

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 also be sent to the Editor at the above address.

TOPICS OF THE MONTH.

CANADIAN BAR ASSOCIATION

NINETEENTH ANNUAL MEETING

The Nineteenth Annual Meeting of the Canadian Bar Association occurred in a year when the Muse of History was extremely busy in receiving the homage of the Canadian people for her benefactions in times past. Some weeks earlier than the date of the meeting Toronto had celebrated the centenary of its incorporation which had much to do with seating Ontario in the chair from which old New England had slipped. Following upon this the Province of New Brunswick had formally honoured the memory of the United Empire Loyalists, large numbers of whom had settled in that province in its formative days. Then the Annual Meeting opened its sessions in the metropolis of Montreal close upon the conclusion of the national celebration of the quater-centenary of Jacques Cartier's first voyage to Canadian shores, an event which led to the permanent settlement of this country by the French and the adoption of the *Coutume de Paris* as the incunabula of the civil law system now prevailing in Quebec. Nor did the common law fail to add its quota to the fortuitous but inspiring historical atmosphere that surrounded the meeting. The 3rd of September was notable as the date upon which fell the tercentenary of the death of Sir Edward Coke, the founder of the modern system of English law which is the basis of the law prevailing throughout the major portion of Canada. That the stimulus of this historical

environment pervaded the minds of those present was noticeable not only in the public discussions that marked the programme of the meeting but also in the private conversations of the members. And that fact was interesting in that it showed the value of the custom now so generally observed of commemorating in some formal way the great events of the past. Such commemorations serve to make real to us the continuity of history. It is no mere flourish of rhetoric to say that little they know of the present who only the present know. It was the spirit of the Renaissance that stirred the minds of men with the idea that life on this planet could be made worth the living and that the planet itself was worth knowing to its remotest bounds. It was the influence of this idea, still prevailing in their times, that moved the mariner Cartier to adventures of discovery overseas, and the lawyer Coke to proclaim the rule of law as the safeguard of political liberty in England. It is a commonplace to say that these doings have had a tremendous effect upon the modern world. They furnish a warrant for us in prologizing as we have.

** It is gratifying to be able to state that the number of members and guests in attendance at the Nineteenth Annual Meeting, held at the Windsor Hotel, Montreal, was the largest in the history of the Association. There were over 700 registrations, indicating representation from all parts of the Dominion, —rather a remarkable thing to happen while prosperity is still hiding most of itself round the corner.

The day before the formal opening of the Annual Meeting, Tuesday, 4th September, was occupied, as usual, with business of a preparatory character. The 8th annual meeting of the Conference of Governing Bodies of the Legal Profession in Canada was held at 10 A.M. The report of the Conference, amongst other things, showed that efforts had been made to have the various Law Societies consider the recent English legislation respecting defaulting solicitors and the regulations adopted under the Quebec Notaries Act for a similar purpose, with a view to securing the protection of clients against loss by the improper conduct of solicitors throughout the Dominion. Officers appointed by the Conference for the ensuing year are : Honorary President, H. J. Sims, K.C., Kitchener, Ontario; President, W. F. Nickle, K.C., Kingston, Ontario; Vice-Presidents, D. H. Laird, K.C., Winnipeg, Manitoba; F. D. Smith, K.C., Halifax, Nova Scotia; Secretary-Treasurer, A. A. Moffat, K.C., Winnipeg, Manitoba. The Conference of Commissioners on Uniformity of

Legislation closed its 17th Annual Meeting on Wednesday. The report of the Conference was subsequently submitted by Vincent C. MacDonald, Dean of Dalhousie Law School. We hope to publish it in a later number of the REVIEW. Officers of the Conference for 1935 are: Honorary President, Hon. W. J. Major, K.C., Winnipeg; President, John D. Falconbridge, K.C., Toronto; Vice-President, Douglas J. Thom, K.C., Regina; Treasurer, C. P. McTague, K.C., Windsor; Secretary, Vincent C. MacDonald, Halifax.

At 2.30 P.M. a meeting of the Council of the Association was held at which several important matters falling within the activities of the Association were brought before the members and fully discussed with a view to shaping the policy of the Association in their behalf.

