

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.

ANNOUNCEMENT.—The Advisory Editorial Board of the Canadian Bar Association has much pleasure in announcing that it has secured the services of Mr. Sidney Earle Smith, of the Osgoode Hall Law School, as Assistant Editor of the CANADIAN BAR REVIEW. Beginning with the October number the department of "Case and Comment" will be under the control of Mr. Smith.

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PRESIDENT OF THE C. B. A.—The Honourable Wallace Nesbitt, K.C., of the Toronto Bar, was elected at the recent annual meeting as President of the Canadian Bar Association. Mr. Nesbitt has had a distinguished professional career at the Bar, on the Bench and again at the Bar. He has always taken an enthusiastic part in promoting the welfare of the profession in Canada and has been a warm supporter of the organisation of which he has now become the official head.

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DINNER TO BENCH AND BAR.—The third of a series of dinners given by the Right Honourable F. A. Anglin, Chief Justice of Canada, to representatives of the Bench and Bar took place at the Country Club, Ottawa, on the evening of October 2nd, the opening day of

the autumn term of the Supreme Court of Canada. Among the fifty guests present were the Honourable Ernest Lapointe, K.C., Minister of Justice and Acting Prime Minister; the Honourable William Phillips, United States Minister to Canada; the Honourable Lucien Cannon, K.C., Solicitor-General for Canada; the Honourable J. H. King, Minister of Pensions and National Health; Sir William Clark, K.C.S.I., C.M.G., High Commissioner for Great Britain in Canada; the Right Honourable L. P. Duff, P.C.; the Honourable P. B. Mignault; the Honourable E. L. Newcombe, C.M.G.; the Honourable T. Rinfret; the Honourable J. H. Lamont; the Honourable R. J. Smith, Judges of the Supreme Court of Canada; the Honourable A. K. Maclean, President of the Exchequer Court of Canada; the Honourable L. A. Audette, Judge of the Exchequer Court of Canada; and the Honourable C. A. Masten of the Appellate Division, of the Supreme Court of Ontario. Many of our leading lawyers as well as representatives of the junior Bar shared the hospitality of the Chief Justice.

The "Chief's Dinners," as they are now called, constitute one of the most delightful features of official life in the capital. Promoting as they do the spirit of amity between Bench and Bar they are especially noteworthy.

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ADVICE TO OUR CRITICS.—Mr. Tom Johnson, M.P. for Dundee, Scotland, who, as a member of the Empire parliamentary delegation, was privileged to make a profound study of the natural resources of Canada from the windows of railway trains and to estimate the qualities of the whole Canadian people by conversing with several of them who sat at public dinners with him, has told the world that he has discovered that there is "an anti-United States sentiment" in this country which he oracularly characterises as "the last great disaster which could befall the world." Mr. Johnson ignores the pride of the two countries in their "undefended boundary line" and their "hundred years of peace." His view of the attitude of the Canadians towards the Americans is as incorrect and inept as his expression of it is mischievous, and, considered in connection with some of his wild statements concerning the treatment of the British harvesters in Winnipeg, convinces us that the visits of such busybodies to this country should be discouraged in the most formal way.

PEACE AT ANY PRICE.—The following dialogue took place between the Bench and the accused in a criminal case tried in Ontario recently:

"You're a cannibal," said Magistrate B. when George Hutton appeared before him charged with having chewed off the lobe of an ear of Harry Hazelton, his brother-in-law.

"I did it to keep the peace," pleaded Hutton.

"You'll have plenty of it," the magistrate retorted,—*"Six months."*

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INSTITUTE FOR STUDY OF LAW.—Johns Hopkins University, Baltimore, is about to plough a new furrow in the field of science. There has been established at this important seat of learning an Institute to foster Scientific Legal Research. Looking upon legal problems as "problems of social engineering" the Institute will approach their solution from the definite viewpoint of sociology. One of the members of this new faculty is Professor H. E. Yntema. In the course of an article contributed to the *New York Times* on the subject of relating the law to modern social ideas Professor Yntema says:

The elemental factor in the need for legal research which the Institute for the Study of Law has been planned to meet is that legal science has lagged behind the times.

