

## IS IT DESIRABLE TO ESTABLISH IN LONDON A SCHOOL OF ADVANCED LEGAL STUDIES ?<sup>1</sup>

In full measure I express my grateful acknowledgment of the honour done me, and the University from which I come, in asking that I put in writing, for publication and circulation, my views as to whether the question above stated should be answered in the affirmative or a negative answer be placed on record.

I accepted the task with hesitation and misgivings. The hesitation did not arise from lack of interest, but rather from a consciousness of my own limitations; the misgivings were inspired by the fear lest what I write would be so greatly coloured by local conditions and, possibly, provincial considerations, that the result might be to hinder rather than to help the furtherance of the object which I so greatly desire.

Here, and at the outset, with the reservation of a possible modification after full discussion of the question, I state my answer to be in the affirmative. I am aware that what I write will not possess the merit of originality. The question is not new; it has been considered and discussed by others of greater experience, greater knowledge, and greater ability than the writer possesses.

I disclaim any intention of suggesting in detail the manner in which the School should be organised or established; in like manner, I shall refrain from other than a mere suggestion, if and when established, along what lines it should be conducted. To attempt anything further would approach presumption on my part. It is my desire to confine myself wholly to the question of the desirability of establishing such a School, leaving to others the determination of the manner of its formation and the details of its operation. Of necessity, what I say will be in great part suggested, and to some extent influenced, by conditions and considerations of the Province in which the University, of which I am a delegate, has carried on its educational activities.

### I.

It would seem beyond doubt that if the principle is adopted, or, in other words, the "preamble of the Bill" be accepted, London is

<sup>1</sup>Address by the Honourable Mr. Justice Greenshields of the Court of King's Bench, Montreal, before the Third Congress of the Universities of the Empire, held at Cambridge, England, in July, 1926.

the place where the School should be established and carried on. To me, the reasons are apparent and convincing. A School of Advanced Legal Studies—Empire-embracing and Empire-wide in its aims and purposes—should have its home in the very heart of the Empire. Other considerations and reasons more cogent will readily suggest themselves to others to whom the reasons are more familiar.

## II.

For a short period of time (1763-1774) the English law was, by Proclamation, declared to be the law governing the subdued people and the ceded territory, viz. that part of the now Dominion of Canada known as the Province of Quebec.

In 1774, with the magnificent generosity that has ever characterised the English nation, it was enacted that in perpetuity, in the matter of property and civil rights, the old law of France should prevail. The criminal law of England remained the law of the new possession.

In 1866 a Provincial Statute was passed, which is known as the "Civil Code of the Province of Quebec." The code purports to embody the entire civil law of the Province, that is, the law governing property and civil rights.

Apart from this, we have borrowed largely from the Mother Country. Our criminal code has for its foundation the common law of England. Where our code is silent, the common law of England prevails. Much of what I might call our "commercial law" the "law merchant," has its source and foundation in the English law. Our Dominion-wide Bankruptcy Act is copied almost word for word, *mutatis mutandis*, from the English statute. Our law governing negotiable instruments—bills, notes, etc.—is admittedly of English origin. The law of evidence in commercial matters is taken from the English rules.

It is true that the chief aim of every Law School in the Province of Quebec (there are three) is, and ever must be, a thorough teaching of the civil law as contained in the Civil Code; but even a knowledge, however thorough, leaves the student much to learn of the law of his own Province, to say nothing of wider fields.

If a young graduate of McGill University could avail himself of a period of study (to be determined upon) at a School of Advanced Legal Studies in London, I have no doubt whatever the result would be of immense benefit to the individual, and would ultimately reflect most beneficially upon the profession in his own country.

Possessing as he would, to a greater or less degree, a knowledge of the great fundamental principles that underlie all systems, a course of teaching in comparative law would necessarily confirm and strengthen his knowledge of his own law, and it would, most assuredly, tend to round out his legal education.

