

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.

~~For~~ Contributors' manuscripts must be typed before being sent to the Editor at the Exchequer Court Building, Ottawa.

EDITORIAL.

AN APOLOGY.—We regret that owing to our inability to obtain reports of the speeches delivered at the tenth Annual Meeting of the Canadian Bar Association by Maître Fourcade, the Honourable G. W. Wickersham and the Honourable Geoffrey Lawrence, K.C., in a form revised by the speakers, we cannot carry out our promise made last month to publish these addresses in the present number of the REVIEW. Our readers must await the receipt by us of authentic reports.

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WEARING THE CAP AND BELLS.—As a solution of the Crime Problem in the United States a periodical posturing as the organ of the Bench and Bar in an important section of the Republic offers the following:—"If we could wipe out over night all the legal enactments which cumber our records and go back to the Golden Rule and Twelve Commandments, teaching from platform, pulpit and school the necessity for a close observance of these and pointing out in every home the distinguishing difference between right and wrong, we would not fear for the safety and perpetuity of our American institutions. We must have some relief soon from the intolerable conditions which confront us."

For supreme and undiluted nonsense we have never seen the equal of this in any publication claiming to represent or reflect professional opinion. But it is worse than silly, proceeding from the source it does. It would be hard to find its mischievousness paralleled in any sheet issuing from the frowzy editorial dens of the "reds" or the

anarchists. To secure American institutions from the effects of lawlessness by abolishing all the laws is so logical a proposition that it commends itself to the meanest intelligence without argument; and yet it does serve to remind one of Sam Weller's story of the ingenious father who cut off his son's head to cure the boy of squinting.

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RETROGRESSIVE DEMOCRACY.—We are informed by the press that Mr. C. S. Stephenson, Progressive candidate for Marquette in the Dominion elections, in opening his campaign advocated a law barring "retired capitalists" from election to Parliament. Such men, he said soon lose the viewpoint of the working man; and only those who actually earn their own living by their own labour should be eligible for election to parliament. While the REVIEW from considerations of policy as well as sheer lack of inclination steers clear of the Scylla and Charybdis of party politics, it considers itself free to criticize theories subversive of our democratic political rights and institutions by whomsoever advanced.

Before Canada could accept Mr. Stephenson's view of political liberty she must needs have been—

"Drawn to the dregs of Democracy."

In fine, in such talk inheres the very antithesis of Democracy. If all who have not the "viewpoint of the workingman" (which we presume signifies only the manual labourer) are debarred from seats in Parliament then indeed will government of the people, by the people, for the people perish from the earth. The despotism of the Tudors would appear benign indeed if contrasted with the tyranny of the proletariat cock-a-hoop! Did not Lord Treasurer Burleigh say some three hundred years ago that "England can never be ruined but by a Parliament?" And would not Mr. Stephenson's idea if realized fulfil that prophecy for us in Canada?

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THE RED PERIL IN ENGLAND.—While we have never imagined that Blake's dream of a New Jerusalem being set up in England's green and pleasant land is likely to be realized during the present century, on the other hand we have not been fearful of Bolshevism setting up a citadel there as a result of all the turbulent conduct of the proletariat since the Great War. Consequently our heart did not fail us when the "Red Peril" became most rubescent; and now that it has paled its ineffectual fires to pink, and from pink to ashen grey before the stern eye of the law, we feel that, sputter as it may from time to time, its manifestations are not to be regarded as a permanent

menace to the industrial peace of the country. We should not take too seriously the news that the authorities have set the criminal law in motion against the boldest of the professed communists, such as J. R. Campbell, the editor of the *Workers' Weekly*. The capitalistic press has been panicky for some time past, and when the 'bourgeoisie' took action by forming a protective association against a threatened syndicalist strike the Baldwin government felt obliged to make a demonstration of its own ability to conserve public peace. Still we think that the country is in no worse position than Canada was in the Winnipeg outbreak, staged by the communistic One Big Union in 1919. We know how that ended, and while we are told by a writer in the current number of the *Dalhousie Review* that there is still a body in our midst—the Worker's Party of Canada—pledged to inaugurate a Soviet form of government, it is innocuous so far as any concrete effort is concerned. We think the English situation is well put by the *Spectator*, of September 5th: "The vast majority of British handworkers have a really wonderful balance of mind; they have plenty of horse-sense; and though, being naturally curious, they are willing to play with new ideas for a time, they always shrink at the last from any act that is dangerously speculative, unfair, or morbidly class-conscious." Such being the case we think that both Mr. Cook and Mr. Wheatley will not be able to launch the civil war they talk so glibly about when the nine months' truce in the coal-fields is ended. *Nous verrons-ce que nous verrons*. It is true that Britain, owing to her position as the chief exponent of the industrial arts down to very recent times, has been the seed-bed of socialism and communistic theories. Along these lines her philosophers have taught Europe unrest and revolt; and yet she has left it to other countries to translate her theories into action. Her freedom from actual war between capital and labour is chiefly if not solely due to the racial faculty for conforming to the law. We think it was Guizot who said that the English had an absolutely illogical system of law, and yet, owing to the genius of the people for civil obedience, it was the most effective system in practice the world over.

