EDITOR'S NOTE-BOOK

ON PREACHING.

When I was invited towards the close of the year 1922 to assume the post of Editor of the official organ of the Canadian Bar Association one of my most venerated friends said to me: "You will make many mistakes—rest assured of that—but so long as you do not become an addict of the cardinal impolicy of preaching at your readers your mistakes will be tolerated." Now I confess that my venerated—and withal candid—friend's implication that the foolishness of preaching might be made more obvious in the editorial chair than in the pulpit impressed me greatly, and I thought his advice worth following. But alas! When I rose up from the job of writing my first editorial I found that, all unmindful of his counsel, I had throughout been nothing if not hortative; and a retrospect of the past three years shews me that I have been fervent in preaching ever since. Stranger still, when I turned to contemporary legal publications I found that their editors had been doing the same thing. Pursuing my enquiry into the general field of journalism, I discovered that the editorial chair has always been made to do duty as a sort of lay pulpit, and that if the editor is to lead his readers to "judgments of value" on public questions he must necessarily exhort. Again, if we recall that the first lawyers in England were clergymen—*nullus clericus nisi causidicus*—the lawyer would seem to have an inherited right to preach. And so when my venerated and candid friend returns to the subject I shall hurl that passage from *Sartor Resartus* at his head where Teufelsdröckh exclaims: "There is no Church, sayest thou? The voice of Prophecy has gone dumb? This is even what I dispute: but in any case, hast thou not still preaching enough? A Preaching Friar settles himself in every village; and builds a pulpit, which he calls Newspaper. Therefrom he preaches what most momentous doctrine is in him, for man's salvation."

SIR GEORGE JESSEL, M.R.

In *Blackwood's* for January, Sir Charles James Jessel, Bart., gives us some interesting sidelights on the character of his distinguished father, Sir George Jessel, who adorned the English Bench as Master of the Rolls from 1873 to 1883. Jessel was the first Jew ever made a law officer of the

Crown, and the first of his race to be elevated to the English Bench. He was without doubt one of the most efficient judges who ever sat on that Bench: and his efficiency was due to alertness of mind, a comprehensive knowledge of the law of his court, lucidity of expression, and withal intrepid and unfailing confidence in himself. Hence his judgments were prompt and trailed no strings of uncertainty about them. It is said that he never reserved a judgment when he sat in the Rolls Court, and only twice did he do so in the Court of Appeal, and then at the request of his colleagues. This is a marvellous record when we think of the list of important decisions credited to him in the books.

The first of the great lawyer's sententious sayings presented by his son is one that possibly I may not quote without hazard to the fortunes of the REVIEW, which is so frequently enriched by contributions from members of the Bench; but I quote it chiefly for the reason that I do not assent to the view it presents. The story runs in this wise: "At a party he met James Knowles, the proprietor and editor of the *Nineteenth Century*. Knowles asked him to write an article for his review. My father's reply was, 'My dear Mr. Knowles I am a man of some reputation now, and I do not wish to lose it by writing in your magazine.'" The son adds: "He always had as a kind of maxim of life that a judge should never, even under the greatest provocation, write to the Press." I am glad that the annals of the Bench show that this maxim has not been of general acceptance and that the formation of sound public opinion, upon which law rests in the last analysis, has been repeatedly assisted in the past by judges who have not limited service to their country to the discharge of their official duties. Take such judges of our own time as Lord Haldane and Lord Birkenhead, can it be said that their contributions to the Press on great public questions have in any way shattered or lessened their judicial reputation?

To regard the law as a "jealous Jade," fiercely intolerant of any intellectual preoccupations outside of her domain, is to forget that law is only one of the four corners of the temple of Sociology and that there is an altar in each which must not be neglected by one who confesses the creed of the patriot.

The "cocksureness" of Jessel is well illustrated by the following anecdote: Sir John Duke Coleridge was Attorney-General at the time that Jessel held office as Solicitor-General. They were both called into consultation by the Cabinet on the *Alabama* claims. "Before they went in Coleridge asked my father for his opinion on some point, an opinion which my father had no hesitation in giving,

whereupon Coleridge said to him, 'Have you any doubts about it, Jessel?' 'My dear Coleridge,' replied my father, according to Coleridge's version of it to Lord James, 'I may be wrong, and often am, but I never doubt.' Lord James afterwards met my father and asked him if the story was true, upon which my father answered 'Very likely, but Coleridge with his constitutional inaccuracy, has told it wrong. I can never have said *often* wrong.'" Here is a story worth pondering by the judicial neophyte: "I remember the late Mr. Justice Mathew telling me that when he was made a judge he went round to see my father and asked him if he could give him any hints on his new duties. My father answered, 'My dear Mathew, the difference between a good judge and a bad judge is not much more than five per cent. The great thing is to be quick.'"

