# 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 the Exchequer Court Building, Ottawa.

## EDITORIAL.

PAX MAJORA DECET.—The Security Pact of Locarno, expressly recognizing as it does the authority of the League of Nations and requiring Germany to be made a member of it, coupled with the fact that within a few days after the initialing of the pact by the contracting Powers hostilities that had broken out between the Greeks and Bulgarians on the Macedonian frontier were stopped at the demand of the Council of the League, must assuredly effect a change of mind on the part of those who have hitherto been sceptical of the ability of the League to achieve for a war-weary world a happy issue out of most if not all of its afflictions. The Locarno Conference has given the League of Nations a position of authority as regards the outlying districts of Europe, where the fires of war always smoulder, which it lacked throughout the first seven years of its existence—for out of Locarno has come the peace of central Europe which was obviously a *sine qua non* to the effectual and abiding pacification of the continent as a whole and a readjustment of its relations with the rest of the world. For the first time in modern history the great Western Powers have stood in absolute accord on a Balkan question, and for the first time they have learned that the pugnacious Balkan nations will come promptly to heel at a word of command which suggests no diplomatic *arrière pensée*. Indeed the Locarno Security Pact presages the passing of the old diplomatic policy of secrecy in relation to foreign affairs, as its provisions will be known in detail by the people of all the countries concerned before its formal signature by the Powers on December the first. The British parliament has already adopted it by an overwhelming majority of votes. Thus the Security Pact is impressed with a quality which not only respects but reflects the

provisions of Article XVIII. of the Covenant of the League of Nations requiring that every treaty or international engagement entered into by any Member of the League must be forthwith registered with the Secretariat and as soon as possible *published* by it.

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WOODROW WILSON AND THE LEAGUE.—We are glad that the success of the League of Nations in quelling a war already begun in the Balkans this month synchronized with the publication of the late Henry Cabot Lodge's book, "The Senate and the League of Nations," which is mainly an attack on Woodrow Wilson and his apostolate for the Covenant of the League in the United States. Senator Lodge was quite content to put a stumbling-block in the path of the League so long as he could discredit the man who was indubitably a martyr to the cause of restoring peace to a world whose resources had well-nigh been exhausted by the ravages of war. Not only was Senator Lodge's enmity to Wilson—rooted as it was in personal jealousy—carried to the grave, but he did not scruple to reveal it to posterity by means of the printed page. Under such circumstances how poor a place must his book hold in the estimation of present or future readers of discerning mind. Woodrow Wilson is now well set on his way to fame—fame as imperishable as that of Lincoln, for his zeal to serve mankind was none the less ardent than that of his great compatriot, and the merit of such things cannot be measured by success or failure; nor can defamation any longer harm him. If he is not now fully conscious of what is going on in this world, then we could wish that some Odysseus of our time would visit the realm of the shades bearing the news to him of the rapidly changing attitude of America towards the League. That would assuage the sense of defeat he carried with him into the great beyond, so largely due to the hostility of Senator Lodge. But others than the enemies of his own household have failed to do Woodrow Wilson justice. In 1922 Sir Frederick Pollock published the second edition of his book, *The League of Nations,* and while he mentions the names of many individuals who had formulated plans for the general pacification of the world from Pierre du Bois, a French writer of the fourteenth century, to William H. Taft and Theodore Marburg, American public men of our own day, he finds no occasion to mention Mr. Wilson anywhere in the volume. But it is enough that the poets are now acclaiming him:—

> "Repudiated, still he dared to face
> The world, head up, and loyal unto death
> To his great plan of peace for all the race."

