

# THE CANADIAN BAR REVIEW

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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.

It is hoped that members of the profession will favour the Editor from time to time with notes of important cases determined by the Courts in which they practise.

Contributors' manuscripts must be typed before being sent to the Editor at the Exchequer Court Building, Ottawa.

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## TOPICS OF THE MONTH.

CANADIAN BAR ASSOCIATION.—The Eleventh Annual Meeting of the Canadian Bar Association at Saint John was a success in the fullest sense of the word. The attendance of members from all the Provinces was gratifyingly large in view of the fact that the date of the meeting approached so near to that of the Dominion General Elections. That alone demonstrates how keen is the interest of the individual members in the welfare of the Association. For lawyers, time out of mind, have been active politicians and are much out of their offices during the elections, so that for them to attend the meeting meant an unusual measure of personal sacrifice, pointing to *esprit de corps* of the finest kind.

A noteworthy feature of the Meeting lay in the fact that the programme of entertainment for the visiting members and guests was arranged by a Joint Committee of the Bars of the three Provinces of New Brunswick, Nova Scotia and Prince Edward Island, so that the atmosphere of the gathering was filled with that full flavour of hospitality for which the people of the "Maritimes" are famed.

Those who were not able to attend the Annual Meeting for 1926 will be interested in reading the excellent report of it by Mr. E. H. Coleman, the Secretary-Treasurer of the Association, published in the present number of the REVIEW.

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LORD DARLING IN CANADA.—One of the most charming things about Lord Darling's visit to Canada was that he made it plain

to all who came in contact with him that he was just as much pleased to be with us as we were delighted to have him as our guest. He proved himself in the amplest way to be what is called on this side of the Atlantic a "good mixer," a social quality which distinguished Englishmen abroad are not as a rule prone to display. Before he came we knew him as a member of the English Bench who had administered his high office with credit to himself and advantage to his country. We knew him, too, through his books as a man of culture and a very pretty wit. But it remained for him to shew us in personal intercourse that beyond question—

"On his unembarrass'd brow  
Nature had written—'Gentleman.'"

Thus we found that the trappings of a Right Honourable Privy Councillor did not disguise the manner of man who stood behind them. In his case it is not so much that high office lends distinction to the man as that the sum of his qualifications serves to exalt his office. It is a fine thing to be able to say this of any Judge in these days of question and criticism when the usefulness of any public office is estimated by the character and qualifications of those who are chosen to fill it.

Coming to us as the guest of the Canadian Bar Association, both in his formal address at the Annual Meeting in Saint John and in his off-hand speeches to the members of the profession (concerning the latter the REVIEW has more particularly in mind what he said at the delightful dinner tendered to him by the Vancouver Bar) he did not fail to point out the great part the Bar should feel itself obliged to play in moulding the destiny of this young Dominion. In substance he told us that England's greatest contribution to civilization was the fashioning of responsible government, and the chief part of that fabric was built by the masters of the Common Law. This, then, is the tradition that should stimulate Canadian lawyers to see that a system of social order approved by experience should go hand in hand with liberty as the years roll on in our process of national development.

In his address to the Canadian Club of Ottawa Lord Darling manifested none of the apprehension which seems to possess the minds of many English visitors that Canada may soon become absorbed into the United States. On the contrary he expressed his conviction that it was a most unlikely contingency, because so far as he could see both Americans and Canadians were satisfied with things as they are. He was most optimistic about the future of Canada,

and he declared that he would be a "booster" for us when he returned to England. There was one thing Canada wanted, he said, and that was people. When he arrived home he would tell that he had seen the country of Canada and found it wonderful. He could tell the English people there was no dole here, but that if a man worked hard he could become well off. And he would still be under the Union Jack. He only hoped that men and women of the old land would take advantage of the opportunities which the people of Canada so generously offered them.

We do not think that Canada ever made a quicker conquest of the heart of a distinguished Englishman than in the case of Lord Darling.

