

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 816 Ottawa Electric 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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JUDICIAL APPOINTMENTS.—The Right Honourable Lyman Poore Duff, P.C., was appointed Chief Justice of Canada on the 17th of March. A further reference to this appointment appears on p. 274.

On the same date Mr. Frank J. Hughes, K.C., of Toronto, was appointed a puisne Judge of the Supreme Court of Canada.

Mr. Eric Norman Armour, K.C., of Toronto, has been appointed a puisne Judge of the High Court of Justice for Ontario in succession to the Honourable G. H. Sedgewick, resigned.

Mr. Fawcett Gowler Taylor, K.C., of Portage la Prairie, has been appointed as a member of the Court of King's Bench Manitoba, in the place of the Honourable A. C. Galt, retired.

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JUDICIAL SALARIES.—Due to the courtesy of the Committee on Judicial Salaries of the American Bar Association we have been furnished with a copy of the judgment of Mr. Justice Levy of the Appellate Division of the Supreme Court of New York, dismissing an application by a member of the Court of Special Sessions in the

City of New York for a peremptory order of mandamus to compel the city authorities to make provision in the revised budget for the year 1933 for 90 per cent. of the salary of the petitioner as fixed at the time of his appointment to office. The petitioner alleged that he was willing to accept this percentage in full of his salary for the year, without prejudice to his right to claim subsequently that the city authorities had no power to reduce his salary as they had attempted to do under certain enactments of the State legislature.

It appeared that the petitioner was appointed to office in 1930. Three years prior thereto, by legislative enactment, the salary of the office was established at \$17,500 per annum. This salary was originally included in the budget for 1933, but in December last, the legislature at an extraordinary session enacted chapters 636 and 637 of the laws of 1932, permitting the reopening of the budget of 1933 and granting the city authorities the right to determine the salary of any official whose compensation was paid, in whole or in part, out of the city treasury. This power was granted in derogation of any existing general, special or local law fixing or protecting such salaries. From the operation of the legislation complained of by the petitioner the following were expressly exempted: Justices of the Supreme Court, First and Second Judicial Districts, the Surrogates of the Counties of New York, Kings, Queens and Bronx, and the Judges of the Court of General Sessions. The Court held that while the Judges of the Court of General Sessions were exempted the exemption did not extend to a justice of the Court of Special Sessions. To hold the contrary would be inconsistent with the provisions of the State constitution which permit the legislature to regulate or discontinue all inferior local courts, and distinguish between "Justices" and "judicial officers holding Courts of Special Sessions."

The case is styled *In the Matter of Gresser*, and so far we have not seen an official report of it.

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LAW AND ETHICS.—Lord Macmillan is not allowing the activity of his mind to sag when it can be employed in any sphere for the behoof of his fellow-men in these momentous days. Last month we referred to his Founder's Day Oration at Birbeck College, London, and the good advice there given as to the way a sound philosophy of life may be attained to. In this number we would refer for a moment to his Inaugural Address as President of the Associated Societies of the University of Edinburgh. It may be found in the March number of *The Scottish Law Review*. His subject was "Law and

Ethics," and he made a strong case for the intimacy of contact between the two. He is of opinion that the demands of the age will no longer tolerate in members of the legal profession the "absorption in formalism" that marked them so strongly in the past. The lawyer can no longer "limit his intellectual horizon to the law reports and the text-books." The push of the consequences of the Industrial Revolution on our social life demands that the lawyer should relate his special training to the whole field of social life and its problems. He may not lag behind the steps of the legislator on the path of necessary and salutary change if the privileges of his profession are to survive. Lord Macmillan observes:

This growing use of the statute book as the vehicle of a new political and social gospel raises some of the most interesting problems in the mutual relations of law and ethics . . . It has always been recognized that the fields of law and ethics closely adjoin each other . . . The main difference between them is that the criteria of the law are objective while those of the moralist are subjective . . . Historically they both derive from an origin in the remote past when their spheres were not differentiated, and to this day they share many conceptions in common.

