

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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MEDICAL JURISPRUDENCE AT DALHOUSIE.—Medical Jurisprudence was the subject-matter of a special series of lectures offered to the students of the Dalhousie Law School during the present session. The lecturer, Dr. Ralph Paterson Smith, provincial pathologist for Nova Scotia, discussed various fields where the activities of the medical doctor and the lawyer meet or overlap. He did not purport to treat of the topics in detail either from the medical or legal aspect but he did present to law students the method of approach or attack which the doctor must make in his investigations. A lawyer with this knowledge is enabled to draw more clearly from his expert witnesses the evidence which is necessary to adjudication and to cross-examine opposing witnesses with a view to disproving their hypotheses or conclusions. The syllabus of Dr. Smith's course clearly shows that medical jurisprudence concerns a lawyer in civil practice as well as a lawyer who specializes in the practice of criminal law. Some of the topics dealt with by him were: wounding, asphyxiation, strangulation, drowning, toxicology, identification of corpses, ascertainment of time of death, birth, legitimacy, age of child bearing,

insanity, drunkenness, abortion, and evidentiary value of blood and other stains. The excellent attendance at these voluntary lectures vouched for their interest and value. The tasks of the lawyer and doctor are closely related to-day, and their contacts are becoming more and more intimate in the administration of justice.

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THE SENSE OF VALUES.—Lord Macmillan, in delivering the Founder's Day Oration during the celebration of the 109th anniversary of Birbeck College, London, gave his hearers some excellent advice as to how they should possess their souls in these distressful days. He said a question had been put to him recently by a distinguished scientist which he found difficult to answer on the spur of the moment. The question was "When you put your head on the pillow at night and turn over to sleep do you generally have a sense of satisfaction in the day's accomplishment?" Pondering the matter, Lord Macmillan said that he had reached the conclusion that the answer to this question depends on one's sense of values. "To appraise the day's work you must have some standard by which to judge it. And in these days one of the greatest difficulties in assessing values is the absence of settled standards." After commenting on the "strange gospels" and the "panaceas for the *malaise* of our souls proclaimed from every booth in the market place," he proceeds to say that we are learning again the old lesson that happiness "does not necessarily consist in the abundance of things which a man possesses," and that the world is craving an ethical revival more than an economic one. In his opinion we are growing weary of "the ingenious people who would rather be clever than good, and even the youngest of us is beginning to wonder if there isn't something after all in the simple homely virtues." To attain to a just sense of values is to learn "to value the right things rightly." Success in life is not to be measured by material rewards but in "the fullest and most useful development of one's faculties." Then, again, the sense of value in work robs it of the sense of hardship. That is poignantly demonstrated by the unemployment which has stopped the wheels of industry in our time. "We have come to realize that work is the greatest of human blessings, and the want of it the greatest curse." It is through and by means of a wise and proportionate sense of the value of success and the value of work that a sound philosophy of life is attained.

Such is Lord Macmillan's counsel to a generation which has allowed the storm and stress of the age in which it lives to break

its spirit. To point a way out of the obsession of despair which now rests as a blight upon the will of so large a portion of humanity, is a noble endeavour. It is an act of social service highly becoming to a man of the law for the law is essentially a social instrument. Lord Macmillan in speaking as he did at Birbeck College was only following the example of many Scotch and English Judges of the past who did not look upon their official duties as exhausting for them all the obligations of citizenship. It would be rather nice to see Canadian Judges less platform-shy.

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A LAWYER SPEAKS TO LAYMEN.—In the preceding item we have referred to an English Judge's response to the obligations of good citizenship—so intense at the present time—by addressing an audience of laymen on matters that concern their welfare both public and personal. A week or so ago we were privileged to attend a meeting where a Canadian lawyer discharged a substantial measure of his social debt by responding to an invitation of a number of his fellow-citizens to give them a friendly talk on a legal subject with which they had some special concern. I refer to an address by Mr. G. F. Henderson, K.C., President of the County of Carleton Law Association, to the Professional Institute of the Civil Service of Canada, on the subject of "The Professional Man as a Court Witness." The meeting was held in the theatre of the Victoria Memorial Museum, and the attendance was large. Mr. Henderson's treatment of his subject was admirable in its content of practical instruction and in its simplicity and forthrightness of speech. He succeeded in conveying to the lay mind a very clear understanding of the difference between factual evidence and opinion evidence. He was able to draw upon his long experience in the courts for many vivid and humorous examples of the pitfalls that beset the expert witness who adds to a high conceit in his professional knowledge a bias in favour of the party by whom he is called to the box. Mr. Henderson left in the minds of his hearers the salutary conviction that if any one of them barged into a case with a mouthful of technical jargon and the impression that it was his business and not that of the Judge to say how the case should be decided, he would beyond peradventure emerge from the court a sadder and a wiser man. He paid a high tribute, in closing, to the scientific attainments of the members of the organization he was addressing, and advised them to give more of their knowledge to the assistance of the courts in Canada and not

leave that field so largely to the American expert as had hitherto been the case.