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"THE GRAND OLD NAME OF GENTLEMAN."—According to the newspapers—we have as yet no report of the case in professional circles—one of the Ontario judges has recently been called upon to define a term which in this age is forced to "welter to the parching wind" of democracy—the term 'gentleman.' Even in the compelling days of caste and class distinctions individual applications of the term were derided. Old John Ball sang in Wat Tyler's rebellion:

"When Adam dolve and Eve span,  
Who was then the gentleman?"

And in Elizabeth's time Sir Thomas Smith was fain to enquire "whether the manner of England in making gentlemen so easily is to be allowed."

We merely touch upon the matter here, as we are unaware at the moment of the exact interpretation essayed by the learned judge, but, knowing him as we do, we think that an introspective glance at his own qualities would have revealed the true meaning of the term in its modern use.

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ADVANCED SCHOOL OF LAW.—By the courtesy of one of the Canadian delegates to the Third Congress of the Universities of the Empire, held at Cambridge in July last, we are able to give the following synopsis of the proceedings at the Congress in so far as they relate to the proposed Advanced School of Law for the Empire.

In addition to representatives from the Universities of Oxford, Cambridge and London, delegates were present from universities in Canada, Australia, New Zealand, South Africa, India and Egypt. Mr. Justice Greenshields, Dean of the Faculty of Law, McGill Uni-

versity, who had been requested to prepare a paper, for circulation before the date of the meeting, embodying his views concerning the desirability of entering upon an imperial undertaking such as that proposed, opened the discussion. With possibly one exception, that of the delegate from Calcutta, there was complete agreement that the question as it appeared on the agenda should be answered in the affirmative. Thus the desirability of establishing in London a School of Advanced Legal Studies was affirmed. It is not surprising that in a discussion which lasted only three hours the details of the scheme could not be adequately considered. Before the discussion closed at Cambridge Mr. Justice Greenshields was asked to call a meeting in London of those most interested in the project. This was done, and those invited met in the Chambers of the Vice-Chancellor of London University. A small Committee was then named, which will be added to later by representatives from the Dominions. The Lord Chancellor accepted the chairmanship. Lord Justice Atkin, President of the Society of Legal Studies, Mr. Gutteridge, Dean of the London Law School, Mr. Beveridge, Vice-Chancellor of London University, and Dr. R. W. Lee, Professor of Roman-Dutch Law at Oxford, form the Committee. That Committee will, in a short time, prepare suggestions in detail for the formation and administration of the school. At a later date these suggestions will be submitted for the consideration of the Committee when enlarged as above mentioned. The project has the sympathetic approval of the members of the Inns of Court, and there is every reason to think that the general endorsement it has already received will result in the actual foundation of the school.

Our readers will be interested to learn that the view that the project should take the shape of a large under-graduate school was emphatically negatived during the discussion at the Congress.

We regret that we are unable to find room for the paper prepared by Mr. Justice Greenshields for the Congress in our present issue, but it will appear in the November number.

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LA CITÉ UNIVERSITAIRE DE PARIS.—In a statement published in the *Ottawa Journal* by the Honourable Philippe Roy, Canadian High Commissioner in Paris, we are informed that the Canadian House in the "Cité Universitaire de Paris" will soon open its doors to the studious youth of Canada. It appears from Mr. Roy's statement that this great cosmopolitan enterprise in the interests of education owes its origin largely to the generosity of a French manufacturer,

M. Deutsch de la Meurthe, who, recognizing the difficulties in which the young generation of students found themselves after the enormous sacrifices France had made in the war, decided to aid them in a practical manner. He found a ready way. Senator Honnorat, Minister of Public Instruction of the French Government, was persuaded that it would be a great thing to rebuild around the University of Paris, the Colleges of the Nations which had in times past enjoyed such a great prestige. In accord with M. Deutsch de la Meurthe who put at his disposition ten million francs, he decided to found "La Cité Universitaire de Paris" for which he invited the various foreign countries to build Houses where the students would receive, along with very advantageous conditions of living, a first class university education.

