

## EDITOR'S NOTE-BOOK.

BY WAY OF EXORDIUM. In this department of the REVIEW the Editor seeks to construct an asylum—the word is used advisedly—whither he may repair upon occasion to escape the restraints symbolized by the use of the oracular editorial “WE.” True, he who controls the destinies of a magazine cannot avoid responsibility for his utterances by so easy an expedient as speaking in the first person singular; but the mere privilege of doing so serves to create for him a feeling of emancipation from official conventions so strait as to amount to legalism, and there is much force in the saying *la légalité nous tue!* Hence while this department will take on a more or less personal and intimate atmosphere, the Editor indulges the hope that when he uses the first person singular he will be understood as speaking *for* himself and not *about* himself, and that when the plural number appears it will be regarded as a mere euphemism to cover a case where to use the former might savour of pretentiousness. This department will be an occasional and not a regular feature of the REVIEW.

A BRIGHTER PROSPECT. The initial year of the second quarter of the Twentieth Century came in with healing on its wings for the troubles that have distracted this planet since A.D. 1914. Out of the war and much tribulation that marked the preceding quarter, came the Pact of Locarno, the most excellent peace, both in its terms and the sweep of its jurisdiction, that the world has ever seen. *Le présent est gros de l'avenir* is a saying once used to signify that there was trouble on the horizon for Europe, now we are privileged to employ it to express our confidence that all signs point to a new birth of the influences that make for permanent peace among men of good-will. Having preached concerning peace for three years, the REVIEW is now glad to prophesy.

THE CANADIAN CONSTITUTION. Two books of first-rate importance in the history of Canadian political institutions have been published by the Oxford University Press during the past three years. One was that of Professor Kennedy, of the University of Toronto, which appeared in 1923 under the title “The

Constitution of Canada," the other is a recently published volume by Professor Coupland of the University of Oxford on "The Quebec Act." The REVIEW had some appreciative things to say of Dr. Kennedy's performance when it appeared, and our good opinion of the work was supported by many competent reviewers abroad. For instance, the late Darrell Figgis spoke of it in the *Irish Times* as an embodiment of history seen from a novel angle, declaring that it disclosed "a new way to write history: and it is a profound and significant way. Stubbs traced the origin of institutions; Green traced the life of the people; but this book traces the life of a people from littleness and frustration to greatness and achievement through, and in, the origin of institutions. . . . Few books would better repay reading by Irish folks today, when freedom is held to lie in documents rather than in the development and experience of a people." That is great praise indeed.

\* \* \*. When I opened Professor Coupland's book I hoped that I would find in it much to supplement Dr. Kennedy's necessarily brief discussion of the facts leading up to and surrounding the Quebec Act, 1774. I was not disappointed. Dr. Kennedy's views of this very magnanimous gesture by the victorious side in the history of the struggles for supremacy between the French and English in America are substantially shared by Mr. Coupland, but the latter's picture, being spread upon a larger canvas, naturally exhibits more detail. While Burke's epigram concerning the political freedom of the Canadians under the Act could not be bettered, it does not do justice to the beneficial economic changes in their condition which emerged from the operation of the Act by the British authorities. Burke said: "The only difference is, they will have George the Third for Louis the Sixteenth." Mr. Coupland is not so rhetorical in his commentary upon the Act as is Dr. Kennedy—who regards it as a "political miracle," but finds much of its inducement to lie in the hope that it would scotch the serpent of revolution that was raising its head in the English colonies south of the territory of Quebec. Mr. Coupland thinks more strongly of the Act as one appertaining to Canada. Speaking of the political conflict that raged in England over the Bill, he says: "The truth is that the party quarrel over the Quebec Bill was not a real conflict of principle. The leaders of the Opposition were inspired throughout by external considerations: they were attacking not so much the Government's Canadian policy as its American policy. If the problem of Canada could have been considered quite apart from the greater and graver problem

of the older colonies, and if it had fallen to Whig ministers to deal with it, they would inevitably, after studying the facts, have drafted a very similar measure. . . . No more for its effects, therefore, than for its motives as they bore upon the other colonies can the Quebec Act be condemned. As it was framed, so it must be judged, as a measure primarily concerned with Canada alone."

