

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.

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 be sent to Mr. Sidney E. Smith, Dalhousie Law School, Halifax, N.S.

TOPICS OF THE MONTH.

CANADIAN BAR ASSOCIATION.

COUNCIL MEETING AT HAMILTON.

The date of the Mid-winter meeting of the Council of the Association (February 3) occurred in a period when the North Pole had lost its bearings and was wandering around southern Ontario with attendant winds which gave a new meaning to the word cold. But the rigour of the weather did not prevent a good attendance of members, and, moreover, served as a foil to the warmth of the greetings between them and the genial atmosphere of cohesion, in aim and effort, that distinguished the meeting from start to finish. It is a notable thing that there has been a marked acceleration in the growth of fellowship among the members of the Association as a whole during the period of depression that began in 1929. Sweet are the uses of adversity—*J'ai connu le malheur, et j'y sais compatir!* But whatever the cause, the last five years have seen an increase of collective sentiment in the Association which will not only establish an esprit de corps and defend the welfare of the legal profession throughout the Dominion, but will function with power in the national sphere. Hope that the Association would come to exercise that function stirred the mind of Sir James Aikins when he said during the course of his presidential address at its second annual meeting that the ambition of its members should be "to draw into closer union the

provinces of a nation in which we have a common interest; to develop that national spirit which will overleap distances and geographical barriers, which will bring into co-operation to the accomplishment of its work its people of all races, languages and creeds, and make a Canadian people strong in body, great in intelligence and upright in character. There may be diversity but that diversity should be in unity.

That the hope so expressed by Sir James Aikins in 1916 has become *fait accompli* in 1934, is demonstrated in the speech of the Honourable N. W. Rowell, K.C., at the dinner tendered by the Hamilton Law Association to the Council of the Canadian Bar Association during the meeting.

Mr. Rowell in speaking of cordial intercourse among the members of the Canadian Bar as one of the constitutional aims of the Association, said:

"I consider this to be one of the most important objects, and the result one of the greatest achievements of our Association. The presence at this dinner to-night of leaders of the Bar from as far west as Winnipeg and as far east as St. John, including a most representative group from our sister Province of Quebec, is, in itself, a testimony to the real interest the leaders of the Bar take in this Association, and the importance they attach to our meetings. At our annual meetings we have representatives of the Bar from every Province of Canada, and who can measure the extent of the influence these meetings have in promoting the spirit of Canadian unity? As I have already mentioned, the members of the Bar are most influential in Parliaments and Legislatures. At these annual meetings we have established bonds of friendship between French-speaking members and English-speaking members, between men from the east and men from the west, and in this Dominion of ours, stretching from ocean to ocean, and more or less sparsely settled throughout, these bonds of friendship constitute invaluable ties to bind our country together. I believe the Canadian Bar Association has made a great contribution to the spirit of Canadian national unity."

* * The meeting opened in the Royal Connaught Hotel at the appointed hour of ten o'clock, the President, The Honourable N. W. Rowell, K.C., LL.D., occupying the chair. After listening to a kindly address of welcome, on behalf of the City of Hamilton and the Hamilton Law Association, by C. W. Bell, K.C., M.P., the Council spent a most profitable morning in the way of advancing its business. So intent were the members to leave no item on the agenda undisposed of that immediately after their entertainment at luncheon by the President at the Tamahaac Club, business was resumed in the Club premises and proceeded with there until it was fully despatched. The interim reports presented showed that the several committees were working with their usual thoroughness and diligence in the matters entrusted to them by the Association. Among items of

general business, special importance attached to the resignation of Mr. E. H. Coleman, K.C., from the office of Secretary-Treasurer of the Association, such resignation being necessitated by his recent appointment to the position of Under-Secretary of State for Canada. Mr. Coleman, in tendering his resignation, expressed his profound regret at being obliged to surrender an office which, while finding him plenty of work, yielded him joy as a means of sharing in the administration of a body that served so fully and in so many ways the interests of the Bar of Canada.

On motion of Mr. G. F. Henderson, K.C., seconded by Mr. D. H. Laird, K.C., the following resolution touching Mr. Coleman's resignation was unanimously adopted:

"That while the members of Council, of course, regret the loss of Mr. Coleman as Secretary-Treasurer of the Association, they must appreciate the fact that the characteristics which made him invaluable to the Association as its Secretary-Treasurer qualify him for his recent appointment to the important position of Under-Secretary of State for the Dominion of Canada, and that his resignation must be accepted. They note with satisfaction that Mr. Coleman does not intend to lose interest in the affairs of the Association, and will look forward with great confidence to his success in his new and distinguished position as well as to the continuation of his friendship with the Association and its members."

