

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.

PRE-LEGAL EDUCATION AT TORONTO UNIVERSITY.—Our attention has been drawn to the fact that the University of Toronto in its Honour Politics and Law B.A. course is at present providing a first-class education for future practising lawyers. This course follows the plan, with necessary modifications, of the B.A. course in Jurisprudence at Oxford, Cambridge and Dublin. In the earlier years sound historical foundations are laid in British, Canadian and American Constitutional History. Thus a student has behind him the sense of constitutional growth before coming to the technical work of the third and fourth years. In these years he reads: Third year:—Roman Law, History of English Law, English Constitutional Law, Canadian 'Administrative,' and Municipal Law. In addition he has an introductory course in the Classical Political Theorists and a solid course either in Public Finance or Statistics. In his Fourth year he reads Canadian Constitutional Law, Jurisprudence, Comparative Federal Constitutional Law, International Law, with an advanced course in Political Theory and in either corporation Finance or Transportation. The object of these non-legal subjects is to combine theory and definite concrete problems with law, in order to widen interest and the field of examples. This graduating honour course is conducted by Professor W. P. M. Kennedy, Professor of Law and Political Institutions, Professor N. A. MacKenzie, Professor of Constitutional and International Law, and Mr. J. F. Davison, lecturer in Roman Law and Jurisprudence. The course

primarily aims at training legal scholars and jurists, and in sending out into Canadian life a group of men and women fundamentally interested in law as a science. Incidentally, it is a first-class pre-legal training for those going to the Law Schools, where, indeed, those who have graduated in it have already acquired honour and distinction. The course is the only one of its kind on the North American Continent. It is not original in its conception, though containing original features, as it follows the plan of those Universities already referred to, whose experience has been that from men educated along these lines have been drawn many of the great line of English and Irish Judges and practising jurists. In other words, the University of Toronto offers incidentally to future lawyers something analogous to what it offers in its honour pre-medical science B.A. course to future doctors—a preliminary legal education. The whole idea is that lawyers need this training in the same way as doctors need it, and that many of the finest types in both professions have as a matter of fact been trained along these lines. The hope is that the University of Toronto has, in a degree, solved a problem along the lines found creative in both law and medicine in England and Ireland. Practising lawyers will doubtless watch with interest this unique experiment—first, specific training in the science of law and politics; then, if the student selects the legal profession as his life's work, training in its 'clinical' work in a Law Society. The course has, we believe, already justified itself. Professional students at the Law Schools who have taken it speak of it as of inestimable value; and not a few without it regret their loss.

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SIR CHARLES HIBBERT TUPPER, K.C.—By the death of the Honourable Sir Charles Hibbert Tupper, K.C.M.G., K.C., the Bar of Canada has lost a distinguished member, and Canada, a citizen who served his country with public distinction during a considerable period of his life.

Sir Charles Hibbert Tupper was in the active practice of his profession at the time of his death, being senior member of the firm of Tupper, Bull & Tupper, of Vancouver, B.C. His demise was due to an attack of pneumonia.

Sir Charles Hibbert Tupper was the third son of the Right Honourable Sir Charles Tupper, Bart., a former Premier of the Dominion, and one of the Fathers of Confederation. He is survived by Lady Tupper, who is a daughter of the Honourable James Mac-