PERMANENT COURT OF INTERNATIONAL JUSTICE.—What we have said about the League of Nations in the two preceding items makes it appropriate at this place to point the attention of the profession to the recent publication of a very excellent work on the constitution, procedure and work of the Permanent Court of International Justice by Mr. Alexander P. Fachiri, of the Inner Temple, London. It is well known, of course, that this tribunal owes its existence to Article XIV. of the Covenant of the League of Nations, which provided that plans should be formulated and submitted to the Council of the League for the establishment of such a Court. In the opening chapter of his book Mr. Fachiri informs us that on the 13th February, 1920, at its second public meeting held in London at St. James's Palace, the Council took the first step towards carrying out the behest of the League by adopting a resolution inviting a number of distinguished jurists, representative of the different civilizations and legal systems of the world, to form a Committee to prepare plans for the Court and to report the same to the Council. The proposal met with the cordial approval of the jurists called upon for the purpose, two of whom were Lord Phillimore, representing Great Britain, and Mr. Elihu Root, representing the United States of America; and in an incredibly short time, considering the difficulties confronting them, the Committee were able to agree unanimously upon a draft scheme for the establishment of the Court. It is interesting to note that the organization of the Court proceeded along lines formulated by the two representatives of the English-speaking world, their scheme being known as the 'Root-Phillimore plan.' This plan overcame the difficulty of reconciling the conventional equality of the States as subjects of International Law with the brutal fact of their political inequality. Its propounders suggested the idea of a joint election of the Judges by the Council and the Assembly of the League, "the result being," to quote Mr. Fachiri, "to combine a preponderating voice for the Great Powers, which are permanently represented in the Council, with an equal voice by all the Powers, great and small, through the Assembly, which includes them all without distinction." The Permanent Court of Arbitration at the Hague was made use of by providing that its members, acting by national groups, should nominate the candidates for election to the new Court, this list of candidates being that from which the election was to be made by the Council and Assembly. The number of regular judges was fixed at eleven, with four supplementary judges. This plan of organization was agreed upon by the Committee of Jurists and subsequently was embodied in the Statute of the Court, which became effective in 1921.

Mr. Fachiri deals briefly but lucidly with the jurisdiction of the Court as finally agreed upon by the Committee, explaining that the Committee had decided in favour of 'Compulsory Jurisdiction' in respect of certain cases falling within the terms of any convention for the purpose agreed on by the Powers concerned. This was simply giving effect to an unanimous resolution respecting matters that should be made the subject of compulsory arbitration passed by the Hague Conference of 1907. But that part of the Committee's report was rejected by the Council of the League. The Court came into existence with its full quota of Judges in September, 1921.

Up to the time of the publication of Mr. Fachiri's book some fourteen cases in all had come before the Court for determination. They are fully and informingly discussed by the author. The rules of procedure in the Court are published *in extenso*, and the book as a whole is of great value to all laymen who are interested in the great world movement towards permanent peace as well as to all lawyers who may be professionally concerned in cases before the Court. If the Senate decides next month that the United States shall become a party to the Court, as there is good reason to hope, the position of the tribunal will be greatly strengthened in its power and usefulness.

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PRIVY COUNCIL PRECEDENTS.—It is quite possible that if Judge Moore had seen Dr. Cameron's article on the "Prerogative Right of Appeal," published in this number of the REVIEW, he would have tempered in some measure the glowing encomium on the Judicial Committee of the Privy Council pronounced by him in one of his Marfleet lectures at the University of Toronto. For Dr. Cameron's examination of some of the decisions by the Judicial Committee in Canadian cases results in disclosing some 'spots on the sun,' some lapses from the path of sound judgment usually pursued by that fine body of jurists. There is no doubt that the men who sit on the Judicial Committee to-day are regarded as stronger in their qualifications for the office than were those who were called upon to decide the case of *Cushing* v. *Dupuy* or that of *Russell* v. *The Queen*; and it is equally true that the inexorable rule that a former judgment of the tribunal should not be overruled by a later one rests as an irksome burden upon the Committee from time to time. That difficulty, however, is one which exposes the salient defect in the whole system of Precedent.

Unbending adherence to Precedent may result in the contraction and inelasticity of the basic principles of law; these prin-

ciples may be lost sight of and in their place we may be confronted by the 'wilderness of single incidents.' "Precedent," said Lord Mansfield in *Jones* v. *Randall*,[1] though it be evidence of the law, is not law in itself; much less the whole of the law." But the subject is an overwhelming one, and we would not presume to discuss it here. So far as the decisions of the Judicial Committee on Canadian constitutional questions are concerned we are content for the present to fall back upon the maxim found in 8 Coke, 97: "*Judicia posteriora sunt in lege fortiora.*"

Just at the moment of going to press, we have received a copy of the proceedings in the Privy Council in July last in the case of *Price Bros.* v. *The Montmagny Power Co.* This was a petition to the Privy Council to rescind an order giving leave to appeal from the Court of King's Bench Appeal Side, made by Mr. Justice Rivard in Chambers. The Privy Council made no order on the petition, but granted leave to appeal.