The President spoke feelingly of the invaluable services rendered by Mr. Coleman during his long tenure of the office from which he was retiring, and suggested that the Constitution might be amended so as to permit of the creation of an unsalaried office to which Mr. Coleman could be appointed and his exceptional abilities thus made further available to the Association. Thereupon Mr. G. H. Montgomery, K.C., moved, seconded by Mr. G. H. Aikins, that the Constitution be amended to admit of the appointment of an officer known as the Honorary Executive Secretary and that Mr. Coleman be appointed to such office. The resolution was carried unanimously and with applause.

On motion of Mr. Pitblado, seconded by Mr. Taschereau, Mr. T. W. Laidlaw, a member of the Manitoba Bar, was appointed to succeed Mr. Coleman as Secretary-Treasurer of the Association.

By direction of the Chairman, a minute was ordered to be made recording appreciation of the excellent work done during the past year by Mr. G. L. Cousley as Assistant-Secretary.

The question of legal aid to the poor having come up for discussion it was pointed out that the standing committee charged with the duty of keeping the Association in touch with the progress of this movement throughout the Dominion, had ceased to function in 1929. As the result of the debate on the subject it was decided that

as present conditions demand in an acute way the attention of the Association in this behalf, a new standing committee should be appointed. This was done. Commenting on this subject in his speech above referred to, Mr. Rowell said:

"We constituted a new standing committee on legal aid, with a view of it investigating and reporting to our next annual meeting the steps which have already been taken in the several Provinces to provide legal aid for those unable, by reason of the present depression or other causes, to pay for the services of a lawyer. We recognize that it is essential to the due administration of justice that every citizen should be able to submit his claim to the Court, or be in a position to defend himself against what he conceives to be an unjust claim, and we consider it to be one of the duties which the profession owes to the public to look into this whole question of legal aid, with a view of rendering all the assistance in our power to those who, by reason of misfortune, are unable to provide for their own protection."

After the disposal of all the items of business on the agenda, the President announced that the Nineteenth Annual Meeting would take place at the City of Montreal on the 5th, 6th and 7th days of September next. In making this announcement he informed the meeting that Lord Tomlin, a distinguished member of the Judicial Committee of the Privy Council, has accepted an invitation to be present at the Annual Meeting as a representative of the British Bench and Bar, and that Maître Jallu, of the Bar of Paris, who attended the meeting at Calgary two years ago, will again be an official guest of the Association. It is expected that M. Jallu will be accompanied by a large number of other members of the Bar of Paris, who will participate in the celebration in Montreal of the 400th anniversary of the landing of Jacques Cartier in Canada. As usual the American Bar Association will be represented at the Annual Meeting by one of its outstanding members.

In the evening the members of the Council were entertained at dinner in the Royal Connaught Hotel by the Hamilton Law Association with the Honourable G. Lynch-Staunton, K.C., a member of the Senate of Canada, in the chair. In proposing the toast to the Canadian Bar Association, Senator Lynch-Staunton took occasion to emphasize the necessity, in this age, of sound business training for those who contemplate entering the profession of the law. That, coupled with a strict adherence to the ethics of the profession, would secure an honoured place for the practitioner in the estimation of the community in which he lived. The toast was also spoken to by General S. C. Mewburn, K.C., of the Hamilton Bar. In replying to this toast and acknowledging the hospitality of the Hamilton Law Association, the Honourable Mr. Rowell delivered an eloquent and impressive speech, passages from which we have already quoted. He

closed with an appeal for a good attendance at the meeting this year in these words:

"I hope that, as members of the Hamilton Bar, if you cannot all be present at the Montreal meeting, you will, at least, be very strongly represented. I am sure our fellow-members from the Province of Quebec, who so worthily represent the traditions of the civil law, will give you a most cordial welcome. Let those of us of all the common law Provinces meet our brothers of the civil law at Montreal next September, and thus further cement the bonds of Canadian national unity and the worthy objects for which our Association stands."

Other speeches at the dinner, and they were all of excellent quality, were made by Mr. Isaac Pitblado, K.C., Dominion Vice-President of the Association, Mr. G. H. Montgomery, K.C., (Montreal); Mr. George F. Henderson, K.C., (Ottawa); Mr. H. A. Porter, K.C., (St. John, N.B.); and Mr. E. H. Coleman, K.C., Under-Secretary of State for Canada.

