

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

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## TOPICS OF THE MONTH.

WISE WORDS FOR ECONOMIC RECUPERATION.—It is cheering to hear the voice of a wise man now and then rising above the babble of nostrum-mongers and directing our minds to a practical way of approaching the restoration of our enfeebled economic system. Such a voice was that of Mr. Anthes, President of the Canadian Manufacturers' Association, in his address at the last annual meeting of that body. He said: "If we have to ask the Government to come in and run our business for us, we had better give it up. Canada has to put her house in order, but we have to do it. We have a great responsibility upon us. We have the interests of the farmers and the people who buy our goods, the wholesalers and retailers, to consider; and a closer alliance among these four with one object—a good clean Canada—will make us all happy." Those are indeed wise words well spoken. They are infused with a sense of the value of individual initiative in the work of economic reform, nor do they overlook the value of the sentiment of patriotism in such a time of national crisis as this. History has its lessons for us along these lines. Over four centuries ago England was passing through a crisis which threatened its very existence. The long struggle between the Houses of York and Lancaster had reduced civil order to the vanishing point, patriotism had

given place to partisanship and economic changes followed hard upon the cessation of armed strife when Henry Tudor won the battle of Bosworth. Before he ascended the throne agricultural labourers had found themselves without employment—due to the corn-lands being turned into pasture-lands—and it was doubtful if any large number of them could be absorbed in the manufacturing industry of the time. The corruption of the Church had reacted disastrously on the spiritual level of the people; the Kingship had lost its lustre; and Parliament was little accounted of. This was the situation that confronted the first Tudor monarch. But so strong a man was he, and so successful were his measures of reform, that the Crown he handed on to his son was secure in the allegiance of every influential Englishman; peace within the realm had stimulated trade; commercial relations were set up with continental Europe; and Parliament re-established its usefulness in the popular mind by creating the Court of Star Chamber wherein disturbers of the King's peace, no matter how powerful, were tried and punished without fear or favour. Then, again, in the reign of the founder of the House of Tudor, John Cabot's expedition to America laid the foundations of English commercial enterprise overseas. And so patriotism furnished atmosphere for the picture of "merrie England." Henry VII had his faults but Francis Bacon could truthfully describe him and his work as a "wonder for wise men". Undoubtedly he planted the seed of national greatness that flowered a century later in the reign of his famous granddaughter, Elizabeth. Now the moral pointed for us by this story of the rebirth of the English nation after a period which seemed to augur its permanent place as a mediocrity in the councils of the world, is that, given a patriotic and resourceful community of people, with its industry organized on the lines of individualism tempered by state control, there is no limit to its powers of resuscitation from any visitation of adversity that the caprice of fortune may launch upon it.

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UNIFICATION OF NATIONAL LAWS CONCERNING NEGOTIABLE INSTRUMENTS.—H. C. Gutteridge, K.C., contributes an instructive article on this subject to the February number of the *Journal of Comparative Legislation*. As a result of the International Conferences held at Geneva in 1930 and 1931 he thinks that some progress has been made in the direction of unification, yet the adoption of the proposed Uniform Law of 1930 on bills and notes, and that of 1931 on cheques, by the

majority of the twenty-six countries which signed the Geneva conventions is still problematical. But even if they are adopted by all the signatories, uniformity will still be regional until the United States, the British Commonwealth of Nations and certain of the Latin American republics join in the scheme of unification. Mr. Gutteridge does not discuss the problem from the comparative point of view because that has been sufficiently ventilated of late; what is more important to him is the formulation of a body of international rules adapted to meet the present needs of the mercantile world. Effort in this direction would leave untouched the conflicts in private international law surrounding capacity, "place of the contract", and the French rule of "provision", which require for their subdual a finer and wiser time-spirit than that now prevailing; but the effort is worth while, and if successful would, in Mr. Gutteridge's opinion, mean the attainment of some measure of harmony at least in business transactions between the nations.

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MAXIMS IN THE UNMAKING.—In January last, Lord Sankey, L. C., appointed a Law Revision Committee, under the chairmanship of Lord Hanworth, "to consider how far, having regard to the statute law and judicial decisions, such legal maxims and doctrines as the Lord Chancellor may from time to time refer to the Committee require revision in modern conditions". To start the Committee on their onerous task four specific matters were referred to them for speedy report, one of them being, "*The legal maxim actio personalis moritur cum persona, and the rule that 'in a civil Court the death of a human being could not be complained of as an injury'*". In respect of this maxim the Committee made an interim report in March last in which the maxim was characterized as "of obscure origin and uncertain meaning"; as "having originated in the peculiarities of the English law"; and as one which, although modified by exceptions embodied in judicial decisions and legislation, yet so far as it remains effective "is still productive of injustice". After declaring that "in actions which are regarded as purely personal, such as defamation or seduction, where the presence of the plaintiff or of the defendant may be of the greatest importance, we do not suggest any change" the Committee proceed to make the following recommendations in the direction of removing the operation of the maxim as it still obtains:

"(a) *Death of defendant after action commenced but before judgment.*—An action for a breach of contract or for a tort or for a breach of statutory

duty commenced during the lifetime of a defendant may, notwithstanding his death, be continued against his personal representative. Any damages recovered in such action shall be payable as a simple contract debt incurred by the deceased.