Donald, Chief Justice of Nova Scotia, and three sons and three daughters. The deceased was born on August 3rd, 1855, at Amherst, N.S. He was educated at Windsor Academy, McGill University, and Harvard University. He was called to the Bar of Nova Scotia in 1878, becoming junior member of the law firm of Thompson, Graham & Tupper. He entered politics at the early age of 27, being elected in that year as a member of the Canadian House of Commons for Pictou, N.S. He continued to represent that constituency until 1904, when he retired from politics. During this time he occupied, respectively, the portfolios of Minister of Marine and Fisheries and Minister of Justice; he also held the office of Solicitor-General at one period. In the year 1891 he was elected to assist the British Ambassador at Washington in the discussion of regulations respecting the fur seals; and in June, 1892, was chosen to represent His Majesty as agent for Great Britain in the Behring Sea Arbitration which met at Paris in February, 1893. When the award was made known, Lord Ripon, the then Secretary of State for the Colonies, cabled to the Canadian Government as follows:—"Without awaiting the official text of Arbitration award, I will not delay congratulations to Canada on Tupper's success as British Agent in asserting the freedom of the sea and of maintaining the legal rights of Canadian ships." As Minister of Marine and Fisheries he carried through Parliament several very important measures relating to navigation and shipping. As Minister of Justice his report on the petition of the Catholic minority in Manitoba relating to the privilege of maintaining separate schools is regarded as a State paper of exceptional value. In the year 1895 he declined the appointment of Canadian High Commissioner in London. He was created a Queen's Counsel, while practising his profession in Nova Scotia in 1890; but since the year 1897 he has been practising his profession in the City of Vancouver, B.C.

Although retired from public life, Sir Charles Hibbert Tupper continued to manifest great interest in the welfare of Canada in respect of its domestic affairs, as well as those related to the interests of the Empire at large. Only a few days before he was seized with his fatal illness he addressed a public meeting in Vancouver on the subject of affairs in the Maritime Provinces. On that occasion he said: "Failure to solve the problems of the Maritimes will lead me to think that Confederation is itself a failure."

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RETIREMENT AGE OF JUDGES.—The Government has introduced legislation in the present session of the Dominion Parliament amend-

ing the Supreme Court Act and the Exchequer Court Act. In the case of the former Court the amendment provides for the appointment of an additional Judge of the Court. Provision is also made that the Judges "shall cease to hold office upon attaining the age of seventy-five years." A similar provision as to the tenure of office of the Judges appears in the amendment to the Exchequer Court Act. On the second reading of the Supreme Court Bill, Mr. C. H. Cahan, K.C. (St. Lawrence-St. George), expressed his dissent from the policy of dispensing with the services of a Judge who had attained seventy-five years, irrespective of the mental and physical fitness of any individual Judge to discharge the duties of his office. In the course of his remarks Mr. Cahan referred to the biographies of many distinguished men who had done some of their best intellectual work after that age. In particular he referred to certain Judges of the English Bench who, for a considerable period after they had attained the age of seventy-five years, had continued to render valuable service to the State. In view of the achievements of the men whose history he passed in review, Mr. Cahan thought that it was "at least premature to pass a statute taking the Judges of the Supreme Court and of the Exchequer Court away from their duties at the modest age of seventy-five, provided that they were then physically and mentally capable of performing the duties of their office. . . . Simply because a few men became incapacitated at the early age of seventy-five, why should we provide that all men, no matter what their physical or mental capacity may be at that age, shall be retired from these high judicial positions?"

In another part of this number of the REVIEW we reprint from the Hansard a portion of the interesting speech of the Honourable R. B. Bennett, K.C. (West Calgary), on the second reading of the Bill to amend the Supreme Court Act.

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THE LABRADOR BOUNDARY AWARD.—We hoped to be able to publish in this number a full and authentic text of the Report of the Judicial Committee of the Privy Council upon the Reference made to them by the Dominion of Canada and the Colony of Newfoundland concerning their respective boundaries on the Labrador peninsula, but we have encountered delay which compels us to defer its publication until next month. At that time we shall publish also some discussion of the outstanding features of the Report. A great deal of discussion has naturally arisen of the terms of the award,

and some things said that were better left unsaid. On the whole, the temper of Canada has responded well to the disappointment involved in losing what we contended for. The leading English papers approach the issue of the Reference with that dignified impartiality so characteristic of them. The *Spectator* speaks of the award in the following terms:—