* * Such of us as were privileged to attend this Mid-winter meeting of Council—privileged to profit by a day's intimate communion with men of like hopes and ideals and sealed of the same professional tribe as ourselves—set out at its close on our homeward journey with the conviction strong upon us that if the law is what so wise a man as Lord Bowen conceived it to be, namely, "the embodiment of the conscience of the nation," then the profession of the law must be a profession of gentlemen fitted in heart and mind to serve and to lead their fellow-countrymen in times of social unrest and national peril such as the present. It was said of the English Inns of Court in the sixteenth century that they were the "Nursing Sisters of the Commonwealth." It is well that the Canadian Bar Association in these eventful days should be mindful of the ancient reputation of lawyers for efficient public service.

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The Nineteenth Annual Meeting of the Canadian Bar Association will take place in the City of Montreal, on the 5th, 6th and 7th days of September, 1934.

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DUTY IN TORTIOUS NEGLIGENCE.—In the January number of the *Columbia Law Review*, Dr. Percy H. Winfield, of the University of Cambridge, has an instructive article on Duty in Tortious Negligence. He considers his subject from three view-points: (1) the meaning of duty in tortious negligence; (2) how the idea of "duty" as a requisite for liability arose; (3) whether the idea serves

any useful function. In discussing the latter branch of his subject he quotes Lord Atkin's observation in *M'Alister v. Stevenson*, [1932] A.C. 562, at page 580: "The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour." In summing up, Dr. Winfield thinks that while the "duty" in question got into the doctrine governing the tort of negligence by an historical accident, its elimination therefrom is at present neither practicable nor desirable, because "only parliamentary legislation could effect it, and that would jar settled habits of judicial thought too much to make the reform worth while."

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HONORARY MEMBER OF C. B. A. KNIGHTED.—William Campbell Johnston, LL.D., of Edinburgh, Deputy Keeper of the Signet since 1924, received the honour of Knighthood from His Majesty on New Year's Day. Sir William is an honorary member of the Canadian Bar Association.

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NEW SERIES OF REPORTS.—The publishers of *Bench and Bar* have launched a new series of reports in a special branch of the law under the name of the *Insurance Law Reporter*, to appear once a month. The avowed aim of the publication is "to collect in one volume of monthly instalments the decided cases on insurance law, decided by the Court of Canada and the Privy Council, whether they are to appear in any other set of reports or not, also to give the text of amendments to Statutes, both Dominion and Provincial, as soon as possible after their enactment." We have received a copy of the first number and are disposed to say that it sufficiently demonstrates the usefulness of the undertaking and encourages the belief that our good opinion of it will be shared by those who have recourse to the work from month to month.

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LEGAL EDUCATION AND THE LAW SCHOOLS—Mr. Jerome Frank, General Counsel for the Agricultural Adjustment Administration, Washington, D.C., delivered an address on "What Constitutes a Good Legal Education" before the Section on Legal Education of the American Bar Association at its last annual meeting, and those who desire to read it may do so in the December number of the *American*

Bar Association Journal. It is a militant attack upon 'Langdellianism,' that is to say the pedagogic theory of Professor Christopher Langdell, originator many years ago of the case system of law teaching at Harvard, who predicated of law that it was a science, and maintained that "all the available materials of that science are contained in printed books." Mr. Frank asserts that Langdell was a "cloistered, bookish and library-minded man" who in his youth is said to have "expressed regrets that he had not lived in the time of the Plantagenets." Moreover, we are told that "his pedagogic theory reflected the man," and that "law teaching has been struggling to break away from the excesses of the Langdell method, but that in these struggles it has been hampered by the fact that the schools were still dominated by Langdell's basic dislike of practice."

Now Mr. Frank is not disposed to smash the law school, but seeks to remove pedagogism from its system of training and supplant it by instruction that will move along the lines of real life at the Bar. He would abandon Langdell's central aim and revert to the "apprentice system but on a more sophisticated level. . . . The law school would resemble a sort of sublimated law office." He would have most of the teachers actively engaged in the practice of the law, but would require them not to overlook the means of solving "governmental and business and social problems with which the law deals." Again, the students would function as "the professors' assistants, or apprentices. Problems would flood in from law offices, business organisations, social and 'reform' organisations and the Government itself." Clearly Mr. Frank is as much infatuated with law as an art as Professor Langdell was devoted to it as a science. But this is not to say that a system as excogitated by Mr. Frank would not be worth trying out, provided it were feasible even to an experimental extent. However, we cannot allow Langdell and his case system to be swept into the discard without quoting the opinion of a qualified critic who commends it. Premising that the case system is to some extent a reversion to that prevailing in the Inns of Court in the Middle Ages and the sixteenth century, Sir William Holdsworth says it is more than that:

"There is this difference: the case system [of to-day] is applied in a university in which law is taught as a science, and in connection with other cognate subjects. The cases are studied and reasoned upon, not, as in the period of the Year Books, under the supervision of lawyers who know little else than cases and law books, but under the supervision of professors who know something of history, jurisprudence and comparative law. . . . Thus the merits of three systems of legal education—the old system of the Inns of Court, the system of teaching law by training in an office, and the academic

training in a university—have been happily combined, and a system of legal education at once theoretical and practical has been devised."

And does not Mr. Justice Holmes say somewhere in his legal essays that "the place for a young man to study law is a law school, not a lawyer's office"? Which, of course, is not wholly a ripost to Mr. Frank's thrust, but it does dispose of the appeal, still sometimes heard, to give the poor boy a chance to learn his law in his own way.

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MANITOBA BAR ASSOCIATION.—For the information of our readers we publish below a list of the names of the gentlemen elected to the executive and committees of the Manitoba Bar Association for the year 1934. OFFICERS: President, R. B. MacInnes, K.C.; 1st Vice-President, W. P. Fillmore, K.C.; 2nd Vice-President, J. N. McFadden; Secretary, F. J. Turner; Treasurer, C. V. McArthur. COUNCIL: *Eastern Judicial District*—B. C. Parker, K.C.; J. T. Thorson, K.C.; F. M. Burbidge, K.C.; Ward Hollands, K.C.; R. M. Fisher, K.C.; H. A. Bergman, K.C.; W. P. Fillmore, K.C.; W. R. Cottingham, K.C.; Jules Preudhomme, K.C.; A. L. Dysart; C. K. Guild, K.C.; A. E. Johnston, K.C.; C. V. McArthur; James McLenaghan; B. V. Richardson; F. J. Turner. *Western Judicial District*—A. G. Buckingham, K.C.; N. W. Kerr, K.C. *Southern Judicial District*—E. E. Spencer, K.C.; W. J. Rowe. *Northern Judicial District*—R. Harrison; C. L. St. John, K.C. *Dauphin Judicial District*—E. N. McGirr, K.C.; J. N. McFadden. *Central Judicial District*—E. G. Porter, K.C.; J. C. Miller, K.C. *Ex-officio Members*—H. J. Riley, K.C. (Past President); J. C. Collinson, K.C. (Legislative Counsel); G. A. Eakins, K.C. (President, Northern Bar Association); A. G. Buckingham, K.C. (President, Western Bar Association); J. Ragnar Johnson (Editor, Manitoba Bar News). COMMITTEES: *Entertainment Committee*—Chairman, Ward Hollands, K.C.; A. G. Buckingham, K.C.; W. R. Cottingham, K.C.; A. L. Dysart; G. A. Eakins, K.C.; R. Harrison; N. W. Kerr, K.C.; J. N. McFadden; E. N. McGirr, K.C.; B. C. Parker, K.C.; E. G. Porter, K.C.; Jules Preudhomme, K.C.; C. L. St. John, K.C. *Rules and Statutes Committee*—Chairman, A. E. Johnston, K.C.; H. A. Bergman, K.C.; F. M. Burbidge, K.C.; J. C. Collinson, K.C.; R. M. Fisher, K.C.; C. K. Guild, K.C.; James McLenaghan; B. V. Richardson; H. J. Riley, K.C.; C. L. St. John, K.C.; J. T. Thorson, K.C. *Membership Committee*—Chairman, C. V. McArthur; A. G. Buckingham, K.C.; G. A. Eakins, K.C.; W. P. Fillmore, K.C.; E. N. McGirr, K.C.; J. C. Miller, K.C.; W. J. Rowe; E. E. Spencer, K.C.; F. J. Turner, J. Ragnar Johnson.

MANITOBA KING'S COUNSEL.—The following members of the Manitoba Bar have been appointed King's Counsel: G. Coulter, H. C. Morrison, E. J. McMurray, D. G. Potter, A. B. Rosevear, F. T. Taylor (Winnipeg), D. A. Ross (The Pas), and J. M. George (Deloraine).

