and the English Bars. All of them were reviewed in the highest terms of praise by the Winnipeg press. In later numbers we hope to find room for some other addresses of unusual merit that were delivered at the meeting.

The REVIEW has much pleasure in announcing that the Honourable Sir James Aikins, K.C., was prevailed upon to accept re-election as the President of the Association. Owing, in a very special way, its foundation to Sir James, his unfailing tact and good judgment have smoothed the way to the large measure of success that the Association has attained. We are sure that its affairs will continue to prosper during his eleventh term of office.

We are not afraid of the charge of invidiousness in venturing to say that nothing that was done at the meeting of a fraternal character excelled in pleasantness the presentation by the Association of a handsome gold watch and chain to Mr. E. H. Coleman, who has held the position of Secretary-Treasurer continuously since its foundation. Mr. Coleman brought exceptional qualities for service to that exacting office, and the way in which his duties have been discharged throughout has reflected credit upon himself and immeasurably benefited the Association. Mr. Coleman has our warmest congratulations upon this graceful recognition of the value of his work.

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TERCENTENARY OF THE DE JURE BELLI AC PACIS.—The tercentenary of the publication of the *magnum opus* of Huig de Groot—

better known as Hugo Grotius—was duly celebrated a few weeks ago by the Grotius Society at Gray's Inn Hall. Lord Blanesburgh, the President was in the chair, and presented a most interesting survey of the life and work of the great international jurist. Speaking in particular of the *De Jure Belli ac Pacis,* Lord Blanesburgh said that the "whole work was pervaded by an insistence upon good faith as between men and as between States in any and every relation of life, and an earnest love of peace. . . . By a process of selection and of classification amounting to genius, Grotius had evolved order out of what to his contemporaries and his forerunners had been chaos. He had forged the golden chains which bound together the whole structure, complete and regular. He had employed as the foundations of that structure the best that had been said and thought and known in the world."

We should like to remark here that while Grotius was not the founder of modern International Law—that title properly belonging to Gentilis—he is its earliest systematic exponent. To anyone who cares to study his epoch-making book it will become manifest that the principle of primordial Justice, as first apprehended by Aristotle and elaborated by scholastics such as St. Thomas Aquinas and Suarez, lies at the very base of the Grotian system of rules for international conduct. Possessing this 'native bias of the soul' as a moral faculty it is the duty of men in civilised society to apply its sanctions equally to individual relations and to those arising between communities. Once this Justice is universally accepted as a practical test of right it will afford a *pou sto* for the feet of Peace, whence she may send forth her benign influences throughout civilisation. And may we not say that Justice as envisaged by the gentle Hugo Grotius is the very *motif,* or dominant idea, of the League of Nations? If so, how can the operations of the League fail of eventual achievement in a world that can no longer prosper if its resources are permitted to be ravaged by War?

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Canada and the League of Nations.—Our opinion of the League of Nations being as above expressed, it was with the greatest pride and pleasure that we learned that Canada had received the distinguished honour of having one of her sons and citizens elected to the presidency of the League. Senator Dandurand is in every way qualified for the post, and the words of the retiring president, M. Painlevé are well merited: "Senator Dandurand is a statesman of high capacity, and deep knowledge of juridical questions." Our satisfaction

over this international recognition of his attainments is deepened by the fact that Senator Dandurand has always manifested a kindly interest in the Canadian Bar Association.

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JUS ET NORMA LOQUENDI.—Above all the professions the law requires lucidity and exactness of language to be observed in its affairs—what disaster can be caused by defectively phrased statutes and legal documents is known of all men. And then how important for Bench and Bar in these days of impatient haste to possess the art of combining precision with brevity of speech. It was said by one of the great English lawyers of the past that the sparks of all the sciences in the world are taken up in the ashes of the law, and surely our professional training should be most solicitous in its regard for the science of the grammarian. Hence it is comforting to know that not only in Great Britain, but in the United States and in Canada, movements are on foot to safeguard the classical purity of the English tongue, and at the same time to expand and develop it to meet the needs of a civilisation that spins forever down the ringing grooves of change.