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UNEMPLOYMENT IN GREAT BRITAIN.—It is gratifying to learn that unemployment in Great Britain showed a decrease in number to the extent of 55,000 in the month of February as compared with the month of January in this year. This is attributed to an improvement in the building trades. That the temper of the English people is standing up well under the attrition of the hardest of hard times is manifest in the recent declaration of the Labour party that neither Communism nor Fascism finds a place in its programme.

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EXPEDITION AND ECONOMY IN LITIGATION.—The committee appointed last year by the Lord Chancellor of England to enquire into methods for securing greater expedition and economy in the business of the Supreme Court of Judicature has not yet reported, but it is expected that one of the recommendations of the committee—over which Lord Hanworth, M.R., presides—will be that the Divisional Court, which hears appeals from the County Courts, should be abolished and that those appeals be taken direct to the Court of Appeal and the judgments of that tribunal be made final. This would appear to be a long step in the right direction.

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HAGUE ACADEMY OF INTERNATIONAL LAW.—Instruction in the Academy of International Law at the Hague will begin on Monday, July 3, and will end on Friday, August 27. The session is divided into two terms of equal length, each a unit in itself, with the same number of courses and lectures, all of equal importance, but on different subjects. Students may attend either or both terms. Lectures are given, as a rule, five days a week (excluding Wednesday afternoons, Saturdays and Sundays), two in the morning, and two in the afternoon. The total number of lectures or lessons on the programme for the summer of 1933 is 148, to be delivered by 26 specialists, who are professors or former professors, magistrates or lawyers, historians, or men of letters, belonging to fifteen different nationalities. The instruction is adapted to all who possess some knowledge of international law, and who are desirous of increasing that knowledge. Instruction is given in French, and deals primarily with public international law in its relation to peace. Each term will comprise general courses on the historical development and fundamental principles of public and private international law, and special courses on carefully defined subjects, selected in accordance with the special competence of the lecturers, and, as far as possible, from among the juridical problems of current international interest. In addition, seminars under the direction of the lecturers will provide for the active and direct co-operation of the students in the work of the Academy. In order to facilitate an understanding of the courses, abstracts of the lectures with bibliographical information are distributed in advance.

In 1933, as in preceding years, no fees will be charged either for attendance at the lectures or for access to the Library of the Peace Palace. Any one desiring to attend should apply to the Secretary of the Managing Board of the Academy of International Law, The Hague, giving his full name, nationality, occupation and address. Ten scholarships of 400 florins each have been provided by the Government of the Netherlands and by the Academy for students, authors of essays, articles, or books on some subject relating to international law. The regulations governing the award of these scholarships may be obtained, free of charge, from the Secretariat of the Managing Board of the Academy, Palace of Peace, at The Hague.

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DEATH OF A. C. McMASTER, K.C.—The Toronto Bar lost one of its prominent members by the death of Arthur C. McMaster, K.C., which occurred on the 26th of March. Mr. McMaster was born in Montreal, and went to Toronto while quite young. He re-

ceived his general education at Upper Canada College and the University of Toronto. After passing his examinations at Osgoode Hall, he was called to the Ontario Bar. At the time of his death he was senior partner in the firm of McMaster, Montgomery and Fleury.

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THE LATE W. M. GERMAN, K.C.—William Manley German, K.C., of Welland, Ontario, died at his home on the 31st March, after a lingering illness. Mr. German was born in Hillier, Prince Edward County, on May 26th, 1851. He was called to the Bar in 1881. He was created a K.C. in 1896. He was counsel for Dulman, charged, along with Nolan and Walsh, with an attempt to blow up the Welland Canal in the year 1900. The plot was hatched in New York, and was said to be fostered by the Fenian organisation known as the Clan-na-Gael. All three were sentenced to life imprisonment. The case created widespread interest at the time. Mr. German was prominent for many years in political life, representing Welland for some time in the Ontario legislature and afterwards in the House of Commons of Canada. While affiliated with the Liberal party, he did not hesitate to dissent from its policies if they were not in accord with his judgment. Notwithstanding his great regard for Sir Wilfrid Laurier, he strongly opposed that statesman's project for trade reciprocity between Canada and the United States in 1911. In the elections of that year the Laurier administration was defeated, but Mr. German was returned by acclamation.

