# 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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MR. JUSTICE MCCARDIE.—The tragic death of Sir Henry Alfred McCardie last month caused a painful shock to all who had followed his career as a Judge of the King's Bench Division of the English High Court of Justice. His appointment to judicial office at the comparatively early age of forty-seven enabled him to bring to his work a thoroughly equipped mind in its prime. Very few of his contemporaries rivalled him in his knowledge of the law. After his call he entered upon practice in Birmingham, and so marked was his success there that London solicitors soon determined that no pent-up Utica should contract his powers, and that the metropolis needed the abilities that were his in so large a measure. So he went to London. At the Junior Bar in this larger field he quickly assumed an outstanding place, and his briefs were as various as the cause lists themselves. His power as an advocate lay not in his book-learning —so often a dull and unprofitable thing as a means of success at first instance—but in his subtle gift for discerning the texture and range of the mind of the Judge before whom he was pleading and presenting his case in such a manner that not a thread of that texture was strained nor the range made to feel its limitations. Then,

again he had a grace of demeanour that captivated all those who came in contact with him, and a voice that rejoiced the ear of every listener—both of them advantages of the highest value to the advocate.

The reputation that was Sir Henry Alfred McCardie's as an advocate was hardly equalled by his reputation as a Judge. But that has been the fate of many eminent lawyers. Erskine, Scarlett and Bethell shone as sentinel stars at the Bar, but each of them dimmed his radiance when he put on the vesture of the Bench. It is common knowledge that men who at the Bar were noted for their good sense and good manners often display a lack of both on the Bench. It is the duty of counsel to suffer judicial insipience if not gladly then with patience, but he has a right to expect that the atmosphere surrounding the Bench will at least embrace the amenities of civilised life. Sir Creswell Creswell was once told by Serjeant Wilkins that what a Judge said in anger was beneath the attention of the Bar; and John Buchan, speaking as a lawyer, has said in one of his essays: "I do not deny that the pure and unadulterated fool has occasionally strayed on to the Bench."

Mr. Justice McCardie was far from inclusion in Mr. Buchan's judicial category, but unhappily he seemed to imagine that it was becoming to descant in a very general, if not irrelevant, way upon the foibles of women in cases before him involving the domestic and social relations. His propensity for associating the functions of a *magister morum* with those strictly judicial became latterly almost an obsession, and newspapermen eagerly attended his Court to secure copy embodying the views of 'the Bachelor Judge' on the monstrous regiment of women, as John Knox would put it. Concerning this unjudicial quality one of our English contemporaries in commenting on the tragedy of his death speaks as follows:

> In the post-war years his agile mind tended to surround almost every pronouncement with an atmosphere drawn from the outside world; and even his warmest admirers regretted what they feared might lead to the swamping of the judge by the man of affairs. As time went on such apprehensions seemed hardly unjustified, inasmuch as a popular press, ever voracious for startling headlines, thought that they had found in Mr. Justice McCardie, if not a new judicial humorist, one at any rate who was as valuable, if not more so, to the editor seeking to fill a column with the soap-bubble of judicial aphorism.

But while the deceased Judge undoubtedly laid himself open to the charge of unwisdom in not keeping his feet strictly to the path of law in some of his deliverances from the Bench, he has left behind him many judgments that are of permanent value to the profession he loved and the State that he served with industry and skill.

RETIREMENT OF PROVINCIAL JUDGES.—The Bill introduced by the Dominion Government for the retirement of Supreme Court and Superior Court Judges in the Provinces at the age of seventy-five was passed by the House of Commons on the 10th of the present month by a majority of 54 votes. The terms of the Bill vary somewhat from the provisions of the Acts regulating the retirement of the Judges of the Supreme Court of Canada and Exchequer Court of Canada. When the Judges of those Courts attain the age of seventy-five they *ipso facto* cease to hold office. Under the Bill affecting the Provincial Judges they are not retired from office when they attain the allotted span of three score years and fifteen, but they must suffer a diminution in emolument if they continue on the Bench. That is to say, their salaries will be reduced to the amount of the pension each of them would draw if he retired at the age when Parliament considers him blighted with senility. So that retirement will be conditioned on how far patriotic ardour plus ability for serving the State will overcome a man's very reasonable disinclination to work for an inadequate monetary return.

