

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.

Special articles must be typed before being sent to the Editor, Charles Morse, K.C., Room 707 Blackburn Building, Sparks Street, Ottawa. Notes of Cases must be sent to Mr. Sidney E. Smith, Dalhousie Law School, Halifax, N.S.

TOPICS OF THE MONTH.

The Eighteenth Annual Meeting of the Canadian Bar Association will be held in the City of Ottawa, on the 30th and 31st days of August, and 1st day of September, 1933.

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COUNCIL MEETING OF THE C.B.A.—The mid-winter meeting of the Council of the Canadian Bar Association, at Toronto, on the 4th instant, was exceptionally well attended, members coming from places far distant from the central portion of the Dominion. That gentlemen should subordinate the personal comfort of remaining at home in inclement travelling weather to loyalty to the Association, speaks eloquently of their appreciation of the value of its activities to them and the whole profession of the law in Canada.

Regret was formally expressed that illness confined the President, the Honourable N. W. Rowell, K.C., to his home and prevented him from assisting the Council in its deliberations. The chair was taken by Mr. Isaac Pitblado, K.C., LL.D., Dominion Vice-President of the Association, and under his skilful guidance business of importance was disposed of without any waste of time.

By the courtesy of the Treasurer of the Law Society of Upper Canada, W. N. Tilley, K.C., the meeting was held at Osgoode Hall. At noon the members of the Council were entertained at luncheon by the Benchers of the Law Society, the hospitality of the Benchers

being much enjoyed. The atmosphere of the fine old Hall never fails to impress one who is accorded the privileges of a visitor there with the profound truth of Burke's saying that "Justice is itself the great standing policy of human society."

At night the members of Council were dinner-guests of the President of the Association at the York Club. The chair at dinner was occupied by Mr. D. L. McCarthy, K.C., Vice-President of the Association for Ontario, and to mention that Mr. McCarthy was its occupant is to imply that the duties of the chair were admirably performed.

Speeches of fine quality were heard after the dinner from Chief Justice Latchford, Chief Justice Sir Douglas Hazen, Honourable W. H. Price, K.C., Attorney-General of Ontario, Mr. L. S. St. Laurent, K.C. and Mr. Pitblado, none of them forgetful of the tremendous problems facing western civilisation to-day and the need for the Bar of Canada to bring its special knowledge to the task of solving them.

* * Preliminary reports of the officers and standing committees of the Association were presented which showed that the activities of the Association had in no wise been allowed to lag during the past calendar year. It was cheering to learn that the financial resources of the Association had stood up well under the depression and the 'bludgeonings of chance' that mark the present time. It is no idle boast to say that no finer spirit of confidence in the administration of the affairs of the Association has ever been manifested at a meeting of the Council. In fact the only doleful note sounded during the proceedings occurred in Mr. J. A. Mann's portrayal of the utter unfitness for its purposes of the building now housing the Supreme and Exchequer Courts of Canada and the valuable library attached to those Courts.

The Eighteenth Annual Meeting of the Association was fixed to be held in Ottawa on the 30th and 31st days of August and the 1st day of September next.

Before the meeting adjourned, Mr. L. E. Beaulieu, K.C., Bâtonnier of the Bar of Montreal, moved a formal resolution of thanks to the Treasurer and Benchers of the Law Society of Upper Canada for hospitalities extended to the Council. This was adopted with applause.

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CHIEF JUSTICE ANGLIN'S RETIREMENT.—By the retirement of the Right Honourable Francis Alexander Anglin from the office of

Chief Justice of Canada, owing to ill-health, the country at large suffers a serious loss. His tenure of the presidency of the court of last resort in the Dominion was marked by the highest efficiency, and it is generally acknowledged that none of his predecessors in office—learned and brilliant lawyers as they were—led the Court with more acceptance to the Bar than he has done. Under no leadership previous to his has so much unity prevailed among the members of the Supreme Court Bench, or a greater measure of despatch attained in the hearing and disposition of cases. For this he has been blessed by the present generation of lawyers, and for this he would be “of them that have left a name behind them” even if he had not possessed other and higher judicial qualifications than that which subsists in administrative ability.