The world has been changing at a rate which has left the lawyer, the judge, and the law teacher breathless. It was only some twenty years ago that the appearance of the red roadster which developed into Ford's Model T was an advent: to-day the automobile is an indispensable tool of our civilization. The other means of modern communication, the steamship, the railroad the telegraph and the telephone became important only a relatively short time before the automobile era. And to-day we are engaged in adding the airplane and the radio, the potentialities of which are still to be measured and controlled.

These facilities of commerce have permitted the creation of a twentieth century civilization which, in respect of its immediate needs and physical environment is vitally different from that in which our forefathers or even many of ourselves were brought up.

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THIRTY YEARS A JUDGE.—The Honourable Archer Martin, one of the Judges of the Court of Appeal for British Columbia, commemorated the thirtieth anniversary of his elevation to the Bench on the twelfth of last month. When he was first appointed to the Bench he was the youngest man in Canada to hold that high office. Mr.

Justice Martin is also the senior Local Judge in Admiralty of the Exchequer Court of Canada.

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JAPAN AND CHINA.—In our last number we ventured the opinion that Japan might be relied on to do her best to stem the tide of Asiatic unrest, notwithstanding the complaints preferred against her by the Nationalist government of China. We are glad to find in the statements made by Count Uchida, during his recent visit to Washington, some confirmation of our opinion. He declared that Japan has no ulterior intentions of any kind towards China. There is no claim that Japan has superior rights over those of other countries in Manchuria, but it is expected, and Japan insists, that her express treaty rights are to be observed. She cannot afford to have the same disorder in Manchuria that there has been in the rest of China. There will be no objection to Manchuria returning to the sovereignty of China if the Nationalist government gives assurances of observing treaty rights and preserving order there. The policy of the "open door" will be maintained by Japan, and she will ask for no more favoured treatment than other nations in respect of tariffs or trade in Manchuria. We think that this position is a fair one to assume and gives no good reason for complaint either to China or the rest of the world.

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LORD HALDANE.—On another page of this number we publish a personal note by Professor W. P. M. Kennedy on the late Lord Haldane. In the course of a very just review of the life work of the deceased statesman the London *Spectator* makes the following plea for considerate treatment of our public men of high grade:

The country can show gratitude for his work in no better way than by resolving that the dust, the noise, the strife of democracy shall not in its ignorance, its impatience of merit beyond its ready understanding, drive out of political life the sensitive men of real wisdom and high intelligence. Sometimes looking around the world, we see countries less well served than ours by really great men. It is to the credit of this country that we have not yet made political life intolerable for them here, and may it be long before we cease to recognize thankfully their services to us.

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THE PROHIBITION PROBLEM.—That the discipline of a decade of Prohibition has not persuaded our American cousins of the folly of imbibing hot and rebellious liquors is painfully manifest in the

Annual Report of the Canadian Department of Trade and Commerce recently published. In the last fiscal year, it appears that whiskey to the value of \$18,380.00 and malt liquor to the value of \$5,376.00 were shipped from Canada to the United States. These figures, taken in conjunction with the avid consumption of intoxicants by peripatetic Americans in Canada, throw some light upon the interesting method of translating ideals into realities prevailing in the United States.