We have cited Lord Macmillan as a good example to the Judges, and would do the same by Mr. Henderson for the lawyers. The latter are all too prone to chew on the wisdom of the aphorism that the cobbler should stick to his last, forgetful of the fact that the law clothes the whole body of the commonwealth and not only its feet.

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DEFAULTING SOLICITORS.—The following is the text of the Report of a Special Committee of the Law Society of Upper Canada appointed to enquire into defalcation by solicitors and to suggest means whereby the evil might be remedied by the action of the Law Society:—

The subject of defaulting solicitors has always been a matter of great concern to the Benchers of the Law Society of Upper Canada and on 15th September, 1932, Convocation appointed this Committee to consider whether more effective means might be taken to guard against defalcations in these times of depression when an increase in the number of defaulting solicitors might reasonably be anticipated. The Committee consists of the following members: Messrs. W. F. Nickle, K.C. (Chairman), A. W. Anglin, K.C., G. F. Henderson, K.C., F. J. Hughes, K.C., M. H. Ludwig, K.C., W. S. Middlebro', K.C., N. W. Rowell, K.C., H. J. Sims, K.C., and the Treasurer.

Meetings of the Committee have been held and the situation has been reviewed and the possibility of making improvements considered by the members of the Committee amongst themselves and with other Benchers and also with some members of the Superior and County Court Bench who were kind enough to assist the Committee in its deliberations.

Your Committee now begs to report as follows:

The method of dealing with defaulting solicitors is authorized by the Act respecting The Law Society of Upper Canada (R.S.O. 1927, cap. 192). Under that Act the Benchers may, after due inquiry by a Committee of their number, find that a solicitor has been guilty of professional misconduct and may resolve that he is unworthy to practise as a solicitor or that he be suspended from practice for a period to be named. A Standing Committee known as the Discipline Committee deals with such cases. The Committee as at present constituted is as follows: Messrs. N. W. Rowell, K.C. (Chairman), A. W. Anglin, K.C., Shirley Denison, K.C., I. F. Hellmuth, K.C., F. J. Hughes, K.C., M. H. Ludwig, K.C., G. W. Mason, K.C., W. S. Middlebro', K.C., D. L. McCarthy, K.C., A. C. McMaster, K.C., R. S. Robertson, K.C., A. G. Slaght, K.C., G. L. Smith, K.C., McGregor Young, K.C., and the Treasurer.

The Committee meets as occasion requires to inquire into cases of alleged misconduct. It examines witnesses under oath in the presence of the solicitor or his counsel, has the evidence transcribed and reports to Convocation. If the report is that the solicitor is unworthy to practise or that he should be suspended he is summoned to appear before Convocation and is heard either personally or by his counsel as to whether the report should be adopted. If the Committee finds that the solicitor is unworthy to practise and the

report is adopted by Convocation, the solicitor's name is struck off the rolls and he cannot thereafter practise in this province as a solicitor. If the recommendation is that he be suspended and the report is adopted he cannot practise during the period of suspension.

The Committee does not permit charges of defalcation to be withdrawn, and in recent years it has given publicity to its decisions removing a solicitor's name from the rolls or suspending him from practice. It is now common knowledge in the profession that serious consequences follow a defalcation by a solicitor.

Your Committee, after giving full consideration to this method of dealing with the matter, is of the opinion that it cannot be improved, and they recommend that it be continued.

Your Committee has given careful consideration to suggestions made from time to time as to other steps that might be taken to prevent defalcations or to compensate those who have sustained losses.

Compulsory audit of a solicitor's accounts is not practicable or expedient. A solicitor's transactions for his client are usually of an extremely confidential nature and the client's affairs should not be required by law to be investigated by auditors. In any event, auditing of accounts could not be done in a way that would protect the client against dishonesty of a solicitor.

Nor would it serve the purpose to require the Society to establish rules governing the keeping of accounts. The rules could not be adequately enforced, and it is, in the opinion of your Committee, better that the method of keeping accounts should be a circumstance to be considered when a charge of misconduct is investigated.

Your Committee gave special consideration to the suggestions frequently made with regard to insurance or a scheme of guarantee or of bonding, but it has been forced to the conclusion that neither would be wise or practicable in that it would give rise to carelessness on the part of the clients in their dealings with solicitors; would give clients a false sense of security; would benefit the untrustworthy solicitor at the expense of those entitled to confidence; would bring about the novel result that honest solicitors would pay for the defaults of the dishonest; would impose a burden on solicitors, particularly those starting in practice, that they should not be called upon to bear; and would be wholly inconsistent with the honourable and independent position occupied by the solicitors of the Province.

Your Committee after a full investigation begs to report that in its opinion none of these suggestions should be adopted, but that the Discipline Committee should continue its efforts to protect the public by excluding from membership in the Society those who are shown to be unworthy of confidence, and the Committee's attention should be promptly directed to all cases requiring consideration.

All of which is respectfully submitted.

(Signed) W. F. NICKLE,
Chairman.

Toronto, 16th February, 1933.