The newspapers throughout Canada have coupled regret feelingly expressed for the enforced retirement of Mr. Anglin with a very complete recital of his professional achievements since his call to the Ontario Bar in the year 1888 and the honours conferred upon him, beginning with his elevation to the Bench of the High Court of Ontario at the early age of thirty-eight. His outstanding career in all its phases is so well known to the Bar that it would be superfluous for us to review it here. Enough for us to speak briefly of him as we know him. Endowed by nature with an acute and logical mind he set himself to extend its powers by a strict regimen of study, first in the arts and later in the law. Law to him has ever been what a great Englishman of the past declared it to be—a copy of the eternal laws so far as man can discern them. To administer it, in his estimation, is to be busied in the highest form of social service. Those lofty ideas of his calling conjoined with the practical virtue of patience gave him the judicial temperament in its fullest measure, and that is a rare endowment. It leads a Judge to prefer to benefit by a closely woven argument of law and fact free of unprofitable interruptions, rather than that he should waste the time of the court in an intellectual wrestling match with counsel retained in the case. Mr. Anglin on the Bench would have been the last man to subscribe to John Marshall's dictum: “The acme of judicial distinction means the ability to look a lawyer straight in the eyes for two hours and not to heed a damned word he says.”

The retired Chief Justice did not forget the interests of the Bar when he ascended the Bench. He was a firm believer in the mutual value of social contact and comradeship between the advocate and

the judge. In his series of public dinners to the Bar he found a happy way of putting this conviction into practice.

The REVIEW extends to Mr. Anglin its very sincere wish that restoration to health will follow upon his retirement from the labours that engrossed him in office.

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ILLEGAL PROFITS AND THE INCOME TAX.—We are indebted to *The Solicitors' Journal* of the 4th instant for a lucid explanation of the decision of Finlay, J., in the case of *S. Southern (Inspector of Taxes) v. A. B.*, involving the question whether profits accruing to an individual and to a company in respect of betting transactions—admitted for the purpose of the case to be illegal—were assessable for tax purposes under the British Income Tax Act, 1918. In the course of his judgment Finlay, J. pointed out that the question simply depended upon whether, on the facts stated, there were “annual profits or gains arising or accruing to any person dwelling in the United Kingdom from any trade, profession, employment or vocation” and, that being found, whether the prospective payer could bring himself within some special exemption made by the legislature. In reaching his conclusion that the profits in issue in the case were properly taxable, Finlay, J. relied on the principles laid down by Rowlatt, J., in *Mann v. Nash (Inspector of Taxes)*, [1932] 1 K.B. 752, in the following terms:

The revenue authorities, representing the State, are merely looking at an accomplished fact. It is not condoning it, or taking part in it. It merely finds profit made from what appears to be a trade [in this case the provision of automatic machines for use for unlawful gaming], and the revenue laws say that profits made from a trade are to be taxed. Reliance was also placed on the maxim *nemo allegans turpitudinem suam est audiendus*. I cannot see that the State is alleging its own turpitude in the present case. It is the appellant who is alleging his turpitude. It is also said that the State are coming forward to take a share in the profits of unlawful gaming. That is mere rhetoric. The State is doing nothing of the kind. It is merely taxing the individual with reference to certain facts. It is not a partner or a sharer in the illegality.

It is interesting to recall the Canadian case of *Smith v. The Minister of Finance* which involved a question similar to that presented to the English Court in the case above referred to. In the Canadian case it was sought to have it determined whether profits arising within Ontario from traffic in intoxicating liquor, prohibited by the law of the Province, were “income” within the meaning of sec. 3, subsec. 1 of the Dominion Income War Tax Act, 1917, and amendments, and so liable to taxation thereunder. The case was

heard at first instance by Audette, J., in the Exchequer Court, who held that such profits were subject to taxation upon a proper construction of the Act ([1924] Ex. C.R. 193). On appeal to the Supreme Court of Canada the judgment of Audette, J. was unanimously reversed. Mignault, J., delivered the judgment of the Court, and he expressed himself, *inter alia*, as follows:

The real question however is whether we should place on the statute a construction which implies that Parliament intended to levy this income tax on the proceeds of crime or on the gain derived from a business which cannot be carried on without violating the law. Such a business should be strictly suppressed, and it would be strange indeed if under the general terms of the statute the Crown, in right of the Dominion, could levy a tax on the proceeds of a business which a provincial legislature, in the exercise of its constitutional powers has prohibited within the Province. ([1925] S.C.R. 405 at p. 408).