But there is a side to the business of selling intoxicating liquor for consumption in a country where prohibition has been established by law which is serious to a degree. To the mind of the average layman, for one State to allow its citizens to engage in a traffic with the citizens of another State which has declared that traffic to be illegal is wholly reprehensible, and should not be tolerated for a moment. But, of course, the question is one not so easily disposed of. Its solution must be sought in the repositories of International law. There we find that for a private citizen of a particular State to do an act permissible by the laws of that State, but which nevertheless enables the citizens of a foreign State to infringe a municipal law of such State, is not an "injurious act" in International law for which the government of the first mentioned State is responsible. Where such acts are committed by individuals or corporations without the command or authorization of the government, they do not even amount to what is known as "international delinquencies." If the Parliament of Canada passed a law to assist the government of the United States to enforce its policy of Prohibition by punishing attempts in Canada to send liquor over the border the question of course would receive its quietus—but that is not even foreshadowed at the present moment although some would say that the way was made smooth for legislation of the sort by the Convention of 1924 which bound Canada to aid in suppressing certain smuggling operations along the international border.

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AFTER-DINNER JUDGMENTS.—A valued correspondent writes:

Has anyone drawn attention to the delightful remark of Lord Mansfield in *The Negro Case*?¹

Counsel arguing from a certain case, the Lord Chief Justice said: "The case alluded to was upon a petition in Lincoln's Inn Hall, after dinner; pro-

¹ *The Case of James Sommersett* (1772), 20 Howell's St. Tr. 1 at col. 70.

bably, therefore, might not, as he believes the contrary is not unusual at that hour, be taken with much accuracy."

Now what on earth *could* he have meant?

Our correspondent's last question is a provocative one, but mid-day dinners at Lincoln's Inn before Mansfield's time were not exactly Lucullan—and heads were strong in those days.

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LEARNING THE LAW WE LIVE BY.—His Honour Judge Kerr, of Chatham, touched upon a question of national importance when he suggested in a recent press interview that students in the Canadian public schools should be taught the elementary principles of the law that governs their citizenship. He thinks that such instruction would bring the minds of the young into harmony with the restraints of law. We commend his observations. It is a common practice amongst men in authority to exclaim over the present revolt of youth *Si jeunesse savait!*—and leave it at that. Not in this way, however, will the vogue of the fribble and the devotee of jazz be displaced.

Philosophers are in agreement that man is a political animal who finds the fullest realization of his powers in association with his fellows; conceding that, surely it must be recognized that it is imperative that he should be trained in such branches of human knowledge as particularly concern the duties of citizenship, and the earlier his study of them begins the better for himself and the country to which he owes allegiance. True, Aristotle declared that civic education was unsuited to the young because of their inexperience and lack of rational guidance, but neither of these grounds is convincing. It is but a step from the rules of conduct prevailing in the home to those prescribed for the community, and the teaching of obedience to the one is a natural propaedeutic to the other. Dr. Boyd, in his book entitled *The Modern Teacher*, would have direct instruction in the rights and obligations of citizenship begin only when the school-boy has attained the age of fourteen years; before then the training should be indirect and derivative from the social bearing of his general studies. In his view special instruction should begin with matters wholly within the field of local government and gradually extend to the science of government in the large.

In his interesting work on *Citizenship*, Sir Henry Hadow emphasises the necessity of providing means for continuing the study of political science by young people after they have left the secondary

schools. He thinks that in every city throughout the British Empire there ought to be an institution like Barnett House, in Oxford, where the investigation of civic problems can be carried on in a systematic way. We quote him:

It would provide capital and labour, socialism and individualism with a neutral ground on which they could meet, with all the facts of the dispute ready at hand, with no suspicion of party advantage in the place or the surroundings, and therefore with the best possible hope of a fair debate and an honourable solution. It would have no policy of its own to pursue, no end of its own to serve: it could be as dispassionate as a university laboratory and in as close touch with realities as a factory workshop. . . . Any organisation which makes for enlargement of knowledge and for greater facility of conference is a means not only to industrial peace, but to the quickening and stimulation of that sense of comradeship on which our civic life ultimately depends. For education in citizenship like all education, has these two principal aims in view, to present the truth and to fit the minds of men for its reception.

We are now spending much money on the manual training of young people in Canada, why should not their minds be also trained at the public expense to fit them to discharge the duties of enlightened citizenship?