"The Majesty of Law and the prestige of the British Empire have been magnificently confirmed by the Report of the Judicial Committee of the Privy Council delivered last week upon the reference made to them under an Act of William IV. by the Dominion of Canada and the Colony of Newfoundland. By the Committee's advice to His Majesty the territory of Newfoundland is trebled and a source of increasing friction between two members of the Empire is wiped away. The issue was, in the words of Lord Hardwicke quoted by the present Lord Chancellor, 'worthy the judicature of a Roman Senate.' The questions brought to ancient Rome are indeed alone comparable to the questions brought to London, unless we admit the validity of a Papal decree granting the sovereignty of an ocean to Spain, or go back beyond the faded decrees of Buonaparte and discern royal decisions beneath the flowery Eastern language that tells us how 'all the kings of the earth sought the presence of Solomon, to hear his wisdom that God had put in his heart.'"

We may explain that Lord Hardwicke's phrase referred to by Lord Cave occurs in his judgment in *Penn v. Lord Baltimore*,¹ where he speaks of the matter in dispute in that case as "of a nature worthy of a Roman senate rather than that of a single judge," and adds: "My consolation is that if I should err in my judgment there is a judicature equal in dignity to a Roman senate that will correct it."

Punch has risen to the occasion with some topical verses entitled "The Great Paper Chase," closing with these lines:—

"But two points are clear: both the parties remain,
As they were, still inside the Imperial domain;
While the fact that they asked us at home to decide
Is a proof of their trust and a ground for our pride."

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CAUSES OF CRIME.—One of the subcommittees of the New York State Crime Commission has tested the value of the 'questionnaire' as a means for ascertaining the causes of crime, and declared that its results are worthless to the Commission. Some three thousand citizens of standing have been interrogated by this means and a synthesis of their individual opinions simply affirms the truism that crime is a social maladjustment and that its causes are complex. So much for

¹(1750) 1 Ves. Snr. 443 at p. 446.

this certificate of futility given to the questionnaire as a royal road to sociological knowledge. But another subcommittee has investigated with great care the histories of one hundred and forty-five persons convicted and under sentence for crimes, only to reach a similar conclusion that there is no unit cause for crime. So that there is little difference in the result attained by both of these methods of inquiry. It is interesting, however, to learn that the ages of the prisoners studied by the last-mentioned subcommittee ranged from 16 to 30 years; and that fifty per cent. of the group investigated were 21 years of age or under, while seventy-six per cent. were 25 or under. Only a small portion of them were born abroad. The report of the subcommittee seems to hold that criminal tendencies on the part of the young can be better restrained and corrected by supervised recreation clubs than by any other means. Of the group of one hundred and forty-five prisoners studied as above mentioned, the report states that not more than five were members of such organisations. The following statement is noteworthy:—

"The recreational interests of the offenders studied who resided in large cities and those who resided in rural parts of the State do not differ to any extent, except that the delinquents from the smaller communities had been 'crazy' about automobiles and had stolen to obtain them. The main recreational interests of the group studied were in prizefights, boxing matches, cheap social clubs, burlesque and cheap vaudeville entertainments, pool playing or loafing around poolrooms. Only a limited number danced or were interested in dancing."

Dealing with the present system of punitive and reformatory institutions in the State, the report does not hesitate to impugn its efficiency in the strongest terms. It is fundamentally wrong, because it does not provide for the study and treatment of the prisoner as an individual. We quote again:—

"Commitments to city or county jails or penitentiaries for short terms neither protect society nor are they likely under present conditions to check the beginning of criminal careers. The percentage of men in our State prisons who are graduates of city and county jails and penitentiaries would indicate the necessity of changing the hit and miss methods now employed by these institutions. It is just as vital for these offenders to receive individual treatment as it is for the offenders sentenced to State prisons. As the young and old, the first and the habitual offenders in most county jails are allowed to mingle freely and to spend their days in idleness, it is obvious that stressing the need for classification and the separation of the young and the habitual criminals in our prisons is an absurdity as long as they are allowed to associate with each other in municipal and county jails."