On further appeal to the Judicial Committee of the Privy Council the judgment of the Supreme Court was reversed and the judgment of the Exchequer Court restored. Lord Haldane, in delivering the opinion of their Lordships, observed that:

Their Lordships can find no valid reason for holding that the words used by the Dominion Parliament were intended to exclude these people [boot-leggers] particularly as to do so would be to increase the burden on those throughout Canada whose businesses were lawful. Moreover, it is natural that the intention was to tax on the same principle throughout the whole of Canada, rather than make the incidence of taxation depend on the varying and divergent laws of the particular Provinces. . . . There is nothing in the Act which points to any intention to curtail the statutory definition of income, and it does not appear appropriate under the circumstances to import any assumed moral or ethical standard as controlling in a case such as this the literal interpretation of the language employed.

So far as the recent English case under discussion is presented by *The Solicitors' Journal* there is no reference in it to the pertinent decision of their Lordships of the Privy Council in the Canadian case we have discussed. It is true, however, that there is a reference to it in the *Nash* case by Rowlatt, J., *supra*. But it is not unusual to find Privy Council decisions disregarded by the English Courts. It perhaps might pain us to search and to find the reason of the neglect of such important contributions to jurisprudence as the decisions of the Privy Council, but *quae nocent, docent*.

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JOHN GALSWORTHY.—It should not be forgotten that John Galsworthy, O.M., who died at his home in England on the last day of January, was a member of the Bar, having been called in 1890. No

one who is familiar with his 'Forsyte Saga' will deny that his fashioning of the character of Soames Forsyte, the London solicitor, demonstrates a skill in delineation that could only be exercised by one who had been in intimate touch with men of the law. Soames looked upon the defence of property as the whole duty of man. "As surely as a dog will bark at a brass band, so will the essential Soames in human nature ever rise up uneasily against the dissolution which hovers round the folds of ownership." Thus spoke his creator.

And so Galsworthy must be numbered among the famous literary men of England who had professional knowledge to assist them when they attempted to create an actor on their stage whose business fell within the purlieus of the law.

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POOR RICHARD'S ALMANACK.—Benjamin Franklin began to publish his famous annual late in the year 1732, but he did not put his original work into it until 1733. From then on to 1758 he furnished maxims and proverbs in prose and verse that still echo round the world. They are not all the fruitage of his own mind in essence but they wear a verbal dress of his distinctive make. He was not prone to compliment the profession of the law. "A countryman between two lawyers, is like a fish between two cats. . . . "A good lawyer, a bad neighbour"—such are the aphoristic sweetmeats he hands out ever and anon to members of the Bench and Bar. Here is his rendering of the classical case of the Two Travellers and the Oyster:

Two trav'ling Beggars, (I've forgot their name)
 An Oister found to which they both laid Claim.
 Warm the Dispute! At length to Law they'd go—
 As richer Fools for Trifles often do.
 The Cause two Pettyfoggers undertake,
 Resolving right or wrong some Gain to make.
 They jangle till the Court this Judgment gave,
 Determining what every one should have.
 Blind Plaintiff, lame Defendant, share
 The friendly Law's impartial Care:
 "A Shell for him, a Shell for thee;
 The Middle's Bench and Lawyer's Fee."

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DR. CODY AND HIS FELLOW-GRADUATES.—At a complimentary luncheon given by the Alumni Association of University College to the Honourable Dr. Cody shortly after his election to the office of President of the University of Toronto, Mr. J. D. M. Spence, K.C.,

tendered to the new President the formal congratulations of his fellow-graduates of University College. After pointing out that he was nominated for that pleasant duty because Dr. Cody and he were of "the same academic vintage, garnered in the sunny days of '89," Mr. Spence proceeded as follows:

In congratulating you and the University upon your elevation to the presidency, we do not dwell unduly upon the fact that you are a graduate of Toronto, or in particular a graduate of our own College, for in a university of all places the spirit of know-nothingism should find no lodgement. But we cannot help feeling gratified that in a graduate of this University and of this College have been found those qualities which go to the making of an excellent president.