(b) *Death of wrongdoer before action commenced.*—An action may be maintained against the personal representative of a deceased person in respect of any breach of contract or any tort or for any breach of a statutory duty committed by the deceased in his lifetime, if such action could have been maintained in the lifetime of the deceased. Any damages recovered in such action shall be payable as a simple contract debt incurred by the deceased.

(c) *Death of plaintiff after action commenced but before judgment.*—An action for a breach of contract or for a tort or for a breach of a statutory duty commenced during the lifetime of a person injured thereby may, notwithstanding his death, and notwithstanding that the act complained of caused his death, be continued by his personal representative, subject in appropriate cases to the terms of paragraph (f) hereunder, and subject in the case of tort to the rule that damages must be limited to the loss to the estate. Any damages recovered, which may include funeral expenses, in such action shall form part of the personal estate of the deceased.

(d) *Death of person entitled to sue before action commenced.*—An action for a breach of contract or for a tort or for breach of a statutory duty which could have been commenced during the lifetime of a person injured thereby, may be maintained by his personal representative, subject to the qualifications set out in the last preceding paragraph, notwithstanding his death, and notwithstanding that the act complained of caused his death, and notwithstanding that the death has been caused in such circumstances as amount in law to a felony. Any damages recovered, which may include funeral expenses, shall form part of the personal estate of the deceased.

(e) Where an injury inflicted on a person by reason of a breach of contract or tort or a breach of a statutory duty would entitle any other person to bring an action against the wrongdoer for loss or damage, an action by such other person shall be maintainable in respect of such loss or damage, notwithstanding that the injury has resulted in the death of the person injured.

(f) Nothing hereinbefore proposed is intended to affect the provisions respecting any right of action conferred by Lord Campbell's Act, as amended now or hereafter, on behalf of the relatives of a deceased person, and the list of competent beneficiaries under that Act shall be extended to include adopted or illegitimate children, if dependent, as above suggested, and the damages recoverable shall be likewise enlarged to include funeral expenses.

(g) *Period of limitation.*—The above changes in the law, which remove the effect of the Maxim in certain cases, and enable actions to be brought, should be subject to the limitation that the cause of action must have arisen within six months of the death, and the action must be commenced within six months after representation has been taken out. The limitations under Lord Campbell's Act and under The Maritime Conventions Act, 1911 (1 and 2 Geo. V. c. 57), shall remain in force as they are."

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SAMUEL INSULL AS A WORLD FIGURE.—It seems that the return of Mr. Samuel Insull to the United States does not ring the curtain down on the international drama in which he was the protagonist. The action taken by the American Government on the case as it stood at the close of last year has given it importance as a precedent in public international law. The current number of *The American Journal of International Law* (Vol. 28, No. 2) not only publishes a full translation of the

majority decision of the Greek Court of Appeals in October, 1933, refusing the application of the United States of America for the extradition of Mr. Insull, but also a lengthy and instructive editorial comment on the case. We learn from the material published by our contemporary that on October 10, 1932, the American Legation at Athens was directed by the United States Department of State to ask for Insull's arrest, since only an exchange of ratifications was necessary to bring into force the pending extradition treaty between the United States and Greece. The following day the Legation at Athens reported that the Greek Government would not arrest Insull because the treaty was not in force. On October 13, 1932, the Legation reported that the Premier of Greece had expressed an intention to prevent Insull from leaving that country until ratifications were exchanged. On November 1st, the Department of State advised the Legation at Athens that ratifications of the treaty had been exchanged on that date, and instructed the Legation to request Insull's arrest pursuant to the treaty. On November 4th the Legation reported Insull's arrest and provisional detention at Athens. On November 17th the Department forwarded papers to Athens, whereby it appeared that the President of the United States had issued a warrant to take the fugitive into custody, charged with "embezzlement by persons hired, salaried or employed to the detriment of their employers or principals." On December 27, 1932 the Council of the Judges of the Court of Appeals at Athens rejected the application of the United States for the extradition of Insull, expressing the opinion that there was no legal cause for his extradition. On December 30, 1932, the Legation reported that no appeal could be taken in the Insull case, and that the decision could not be reviewed by the same Court on the same evidence. In June, 1933, Insull was indicted in the United States under five counts, charging violation of the United States Bankruptcy Laws. The alleged violations consisted of the unlawful transfer of property belonging to the Corporation Security Company of Chicago, while Insull was an officer and agent thereof, in contemplation of the bankruptcy of the said Corporation, and for the purpose of defeating the operation of the Bankruptcy Act. A bench warrant was issued for the arrest of the accused, but returned not found. Thereupon the Attorney-General of the United States requested the Secretary of State to obtain the provisional arrest and detention of the fugitive. The arrest was requested of Greece on August 14, 1933, and was effected on August 26th; and Insull's surrender to the United States was demanded under the provisions of