In 1910 there was founded in England, under the presidency of the late Lord Morley, an Academic Committee of the Royal Society of Literature, with the pious wish that it might be allowed to exercise functions similar to those of the *Académie Française*. This committee, lacking, as it does, the institutional status of its French prototype, has met with hostility too often spiced with derision from the young lions of the press; but it has not been daunted in the prosecution of ends for which it was formed, nor has its labours been without achievement notwithstanding the revolt against authority of every kind that has peculiarly marked the last decade of English social life. Then they have also overseas the Society for Pure English, pledged to deracinate all the weeds it may find in the grammarian's garden.

A Roman emperor, seeking to introduce strange forms of speech was fearlessly told that he would not be allowed to become an inventor of solecisms, hence the maxim—"*Cæsar non supra grammaticos.*" And what an emperor was not permitted to do with the Latin tongue our mob of vulgarians should not be allowed to do with the English tongue.

A year or so ago a movement for the purpose of arousing public interest in the speaking of pure English in Canada was started by Miss Rosamond Archibald, M.A., of the Acadia Ladies' Seminary, at Wolfville, Nova Scotia. So successful has Miss Archibald's campaign been that there are now four associations carrying on at different

centres in the Dominion what is known as "The King's English drill." Moreover, it was announced recently in the American press that Miss Edith Spencer, a Los Angeles teacher and educationist, had invited the newspaper editors to assist her in one clear-cut and specific effort to counteract the prevailing influences making for the corruption of the English tongue, namely, by eliminating the following five outlawed expressions from all "Comic Strips" in their publications: 'Ain't,' 'You was,' 'I seen,' 'You done' and 'I ain't gonna do nothin.' Miss Spencer's project is being cordially endorsed in editorial circles. A small beginning, perhaps, for so great an enterprise as the purgation of the corrupt forms of English so generally used by uninformed persons in the United States, but it must be remembered that the renowned *Académie Française* grew out of a friendly meeting of eight more or less unimportant Parisians in the Rue Saint Martin in the year 1629.

So we feel that the general outlook is hopeful for the English language to be kept from losing its responsiveness to the standards of the past and from the disruptive influences inherent in the adoption of uncultured neologisms and improvisations. But it must not be overlooked that both in the United States and Canada stupid and misleading variants of English words and phrases of established place are being constantly poured from the mouths of people newly-arrived from alien lands, and where these people gather in communities corrupt speech must find a permanent lodgment unless the efforts of the educational authorities are backed by concerted action on the part of patriotic citizens throughout the countries concerned to combat the evil.

In contending as we do for the continuity and unity of present day English with the standards fixed by its great masters in the past, we are not insisting that our language, even on formal occasions, should now reflect the embroidered rhetoric of Chatham or Burke, or even Gladstone—of whom Queen Victoria complained that whenever she gave him a private audience he always addressed her as if she were a public meeting. We desire to say, too, that we hold no brief for the pedant. So far as our Courts are concerned, all we ask is that effort be made to adhere to the contemporary usage maintained by the Bench and Bar in England. There we have a demonstration of both the formality and flexibility of the English tongue—the one securing a just adherence to inescapable rules laid down in the past, the other providing for the inclusion of new forms of expression demanded by the social machine in every sphere of change. In this con-

nection we commend a reference to the House of Lords opinions in the recent case of *Sorrell* v. *Smith*.[1]

Unfortunately Canadian citizens using English as their native tongue are not in so happy a case as their French-speaking compatriots. The well-known conservatism of the French-Canadian is a sure refuge against the menace of linguistic corruption as well as against other forms of social revolt and disorder. In thus holding fast that which is good, Quebec affords an example which the other provinces of Canada would do well to follow.

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Better Education for Lawyers.—Our attitude towards the efforts to preserve the purity of English speech referred to above naturally inclines us to commend to the attention of our readers Mr. G. F. Henderson's plea[2] for the better education of persons desiring to enter upon the study of the law in Canada. It would seem that zeal for high linguistic standards can only be measured by the fullness of one's recognition that language is not only the garment of thought but is the key to the whole intellectual treasure-house of man. That recognition in its fullness is the product of education. As Mr. Henderson very frankly explains, his article is more or less a reflection of Professor D. A. MacRae's paper on the subject read before the members of the Ontario Bar Association at its last annual meeting. While Dean of the Dalhousie Law School Dr. MacRae established his place as one of the best qualified teachers of law on this side of the Atlantic, and he is strengthening his reputation as such in his new and larger field at Osgoode Hall. We are glad to see his progressive views shared by Mr. Henderson, one of the Benchers of the Law Society of Upper Canada.

