

# 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.

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 also be sent to the Editor at the above address.

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## TOPICS OF THE MONTH.

THE PASSING YEAR.—The year now drawing to its close rounds out the quinquennium of the Great Depression. While it has not performed its lustral rite so effectively as to render the prospect of its successor free of all obscurity, nevertheless its record does not disentitle it to be regarded as a year of grace. Viewing its course over the world at large there is much to encourage the belief that civilization has entered upon the early stages of recovery from its temporary lapse into panic and exhaustion. We have heard during the past twelve months many prophecies of a war that would end mankind about to fall upon us the day after tomorrow, but happily its drums and trappings did not reach our ears. More than that, there are convincing signs that the League of Nations is at last coming into its own. The most disturbing threat to the peace of Europe occurred late in the year when Yugoslavia and Hungary brandished their fists and shouted defiance at each other; but instead of that inflammable episode leading to war we know that the rights of the parties in conflict have been submitted to Geneva for advisement in order that a pacific settlement may be reached. It is by such measures that Europe's tortured nerves will be tranquillized. Then, again, the League of Nations has materially helped to assuage the acuteness of tension between France and Germany by providing a committee of experts to advise upon a fair price to be paid for the Saar mines in the event of the territory reverting to Germany as a result of the plebiscite to be taken on January 13th next. The price so settled to be paid for

this *terra irredenta* is said to be satisfactory to France, and if the territory goes back to Germany—as it likely will vote to do, being overwhelmingly German—much will be achieved for the peace of Europe. Indeed the present causes of friction between France and Germany would be minimized if not wholly removed if France were persuaded to agree to a reasonable measure of re-armament for Germany. Peace between the two countries being thus stabilized, there is every reason to believe that Germany would seek readmission to the League. In view of all this the newspapers should be adjured by their readers to start the New Year with a firm resolution to help to expel the obsession of the war-idea with as much zeal as they helped to create it in the minds of men.

That the heart of the world has become incapable of response to the stimulus of lofty emotion has been disproved by two outstanding events during the year. The absorbing interest everywhere manifested in the wedding of the Duke of Kent and Princess Marina shows that the pageantry associated with the solemnization of matrimony *in facie ecclesiae* has not lost its appeal to the heart, and the tremendous acclaim of Dr. Allan Roy Dafoe by the people of New York is proof of the veneration in which men who have done big things in a quiet way for the benefit of humanity can still be held by a more or less sophisticated community.

So far as our own country is concerned its people have steadfastly pressed forward toward the goal of social betterment in all its branches. Much house-cleaning has been done in the mercantile sphere, and the way prepared for legislative regulation of Big Business and the extermination of the methods of bad business. In the sphere of State while there has been more or less heard of the sort of politics that the new age would be glad to forget, the voice of the statesman has not failed to utter words of genuine leadership. In the ordinary walks of life there have been signs among us of that spiritual awakening which fosters the belief that righteousness exalteth a nation. This, we think, is the supreme good that has come to us out of the Great Depression. That Canada is not alone in this renewed search after that which makes human life worth the living is demonstrated by what has recently been said by a citizen of far-off Japan: "People have realized through the world-wide depression since the Great War that they cannot get true and eternal happiness in the material world after all, which is not constant, and they have begun to seek enthusiastically after the spiritual happiness".

**LORD BUCKMASTER.**—One of the most distinguished figures in the public life of England in recent times passed to his rest on the fifth day of the present month. Viscount Buckmaster of Cheddington was born on the 9th January, 1861. After a brilliant career as a student at Oxford, he was called to the Bar in 1884. He was first elected as a Liberal member of the House of Commons in 1906. He became Solicitor-General in 1913, and received the honour of Knighthood in the same year. In 1915 he became Lord Chancellor and was raised to the peerage. During the early part of the Great War he acted as Director of the Press Bureau, and later became a member of the Interallied Conference on Finance and Supplies. His gifts as a public speaker enabled him to share an equality of distinction with such masters of rhetoric as Lord Oxford, Lord Birkenhead and Sir John Simon. In 1925 he visited this continent as the guest, first, of the American Bar Association, and, later, of the Canadian Bar Association. His speech at Detroit on "The Romance of the Law" is said to have been one of the most unique and eloquent discourses in the history of the American organization. His address to the Canadian Bar Association at Winnipeg is printed in full on pp. 361-370 of Volume 3 of the *CANADIAN BAR REVIEW*. It will repay a fresh reading today, revealing as it does pride and confidence in the aims and achievements of the profession of the law and a passionate attachment to the political ideals and institutions of the British people.