In view of this case we have asked Dr. Cameron to continue his discussion of the Prerogative Right of Appeal in the December number of the REVIEW, having special reference to the decision of the Judicial Committee therein.

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LAW SOCIETY CENTENARY.—At a banquet held in connection with the celebration of the Centenary of the Law Society at the Guildhall on the 15th of last month, His Royal Highness the Duke of York, in proposing the health of the Society, said many pleasant things about its voluntary work for the past hundred years in furthering the administration of justice in England. In responding to the toast, Mr. Herbert Gibson, the President of the Society, stated that its meetings were originally held in coffee houses in the neighborhood of Chancery-lane, among them being "Serle's Coffee House," "The Crown and Anchor" and "The Devil's Tavern." In relation to the last-mentioned resort, he humourously remarked that the members before leaving their offices to attend the meetings there were wont to write up on the doors "Gone to the Devil"—and whether that was to be regarded as a prophecy or not he was unprepared to say! But he declared that it was a long way from Serle's in 1825 to the Guildhall in 1925, and the bridge of success which covered that distance was "the spirit of loyalty to the King, to the country and loyalty to the profession." The Lord Chancellor reminded the gathering that the Law Society had been described as a trade union, and he observed that

[1] (1774) Lofft. 386.

it was a trade union which was mindful of the duties of its members as well as of their rights. As such it was something to which anyone might be proud to belong, and he wished there were more such trade unions in England to-day. [We should like to say Hear, Hear, to that!] The Lord Chief Justice, referring to the tendency of the times to enlarge the borders of Administrative Law, said that while the Judges were independent of the Executive, he must protest against cherishing the fallacy that the Executive was somehow to be independent of the Judges. Wherever that heresy appeared in their midst those who loved justice could leave the Law Society to deal faithfully with it.

In connection with the Centenary proceedings, it is worthy of note that at the last Annual Meeting of the Canadian Bar Association the following resolution was unanimously adopted:

"The Canadian Bar Association having learned of the approaching celebration by the Incorporated Law Society of London, England, of its One Hundredth Anniversary, embraces the opportunity of extending to it on such occasion its warmest congratulations and good wishes for the future, and this Association sincerely hopes it may be the privilege of its own future members, when its activities shall have covered the same period, to reflect on a past so enriched as that of the Incorporated Law Society of London, England, with many and valued achievements."

On the first day of the proceedings Sir James Aikins, on behalf of the Canadian Bar Association, cabled to the President of the Law Society the substance of the above Resolution, and received the following reply by cable:—

"Your very kind congratulatory telegram read to centenary meeting yesterday. Sincere thanks voted by acclamation, and your good wishes cordially reciprocated."

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A Matter of Manners.—In spite of the fact that the Review has occasionally been betrayed by careless authors and proof-readers into printing some barbarous renderings of passages from well-known Latin texts (only last month we suffered a sad misreading of a familiar passage in the second book of the *Aeneid* to go down to posterity) the unbecoming manners of certain young members of the profession, as observed by us from time to time in Judges' Chambers, prompt us at all risks to quote the following lines from Juvenal's *Satires* as a not inappropriate suggestion to them:—

> "Credebant hoc grande nefas et morte piandum,
> Si juvenis vetulo non assurrexerat."

Politeness in the past has been the ornament of advocacy, and while democracy is not a genial soil for its cultivation we think the Bar is still a profession for men of native refinement.

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RELIEF AGAINST 'HOWLERS.'—What we have said in the preceding item about errors in quotation makes it timeous for us to amplify the subject here for practical purposes. Isaac D'Israeli was pleased to regard quotation as an art, and affirmed that delicacy was required in its use. In one of his speeches Lord Rosebery alludes to the advice of an aged sage to somebody who sought his guidance in life, and it was this: "Always wind up your watch and verify your quotations." With all deference the REVIEW would urge these excellent counsels upon the attention of its contributors. Be an editorial staff never so erudite—and the REVIEW would blush to assert such a claim—it is unsafe and unwise for a writer to quote from memory and leave the responsibility for accuracy to the proof-reader. It is a delight to the Editor of the REVIEW to peruse a manuscript showing that quotations have been scrupulously checked by its author. Where this is not done it spells for him much unnecessary personal toil, and he is only too conscious of the possibility of mistakes appearing to him for the first time on the published page—which is a tragedy for all concerned.