We are moved to quote some pertinent remarks from outside sources for the consideration of our readers after they have duly weighed the arguments for reform advanced by Mr. Henderson. In Mr. Philip Guedalla's volume of spirited essays entitled "Masters and Men" we find the following encomium upon solicitors of our own troubled time. It loses nothing in its suggestion of high ambition for intellectual and moral fitness from the fact that it emerges from the alembic of Mr. Guedalla's experience as a quondam practising member of the Bar. "If the solicitors of England were to take ship tomorrow for the Islands of the Blest, this happy kingdom would revert to the social economy of the *kraal* . . . . Our solicitors are the frail barrier which we have erected (at a trifling cost) between

[1] 41 T.L.R. 529.
[2] See *ante*, p. 371.

civilisation and the jungle." And then, with more intimate relation to our subject, let us hear from the Vinerian Professor of English Law at Oxford:[1]—"What is the kind of information which students beginning to study the law need? . . . . In my opinion we should insist that all students should be required to know some Latin and French, and the outlines of English history. My difficulties here with some of the American Rhodes scholars, who know neither Latin and French, have impressed me very strongly with the need for some such requirement." And he refers to the opinion expressed by Mr. Justice Dodderidge in the seventeenth century that "the study of the Lawes must of necessity stretch out her hand and crave to be holpen and assisted almost by all other sciences"; and to Roger North's view that "it is a vast advantage to be not only a common lawyer, but a general scholar, as in latter times Selden was."

We have also had the advantage of reading the Report of the Select Committee on the "Admission of Attorneys Bill" introduced into the House of Assembly of the Union of South Africa during the present year. Many of the professional witnesses examined before the committee adhere to the view that a sound preliminary education is a decided advantage to the student of law, and one of them—the President of the Incorporated Law Society of the Cape of Good Hope—advised that for a man who had taken this B.A. degree the period of articled clerkship ought to be reduced to three years instead of five years as proposed in the Bill. One of the objects of the proposed legislation is to prevent the overcrowding of the profession in South Africa by poorly trained men. It was generally agreed by the witnesses that very indifferent instruction was given at the present time by solicitors to their articled clerks. Thus on every hand it appears that the Bar must now look to organised institutions for the proper education of those desiring to enter its ranks. We cannot afford to lose our status as one of the learned professions.

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THE LATE MR. BRYAN.—While the reputation of the late William Jennings Bryan as a lawyer was not one that excelled the quirks of blazoning pens, yet the curious distinction he attained both in the political and social movements of his time demands that his passing be chronicled by professional journals as an event of some importance. Given every opportunity during his political life to display the qualities of a statesman, he failed in high office and in critical moments to prove himself more than the possessor of an *os magna*

[1] *Journal of the Society of Public Teachers of Law*, 1925, p. 3.

conalarum. Accorded by a large class of his fellow-citizens a position of social leadership, his activities achieved no real purpose of reform, and in the end he led his followers into the gates of ridicule.

He died just as the curtain was rung down upon the Tennessee Evolution Trial—popularly known as "The Dayton Monkey-business." Perhaps its best analogue on the whole is the trial of the Knave of Hearts in *Alice in Wonderland.* It was Bryan's destiny to be the chief actor in this solemn farce—the one single event that has contributed to the gaiety of nations since the world was scourged by the Great War. In the record of this case he unconsciously wrote his own epitaph.

Abraham Lincoln naturally swims into one's ken as an exemplar and criterion when the claims to distinction of American public men are sought to be valued. Both Lincoln and Bryan were lawyers, bred to the Bar of the Middle West. There the parallel between the two begins and ends. Lincoln is numbered of the world's greatest, while Bryan was never more than an outstanding denizen of Main Street. But his private life was clean and honest through and through, and if he shouted overmuch on his way to the New Jerusalem he envisaged, it was out of the fullness of his heart for serving what he conceived to be the good of his fellow-men.