We recall that during the historic visit of the American and Canadian Bars to London in 1924 we had the privilege of spending an hour or two in the company of Lord Buckmaster. The rare quality of the man became apparent at the earliest moment of contact with him; communion with him even of the briefest kind gave one a very real sense of cultural illumination.

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**LAW REFORM AND THE STATUTE OF FRAUDS.**—Dean Pound has said in one of his books that the legal order must be flexible as well as stable, and that it must be constantly overhauled and refitted to the demands that follow upon change in the social life of the community which it governs. That the present Lord Chancellor of England is of like mind with Dean Pound in this behalf is established by his appointment some time ago of a Law Revision Committee to consider and report upon the state of certain branches of the common law and whether or no in the opinion of the Committee reforms in these branches are invoked by modern conditions. We have previously referred

to some of the reforms already recommended by this Committee, and the reception they have met with from the Bar as a whole has convinced us that English lawyers in our day are not inclined to greet suggestions of drastic law reform with the repugnance exhibited by the profession when the nineteenth century was young. We now hear no echo of the famous declaration of the Parliament of Merton, "Nolumus leges Angliae mutare"; but in the ears of Bentham and Romilly that echo was no feeble one. England has undoubtedly awakened to the duty of removing from her laws the dead hand of the past. The time is coming, too, when we shall hear more of jurists and less of legal craftsmen in England.

One of the latest subjects of enquiry referred by the Lord Chancellor to his Committee touches the advisability of repealing section 4 of the Statute of Frauds and section 4 of the Sales of Goods Act, 1893 (which reproduces section 17 of the Statute of Frauds). Our readers are, of course, aware that with the exception of sections 4 and 23 the whole of 29 Car. II., Ch. 3, has been repealed, although some provisions survive by transference to other and later legislation of the United Kingdom. Section 4—judicial interpretation whereof has greatly swollen the doctrinal content of the branches of law and equity affected by its provisions—has been partially repealed by the Law of Property Act, 1925, so that so much of it as is obsolescent might now be thrown on the scrap-heap with advantage. No doubt the shades of Lord Nottingham, North, C. J., and Sir Leoline Jenkins—great lawyers all in their time—will suffer dismay over the disclosure that the famous Statute, drafted in whole or in part by them, has so suffered in the process of judicial distillation that there is nothing left of it but a *caput mortuum*.

Pascal once exclaimed that "three degrees of polar elevation upset the whole of jurisprudence"; and three centuries of time can do as much. In *Combe v. Edwards* (L.R. 3 P.D. 142) Lord Penzance very finely said: "The spirit of justice does not reside in formalities, or words, nor is the triumph of its administration to be found in successfully picking a way between the pitfalls of technicality. After all, the law is, or ought to be, but the handmaid of justice; and inflexibility, which is the most becoming robe of the latter, often serves to render the former grotesque."

THE DOMINION MARKETING ACT, 1934.—The Natural Products Marketing Act, 1934, is a definite repudiation of the doctrine of laissez-faire as applied to the marketing of natural products. The opportunity is now afforded under the Act to the producer of wealth to exercise an effective regulation over the marketing of his product. Power is given to regulate the time and place at which, and to designate the agency through which, the regulated product shall be marketed, to determine the manner of distribution, the quantity and quality, grade or class of the regulated product that shall be marketed by any person at any time, and to prohibit the marketing of any of the regulated products of any grade, quality or class.

The machinery through which this effective control is to be exercised consists in the first instance of the Dominion Board appointed by the Government and of the local Boards to which the Dominion Board may delegate all or any of its powers under the Act. In the practical working out of the plan it is apparent that the Dominion Board will leave the operation largely in the hands of the local Boards constituted for the purpose.

The Act is brought into operation in any particular industry by the primary producer himself, who is given the privilege of formulating a plan and submitting the same for approval to the Minister. If the Minister feels that the suggested plan has sufficient support by the producers engaged in the industry to warrant its consideration, he transmits it to the Dominion Board, who in turn inquire into and report upon the expediency thereof. If the report be favourable, the Minister may either submit it to a poll of those involved or may in his discretion pass it on to the Governor-in-Council for an order making it effective. In such order the date upon which the plan goes into effect is stated. Upon the passing of the Order-in-Council the local Board named in the plan becomes a body corporate and the plan itself has the force of law.

