

THE CANADIAN BAR REVIEW

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.

TOPICS OF THE MONTH.

ANNUAL MEETING.—The Twelfth Annual Meeting of the Canadian Bar Association will be held in Toronto on the 24th, 25th and 26th days of August next. It is expected that the Lord Chief Justice of England will be one of the guests of the Association during the meeting.

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MR. BRUCE ON THE IMPERIAL CONFERENCE.—Prime Minister Bruce's observations on the achievement of the last Imperial Conference, as published in the December number of *The English Review*, strike us as both luminous and just. Emphasizing what must now be accepted as a fact that the pre-war conception of the Empire was wholly displaced by the position accorded the self-governing Dominions at Versailles and at Geneva, he proceeds to say that the real and substantial question confronting the Conference for settlement was "whether the will to unity throughout the Empire had or had not been impaired by the events and experiences of the last twelve years." Fortunately it was found that there was no implication of disunion in the aspiration of the Dominions for equality of status with Great Britain, and that a 'separatedness' might be conceded which would not connote separation. Yet while acknowledging the tremendous advantage which inhered in the common intention of

the Dominions that the integrity of the Empire should not be impaired in this process of readjustment, Mr. Bruce is not disposed to regard lightly the practical difficulties that beset the attainment of equilibrium in the new dispensation. There was no help to be had from the past in the settlement of these difficulties, for the British Empire finds no parallel in history. The appeal for a way out of the situation resolved itself into sheer invocation of good-will and resourcefulness. And so the result of the Conference is not to be lightly regarded. Thus Mr. Bruce speaks of it:—

“It may be said that the resolutions merely clarified a position which existed all along, but I would remind those who are inclined to make criticisms of this sort that before the Conference met there was no such general agreement about the political situation in the Empire as, I think, exists to-day, now that the work of clarification has been done. Doubts were freely expressed as to what Imperial unity could mean if it had to be reconciled with a full degree of autonomy in the self-governing parts of the Empire. Similarly, there were some who questioned whether genuine autonomy could be maintained in face of the need for a unified executive policy in the international sphere. Even among those who were prepared to admit the possibility of reconciling unity with autonomy there was room for a good deal of disagreement as to how this was to be done, and where precisely the emphasis was to be laid.

“It should scarcely now be possible, while the general circumstances of the Empire remain as they are to-day, for any question to be raised to which the answer has not been either definitely given or clearly forecasted in the resolutions of the Conference. The three great watchwords of Liberty, Equality, and Unity have been freely and unmistakably accepted, and their application in detail has gone quite as far as the needs of our time demand, without leading to that kind of over-rigid definiteness which may itself so easily prove to be a stumbling-block.”

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WHAT MIGHT HAVE BEEN.—In connection with the subject discussed in the preceding item we wish to quote the following from the *Washington Post*:—

“If the terms of the reference now accomplished between the Mother Country and the Dominions had been offered in the time of George III., it is quite probable that the United States of America would to-day have been a Dominion under the British Crown.”

This is a profoundly suggestive thought, and we commend it to Mr. Maxse, of *The National Review*, whose noisy and ill-tempered criticism of the result of the recent Imperial Conference, and of the statesmen from all parts of the Empire concerned in it, reminds us of the part played by Thersites among the Greeks at Troy.