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CARLETON LAW ASSOCIATION.—At the annual meeting of the County of Carleton Law Association, held on January 12th, the following officers were elected: President, G. F. Henderson, K.C.; Vice-President, F. H. Honeywell; Secretary, J. T. Wilson; Treasurer, D. K. MacTavish; Auditors, Lester Clayton and Cuthbert Scott; Trustees, Ainslie W. Greene, K.C.; J. W. York, K.C.; Paul Leduc, K.C.; H. J. Burns and A. W. Beament.

One of the matters discussed at the meeting was the appointment of a Junior Judge for the County of Carleton, and a Committee of members was appointed to interview the Minister of Justice in that connection.

In the course of an address recently delivered by request before the Masons and the Oddfellows of Renfrew on the subject of "Lawyers and Laymen," the President of the Association, in speaking of the administration of justice, said: "Every man present in a Court, from the Judge to the doorkeeper, and, indeed, the humblest member of the public there, should be loyally and zealously assisting in the administration of justice—that marvellous thing upon which citizenship is based, and without which civilization could not continue." That is the sort of unpaid advice that lawyers should feel themselves privileged to give to their fellow-citizens in these days of social unrest and perplexity.

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HAMILTON LAW ASSOCIATION.—Mr. T. C. Haskett, K.C., of Hamilton, was elected President of the Hamilton Law Association at the annual meeting of that body last month. Other officers elected were: Vice-President, Senator G. Lynch-Staunton, K.C.; Treasurer, E. F. Lazier, K.C.; Secretary, S. R. Jefferess; Board of Trustees: R. R. Bruce, K.C.; J. Chisholm, K.C.; C. W. Bell, K.C., M.P.; D. Martin, K.C., and F. R. Martin, K.C.

The Association was host at a dinner given to the Members of Council of the Canadian Bar Association, on the 3rd instant, in the Royal Connaught Hotel.

DEATHS IN THE PROFESSION.—The following members of the Canadian Bench and Bar have passed away recently:—

The Honourable William H. Wright, one of the Judges of the High Court of Justice for Ontario, died on the 31st of January, after a period of illness, at the age of sixty-eight.

The Honourable J. P. Byrne, a member of the Bench of the Supreme Court of New Brunswick, King's Bench Division, died at his home in Bathurst, N.B., on January 22nd, in the sixty-fifth year of his age.

The Honourable Paul G. Martineau, a Judge of the Superior Court, Montreal District, died on the 20th of January. He was in his seventy-sixth year.

The Honourable L. J. Arthur Brossard, a member of the Bench of the Superior Court of the Province of Quebec, Montreal District, died from a seizure which happened to him while presiding in a case in Court on January 19th. The late Judge was appointed to the Bench so recently as August 30, 1933.

His Honour Judge J. F. Wills, Junior Judge of the County Court of Hastings, died on the 29th of January, after a lingering illness.

Mr. Edward Bayly, K.C., passed away at his home in Toronto after a brief illness, on the 29th of January. At the time of his decease Mr. Bayly held the office of Deputy Attorney-General of the Province of Ontario, being appointed to that office in the year 1919.

Mr. Angus McCrimmon, K.C., died at St. Thomas on the 31st of January, at the age of seventy-eight. He retired from the post of County Crown Attorney for Elgin County a few months before his death.

Mr. W. J. White, K.C., of the Montreal Bar, died at his home on the 22nd of January. Mr. White was made a Q.C. in the year 1889, and was elected *Bâtonnier* of the Bar of Montreal in 1910.

Mr. Alexander D. MacIntyre, of Kamloops, B.C., died on the 25th of January, at the age of seventy-eight. Mr. MacIntyre had a large criminal practice: one of the most celebrated cases in which he was engaged was that of the trial of train bandit Bill Miner, of Notch Hill, B.C.

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CORRECTION OF ERROR.—In referring in our last number to the titles of honour conferred by His Majesty upon Canadian Judges, we inadvertently spoke of Sir Joseph M. Tellier as "Chief Justice of the Court of King's Bench, Montreal Division" whereas the fact is that he holds appointment as Chief Justice of the Court of King's

Bench, and is by statute the Chief Justice of the Province of Quebec. We regret the error.

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APOLOGY TO A CONTRIBUTOR.—The interesting report of the complimentary dinner tendered by the Ontario Members of the Canadian Bar Association to the Right Honourable Sir William Mulock, C.J.O., in celebration of his ninetieth birthday, published in the last number of the REVIEW, was written and contributed by Miss Grace H. Hunter, of the Toronto Bar. We regret that through inadvertence Miss Hunter's name was not appended to the report.