Article 2 of the Extradition Treaty. On October 31, 1933, the Court of Appeals at Athens refused the application for Insull's surrender, the presiding Justice, Mr. Emmon. Panegyraakis dissenting from the opinion of the majority of the Court. On November 5, 1933, the American Minister to Greece was authorized to deliver to the Greek Minister of Foreign Affairs a communication stating that he was instructed to inform the Minister that the United States Government found it difficult to reconcile the "unusual decision" of the Greek Court of Appeals with the admission of the competent authorities that the fugitive committed the acts with which he was charged "and that these acts are illegal and fraudulent both in the United States and Greece". The communication closed with the following: "I am to add that my Government considers the decision utterly untenable and a clear violation of the American-Hellenic Treaty of Extradition signed at Athens on May 6, 1931".

The editorial comment of our contemporary contains the following paragraph: "In view of the position taken by the United States which in substance asserts that the Greek State, through its judicial authorities, has failed to respect the terms of the Hellenic-American Treaty of Extradition, there has arisen an issue that requires adjustment. It is suggested that the alleged breach of the treaty appropriately calls for adjudication before an international forum. From an American point of view, it would be desirable to submit to the Permanent Court of Arbitration at The Hague, under the existing Arbitration Treaty between the United States and Greece, of June 19, 1930, [sic] the question whether Greece has been guilty of a breach of the Treaty of Extradition. The conclusion of that tribunal on that question would be helpful to the cause of extradition. The protest of an aggrieved State, such as the United States, however valid, needs support and vindication in an international forum to which the contracting States have agreed to have recourse."

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LORD MANSFIELD AND EDUCATION FOR LAW.—A correspondent has called our attention to the fact that the matter quoted and assigned to Lord Mansfield on p. 248 of the April number of the REVIEW does not appear in his judgment in the case of *The King v. Benchers of Gray's Inn* as reported in Douglas. We wish to explain that the text as quoted by us was taken from Norton-Kyshe's Dictionary of Legal Quotations, p. 104, under the title of "Inns of Court."

DEAN FALCONBRIDGE AND THE SELDEN SOCIETY.—In the course of his presidential address at the 49th Annual Meeting of the Selden Society Lord Atkin made the following reference to Mr. J. D. Falconbridge, K.C., Dean of the Law School of Osgoode Hall. "He is a very distinguished lawyer and one from whose association with the Society and the Council—for we elected him to the Council—we expect to derive considerable benefit."

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THE LATE MRS. E. N. RHODES.—The sudden death of the wife of the Honourable E. N. Rhodes, K.C., Minister of Finance, has caused the deepest regret throughout Canada. To all who had the honour of her acquaintance the announcement of her passing brought a poignant sense of loss. In speaking of the sad event the *Ottawa Citizen* in the course of a feeling tribute to her memory said :

"In a recent letter to this newspaper, not intended for publication, she wrote, among other things :

'What a long step we have gone in our lifetime. But it isn't the system which hurts us. It is the abuse of it. If everyone could only be taught honesty of purpose, what a wonderful world it would be.'

And honesty of purpose was one of Mrs. Rhodes' chief attributes. It was seen in her contact with others as it was seen in her constant interest in questions affecting the welfare of the country she loved so well. No one became acquainted with her without feeling that they were better for it. She radiated that warmth and vivacity that comes from those who have learned to live fully and usefully. Few women there are whose passing will leave so deep a sense of irreparable loss."

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PERILS OF MIDDLE AGE.—In an address recently delivered in London Dean Inge said that some men in middle life suffer from "a sort of fatty degeneration of the conscience, a cirrhosis of the moral sense." The man of fifty sometimes gives way to a sudden temptation against which he has not protected himself, and so we hear from time to time of exposures and disgrace in unexpected quarters. On the other hand, said the philosophic Dean, all of us have known "some of the most delightful people who had reached old age without losing the heart of a child, who had not become cynical, uncharitable or selfishly absorbed." The Dean's remarks are of value to the men of the law, for their professional contacts with the seamy side of life tend to shake their confidence in the preponderance of goodness in humanity.

Again many a middle-aged lawyer has found to his sorrow that long persistence in conduct which cannot be squared with the best ethical standards of his profession has rendered him powerless in a moment of temptation to resist the impulse to actual crime.

A useful prophylactic against that disease of middle age characterized by the Dean as "cirrhosis of the moral sense" is association with young people of high principle, and sympathy with their quite laudable ambition to do things better than their elders. Cicero was wise when he said that he approved of a youth that had something of the old man in him, and was no less pleased with an old man who looked at life to some extent with the eye of youth.

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