The Minister thereupon obtained from the City of Paris seventy acres of land then taken up by the old fortification in front of Montsouris Park, not far from the Sorbonne and the school quarter, and on them gave free sites to the foreign countries desiring them for their buildings.

The Canadian High Commissioner in France who had thought of the same thing at the close of the war, hastened to take an option on the site adjoining the French Buildings and immediately made an appeal to his fellow subjects for the means to carry through such a commendable project. Canada as a result will be the first foreign country to open a House in the "Cité Universitaire de Paris."

In four or five years, the University City of Paris will be a community containing 3,000 foreign students and a thousand French, who will enjoy a common intellectual life under the most advantageous material conditions. The City will have its own playgrounds, its own co-operative restaurants, libraries and halls.

It is obvious that an institution administered on these lines will be quite different from the kind of university which Milton called "a stony-hearted step-mother." The advantages it will offer to Canadian students privileged to attend it are incalculable. A course of study there would be a great preliminary training for one who seeks admission to the Bar.

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PROFESSOR SMITH EXPLAINS.—In the correspondence department of this number of the REVIEW, Professor H. A. Smith, of McGill University Law School, explains what he meant by the statement in his letter to the *Times* (reprinted at p. 322 of our current volume) that "the general educational level of the profession in Canada is

far below that which prevails at the English Bar." This statement gave rise to some speculation as to the particular branch of education the learned professor had in mind in predicating such disparity. The REVIEW was disposed to think, quite erroneously it now appears, that it was the educational methods prevailing in Canadian law schools that got a black eye in the comparison so made. We are very glad to be set right, and are more than pleased to learn that Professor Smith has really a high opinion of the professional education given in the leading Canadian law schools. We gathered from what he said that he harboured no such opinion—but that was due to our obtuseness, which cannot be excused by quoting the saying ascribed to Talleyrand: "*La parole a été donnée à l'homme pour déguiser sa pensée.*"

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BACON THREE HUNDRED YEARS AFTER.—Public notice has been taken in England and elsewhere of the tercentenary of the death of the great Englishman who called himself and is called by others—inaccurately as we must remind ourselves—Lord Bacon. Francis Bacon, Lord Verulam and Viscount St. Albans, died at Highgate on the 9th April, 1626, practically a martyr to the cause of natural science. Hobbes, who knew him well, tells us that he was riding with the King's physician upon a day when the ground was covered with snow, when he was struck with the idea that flesh might be preserved in snow as well as in salt. Bacon thereupon descended from the coach, purchased a hen from a poor woman and had her "extenterate" it. He then assisted her in stuffing the body with snow, in which business he caught a severe chill and became so indisposed that he could not return to his lodgings at Gray's Inn. He went to the Earl of Arundell's house at Highgate Hill where, to quote from Hobbes: "They put him into a damp bed that had not been lain in for about a year before, which gave him such a cold that in two or three days he died of suffocation." Possibly this account of Bacon and the hen is the first recorded experiment in refrigeration. But at least the incident establishes that he did not hesitate to practice what he preached about man's duty to search out knowledge, namely, "pursue it strenuously and persevere even unto death."

It may be that Pope, in the eighteenth century, wrote Bacon's perdurable epitaph in these lines—

"Think how Bacon shin'd—  
The wisest, brightest, meanest of mankind."

But the better understanding that we have in these later days of the infinite complexity of the human mind and how responsive its qualities are to the influences that pervade the social atmosphere of any particular age, enables us to extenuate in some degree the moral weakness of a man whose intellectual stature was that of a giant. We recall that his life was lived in the full flood of the Renaissance as it obtained in England, a force so essentially pagan as to make the Reformation movement in his time a battle between learned dialecticians rather than a spiritual revival. Machiavelli's *Prince* was the book resorted to for instruction in statecraft, and duplicity was predicated as the only art of Government. Hence living in such an atmosphere, selfish and ambitious by nature, early aware, too, of his extraordinary gifts of mind, we can understand how he came to pursue the crooked path to place and power and display the meanness for which he has been pilloried by poet and historian. In this light we can also read without a sense of shock such unquestionable bits of machiavellism from his pen as the following:—"There is in human nature generally more of the fool than of the wise; and therefore those faculties by which the foolish part of men's minds is taken are most potent. . . . "The wiser sort of great persons bring in ever upon the stage somebody upon whom to divert the envy that would come upon themselves." . . . "There is rarely any rising but by a commixture of good and evil arts."