\* \* \* But there are moments in his work when Professor Coupland does not so largely command our assent. Here is one. The author, in dealing incidentally with the expulsion of the Acadians from Nova Scotia in 1755 does not make it clear that the so-called "expulsion" was really a case of transporting British subjects from British territory without trial and sentence in respect of the offence charged against them by Governor Lawrence. I am inclined to think, after some careful investigation of the records of the time, that there were very few of the 6,000 persons who were arrested by Lawrence's soldiers and hustled on board the ships waiting to carry them away who were not British subjects. And they were not only "transported to the British Colonies along the Atlantic Coast," as Mr. Coupland remarks, but some were carried elsewhere. Under the Treaty of Utrecht so many of the Acadians as chose to remain in the province after a year became "subject to the Kingdom of Great Britain." More than that, the transportation, or deportation, occurred 42 years after the province was finally ceded to Great Britain. Surely persons who were born subsequent to the cession, and "within the King's Allegiance," were British subjects. And Blackstone says that "no power on earth except the authority of Parliament, can send any subject of England out of the land against his will; no, not even a criminal." But they were accused of what we must regard as treason, and without trial were punished. Surely in these days when the truth may be told without celestial hazard this outrage against humanity ought not to be glossed over by emphasizing the difficulties that might have induced, but certainly do not palliate it.

IS A CAT

FERAE NATUREÆ?

"*Tyb.* What would'st thou have with me?

*Mer.* Good king of cats, nothing but one of your  
nine lives."

*Rom. and Jul.* III, 1.

In *Buckle v. Holmes*<sup>1</sup> the plaintiff was the owner of some valuable pigeons and some fowls destroyed by a cat belonging to the defendant,

<sup>1</sup> (1925) 160 L. T. Jour. 467.

which had gone upon the plaintiff's premises. The plaintiff complained to the defendant of the cat's misconduct, and it—we use the neuter as we are unaware of the real gender of the marauder—was put to death by the latter. The plaintiff, however, brought an action for the loss of his pigeons and fowls. The County Court Judge who tried the action arrived at the conclusion that the roaming of cats was a recognized habit, and that the defendant had no knowledge that his cat had a character differing from the ordinary character of cats, and that as the plaintiff had failed to prove the *scienter*, judgment must go for defendant. On appeal to the King's Bench Division (Shearman and Sankey, JJ.) by the plaintiff the court confirmed the judgment below, holding that the general rule of law is that an owner is responsible for damage done by an animal even *domitæ naturæ*, if that animal is trespassing; but to this there are certain well-established exceptions and one of these is in favour of unprovoked trespasses by dogs, and as regards liability for trespass, cats are indistinguishable from dogs. A cat, being a domestic animal, is *domitæ naturæ*, and *scienter* must be proved before the owner can be held liable for its unprovoked trespasses. It seems however, that the plaintiff is not content with this exposition of the law, and seeks to go on to the Court of Appeal, declaring himself willing to defray the costs of the further appeal in any event. The which may be sheer litigiousness, or again it may be induced by a laudable desire to win over the Bench to a larger compassion for those who would breed birds for the alimentation of man and not for cat's-meat. However that may be, the case is important enough to have elicited especial notice from the editor of the *Law Journal*, who descants upon it in this wise: "It may not be impossible that the House of Lords may be ultimately called upon to consider the matter. . . . It will be interesting to see if any court can be induced to grade the same cat's *natura* according to its different moods; and still more interesting to see if the contention will be extended to other animals? Incidentally, if the point is carried, no householder who lives in the country where game is preserved, will dare henceforth to keep a cat. He will prefer to be overrun by rats and mice rather than by law-suits."

Late news shows that the Court of Appeal has granted leave to plaintiff to try out this important question of feline psychology there.

When the case is finally disposed of we shall expect our professional poets to embalm it in immortal verse.

AMERICA AND THE LEAGUE. Ernest Dimnet, writing to the *Saturday Review*, says that he heard the news of the momentous result of the Locarno Conference while he was a passenger to America on a French steamship—"somewhere off Newfoundland"—but that when he landed in New York they were still talking about it as if the news were not some three days old. This is how he was impressed by the reception of the news by the American public: "The keynote was delight with the people who believe in the League of Nations, bewilderment with those who do not, and surprise with them all. . . . A college president said to me rather contemptuously: nobody thought of America, because America was not there. . . . I see a great deal of the Republican circles. Their mistake has generally been to be hypnotized by the notion that Wilson's League, being destined to combat war, was a Utopia first, and second, could not but be a super-government which no proud nation can admit. The idea of Geneva as a sort of World's Bureau in which the affairs of the planet are centralized and transacted does not occur to them: the moment you bring it to their attention they unbend."

These observations of The Very Reverend Abbé Dimnet are illuminating. He knows the United States and its people passing well. Not for nothing in this regard did he occupy the post of Lowell Lecturer at Harvard in 1919, and for five years before that continuously write for the *North American Review*. America will not be denied her *locus penitentie* when she seeks it—and that may be soon: we believe that the United States of America will join the League of Nations long before that marvellous thing now being discussed—the United States of Europe—comes into being.