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LAW AND THE MUSES.—The Bar both in England and in Canada at the present time seems to be mindful of Sir Walter Scott's dictum that "A lawyer without history or literature is a mere mechanic." We have arrived at this assumption because the mails bring to us, with pleasing frequency, both historical and literary articles of excellent quality, and when we turn to our English exchanges we find that they are having a like experience.

It is interesting to note also that the profession in England is

keeping the printers busy with translations from the classics. To refer to a particular instance, a short time ago Mr. Leonard Chalmers-Hunt published a translation of some of the Odes of Horace, with a foreword by Mr. Justice McCardie. Concerning that witty and learned Judge's contribution to the work, the *Law Journal* of September 26th offers a comment which should make all of us less ashamed of our excursions into the Tempean vale even if they do savour of truanancies from the sombre paths of the law: "And what is Mr. Justice McCardie doing in this company? Not the least interest that Mr. Chalmers-Hunt's book has brought us is to know that there is more in this very learned Judge's library than the law reports that furnish forth his wonderfully documented judgments. And he is a reader of Mathew Arnold and gives from 'Literature and Dogma' the final definition of culture: 'Culture is to know the best that has been said and thought in the world'; and from Meredith: 'Culture is half-way to Heaven'."

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AVIATION CONFERENCE AT LYONS.—The Seventh Congress of the International Juridical Committee of Aviation was held in Lyons, France, under the patronage of the President of the French Republic, commencing on the 28th of September last. Thanks to the courtesy of Mr. G. J. Desbarats, C.M.G., Deputy Minister of National Defence, and Dr. O. D. Skelton, Under-Secretary of State for External Affairs, the Canadian Bar Association was able to be represented at the Conference by Mr. Norman MacKenzie, who had been at the Geneva Conference. The importance of the law of Aviation is now rather obvious, and it must be a great satisfaction to know that the Association was so well represented at this important Conference. Mr. MacKenzie's report, which has not yet been received,, will be looked forward to with great interest.

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A PROGNOSIS OF PERFECT PEACE.—Mr. Lionel Curtis, once renowned as the architect of *les chateaux en Espagne* of British Imperialism, seems now to have taken on the rôle of hierophant of *Der Erde Paradies*. At all events we are to understand from his utterances in July last before the Institute of Politics at Williamstown, Massachusetts, that no pent-up Utica such as the British Empire contracts his powers at the present time, and that nothing smaller than the planet itself will suffice as a theatre for his activities in regenerating civilisation. After referring to the success that has attended the efforts of himself and others in moulding the British Commonwealth of Nations, so far as it exists, he proceeds to say: "The

eventual goal of these experiments, I do not scruple to say, is the eventual establishment of a world State—a world Commonwealth of nations. It is not impracticable to say that some day the whole world will have been organized into one big Commonwealth. You will not exorcise the spectre of war until you have done that.”

Now we think it inconsiderate to say the least for Mr. Curtis to anticipate as he does in the above pregnant observation something that St. Augustine disclosed to the world of the fifth century in his *De Civitate Dei*—the terrene State (*Civitas terrena*), a State that aimed at earthly peace and no more, knowing no ‘other-worldliness.’ Inconsiderate was it also for him to foreshadow the obsolescence of the League of Nations on the arrival of the perfect day of his millennium. With the world organized into “one big Commonwealth” there can be no League because there will be no Nations to compose it.

We are sorry that Mr. Curtis has remitted his efforts to give us a working Constitution for the British Commonwealth of Nations. The constituent units are still in the situation described by C. P. Lucas twenty-five years ago: “There is no deep-seated and well-defined evil requiring a prompt, and definite, and radical cure. There is simply a feeling of uneasiness with regard to the future, that the two parties [the motherland and the colonies], being very slightly connected, will gradually drift apart unless some stronger bond of union is substituted for the existing one.” We do indeed want a united British world; but could the mass of humanity in its present condition of imperfection abide the dulness of a solitary World-State?