Manson in his "Builders of our Law" has a good story about Jessel which we could hardly expect his son to repeat. As the story goes it seems that he had a tendency to drop his h's. When he was Solicitor-General he was retained as counsel for plaintiff in an action against a French company for infringement of an English patent for steam-boilers and condensers. An interpreter was engaged. The drift of some question being mistaken by a witness who was giving his evidence in French, Jessel impatiently exclaimed: "Tell the man he don't seize my point. My question has nothing to do with 'eating the pipes." The interpreter, who was nothing if he was not literal, addressed the witness as follows: '*Monsieur l'avocat vous prie de croire qu'il ne s'agit nullement, dans son interrogatoire, de manger les tuyaux.*'"

Sir George Jessel was an admirer of the Civil Law, his admiration being derived from a fairly comprehensive study of it in the Latin texts and in the modern codes that are based on the *Corpus Juris*. On the introduction of the Bankruptcy Bill of 1869, he said in the course of his speech in the House of Commons:—"Only in a sense was it true that our common law was not based on the Roman law, for we had used the Roman law as the Turks used the remains of the splendid temples of antiquity. We had pulled out the stones and used them in constructing buildings which we called our own."

Before we can condemn this statement as overdrawn or heretical we must first forget what manner of doctrines were espoused by Lord Holt in *Coggs* v. *Bernard*, and dismiss the English law of Bailments as having no authoritative foundation. And what Lord Mansfield did in the way of "civilizing" English Mercantile Law is another story.

NEW LAND LAWS FOR ENGLAND.

On the first of January there came into force nine Acts of Parliament which in the mass constitute a new law of real property for England and Wales. The chief object of this legislation is to sweep away the ancient rules that clogged the free transfer of land. Many of these rules had their origin in the conflicts of jurisdiction between the Common Law, Chancery and Ecclesiastical Courts that marked the early part of the sixteenth century. When the common lawyers in 1535 succeeded in obtaining the passage of the Statute of Uses which virtually abolished trusts upon land, the chancery lawyers resorted to the expedient of creating a use upon a use for the purpose of evading the statute. Then there was the manorial system, having its roots in Saxon times and replete with oppressive incidents; not to mention the curious tenures of Gavelkind and Borough English, each prevailing in a limited area of the realm. Who that has read his Blackstone can forget the heavy hand of the feudal past that lay upon the English law of real property down to the present age? Who will not rejoice that the ghost of "the Rule in Shelley's Case" is laid? Who can deny that if Lord Birkenhead had done nothing more than lead the van of the reform movement which resulted in bringing these nine statutes into operation he has not only discharged the Baconian debt to his profession but his duty to the State in ample measure as well? His Law of Property Act of 1922, which as amended in 1924, forms part of the code brought into force at the beginning of this year, aimed at making land as susceptible of easy disposition and transfer as personal property; how far this purpose has been achieved time must reveal.

The new legislation has not only repealed the Statute of Uses but has gone so far as to compel the establishment of trusts in many instances. In case of intestacy the estate of the deceased passes to trustees who hold it for the benefit of the widow and children of the intestate. Thus the "heir-at-law"—so often made to do duty by Victorian novelists as a sort of *diabolus ex machina* to devour widows' houses and evict helpless children from their patrimony—passes out of the picture entirely. This is a particular item of reform which Bentham advocated with vigour: it is a making straight of what he called "the crooked roads of the common law" through which the succession to the real property of intestates was obliged to pass. Bentham's idea was that after the intestate husband's death the widow should have half the common property, and the other half should be distributed among the children in equal proportions. He would have none of Montesquieu's admiration for the feudal laws, suggesting the spectacle of "an ancient and majestic

oak." *Au contraire,* he thought we should "rather compare them to that fatal tree whose sap is poisonous, and whose shade is destructive. That unfortunate system has produced in modern laws a confusion and complexity from which it is very difficult to deliver them."

It is interesting to note, however, that Professor Holdsworth in the seventh volume of his monumental "History of English Law," recently published, does not share Bentham's view of the egregious shortcomings of the English law of real property. He thinks (p. 399) that "the erection, upon the basis of the rules of the mediaeval common law and the statutes of the sixteenth century, of the elaborate superstructure of its rules, was a technical achievement of which the lawyers of any system might be proud."

* * * Turning over the pages of Professor Holdsworth's history as a whole does not reveal any distinctly good opinion of Bentham's practical value as a reformer. In addition to what we have quoted above from the seventh volume, we find an allusion to him in the eighth concerning his attitude on the question of Usury (p. 100). After remarking that experience has shown that money-lenders need to be chastened by the law in their zeal for exploiting those who are in straightened circumstances, he says:—"In this country a very short experience of the consequences of allowing lenders and borrowers to make what bargains they please has been sufficient to demonstrate this fact; and this century has seen the State resume a control which it had abandoned under the influence of the *a priori* theories of Bentham and of the pseudo-scientific laws of the school of *laissez-faire* economists."

BOOKS AND PERIODICALS

Westlake's Private International Law. A Treatise on Private International Law with principal reference to its practice in England. By the late John Westlake, K.C., LL.D. 7th Edition. By Norman Bentwich, Attorney-General of Palestine, Barrister-at-Law; late Whewell Scholar in the University of Cambridge. London: Sweet & Maxwell Limited, 1925.

If one seeks an example of how rapidly the principles of Private International Law are being developed at the present time it is furnished him in the fact that two editions of Westlake's Private International Law have been issued within the past three years. The learned Attorney-General of Palestine, the Editor of the sixth edition as well as of the present one, states in his preface that in the intervening period nearly one hundred decisions have been given by the Courts which constitute a basis of fresh rules or have amplified the rules formulated by Professor Westlake.

While observing that statutory changes in the law of his subject have been few, the editor states that the detachment of the Free State of Ireland