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RETIREMENT OF MR. JUSTICE GALT.—The Honourable A. C. Galt retired last month from the Court of King's Bench for Manitoba after having sat as a Judge there for over twenty years. He is a son of the late Sir Thomas Galt, a distinguished member of the Ontario Bench in the years gone by. The retired Judge celebrated his eightieth birthday on the 15th of March. When practising at the Bar he was a prolific writer on legal subjects, and his name is subscribed to many interesting articles appearing in the pages of the *Canada Law Journal* and the *Canadian Law Times*, which became incorporated with the CANADIAN BAR REVIEW when it began publication in the year 1923.

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GUEST OF ASSOCIATION.—The Honourable Sir Adair Roche, one of the Judges of the King's Bench Division of the English High Court of Justice, will be the guest of the Canadian Bar Association at its Annual Meeting in Ottawa, beginning on the 30 of August next.

THE CHIEF JUSTICE OF CANADA.

The Right Honourable Lyman Poore Duff, P.C., was sworn into office as Chief Justice of Canada on the 20th of last month.

That the presidency of the Supreme Court of Canada demands the very highest qualities and qualifications in the incumbent of the office goes without the saying. For the REVIEW to affirm that there is no one in this country more richly endowed with the gifts of heart and mind essential to the successful administration of his office than the new Chief Justice, is but to add the voice of the organ of the Canadian Bar Association to the chorus of approval of the appointment that was heard throughout all Canada on the day when it was announced.

On the assembling of the Supreme Court on the 20th of March, Mr. Justice Rinfret, as senior puisne Judge of the Court, presented the Right Honourable the Chief Justice with the following address:

May it please your Lordship,—

I consider it a very great honour that it should be my privilege, to-day, as senior puisne Judge and on behalf of the members of this Court, to greet our esteemed colleague, the Right Honourable Mr. Justice Duff, as Chief Justice of Canada. No appointment to this high position could be received with more satisfaction by the Bench and Bar of this country.

Since the office was made vacant by the death of the late Chief Justice, which was so deeply deplored and which brought to a close a notable and distinguished career, all eyes were turned towards Mr. Justice Duff as his normal and obvious successor at the head of the Judiciary. We are extremely glad that our ardent expectation has now become an accomplished fact.

It would be quite impossible, on this occasion, to attempt adequately to recall—far less to appreciate—the invaluable services rendered to his country by the new Chief Justice, first as junior counsel at the Alaskan Boundary Conference, in London, then as a Judge of the Supreme Court of British Columbia, afterwards as a member of the Supreme Court of Canada. He has now been on the Bench for more than twenty-nine years. He has been with this Court for twenty-six years and a half. He acted as final Judge of Appeal in conscription cases during the ominous years of 1917-1918. Lately he was chairman of the commission investigating the administration of railways in Canada. For more than fourteen years he has been a member of the Judicial Committee of the Privy Council, where he has been sitting frequently and for whom he wrote and delivered many judgments. But it is quite unnecessary to pursue the enumeration of the distinguished services of Chief Justice Duff which are so well known to all and which have earned him the highest judicial position in the gift of his country.

It is not too much to say that no one was more worthy of the position. He is learned; he is cultured; he is broad of mind and lofty of vision. He is familiar with both official languages, the use of which is authorized before this Court; and if I may be allowed to make a special reference to my own native province, I may say that judges and lawyers of the Province of

Quebec are pleased to regard Mr. Justice Duff as a master of civil law, and receive with the greatest respect his pronouncements upon cases from that province. It would be idle to refer to his vast and intimate knowledge of the system of law prevailing in the other provinces. But, above all, should be emphasized his profound devotion to justice—a devotion which, to borrow his own expression, has “reached the dimensions and the intensity of a passion.”