Consideration of the purpose of this Bill naturally recalls the fact that notwithstanding the arduous character of the judicial office some members of the Bench maintain their ability to discharge their duties long after the age now sought to be prescribed for retirement. Sir William Mulock, Chief Justice of Ontario, is a notable example of longevity unattended by impairment of mental power. The history of the English Bench affords a number of examples of a like kind. When Chief Baron Pollock was eighty-three Sir James Fitzjames Stephens described him as "a fine lively old man, thin as threadpaper, straight as a ramrod, and full of indomitable vivacity." Lord Wensleydale (Baron Parke) was regarded as the legal pillar of the House of Lords at eighty-six. Lord Campbell entered upon the Chancellorship at seventy-nine. Lord Dunedin was appointed Lord of Appeal in Ordinary at sixty-three and resigned office last year at the age of eighty-two, a short while after he had delivered the judgment of the Judicial Committee of the Privy Council in *The Attorney-General of Quebec* v. *The Attorney-General of Canada,* [1932] A.C. 304, touching the constitutional power of the Dominion to regulate and control radio communication. All of which goes to show that age may not wither a Judge at seventy-five. But it is a case of the fit suffering from the selfishness of the unfit. If men who are really senile at seventy-five will not retire then some means must be taken by the State to assist them off the Bench even at the expense of losing the services of a few capable men by the policy adopted.

To fit the law to particular cases is confessedly a matter of great difficulty.

* * Opposition to the Bill is likely to be encountered in the Senate, and that it will become law during the present session of Parliament is a matter of doubt.

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OSGOODE HALL ENTRANCE REQUIREMENTS.—We are indebted to *Obiter Dicta*, the organ or the law students of Osgoode Hall, for the following summary of a Memorandum concerning Educational Requirements preliminary to entering the Law School of Osgoode Hall submitted to the Benchers of the Law Society of Upper Canada by a committee of the students appointed for the purpose at the request of Mr. M. H. Ludwig, K.C., Chairman of the Legal Education Committee of the Benchers:

"The students' committee surveys and reports that the standards of entrance to the Ontario Bar are the lowest in Canada; that they are lower than in England and that they are two years lower than that approved by the American Bar Association of the United States.

The report further points out that the Ontario standards are below the minimum of two years at a university adopted by the Canadian Bar Association in 1922.

Dealing with each province separately the students' recommendation shows that Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan and Alberta require at least two years in a university. Quebec and British Columbia require three years in a university.

The report reveals that the percentage of university graduates at Osgoode Hall Law School at present is 89.6 with 10.4 per cent. of the students two-year men. Since the lowering of standards on May 12th, 1932, the percentage of university graduates who have articled has fallen to 49.28.

'Such a policy can result only in the gradual conversion of a learned profession into one filled with men of very limited education,' the report states.

Dealing with the question of the 'poor boy,' the committee states that the 'poor boy' is deprived of the very opportunity that is purported to be held out to him. In addition, the fact that a large proportion of the university graduates in Osgoode Hall at the present time have earned sufficient money to assist in putting themselves through the university as well as the Law School, indicates that if a

man is desirous of becoming a lawyer he will overcome the financial obstacles.' "

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POUR ENCOURAGER LES AUTRES.—The preceding item bodies forth the sturdy opinion of the students of Osgoode Hall concerning the policy of the Benchers in lowering the standard of educational requirements preliminary to entrance into the Law School. On the 12th of the present month the Canadian Press released a story which shows that however careless we of the present age may be about retaining the Bar's old-time place among the learned professions, at least a representative member of the medical profession thinks that it is not in the exercise of technical skill, with all its utilitarian value, but in searching out "the best that has been said and thought in the world" that the human mind finds its ultimate sense of profit and power. Sound learning teaches us that the art by which a man lives is something else and something less than the art of life. But here is the story:

"A native Nova Scotian, who entered Acadia University in 1879, did not complete his course, but later became one of the foremost surgeons in the United States, will realize his life-long ambition this year when he receives a bachelor of arts degree from his alma mater. He also beats his son by one year in achieving that goal. At the age of 73, Dr. John Bion Bogart, one of the founders of the American College of Surgeons and consulting surgeon to a half dozen of New York's largest hospitals, attended classes this year as assiduously as any studious senior."