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'THE GREAT COMMONER.'—Many foolish things have been said about Mr. Bryan since his death, but nothing seems to us more stupid than to call him 'The Great Commoner,' which has been persistently done in the American press. That particular title was first applied to Sir John Barnard by Lord Chatham, when he was Mr. Pitt, and it afterwards, oddly enough, became a sort of sobriquet for Pitt himself. It should be allowed to rest there for obvious reasons. The word 'Commoner' used in its political sense formerly meant a member of the English House of Commons, as distinguished from a member of the House of Lords, but its use in that connection is said to be rare now. Both the Oxford Dictionary and Webster's New International Dictionary give 'Commoner' as the specific name for a member of the London Court of Common Council. The word has little significance in the United States where not only is there no House of Lords, but there are no 'common people.'

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JUDICIAL NOTICE.—We were interested in reading the following reference in the *Law Times* of June 13th to the election of the Right

Honourable the Chief Justice of Canada to the post of Honorary Bencher of the Inner Temple. We understand that under the constitution of the Inner Temple there can be only four honorary Benchers holding office at the same time:—"The election of the Hon. Francis Alexander Anglin, the Chief Justice of Canada, as a bencher of the Inner Temple, is a fresh instance of the growing practice of the various Inns of Court to bestow honorary membership upon distinguished lawyers from the Dominions, in this pleasing fashion drawing still closer the bonds uniting our kin beyond sea to the home of the common law. The practice of thus co-opting members of the Dominions Judiciary and Bar has, it will be observed, been coincident with the growth of the idea of the essential unity of the English-speaking peoples, and in particular with the growth of the ideal of a great British Commonwealth. In this way the Inns of court are playing a not unimportant role by bringing into close personal relationship judges and lawyers from the four quarters of the world all owning allegiance to essentially the same body of jurisprudence. A glance through the lists of Benchers of the four Inns printed in the current Law List will show that the Middle Temple and Gray's Inn have been especially generous in extending their hospitality to a very large number of overseas lawyers. At both Inns, too, members of the United States Judiciary and Bar have been included in the ranks of honorary Benchers. One of Chief Justice Anglin's colleagues of the Supreme Court of Canada, Mr. Justice Duff, who during the last few years has been frequently a member of the Board of the Judicial Committee, is an honorary Bencher of Gray's Inn."

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FORTUNES AT THE BAR.—On the 12th March last Sir Francis Taylor Piggott, the author of a number of well-known legal treatises, died after a brief illness in his 73rd year. In addition to a very high reputation in his peculiar field as an author, Sir Francis during his lifetime held the distinguished positions of Chief Justice of Hong Kong and Legal Advisor to the Japanese Government in connection with the drafting of the Constitution of Japan. But he was not of the sort of men who gather the *peculium quasi-castrense*, and died poor in this world's wealth. It appears from a recent number of one of our English contemporaries that he left unsettled property valued for probate at £120, with personalty amounting to £16!

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ENGLISH LAW SOCIETY.—Canadian lawyers as a body since their visit to England last year have a more real interest in the various

professional institutions than they had before. We are always glad to hear about the proceedings in the Inns of Court and in the Law Society.

The annual general meeting of the latter body was held at the Society Hall, Chancery Lane, on the 10th ultimo. A very full report of the meeting will be found in the *Law Journal* of the 18th ultimo. In speaking of the centenary of the Society which will be celebrated in October next, Mr. Herbert Gibson, the newly-elected president, said that with the support of the profession as a whole the Society had built up what might be called a national institution which was entrusted with very high responsibilities. In view of this he was sure that the members would see that the Council would have the heartiest co-operation in making the centenary celebration a fitting one in every way, and worthy of the Society and of the profession as a whole. Mindful of last year's reception by the Law Society, we should much like to be in London in October.

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Lord Curzon's Will.—Judging from some of the terms of his will the late Marquis Curzon of Kedleston was not impressed with the view so widely held to-day that the landed aristocracy of England is bound to become extinct during the present century. Notwithstanding his upbringing under a clerical father he was quite unmindful of the warning of the Psalmist to those who "think that their houses shall continue forever; and call the lands after their own names" when he essayed to establish a 'Kedleston Trust' to preserve his ancestral estate for his family. True to form he explains that he was not moved to do this by "personal vanity (!) but by a hope for the continuation of England's nobility and gentry." . . . "I desire," he adds, "that my family, which has owned and resided at Kedleston for longer than 800 years, shall continue to live there and to maintain the traditions of a not unworthy past."