Of late years, many colleges have chosen their heads, not for scholarship, nor for their scholastic associations, but purely and simply for their advertising value or their business ability. In asking you to accept the presidency, the Board of Governors did not overlook the administrative side of the office. You had given abundant evidence of your administrative capacity and energy, for in church affairs, in your work as Minister of Education—which the secondary schools of Ontario remember with undying gratitude—in your work on the University Commission of 1906, and in your Chairmanship of the Board of Governors, you had shown yourself possessed of sound outstanding business sense. Nor was true scholarship lacking. Will you permit me to say that not many men have gone out from this University with a greater love for learning or have given greater proof of scholarly instinct and attainment. Yours has been not merely the scholarship of the cloister—though I do not belittle that scholarship—but the scholarship rooted and grounded in classical culture which results in a mind alert, facile, receptive, keenly selective, tuning in on all the myriad voices that fill the air of our modern world.

You have done many things and done them well. Of course some of us have always known—though we did not venture to whisper it—the true secret of your success; that whatever of good you have done, whatever of excellence you have said, is due to the rockribbed Presbyterianism that underlies the Anglican graces of so many of the prelates of your Church.

Among your qualifications there is not wanting the youngness of mind that is necessary to a man who would deal manfully and helpfully with masses of the young life of this province—the sympathy of a man who is young enough to feel that one whose youth has been spent without some urge towards rebellion has likely spent his youth in vain; to remember that one who is incapable of intelligent doubt is incapable also of intelligent belief. And your sympathy with youth does not stop with the things of the mind. We have not overlooked your presence at London, where you saw your young men soundly whipped, nor at Montreal, where they emerged doggedly victorious from a muddy battle.

The other night, sir, I found myself sleepless for a time and I beguiled the wakeful moments with an attempt to form an anagram from the words "University of Toronto." I was interested and amused, and almost startled, to find that with the very pardonable substitution of Latin I for English Y the words University of Toronto have a perfect anagram in the words "*o fortiter in novo situ.*" It is oddly apt when we have in mind the motto of our University and your own recent transplanting. I offer it to you, Mr. President,

as a good omen, and as the prayer on your behalf of all your fellow graduates: *O fortiter in novo situ velut arbor aevo crescas!*—as a tree grows with age so as the years go by may you flourish mightily in the new field.

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MANITOBA BAR ASSOCIATION.—The following are the officers and members of the Council of the Manitoba Bar Association for 1933:

Officers

Honorary President..... Chief Justice Prendergast.
 President..... Harold J. Riley, K.C., Winnipeg.
 1st vice-president..... J. C. Miller, K.C., Portage la Prairie.
 2nd vice-president..... A. E. Johnston, K.C., Winnipeg.
 Secretary..... F. J. Turner, Winnipeg.
 Treasurer..... R. B. MacInnes, K.C., Winnipeg.

Members of Council

Eastern Judicial District: H. A. Bergman, K.C., W. R. Cottingham, K.C., B. V. Richardson, A. L. Dysart, A. C. Campbell, K.C., B. C. Parker, K.C., J. T. Thorson, K.C., F. M. Burbidge, K.C., R. M. Fisher, K.C., W. P. Fillmore, K.C., Jules Preudhomme, K.C., C. K. Guild, K.C., and Ward Hollands, K.C., all of Winnipeg.

Western Judicial District: N. W. Kerr, K.C. and A. G. Buckingham, K.C., Brandon.

Southern Judicial District: E. E. Spencer, K.C. and Archie McAuley, Morden.

Northern Judicial District: C. L. St. John, K.C. and R. Harrison, Minnedosa.

Dauphin Judicial District: E. N. McGirr, K.C. and J. N. McFadden, Dauphin.

Central Judicial District: J. C. Miller, K.C. and E. G. Porter, K.C., Portage la Prairie.

Ex-officio members are: Mr. Justice Montague, past president; J. C. Collinson, K.C., legislative counsel; J. Ragnar Johnson, editor of Manitoba Bar News (all of Winnipeg); and G. A. Eakins, K.C., Minnedosa, president, Northern Bar Association; F. G. Taylor, K.C., Portage la Prairie, president, Central Bar Association; and A. G. Buckingham, K.C., Brandon, president, Western Bar Association.

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