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CONGRESS AND THE WAR DEBTS.—It would appear at the moment of writing that the United States Congress will not support President Roosevelt's proposal to suspend the War Debts payments falling due on June 15th. During the recent Washington conversations between the British Prime Minister, M. Herriot and Mr. Roosevelt, the latter assured the visiting statesmen that in so far as his power extended the proposal would become effective, provided that France would pay the $19,000,000 of interest defaulted last December. In so expressing himself it was obviously in the President's mind that in view of the tremendous need of success attending the approaching World Economic Conference both Houses of Congress would not fail to support his proposal for suspension of the June payments. But the latest news from Washington displaces that expectation. Both the Senate and the House of Representatives maintain an attitude of unyielding opposition to it, and the administration leaders are said

to be gravely concerned over the result should the President bring the question to an issue.

The situation so created is a lamentable one for the world at large. What possible hope is there for any worth-while achievement by the Economic Conference if its atmosphere is poisoned with bad temper between debtor and creditor? Unless the United States Congress may yet be led to realise what the result of the repudiation of the President's proposal would mean both to the creditor and debtor nations, then the Washington conversations will poorly serve the return of prosperity to the world, and Franklin Roosevelt's effort to induce his country to take its due and proper place in the council of the nations will suffer frustration in common with that of Woodrow Wilson.

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A PALPABLE HIT.—Vice-Chancellor Bacon's wit on the Bench was often better than his law. On one occasion a member of the junior Bar, who held very few briefs, handed a document in his case up to the Vice-Chancellor who began to read it with some deliberation. Seeing the court thus preoccupied the counsel opened up a whispered conversation with a witness. So absorbed did he become that he did not notice the court's invitation to proceed with his presentation of the case. Then the Vice-Chancellor, elevating his voice, renewed his challenge to counsel's attention in this wise: "Go on, Mr. ——— go on! You can talk to that gentleman any day, but you don't often get an opportunity of talking to me."

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MONEY PAID IN MISTAKE OF LAW.—A Bill that was introduced by the Government early in the present session of the Canadian Parliament, seeking to abolish actions against the Dominion Crown for the return of moneys paid under mistake of law, has been withdrawn owing to a resolution unanimously adopted by the Council of the Bar of Montreal objecting to the Bill as constitutionally unsound, because that under the provisions of the British North America Act it is permissible for people living in the Province of Quebec to recover from the Crown moneys so paid.

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DEATH OF JUDGE WELLS.—Judge William Wilberforce Wells, retired Judge of the County Court of Westmorland, N.B., died at Ottawa on the 18th of April in his eightieth year. On his retirement some twenty years ago he made his home in Ottawa where he was universally esteemed.

THE LATE JUDGE PONTON.—His Honour Judge Richard Douglas Ponton, of the County Court of Victoria and Haliburton (Ontario), died on the 14th instant. It was only in December last that he received his appointment, and soon after he became seriously ill. In March he went to Florida in an attempt to regain his health, but he was forced to return to his home in Belleville some three weeks ago without improvement. To his father, Colonel W. N. Ponton, K.C., the esteemed Registrar of the Canadian Bar Association, the REVIEW extends its sincere sympathy in his bereavement.

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GERMANY AND THE POLISH CORRIDOR.—In a paper read before the Royal Institute of International Affairs (London) in January last, M. Jean Ciechanowski spoke as follows concerning the Polish Corridor problem:

"To the Germans the problem of the 'Polish Corridor' is essentially political. The existence of the 'Corridor' is the hated symbol of their shattered dreams of imperialism—the visible symbol of the failure of their *'Drang nach Osten,'* which has ever been the foundation of Prussian imperialism. Its return to the map marks the end of their greatest colonial venture, based on the now generally bankrupt theory of a super-race conquering and holding inferior races. That explains why some 300,000 Germans left the 'Corridor' as soon as it had been restored to Poland. They had been alien colonists, not natives, and their venture has come to an end. The age of colonial expansion is over. Colonial empire-building is a thing of the past. The theory of racial superiority has given way to that of equality among races. In modern democratic times no territorial settlement running counter to the will of the local population can hope to last or to ensure peace. That is why the restoration of Alsace and Lorraine to France and the restoration of an independent Poland were inevitable after the War."