It is the way in which he ruled his professional life that prevented Bacon from being as great a lawyer as he is a philosopher and a master of the art of letters in the opinion of the modern world. In the prosecution of Essex he was appointed to assist Coke, the Attorney-General, and his skill in advocacy far outshone that of his rival. Twice he retrieved serious blunders by his leader, and by his remorseless logic secured the conviction of his former friend and benefactor. True, he was not so learned in black-letter law as Coke; but his reports on the Penal Law during his occupancy of the office of Solicitor-General are characterized by a modern writer as "striking in the lucidity of their presentment of facts and wise in their recommendations for reform." But he damned his reputation as a lawyer by espousing the doctrine of the divine right of kings in the hope of preferment from James. "I will be as ready as a chessman to be wherever your Majesty's royal hand shall set me," he declared to the autocratic founder of the English House of Stuart. An epic of human frailty could be written around those few words.

The modern view of Bacon's place in law, philosophy, science

and literature has been fully discussed in an address on a recent occasion by a member of the Canadian Bench, and the REVIEW is privileged to publish it in an early number. So that we shall not enlarge further upon the theme here. But in closing we should like to quote some delicious and thoroughly characteristic observations by a prominent Oxford scholar, the late Sir Walter Raleigh, on the preposterous Baconian theory concerning the authorship of Shakespeare's plays. "All the Baconians whose writings I have read came to the study of Shakespeare with a case to prove. Not one of them so far as I know, has given evidence of a study of the plays for their own sake. They are pleaders, who enjoy a hobby. Their view of Shakespeare is about as complete as Sergeant Buzfuz's view of Mr. Pickwick. . . . If a book were written to show that Jeremy Bentham wrote the works of Charles Lamb, I don't know whose duty it would be to answer it. . . . If Shakespeare's work and Bacon's were both anonymous, no intelligent reader would mistake them for the utterances of a single man."

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CANADA IN ENGLISH EYES.—Possibly it is a result of the pessimism about mundane things present and things to come so sedulously preached by the Gloomy Dean that a number of the English periodicals at the present time are figuratively smiting their breasts and prophesying woe to the Empire because that Canada is surely and not slowly approaching absorption into the United States! As an antidote to this prophecy, so surprising to the Americans and so offensive to Canadian self-respect, it is pleasant to read how the London *Spectator*—which never speaks without knowledge and a proper sense of responsibility on relations between this Dominion and the United States—weighs the probabilities of the question in a recent number:

"All history shows the fatuity of such a prophecy . . . . Even if America were bent upon the absorption of Canada—which of course she is not—she could never achieve it either by force of arms or by the force of commercial bribery. . . . The only possibility of such a course of action (though we cannot admit that even this could ever happen) would be due to the extreme poverty of Canada. If we can suppose Canada reduced to great economic straits, and possessed of a population for which she could not herself provide, it is just conceivable that she might consider that salvation could only be found in entering the Union. But only the wildest, most pessimistic and most ignorant dreamers can contemplate Canada as a bankrupt community and a wilderness of ravening paupers. Canada's economic future is assured, and it is one of the brightest, perhaps the brightest, in the civilised world. Canada has the five things that make for prosperity. (1) She has a virile, industrious and home-grown rural population. (2) She has by far the best and largest amount of virgin soil, *i.e.*, potential cornfields, left in the world. (3) She has not only the greatest amount of waterways on



the globe—water transport will always beat land transport for heavy produce—but, what is more important, the greatest amount of cheap and efficient power that the world can show in her rivers and waterfalls. (4) She had also got what the world still wants, and will want for a long time yet, vast stores of timber, suitable not only for building and carpentering but for the production of paper on which to print the records of the day. (5) Finally, she has got a climate which, though it looks as if it halved mankind's working capacity, is nevertheless one which does not involve economic waste. On a balance of account the Canadian winter reduces the nation's man-power less than the malaria, the fever, or the hook-worm of communities which superficially seem so much better blessed in the way of climate."