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LORD COLERIDGE USES ITHURIEL’S SPEAR.—Lord Coleridge, in his ‘This for Remembrance,’ quotes from the diary of his grandfather, Sir John Taylor Coleridge, as to Lord Denman, thus:—

March 3, 1850.—“He was not a great lawyer. Not only was he not deeply or widely read, but he always seemed to me to be very imperfectly stored with legal principles or analogies. And further, he seemed from long habit a very loose reasoner. His judgments, even those he laboured on most and with most liking, as they came from his hand were very loose and unconnected, the hooks and eyes of his argument were constantly misapplied. . . . The public suppose that every judgment he has read has been his own production . . . when in truth few of them were not furnished to him by other members of the Court.”

Lord Coleridge also relates this anecdote of Gladstone:—

“It is said of Mr. Gladstone that, while an undergraduate, he

attended the service of Magdalen College, Oxford. As now, the choir performed the service, the congregation for the most part content to listen. But Mr. Gladstone, fired with religious enthusiasm, and being very musical, sang loudly. This attracted the attention of the College Dean, who sent for Mr. Gladstone, and remonstrated with him. 'Why,' said Mr. Gladstone, 'is it not the House of God?'

'Not at all,' said the Dean, 'it is a college chapel.'

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AN ESTEEMED LAWYER.—George S. Kerr, K.C., one of the best-known members of the Hamilton Bar, died recently in his 58th year after a lingering illness. The day following the announcement of his death the jury sittings of the County Court for the City of Hamilton was adjourned out of respect for the memory of the deceased. Before the adjournment touching references to the character of the deceased were made by the Bench and the Bar. His Honour Judge Evans said: "Mr. Kerr was an able lawyer, a lawyer who rose to the top of his profession, and was one of the most prominent lawyers in Hamilton during the last thirty years. He had the finest disposition of any man I ever knew. I know his death will be a great blow to the profession and to the city."

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JUDICIAL CONFLICT IN ENGLAND.—In the correspondence department of the present number of the REVIEW we publish a letter containing some interesting observations upon the conflicting views relating to the right to recover damages arising from nervous shock as expounded by the Judicial Committee of the Privy Council in the case of the *Victorian Railway Commissioners v. Coultas*,¹ and by the House of Lords in *Brown v. John Watson, Limited*.² The REVIEW has already published comments³ on the irksome obligation resting upon the Canadian courts to follow the law laid down by the Privy Council in a case which has been repeatedly discredited by text-writers and Judges. Further discussion of these opposing currents in the stream of precedent—which so largely lend countenance to the popular idea that the law is more or less of a Serbonian Bog—would not be edifying. We leave this judicial conflict with the submission that the time is fully ripe for their lordships of the Privy Council to let some 'Lethæan dews' fall upon certain pages of the thirteenth volume of the Appeal Cases.

¹ (1887) 13 A. C. 222.

² (1914) 83 L. J. P. C. 307.

³ *Ante*, pp. 340, 405.

THE VICTORY OF LOCARNO.—

“A peace is of the nature of a conquest;
For then both parties nobly are subdued,
And neither party loser.”

Just as we go to press this month the joyful news comes to us from the little city of Locarno on the shore of Lake Maggiore that the world is about to have real peace again after weary years of devastating War and its paralyzing aftermath. How many things affecting the whole course of human history have come out of the small cities of Switzerland!

The Rhine Security Pact pledges France, Germany and Belgium to abstain from invading and levying war upon the territories respectively belonging to those powers; while Great Britain and Italy stand as guarantors of this undertaking, promising to throw their forces against any of the three parties violating its terms. The pact is a conventional law governing its signatories. The rôle of the guarantors is that of sheriff or policeman enforcing the law. As between France and Germany, the pact takes cognizance of certain rights of the former embodied in the Treaty of Versailles, and should Germany commit a hostile act by “constructing fortifications either on the left bank of the Rhine or within fifty kilometers of its east bank”; or attempt to keep armed forces within that area, then France may take effective action to enforce her rights thus disregarded.