PRELIMINARY EDUCATION OF LAW STUDENTS.—By a regulation, which becomes effective in September next, two years' University training is imposed as a prerequisite for entrance into the Law School of Osgoode Hall. In view of the fact that this regulation only requires from law students in Ontario the same standard of preliminary education as is exacted in at least four of the smaller provinces of the Dominion, it is somewhat curious to find that it is the subject of adverse criticism on the part of some leading members of the profession in Ontario where University training is available at such convenient centres and at so reasonable a cost. That the Bar should be learned in more things than the law of the office and the courts has been insisted upon ever since its organisation. Bolingbroke counselled the neophyte to approach the study of the law by climbing the vantage-grounds of metaphysical and historical knowledge so that he might not spend his life "in a mean but gainful application to all the little arts of chicane." If general scholarship was desirable for him who sought to serve the law in the eighteenth century, it cannot be other than indispensable for his successor in this day of wider intellectual horizons, when it is declared that "Law is a subject which in every era forms an essential stratum in the structure of society. Cleave down through any part of this structure, seeking the foundations upon which modern philosophy, religion, history, economics, and sociology are built, and you come to a layer of law—not lawyer's law alone, but the people's law—which is the product of human experience." Episodes in which counsel of inadequate mental training is made a laughing-stock by some soundly educated witness are becoming too frequent in the courts; hence the REVIEW acclaims every step which will tend to make such scenes impossible. It is well-known that Mr. J. D. Falconbridge, K.C., has consistently advocated better standards of preliminary education for entrants to the Law School of Osgoode Hall since his appointment to the office of Dean. So we naturally find him pleased with the change. But we were particularly interested in reading the observations of the Honourable Wallace Nesbitt, K.C., on the subject of the new regulations, as published in one of the Toronto newspapers. We quote:—

"The Hon. Wallace Nesbitt, who has been specially interested in the raising of the standard, spoke strongly in favor of the regulation and expressed a hope that it was a step towards requiring complete University training for entrance to the school. 'There is a great deal to be said for the Abraham Lincoln theory, that a poor boy should have a chance to rise in the profession and not to be hindered by unnecessary regulations,' he

admitted, 'but I do not think that with present day facilities there is any reason why any boy should not be able to take two years at the University. I would like to see a full University course necessary,' he added, 'and in the last two years of the course students intending to take law could take as part of the course Constitutional law, Roman law, lectures on the Civil Code, which plays such an important part in Canadian legal matters, and other subjects. They should then take three years in the law school and serve a year in practical work of an office, preferably in the country. I say, in the country, for there is found better training than in city offices which are now overcrowded and senior and junior partners carry on with the aid of stenographers, and the student has but very little to do with practice in the office or with clients.'

'The University course,' he continued, 'should give a knowledge of French, which is most essential now as many judgments of the Supreme Court are given in French and two-fifths of Canada's population is French-speaking.'"

It is strange to find opposition to the improved standard of preliminary education for law students exhibited by some members of the Bar who themselves are initiate of the muses and contribute to the profession and the State that great measure of service which only those can yield who have received academic training. We think their attitude is due to overstrained sympathy for the ambitious youth of small means, and they are caught by the 'Abraham Lincoln' argument—forgetting that men of Lincoln's fibre are rare in all ages, and that in changed social conditions even they might fail of achievement. If a youth of to-day has the qualities of the self-made men of the past he will be wise enough to see that the chances for success of the untrained mind in the modern world are extremely dubious.

It is being generally recognized to-day that easy access to the Bar tends to lower both the intellectual and moral standards of the profession; and to recognize that is to concede that the time is ripe for experiment in reform. We must satisfy the public that the privileges accorded to the profession as a body are not inimical to the interests of the State.

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SIR ROBERT BORDEN AT OXFORD.—Last summer the Rhodes Trustees created a new Lectureship at Oxford to be known as the Rhodes Memorial Lectureship. It is a condition of acceptance that the Lecturer should deliver a series of lectures in Oxford and should reside there for one term. The appointments to the Lectureship are made jointly by the Vice-Chancellor of Oxford University and the Rhodes Trustees.

In July last, the Rhodes Trustees, in agreement with the University authorities, decided to invite Sir Robert Borden to be the first Rhodes Memorial Lecturer, and to reside at Oxford during either the winter or the summer term. Sir Robert Borden accepted the invitation, and will be in residence at Oxford during May and June of this year.