In Canada we have no School for Advanced Legal Studies; we have no Postgraduate Course. In the Republic to the south more than one exists. Harvard, with its vast, almost unlimited financial resources, has for some years maintained such a School. It is equipped in the way of teaching staff, library facilities, etc., as perfect as money and careful management can make it. Some of our Canadian graduates seek its advantages. I endeavoured to obtain exact figures as to the number but, unfortunately, the figures have not yet reached me. It is regrettable that such of our law graduates as go to Harvard (few though they may be) have no such School available within the Empire.

As I write, I have not in view the result so far as the future active practitioner is concerned. I have rather in view the making of a highly educated, learned jurist. I am not greatly exercised with the commercial or money-making side of the question.

In course of time, as the years went by, I have no doubt that we would have in Canada graduates of our Law School, highly educated men, qualified to fill the chairs of our Law Schools, all of which would ultimately reflect to the great advantage of the profession generally.

A considerable percentage of the legislators of the Dominion come from the legal profession. Naturally, and properly, they exercise a very considerable, if not a controlling direction of legislation. The advantage of a preparatory course at a School such as I hope to see established in London on Comparative Legislation is perfectly apparent, and must be conceded. In my mind, there is no room for doubt. What I now say with respect to the Province of Quebec is equally true, I am satisfied, of the other Provinces of the Dominion.

I have no doubt that if the time does come to establish a school of advanced legal studies in London, a far more comprehensive curriculum would be arranged than I at the moment care to suggest.

### III.

In discussing the desirability of establishing a School in London for Advanced Legal Studies with the members of the Law Faculty of McGill objections have been suggested; fears were expressed lest

perchance that school, when established, would proceed in its activities to entrench upon, or conflict with, present existing systems in the Dominion—would, as it were, enter into competition with the institutions already established in the Dominion for the purpose of elementary legal education.

Each of the Provinces of the Dominion has, at least, one Law School. If the idea prevailed that the School of Advanced Legal Studies would replace any of these in fitting the young men of this country for membership in the local Bar, I am satisfied that it would be strenuously resented. So far as the Province of Quebec is concerned, I can speak with assurance, no certificate from a School of Advanced Legal Studies would ever be accepted, admitting the bearer to membership in the Bar of the Province. I repeat what I once said on this subject: "I am convinced that a course, however extended as to time and thorough as to teaching, would not be accepted in replacement of the requirements in force for admission to the profession in the Province of Quebec." I believe, with equal certainty, I may make the same statement concerning the other Provinces of the Dominion.

If the School for Advanced Legal Studies comes into existence, I will miss no opportunity to impress upon the students, prepared as they have been by a course in our Faculty, and upon receiving our Faculty degree, to take advantage of the privileges and opportunities offered by the London School, and follow its teaching for such reasonable length of time as the individual circumstances of the particular student would permit.

Apart entirely from the advantages of study and teaching, the contact of the student from the Dominion with others from within and without the Empire cannot fail in its broadening effect. Our men would come back better and bigger men in every sense of the word; they would come back with deeper affection and admiration for the Empire.

I have had the opportunity of reading a most interesting letter of Professor Gutteridge, appearing in *The Times*, and I only add a statement of my complete agreement where he says: "All that is necessary can be achieved by a carefully planned and well-organised system of collaboration between the professional bodies and the Universities, which would further have the great merit of avoiding any possible isolation of the Dominion student owing to his segregation in a separate school of law where he would have no opportunity of coming into direct contact with English students."

Might I add in conclusion. So exalted is my opinion of professional standards and ideals in England that I am convinced, if the Dominion student could be given an opportunity to come in contact with members of the English Bar in their everyday work—be given an opportunity, to some extent at least, of learning their methods—the result would be of untold advantage.

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HIS FIRST TECHNICAL OBJECTION.—A member of the profession now well on in years recalls how in his student days, he was sent to Osgoode Hall to oppose a motion to examine a judgment debtor, and then and there raised his first technical objection. Richards, C.J., was holding Chambers and when the motion came on, the following colloquy took place: "My lord, I submit there is no proof of service of any summons, I find here an affidavit in which the deponent swears he served a copy of the annexed summons, but there is no summons annexed." Judge: "Is there a summons with the papers?" "Yes, my Lord" Judge: "Well stick it on," "Have you any other objection?" "No, my lord." Judge: "The order can go."