MR. STRACHEY EXPLAINS. I am sure that those who were privileged to meet Mr. J. St. Loe Strachey during his recent visit to Canada were glad to learn from his statement in the *Spectator* of the 19th ultimo that he is not severing his connexion with the famous weekly, and that its columns will still be illumined by his shrewd and lively observations on current events. The control of the paper passes to Mr. Evelyn Wrench "as owner of a majority of the ordinary shares in the *Spectator* company," so Mr. Strachey informs us. He adds: "I am retiring from the control of the paper, not for reasons of health or through any disagreement with the *Spectator* public, but because I desire to be free from office

work and to be able to devote much more time to travel and to literature rather than to the routine of journalism." Mr. Strachey's last remark gives me pause. Does he wish us to think that the excellent writing that he has done throughout his connexion with the *Spectator* must not be regarded as "literature?" Surely the contents of the "higher journalism" constitute literature, and of a notable kind for the most part—replete as it is with the culture, taste and scholarship which Seneca seems to regard as hall-marks of the art of letters. Or does the periodical written word not become literature until it is reprinted in book form, as is so often done with negligible changes in the text? Of course one can conceive of a distinction in the distinguished editor's mind between polite literature and the literature of that sort of journalism represented by Mrs. Crumb in Mr. Wells' latest book whose "right fore-finger had that indelible inkiness which only the use of an incontinent fountain-pen can give." But I incline to the view that Mr. Strachey did not mean to imply that literature and journalism are necessarily antonymous terms, and resting on that interpretation of his remark I rejoice in the knowledge that the *Spectator* is in a position to continue to supply us with the same sort of literature from Mr. Strachey's pen as that which has so long charmed reading men of the Bar.

#### THE ARISTOCRATS OF AMERICA.

In the course of his interesting address to the American Bar Association in Detroit a few months ago Maître Fourcade quoted a pleasant tribute by M. de Tocqueville to the American Bench and Bar as constituted in the early days of the nineteenth century:—"l'Aristocratie américaine est au banc des avocats et sur le siège des juges." M. Fourcade's address was delivered in the French language, and will be found printed at length in our present number.

#### SIR PAUL VINOGRADOFF.

It was with great regret that I learned of the death of Sir Paul Vinogradoff last month. As our readers know Sir Paul contributed an instructive article on the "Rights of Status in Modern Law" to the first volume of the *CANADIAN BAR REVIEW*, and an acquaintance with him by correspondence was thus brought about. A letter or two from him, brief and of a business character as they are, implicitly show the fine qualities of the man. At the time of his death he occupied the chair

of Corpus Professor of Jurisprudence at Oxford University, having held it continuously since 1903. He was born at Kostroma, Russia, in 1854. While acting as Chairman of the Educational Committee in the City of Moscow he came into conflict with the governmental authorities, and resigned his post. Soon after his resignation he went to England where he continued studies which he had some time before begun in English social and legal history. He was the author of many books chiefly dealing with subjects on the more recondite side of the law, but his little work entitled "Common Sense in Law," published in the Home University Library, brought him into touch with the general run of readers who do not confine their mental exercise to the perusal of fiction. Sir Paul delivered a course of lectures on legal subjects in certain Universities of the United States some two years ago.

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## CORRESPONDENCE.

The Editorial Advisory Board of the Canadian Bar Association does not hold itself responsible for the opinions of Correspondents. Contributions to this department of the REVIEW must be accompanied by the genuine names of the writers, to be used in the discretion of the Editor.

### ONTARIO CHURCH PROPERTY COMMISSION.

*Editor The Canadian Bar Review:*

SIR,—In the December number of the CANADIAN BAR REVIEW the last item under the heading of "Current Events" is as follows:—

"*Ontario Church Property Commission.*—After an all-day and all-evening hearing the Ontario Church Property Commission at midnight on the 21st instant ruled that it would decline to make any finding or recommend action in the matter of property division as between the non-concurring Presbyterians and those of the church which had voted into union. It is stated there is no appeal from the Commission's finding."

The impression which this bit of news would be apt to convey is somewhat misleading, and I trust that you can find space for a short statement of the facts.

The Commission, consisting of Mr. W. H. Wardrope, K.C., Mr. R. S. Cassels, K.C., and myself, was appointed by the United Church of Canada Act, being chapter 125 of the Ontario Statutes of 1925, with power to hear certain limited classes of applications. The time fixed for making applications expired on the 10th of September last. Prior to that date over 150 applications were filed, and since that date the Commission has held 15 sittings in different parts of the province and has heard 64 cases. Of these cases 40 were disposed of at the hearings. In 24 cases judgment was reserved, but the decisions have been subsequently announced in all except two cases. About 12 applications have been withdrawn.

Whether the Commission has done a useful work is not for me to say. In any event it is of course bound by the limitations of the powers conferred