In Western Canada the two classes of producer, that is, the poultry producers and the live stock producers, have plans now under consideration by the Dominion Board. As some indication of the strength and extent to which these are receiving support, it appears that the petition of the live stock producers of Alberta now before the Board was approved of at a recent meeting held in Calgary representative of every branch of the industry. At that meeting, approximately some 200 delegates were present from the Peace River to the International Boundary. It was characterized by one of the leading stock men of Alberta

as being the most representative meeting of live stock producers ever held within the Province. After discussion of the plan in detail a motion to submit the same to the Minister for approval was carried with only five opposing votes. The plan being put forward by these various branches of agricultural industry indicate a desire on the part of the producers to undertake the responsibility involved in the application of the Act, and, through their own Boards elected by all producers affected, to provide for an effective regulation of the flow of their product to the market. Existing organization and channels through which distribution of the product in its finished form is made to the consumer will under the plan function as formerly but must go to the Board itself for their supply of the material. Provision is made for a levy on the product itself as it goes to the market under the control of the Board to provide for operating expenses and necessary reserves to the end that the industry will not be a charge upon the taxpayer but will pay its own way. The plans in question have been worked out in some detail with the usual provisions for a regulation of the product in an effective way so that the purpose and intent of the Act will be carried out and effective control be in the hands of the producers themselves.

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BARRISTER AND LAWYER NOT CONVERTIBLE TERMS.—Tradition has it that in the opinion of the Bench daily support for the view that a person may exercise the profession of the law without being a lawyer is furnished during the trial of cases. It is rare indeed to find that judicial opinion formally recorded, but we happened upon an instance of the kind the other day in reading the report of *Skipworth's* case (L.R. 9 Q.B. 230). That was part of the legal aftermath of the notorious experiment of Thomas Castro, of Wagga Wagga, Australia, who sought to metamorphose himself from a butcher into a baronet by pretending to be the heir to the Tichborne title and estates. Prior to Skipworth's appearance on the scene, two members of parliament, Whally and Onslow, had been adjudged in contempt for publicly discussing the trial, then awaiting hearing in the Court of Queen's Bench, of the Tichborne personator for perjury. It appears from the report that Skipworth was a member of the Bar, and how he in turn got into trouble by contempt is recited in the following extract from the judgment of Blackburn, J. (p.239):

"Last week he was present, according to his own statement, when Mr. Whally and Mr. Onslow were adjudged to have been guilty of contempt and sentenced to pay a fine. He heard that judgment in this Court, and for the reasons stated then he knew it was a wrong thing and a contempt of court to interfere further with the proceedings;

and having heard this, he goes down to Brighton and attends a meeting to do the same thing the very same afternoon, and announces there that he was present at the hearing of that case of contempt, and uses terms of abuse of the Lord Chief Justice, and I think uses terms not very complimentary to the rest of the Court, and he announces his determination to proceed notwithstanding the warning of the Court. I am reminded by my brother Mellor that this is done by a person who is a barrister, and ought to have known better; but *Mr. Skipworth, although he is a barrister, certainly appears not to be a lawyer.*" (Italics ours).

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EDUCATION FOR CITIZENSHIP.—In the November number of the *New Jersey Law Journal* Mr. Theodore Gottlieb publishes an interesting commentary on the report of the American Citizenship Committee of the American Bar Association. He refers to the summary made by the Committee of the answers to questionnaires, sent out to various colleges, universities, and law schools throughout the United States, which induced the Committee to speak of the answers in the mass as revealing "amazing conceptions of the meaning of the Constitution. . . . Too much has been left to the vagaries of many college teachers, who are lacking in practical experience in the affairs of life, and who have scant sympathy with our form of government." Mr. Gottlieb, who has acted for some years as Citizenship Instructor to the Citizens Military Training Camps at Plattsburg and Madison Barracks, confirms the view expressed in the report of the Committee of the Bar Association and declares that every State Bar Association should take measures to remedy the situation therein disclosed. He shows, however, that the State of New York has already taken action in the matter so far as both public and private schools are concerned by enacting a law that pupils in these schools must receive instruction in patriotism, citizenship and the provisions of the United States Constitution as a condition precedent to graduation.

We think that this awakening of the people of the United States to the duty of educating the young in the principles of citizenship should serve to direct the attention of the Canadian people to what is being done, or not done, by our school authorities to foster a vigorous and intelligent patriotism in those who in the course of time will be called upon to shape the destiny of this country. Instruction in the rudiments of political science should not begin in the Universities—few of our young men and women are ever enrolled as alumni in those institutions. Our experiment in federalism has never been free of difficulties, and its problems are increasing with every fresh intrusion of governments upon the field of doubtful constitutional powers. Hence the value of an understanding mind in the Canadian electorate.