It is understood that in his first two lectures Sir Robert Borden will touch upon the history of Canada during the seventeenth and eighteenth centuries, inviting attention to the leading events during that period, and especially to the commanding figures among the adventurers, explorers, missionaries, soldiers and statesmen who chiefly guided the course of these events. In subsequent lectures he will discuss the emergence of full liberty and complete self-government from the confusion of the system established during the latter part of the eighteenth century, and in his concluding lectures he expects to give an intimate account of the Peace Conference at Paris and of the Disarmament Conference at Washington, at each of which he represented Canada. Sir Robert Borden expects to sail from New York for Italy on the 1st of March. After spending a few weeks in Italy and France he will arrive at Oxford about the end of April.

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A CANADIAN STUDENT.—Mention of Sir Robert Borden in connection with Oxford makes it appropriate to refer to the academic achievements there and elsewhere of his nephew, Mr. Henry Borden. After graduating with honours in arts at McGill University at the age of nineteen, Mr. Borden entered the service of the Royal Bank at Halifax and remained there for a year. Then he entered Dalhousie Law School, distinguishing himself in his course. He was then chosen as a Rhodes Scholar, and proceeded to Oxford, preparing for the degree of B.C.L., which he will receive during the present year. Last spring he obtained a "First" at Oxford in the examinations for the B.A. in Jurisprudence, which is comparable to an LL.B. in Canada. While in Oxford he entered Lincoln's Inn, and in December last passed his "Finals," obtaining one of the five Certificates of Honour and standing third in a class of 137. With so fine a record as a student, Mr. Borden ought to obtain a conspicuous place at the Bar.

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CARNEGIE FELLOWSHIPS IN INTERNATIONAL LAW.—The Division of International Law of the Carnegie Endowment for International Peace announces that Fellowships in International Law will be

awarded for the academic year 1927-28, according to the following regulations:—

1. These fellowships have been established by the Trustees of the Endowment for the purpose of providing an adequate number of teachers competent to give instruction in international law and related subjects, as an aid to the colleges and universities in extending and improving the study and teaching of those subjects, which are daily becoming increasingly of more interest and importance in the conduct of international affairs. Only those who intend to aid in this work are, therefore, expected to apply for these fellowships.

2. Two classes of fellowships will be awarded (a) Students' Fellowships, (b) Teachers' Fellowships. Applicants should indicate the class of fellowship for which application is made.

(a) Students' Fellowships will be awarded only to graduate students holding the equivalent of a bachelor's degree. The stipend attached to such fellowships is \$1,000.

(b) Teachers' Fellowships will be awarded only to applicants who have taught international law or related subjects for at least one year. An equivalent in practical experience may be submitted. The stipend attached to such fellowships is \$1,500.

An applicant for a Teacher's Fellowship who wishes to study abroad must be able to read and write the language of the foreign country in which he elects to study. Teachers' Fellowships awarded for study abroad will carry an additional stipend of \$300 on account of the cost of the transatlantic passage.

3. In general, a knowledge of the elements of international law and a good knowledge of history are necessary, and it is desirable that at least two modern languages be furnished. Applicants who hold a degree in law, or who have otherwise acquired a knowledge of law as a system, will be preferred in the award of fellowships. Other special previous preparation will also be considered.

4. The Fellow shall register as a student at a university or college, and shall devote his entire time to studying international law and related subjects. No other employment may be engaged in during the period covered by the Fellowship. Courses of study must be submitted to and approved by the Committee on Fellowships, and the Fellow shall report to the Committee at such times during the year as he may be directed.

5. The stipends are payable in quarterly instalments upon compliance with the regulations, communicated with the awards, governing the submission of reports and evidence of work.

6. A holder of a fellowship may apply for a fellowship for a succeeding year.

7. Each applicant is required to furnish a signed photograph, showing the date when it was taken.

8. Applications will be received up to March 16, 1927. Application blanks will be furnished upon request to the Committee on International Law Fellowships, 2 Jackson Place, Washington, D.C.