The report censures the practice of permitting a criminal to offer a plea of guilty of a lesser offence than that for which he is charged. It is unfair both to society and to other criminals who are undergoing sentences proportioned to the offences actually committed. The latter are thus taught to sneer at justice, which is a fruitful cause of anti-social conduct.

The following passage in the report will commend itself to those who are concerned with the subject:—

"Explaining away the anti-social acts of all individuals on the grounds of feeble-mindedness or other abnormalities is an absurdity," says the report. "But this fact does remain, that common sense demands that when a person is feeble-minded, and cannot control his criminal inclinations, and time and again breaks the established laws of society he has specifically shown his inability to adjust himself to society and to protect itself society must take intelligent, decisive action. Either he must receive intelligent supervision in the community or he must be given custodial care.

"For a number of years the need for having attached to our courts clinics for the mental and physical examinations of offenders has been stressed. But as yet no court dealing with adult offenders has such a clinic, although in a few courts, notably the New York Court of General Sessions, and the Family Court of New York City, and the Erie County Courts, the services of psychiatrists are frequently utilized."

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NEW KING'S COUNSEL FOR SASKATCHEWAN. — His Honour the Lieutenant-Governor of Saskatchewan by and with the advice of the Executive Council has been pleased to make the following appointments as King's Counsel for Saskatchewan:—

Regina, Friday, December 31, 1926.

The Honourable Thomas Clayton Davis, Provincial Secretary and Minister of Municipal Affairs for the Province of Saskatchewan.

Frederick Barber Goodwillie, Esquire, of Melfort.

Jacob Emil Doerr, Esquire, of Regina.

Alder Brehaut, Esquire, of North Battleford.

Albert Edward Vrooman, Esquire, of Arcola.

Netson Ross Craig, Esquire, of Moose Jaw.

Frederick Finlay MacDermid, Esquire, of Saskatoon.

Percival Hector Gordon, Esquire, of Regina.

Harold Francis Thomson, Esquire, of Regina.

John Cameron Martin, Esquire, of Weyburn.

James Meiklem Stevenson, Esquire, of Saskatoon.

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- Andrew Murray McIntyre, Esquire, of Saskatoon.
Charles Edward Bothwell, Esquire, of Swift Current.
Louis Thompson McKim, Esquire, of Melville.
Wilson Mowbray Graham, Esquire, of Yorkton.
George Arthur Cruise, Esquire, of Saskatoon.
Robert Erie Nay, Esquire, of Wilkie.
William Frederick Dunn, Esquire, of Moose Jaw.
William Henry Buchan Spotton, Esquire, of Moose Jaw.
William Milverton Rose, Esquire, of Moose Jaw.
Arthur Moxon, Esquire, of Saskatoon.
Arthur Thomas Procter, Esquire, of Moosomin.
Olin Drake Hill, Esquire, of Melfort.
Robert Wallace Hugg, Esquire, of Regina.
Frank Lindsay Bastedo, Esquire, of Regina.
Harold Johnson Schull, Esquire, of Moose Jaw.
Corbet Locke Durie, Esquire, of Saskatoon.
Robert John Hawthorne, Esquire, of Assiniboia.
Frederick George Atkinson, Esquire, of Battleford.
Roy Franklin Hogarth, Esquire, of Saskatoon.
Andrew G. MacKinnon, Esquire, of Regina.
Joseph Augustine O'Connor, Esquire, of Kindersley.
Andrew McLean Mathieson, Esquire, of Prince Albert.
William Harry McEwen, Esquire, of Regina.
Allan Lefroy Geddes, Esquire, Deputy Attorney-General for Saskatchewan.
Donald Alexander McNiven, Esquire, of Regina.
Gilbert Harrison Yule, Esquire, of Saskatoon.
Vincent Reynolds Smith, Esquire, of Yorkton.
Sylvester R. Curtin, Esquire, of Regina.
William Gladstone Ross, Esquire, of Moose Jaw.
Robert Handyside Milliken, Esquire, of Regina.
Thomas Gallant, Esquire, of Gravelbourg.