When we fell upon the news of Lord Curzon's will we had just been reading Philip Guedalla's sketch of him in a book entitled "A Gallery." It would have been more aptly entitled "A Pillory" so far as it delineates the characteristics of the late statesman. Readers are prepared for the forthrightness of the text when they find the following stanza from *Zadig* used as a motto:—

Que son mérite est extrême!
Que de grâces! que de grandeur!
Ah combien monseigneur
Doît être content de lui-meme.

In speaking of the surprise created by Lord Curzon when he supported the Parliament Bill of 1911, the author says:—"Mr. Wyndham explained that it was all snobbishness on Curzon's part. He could not bear to see his Order contaminated with the new creations." If Wyndham's gibe was justified, it throws some light on the passage above quoted from the will of the noble lord.

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THE C. B. R. ABROAD.—Imitation of one's editorial methods is undoubtedly the sincerest form of flattery, but appropriation of the contents of his magazine is quite another thing. This observation is evoked by the reprinting in a single issue of one of our American contemporaries—without our permission first obtained—of no less than three copyrighted articles published in the CANADIAN BAR REVIEW! For our own part when we decide to borrow matter from others—a rare thing as our readers know—we conform to editorial etiquette by asking permission to do so. The exigencies of getting out a vacation number are great, as we well know, Brother, but why levy upon us for so large a portion of your contents *sans permission?* We are glad, however, that you were kind enough to mention the original medium of publication.

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LINCOLN'S INN 'OLD HALL.'—Canadian lawyers who made the 'happy pilgrimage' to London last year will gratefully recall the hospitality of the Honourable Society of Lincoln's Inn. Wonderfully impressed were the visitors with the literary treasures disclosed to them in the library of the Inn; and thrilled were they by the historic grounds and buildings as a whole—linking up as they do the fifteenth and twentieth centuries in a very intimate and vital way. In view of these memories it is interesting to learn that the 'Old Hall' of the Inn is now in process of restoration. That is well. It deserves to be cherished of all men for the place it holds in civilisation. This structure was begun in 1489 and finished somewhere about 1502. The *cause fictive* of *Jardyce* v. *Jarndyce* has familiarised 'Old Hall' even to lawyers who have not visited England, and things have been little changed there since Dickens wrote 'Bleak House.'

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ECCLESIASTICAL AND LEGAL SANCTIONS DIFFERENTIATED.—Many excellent stories are told about Jowett, the famous Master of Balliol, whose dry humour gave him almost as much distinction as his classical learning; but the following demands the appreciation of the legal fraternity in a very special way. It seems that Jowett was present

on a social occasion when some lawyers and clergymen were discussing the advisability of removing certain minatory clauses from one of the ancient creeds avouched by the Church of England. As a sequence of the discussion one of the lawyers observed that the clergy were more powerful in the community than the judges because a priest could say to an ecclesiastical offender "You be damned," while a judge could only affect the mortal career of a criminal with the sentence "You be hanged." "Ah, yes," piped Jowett, "but when a judge says 'You be hanged,' you generally are hanged, you know!"

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TYPHOID AND 'ACCIDENT.'—In a recent unreported case the Supreme Court of Maine has decided that under certain circumstances typhoid fever may become a "personal injury by accident" under the Workmen's Compensation Act of that State. The plaintiff in the action was employed by the State Highway Commission at a daily wage and in addition to such wage was furnished board and lodging by the Commission at a camp located near a road that was in the course of construction. The water that was supplied by the Commission for use of the plaintiff and his associates in carrying on the work of construction was taken from a spring near the camp. The water was unsanitary and the plaintiff contracted typhoid fever from its use. The matter came before the Chairman of the Industrial Accident Commission, and as the result of his inquiry he found that as a matter of law the typhoid so contracted was "a personal injury by accident arising out of and in the course of the plaintiff's employment," and the plaintiff was therefor entitled to compensation under the Workmen's Compensation Act. An appeal to the Supreme Court of Maine resulted in the decision of the Chairman of the Industrial Accident Commission being sustained. The view of the Supreme Court is that from weight of authority and by reason of the humane [sic] and liberal construction demanded by the Compensation Act, the sickness of the plaintiff must be taken as "an undesigned, sudden and unexpected event," and therefore an "accident" within the meaning of the statute in question.