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A GREAT ADVOCATE.—In the course of an address delivered at the Graduates' Dinner, which was one of the events of the recent commemoration of the Seventy-fifth Anniversary of the founding of Trinity College, Toronto, the Right Honourable Mr. Justice Duff paid this graceful tribute to the memory of the late Mr. Christopher Robinson, K.C., who in his lifetime had held the position of Chancellor of Trinity:—

"I think, Mr. Chancellor, if I were searching for the name of an individual illustrating in his own person in unusual measure, those qualities which we believe to be fostered by an ideal University, my mind would inevitably turn to the name of a great Canadian, the son of the first Chancellor of Trinity, himself a chancellor of Trinity, who though educated at King's College took a Trinity degree: who for long years adorned the profession of the law and the citizenship of this country: and who to commanding abilities united great simplicity of character, kindness and the utter absence of pretention, and need I say it, stainless honour—I am thinking of the name, the great name of Christopher Robinson. Mr. Robinson's fame as an advocate, his conspicuous freedom from anything like vulgar ambition, are known to most people, but his fame beyond our shores, the impression he made in other countries, is perhaps not so well known. I cannot resist the temptation to mention an incident in his career.

"The place was the great reception hall of the Foreign Office in Whitehall. The occasion was the hearing before the Alaska Boundary tribunal in 1903. Our American friends had known Mr. Robinson ten years before in the Behring Sea Arbitration when he was in the plenitude of his powers and had assigned him a high place, a very high place indeed, among the great historic advocates. Mr. Robinson was to make the closing speech for us. I was there in a very minor capacity—*pars minima fui*. That morning they gathered to hear him. All that was most eminent and representative in the American colony was there. There was Mr. Joseph Choate, the American Ambassador; there was Mr. Henry White, the first Secretary, afterwards Ambassador to France; Senator Lodge and Mr. Root were Members of the Board; there were representatives of the great American financial interests; there were numbers of distinguished American ladies, and great English ladies of American birth. Mr. Robinson, owing to illness, was obliged to ask leave to address the tribunal from his seat. Our American friends gathered about in serried ranks as if dreading to lose the lightest whisper of 'that old man eloquent'; and they heard, delivered in a barely audible voice, what by common consent was one of the greatest speeches of the great advocate's life. It was a triumph, such as falls to a few. But the point I wish to emphasize is this: to him that triumph was but a passing incident; greater than all his triumphs, greater than all his brilliant career, greater than all his shining gifts, was the man himself."

PROFESSIONAL AMENITIES.—Sir James Aikin, K.C., President of the Canadian Bar Association, has received the following resolution adopted by the Advocates of the Court of Paris touching the reception accorded to Maître Chresteil, who represented the Paris Bar at the Eleventh Annual Meeting of the Canadian Bar Association:—

Ordre des Avocats à la cour de Paris Séance du 5 Octobre, 1926.

Le Conseil:

Après avoir entendu le rapport présenté par Monsieur Chresteil sur la mission remplie par lui au Canada, exprime à la Canadian Bar Association et à son chef éminent, Sir James Aikins, ses remerciements chaleureux pour l'accueil dont Monsieur Chresteil délégué par le Barreau de Paris à cette manifestation professionnelle a été l'objet de la part du Barreau Canadien. Il assure la Canadian Bar Association de la réciprocité des sentiments dont Monsieur Chresteil a reçu, au cours de sa mission, d'émouvants témoignages.

Le Secrétaire de Conseil,
" G. Chresteil."

Le Bâtonnier de l'Ordre,
" Henri Aubépin."

Les Membres de Conseil de l'Ordre.

R. Poincare,
Albert Flayeue,
Andre Raillif,
Anton Brucker,
Albert Salle,

Manuel Fourcade,
R. Poultier,
A. Millerand,
A. Vaunois.

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SALARIES OF UNITED STATES JUDGES.—By an Act of Congress passed by a vote of 295 to 39 of the members present on the 9th of December last, and approved by the President of the United States on the 13th of that month, the following provision was made for the salaries of the judges and functionaries mentioned below:—

The Chief Justice of the Supreme Court of the United States, \$20,500 per year.

Each of the Associate Justices of the Court, \$20,000 per year.

Each of the Circuit Judges, 12,500 per year.

Each of the District Judges, \$10,000 per year.

The Presiding Judge of the United States Court of Customs Appeals and each of the other Judges thereof, \$12,500 per year.