So far as can be gathered from the press accounts the pact does not disregard the authority of the League of Nations but establishes it. For instance the operation of the pact is suspended when combined penalties against any aggressor nation are ordered by the League, or when the council fails to reach unanimity on any dispute and the members of the League (as provided by Article XV. of the League Covenant) exercise their right to take such action as they deem necessary for the maintenance of right and justice. But, perhaps, the most significant gesture of the pact in the direction of a new order of international behaviour lies in the fact that arbitration is obligatory between the parties in certain cases, arbitral jurisdiction being assigned to the Permanent Court of International Justice, boards of conciliation and the League Council. By that feature of the pact what the world has needed from the beginning of national communities is supplied. It is a definite deliquescence of the menace of war between the chief parties to the agreement, and must react on the world at large. From the pact as a whole Austin Chamberlain does not hesitate to say that “there will emerge for Europe not a peace imposed, but a peace consented to by all; and Premier Painlevé de-

clared that it indubitably marks the beginning of an epoch in history.

And so with the Security Pact implementing the League of Nations rather than superseding it we come to recognize the folly of such opinions of the League as that expressed by H. G. Wells in his amazing 'Short History of the World':—"Born prematurely and crippled at its birth, that League has become indeed, with its elaborate and unpractical constitution and its manifest limitations of power, a serious obstacle in the way of any effective reorganization of international relationships."

Truly, as Carlyle said, History is as perfect as historians are wise.

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INTERPARLIAMENTARY UNION.—The first Conference of the Interparliamentary Union ever held in Canada took place at Ottawa on the 13th and 14th instant. It was the twenty-third Conference of that interesting body. There were present no less than three hundred and fifty-eight representatives of forty-one nations, showing how much importance is attached to such gatherings. The House of Commons was the scene of the meetings of the representatives, and they expressed themselves as much pleased with the convenience and beauty of the building as a whole. Baron Theodor Adelswaerd, President of the Council, was in attendance. Among the distinguished English-speaking representatives present were the Right Honourable Arthur Henderson, P.C., former Home Secretary in the Ramsay MacDonald government, and also a member of the war cabinet; Right Honourable Sir Robert S. Horne, former Chancellor of the Exchequer; J. Hugh Edwards, Official biographer of Lloyd George; Sir Arthur Shirley Benn; F. W. Pethick-Lawrence, the Labour representative who defeated Winston Churchill; General Richard Mulcahy of the Irish Free State Parliament; Honourable Walter S. Monroe, Prime Minister of Newfoundland.

The Honourable N. A. Belcourt, K.C., member of the Senate of Canada, welcomed the visitors in a felicitous speech. On the first day of the Conference they were guests of the Government of Canada at dinner.

The business of the Conference at Ottawa was not important as it was in the nature of a continuation of the meeting of the Union in Washington the previous week. There was some discussion on the question of regulating the use of narcotic drugs, and on the subject of "minority rights," but both were laid over for action at the next meeting of the Union.

The Interparliamentary Union is a body of practical importance more particularly in that its membership is confined to sitting parlia-

mentarians who can bring into the active sphere of legislation measures approved by the Union. To quote Sir Robert Hutchinson, speaking at Toronto, it is: "An association of the parliaments of the world, which did not and could not pass acts in executive manner, but threshed out problems and moved resolutions pointing in the directions in which parliaments might profitably travel. It was creating an educated international public opinion through the personal touch that members were enabled to acquire, one with another. It was finding out what the people of each country thought and so promoting more national and international efficiency and a better understanding between nations."

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LEAGUE OF NATIONS AND THE BALKANS.—On the 27th instant the League Council decided at a tea given by M. Briand to the Council members that the League would follow up the Greco-Bulgarian incident, and formulate a sort of Locarno agreement for the Balkans.

With the war clouds brushed from the skies of Western and Central Europe, the powers are determined to take every possible measure to prevent a conflict, which might easily spread to other countries from breaking out in the Balkans.

A Council meeting was previously held, when opinions were divided as to the cause of the conflict and the present state of affairs.

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MOSUL AND THE LEAGUE OF NATIONS.—It seems that atrocities have not stopped since the Lausanne Treaty. Dr. MacDowell believes with the British authorities that, even if the Angora Government orders civilized methods in dealing with Christian minorities, local Governors on all parts of the frontier will be absolutely out of hand, making Angora powerless. The frontier officers and local Governors are notorious for their hatred of Christians, and they are known to have instigated the terrorism.

The British mandate expires in three years, or in 1928, and even if it is renewed, the population fears that the Turks eventually will hold the territory, and take revenge on any one speaking against the Turkish occupation now. The presence of 40,000 troops on the Turkish border makes honest opinion regarding the plebiscite impossible.