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THE LEAGUE ON ITS FEET.—We venture to think that in admitting Germany to a permanent place on its Council the League of Nations has splendidly and, notwithstanding the present aloofness of the United States, we do not hesitate to say *effectually*, equipped itself for the attainment of its high purpose, namely, the regeneration of the world by the peaceful settlement of disputes between nations which have hitherto been referred to the arbitrament of War. It will thus become, it *must* become in the face of all obstacles, the outstanding contribution of the Twentieth Century to civilization. History has witnessed the individual man in his slow process of reclamation from savagery to culture, from the practice of securing his rights by the methods of the jungle to the urbane gesture of vindicating them by the law of the land. But while man had thus advanced in his personal and segregate capacity, in the mass—first in the tribe and later in the nation—something less than a dozen years ago he was still the primitive creature who measured his right by his might and saw in the ordeal of battle the only worth while way of adjusting claims between communities at variance. But *Des Menschen Engel ist die Zeit!* At last humanity in the aggregate is ready for a new and better dispensation. Down to A.D. 1920 there was no alliance or coalition between nations that had any other real end in view than the furtherance of the military or commercial advantage of the parties thereto over some other nation or nations. True, as the REVIEW has before pointed out, the Holy Alliance of 1815 purported to be made for the purpose of regulating international relations "in accordance with the principles of Christian charity;" but, with the possible exception of the Russian Emperor, those who signed it did so with their tongues in their cheeks. At all events Metternich made it a scourge rather than a benison to Europe. By hard experience the nations have learned the lesson that war is not the ploughshare by which the paths of prosperity are fashioned. And so in the fulness of time the League of Nations appeared.

We refused to be discouraged by the failure of the Assembly in March last to admit Germany into the League. We believed that wisdom would be justified of her children, and that the obvious justice of Germany's claim would ultimately secure its recognition. In the result it was well that a dead-lock occurred, necessitating an adjourned meeting of the Assembly. It was well for the supporters of the League to have time to weigh every aspect of the hazard that faced it in the circumstances. It fed the flame of their zeal, and success when it came was all the more far-reaching in its influences. Had Germany been admitted in March Herr Stresemann might not have felt himself confronted by so imperious a challenge to show how deep was the conviction of his compatriots that without the instrumentality of the League no pacification of Europe was to be hoped for. He might not have been disposed to say with utter frankness that the German people were prepared to co-operate with other members of the League not only in disarmament measures to displace the menace of war, but in establishing a policy for the economic reorganization of Europe in the interests of all concerned. Probably, too, we should not have had so fervent a declaration of amity on the part of France towards Germany as that which marked M. Briand's eloquent reply to the speech of Herr Stresemann. We quote a single passage to illustrate the spirit of the whole:—"It is only a few years since the most terrible war in history. The blood is hardly dry on the battlefields, and here we are meeting the Germans, not as we have met them before, in battle: we are meeting them here to collaborate for the peace of the world. This means peace, and it means the end of a series of conflicts in which my country has met Germany again and again throughout history. It means no more mourning; no more suffering now that we have accepted a judge and will appeal to the law when we want to settle our disputes."

These were not the voices heard in old chancellaries: they proclaim a new and better way of international living.

Surely all this will silence the carping tongues of certain cisatlantic critics who have not hesitated to say that the League is an organization used by the victors to keep down the vanquished, and nothing more.