Then, again, to such of his contributors as the Editor is able to supply with galley-proofs, he would commend as a spur to vigilant correction Tom Moore's warning—

"Though an angel should write, still 'tis *devils* must print."

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TITLE OF COLOUR.—The case of *Corrigan and Curtis* v. *Buckley* has been appealed from the decision of the Court of Appeals for the District of Columbia, affirming the judgment of the Supreme Court of that District, to the Supreme Court of the United States. The case arose out of the sale of a house in the City of Washington, D.C., by the appellant Corrigan to the appellant Curtis, the latter being a coloured woman. Mrs. Corrigan had agreed with some thirty other white property owners in Washington never to sell their properties to any person of negro race or blood, the covenant to run with the land and bind the heirs and assigns of the persons making the agreement. Mrs. Corrigan subsequently found it necessary to raise money and to that end sold to Mrs. Curtis the house in question. When objection was made to the sale, Mrs. Corrigan offered the land to the white property owners at the price agreed upon with Mrs. Curtis, but none

of them would buy at that price. Thereupon Mrs. Corrigan decided to proceed with the sale to Mrs. Curtis. On the basis of the agreement entered into by the white property owners, the latter sought to enjoin Mrs. Corrigan from selling and Mrs. Curtis from taking possession of the house. This injunction was issued by the Supreme Court of the District of Columbia and was sustained, as we have said, by the Court of Appeals.

The case involves a recourse to the provisions of the Fourteenth Amendment of the Constitution of the United States in order to determine the residential status of coloured people, and its decision by the Supreme Court will affirm or deny the right of those who seek to establish a policy of "segregating the negroes" in American communities. Reliance will be placed by the appellants on the case of *Buchanan* v. *Warley*,[1] where the Supreme Court decided that a city ordinance, which forbade coloured persons to occupy houses in blocks where the greater number of houses were occupied by white persons, was unconstitutional as passing the legitimate bounds of police power and invading the civil right to acquire, enjoy and use property, which is guaranteed in equal measure to all citizens, white or coloured, by the Fourteenth Amendment. This decision would seem to support with much force the contention of the appellants. Mr. Justice Day, in delivering the opinion of the Court in the case cited, said: "It is argued that this proposed segregation will promote the public peace by prevailing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." It is reasonable to think that agreements between private parties for the purpose of effecting "segregation" ought not to stand when municipal regulations, adopted in the exercise of the police power, for such purpose are brushed aside as unconstitutional.

It is somewhat significant of the trend of the times that a case so repellant to the principles of free citizenship should arise in the capital of the American republic bearing, as it does, the name of Washington. In view of this we wonder if Eliza Cook had lived until to-day she would have revised her poem containing the lines—

> "Shall the name of a Washington ever be heard
> By a freeman, and thrill not his breast?"

[1] (1917) 245 U.S. 60.

PRAISE NOT UNDESERVED.—Having occasion to refer to Cook on Corporations[1] recently, it was gratifying to find there the following tribute to law-making in England: —

"We have much to learn from the English in the way of Corporation Statutes. They have shaken down more ripe fruit from the tree of knowledge than any other people, and have not been cast out of the Garden of Eden either."

While it is not so lyrical in expression, yet the above praise of England is comparable in fair measure with that of Shakespeare when he puts the following lines into the mouth of John of Gaunt in *King Richard II.*:—

> " This royal throne of kings, this sceptered isle,
> This earth of majesty, this seat of Mars,
> This other Eden, demi-paradise."

## THE "BILINGUALS" IN PARIS, 1924.

" Pardonnez-moi, Mushoo, mais quoi est cette bâtiment-là?

" Je ne connais pas. J'ai juste venu a Paris."

" Oh, je pensait que vous étais un Parisienne. Ou est-ce que vous vennez de? "

" Parry Sound. Et vous?"

" Medicine Hat."

" Good Lord! Good old Chapeau de Médecin! Shake! "

J. D. S.

[1] 8th Ed. (1923) Vol. 5 p. 4162