My Lord,

We all rejoice at your appointment. The members of this Court wish to assure you of their loyalty and their hearty co-operation in your great task. They express the hope that there may be many years yet before you to exercise your powerful influence over the jurisprudence of our country.

After the presentation of the address by Mr. Justice Rinfret, Mr. D. L. McCarthy, K.C., tendered to the new Chief Justice the congratulations of the Bar of Canada in the following words:

May I be permitted, on behalf of the Bar of Canada, to associate myself with the remarks of the Honourable Mr. Justice Rinfret in regard to Your Lordship who has just been appointed to the position of Chief Justice of Canada.

I am reminded of the fact, and proud of it, that Your Lordship was born in the province of Ontario and, I think, in the early part of your career lived in the town of Barrie where I also was born.

After a distinguished University career, Your Lordship was called to the Bar in 1893; at the age of 36 was appointed one of His Majesty's counsel; in 1904 Your Lordship was appointed a member of the Supreme Court Bench in British Columbia at the age of 39, which, I think, is a record in this country. In October, 1906, Your Lordship was appointed a Justice of the Supreme Court of Canada at the age of 41, and, in 1917, you were made Central Judge of Appeal during the troublesome days of the War under the Military Service Act. In 1919 Your Lordship was made a member of His Majesty's Privy Council and in 1924 an Honorary Member of Gray's Inn.

I can add little to what Mr. Justice Rinfret has said regarding your services on the Bench. They are known only too well to the Bench and Bar throughout the country. The Bar has the same kindly feeling towards Your Lordship as has the Bench, and there is no appointment in the gift of the Dominion that has been more welcome than that of Your Lordship to the Chief Justiceship of Canada.

May I again associate myself with His Lordship in his wishes that you may be long spared to bring to the Court and to the Bar your powerful influence in all matters that come before this Court. On behalf of the Bar I wish to offer my sincere congratulations.

The following reply to the addresses of the Bench and Bar was made by His Lordship, the Chief Justice:

Mr. Justice Rinfret, my Brother Judges and Members of the Bar:

I can assure you that words altogether fail me to express the deep sense of gratification which I feel at the very kind things you have just said. I know my colleagues and the members of the Bar too well to doubt the sincerity of it. It has, of course, been all too kind and all too flattering.

I can only say that the greatest reward a Judge can look for is the confidence and esteem of his colleagues and of the Bar.

Again, I cannot begin to express the pride I feel in the kindness you have shewn me this morning.

* * The REVIEW feels that the following appreciations of the Right Honourable Mr. Duff will also prove of interest to its readers. Speaking of him in the *Empire Review* for September, 1927, the late Lord Haldane said:

British Judges are not the only Judges who sit on it [the Judicial Committee] now. The Chief Justices of the Dominions have places on it, and others of the Dominion Judges sit there from time to time. In each summer there are two months devoted in the main to appeals which come from Canada and which are largely argued by Canadian advocates. A distinguished Canadian jurist, Mr. Justice Duff, of the Supreme Court of Canada, comes to Downing Street by the desire of the Dominion Government, and brings great experience and an acute and highly furnished mind to bear on all questions during his co-operation with his colleagues here.

In the columns of *The Ottawa Journal*, on the morning following the proceedings in the Supreme Court above referred to, Mr. Grattan O'Leary spoke as follows of the new Chief Justice:

Our nearest approach to the English tradition is Lyman Poore Duff, the Supreme Court's new Chief Justice. Student and scholar, master of many things other than law, he is the most versatile and arresting figure the Canadian bench has known since Confederation.

To-day, by common consent, he is one of the Empire's great Judges. His record on the Supreme Court has been a procession of triumphs. There has not been a great legal decision within a quarter of a century with which his name has not been associated. During the War Sir Robert Borden enlisted his services as Central Appeal Judge under the Military Service Act: he was, with Mr. Justice Meredith, a member of the Royal Commission which inquired into the famous shell charges; he has heard, and written judgments upon, nearly all the great constitutional cases of the past decade; and he has been summoned by the Government to deal with such momentous cases as the *P'm Alone* arbitration and the inquiry into the railway problem.