The Chief Justice of the Court of Appeals for the District of Columbia, and each of the Associate Justices thereof, \$12,500 per year.

The Chief Justice of the Court of Claims and each of the other Judges thereof, \$12,500 per year.

The Chief Justice of the Supreme Court of the District of Columbia, \$10,500 per year.

Each of the Associate Justices thereof, \$10,000 per year.

Each of the members of the Board of General Appraisers, such Board functioning as the Customs Trial Court, \$10,000 per year.

By this measure substantial increases are made in the salaries of some of the Judges and functionaries above mentioned.

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LORD SUMNER.—Lawyers throughout the British Commonwealth were glad to learn that the New Year's honours granted by His Majesty included the advancement of Lord Sumner from a life peerage, held by him as a Lord of Appeal in Ordinary, to the hereditary title of Viscount. Lord Sumner (John Andrew Hamilton) was educated at Balliol College, Oxford. He was called to the Bar (Inner Temple) in 1883, and took silk in 1901. After a distinguished career at the Bar, he was made a Judge of the High Court of Justice, King's Bench Division, in 1909. In 1913 he became a Lord Justice of Appeal. His fine educational attainments have been recognized by the Universities of Great Britain. He was made an Honorary Fellow of Magdalen College, Oxford, in 1909; an Honorary LL.D., of Edinburgh in 1913, and of Manchester in 1919; and an Honorary D.C.L., of Oxford in 1920. He was a member of the British Delegation to the Reparations Commission, Peace Conference, Paris, 1919; and Chairman of the Royal Commission on Compensation for Suffering and Damage by Enemy Action, 1921. While a junior he maintained the literary traditions of the profession by writing reviews for one of the leading weeklies and contributing articles to the *Dictionary of National Biography*. Proficiency in the art of letters so acquired is manifested by him on the Bench. We might point in this connection to his judgment in the Canadian case of *Rex v. Attorney-General of British Columbia*.¹

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AN ENGLISH OPINION.—We extract the following passage from Professor Berriedale Keith's "Notes on Imperial Constitutional Law" in the last number of *The Journal of Comparative Legislation and International Law*:—"It is impossible seriously to contend that Canada, which occupies a place in the League of Nations and claims national status, is incapable of producing a Supreme Court to which should be left the decision of such issues as the liability of the Ottawa

¹ [1924] A.C. 203.

Electric Railway Co. to a lady who had the misfortune to undergo an accident when seeking to enter their premises: *Letang v. Ottawa Electric Railway Co.*,¹ or the limitation period applying to the claim of a passenger for personal injuries incurred on a street railway in British Columbia: *British Columbia Electric Railway v. Pribble*.²

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THE PRINCE ACCLAIMS WOLFE.—In responding to the toast of “The Queen and other Members of the Royal Family” at a Dinner given by the Wolfe Society, at the Savoy Hotel, in London last month the Prince of Wales paid the following tribute to the memory of General Wolfe:—

“Every English-speaking boy is, as the saying goes, ‘brought up on heroes.’ James Wolfe ranks very high among them. The dramatic story of his death in the very moment of victory is one of the first that stirs our imagination when we begin to read history. To our generation he has a very special appeal, because, from the very briefest sketch of his short life, it strikes one that he was just the type so many of the brilliant young soldiers who made a name for themselves in the late war. He put his whole life into his profession, yet he was always full of new ideas, and, still more important, he never missed the opportunity of trying them out.

“But it was of the wider significance of Wolfe’s name that I meant to speak, however briefly. It is rather as a pioneer, as a creator, than as a soldier, that we think of him now. There are, in this Empire’s history, a few names that are imperishably associated with certain parts of our Empire. Before our school days are over we have linked Clive with India, Captain Cook with Australia, or Rhodes with the splendid country which bears his name. And it is impossible to think of Canada without thinking of Wolfe. That first glimpse of Quebec inevitably brings him into one’s mind.”

¹ 42 T.L.R. 596.

² [1926] A.C. 466.