At 4.30 P.M. on Tuesday the members of the Association who had then arrived in Montreal were privileged to attend the interesting ceremony of the unveiling of the bust of the late Eugene Lafleur, K.C., dedicated to his memory by the Bench and Bar of Montreal. The ceremony was under the chairmanship of Pierre Beullac, K.C., and addresses eulogistic of the character and abilities of the deceased lawyer were delivered by the Right Honourable Lord Tomlin, P.C., on behalf of the Judicial Committee of the Privy Council, by the Right Honourable Sir Lyman Duff, P.C., Chief Justice of Canada, on behalf of the Canadian Bar Association, by Walter S. Johnson, K.C., of the Montreal Bar, and by the Honourable Senator André Fauteux, K.C.,—the latter accepting the bust on behalf of the Montreal Bar in his capacity of *Bâtonnier*. The address of Sir Lyman Duff is published in full on a preceding page of this number of the REVIEW.

In the course of his address Lord Tomlin spoke of the esteem and admiration in which Mr. Lafleur—"the perfect advocate"—was held by the members of the Board of the Judicial Committee before whom he appeared as Counsel in so many important Canadian appeals. "His keen and cultivated mind," said Lord Tomlin, "his power and force of thought, yet moderate statement, his charm of manner, gained our highest esteem and regard. In his death we lost a friend. With us, as with you, his memory will ever remain green."

Mr. Johnson's address was marked by a keen analysis of Mr. Lafleur's gifts as an advocate, and a fine appreciation of the sterling qualities of his character. It was throughout a noble tribute to a great lawyer, and it is a matter of regret to

us that we cannot find space in the present number of the REVIEW to publish it in its entirety.

The bust of the deceased lawyer was unveiled by his daughter, Miss Violet Lafleur. It is the work of Mlle. Daoust, a Montreal sculptress trained in the École des Beaux Arts. It will be placed in the dome of the Advocates Library in the Montreal Court House.

On the evening of Tuesday, Mr. George H. Montgomery, K.C., Vice-President of the Association for Quebec, entertained at dinner the members of the Council and the distinguished guests of the Association.

* * The opening session of the Nineteenth Annual Meeting took place in the Rose Room of the Windsor Hotel at 10 o'clock on the morning of Wednesday, 5th September.

The Honourable N. W. Rowell, K.C., President of the Association, occupied the chair. With him on the platform were: His Honour the Lieutenant-Governor of Quebec; the Right Honourable Lord Tomlin, P.C., representing the English Bench; the Right Honourable Sir Lyman Duff, P.C., Chief Justice of Canada; the Right Honourable Sir William Mulock, P.C., Chief Justice of Ontario; Maître Olivier Jallu, representing the Bar of Paris; the Honourable Clarence E. Martin, representing the American Bar Association; Professor Xavier Janne, of the law faculty of the University of Liège, Belgium; Signor Salvatore Galgano of the Institute of Legislative Studies, Rome; Maître Peringuey, President of the Association Nationale des Avocats of France; and Louis S. St. Laurent, K.C., past President of the Association.

Following the introduction by the President of the distinguished guests of the Association, the Honourable E. L. Patenaude, K.C., Lieutenant-Governor of Quebec, welcomed the members of the Association on behalf of the Province and the City of Montreal. His Honour referred to the changing and increasing complexity of the age, the transformations in political and economic constitutions and the consequent birth of new problems which could best be solved by men of the law. "To them," said the Lieutenant-Governor, "falls the duty of discovering and applying formulae capable of safeguarding integrity and justice. There is no doubt that the great legal principles which have in the past been as guiding stars will continue in the future to animate the formulation of rules for the conduct of men's affairs."

Mr. W. A. Gilchrist, K.C., Vice-President of the Association for Saskatchewan, on behalf of the Association, responded to the welcome of His Honour, assuring him of the value of his observations on the tasks that confronted members of the Bar at the present time.

Mr. Louis S. St. Laurent, K.C., then took the chair, and the Honourable Mr. Rowell delivered his presidential address. The subject of the address was "Our Heritage in the Civil and the Common Law," and we publish it in full on a preceding page of the current number of the REVIEW.

At the conclusion of the President's address the chairman called for the presentation of the reports of committees to be referred to sectional meetings of the members. Mr. E. K. Williams, K.C., presented the report of the Committee on Insurance Law, Mr. O. M. Biggar, K.C., that of the Committee on International Law, and Mr. D. C. Wells, that of the Junior Bar, and Dean Kronkite, K.C., that of the Committee on Legal Education.

Then followed the appointment of the Nominating and Resolutions Committees, after which the morning session was declared closed.

At 1 p.m. on Wednesday the members and guests assembled in Windsor Hall for luncheon, and afterwards listened to an address by the Right Honourable Sir William Mulock, P.C., Chief Justice of Ontario, on "The Independence of the Judges." Sir William—"Canada's Grand Old Man"—was in fine form and handled his subject with great vigour. It is printed at length in our present number.

The Honourable R. A. E. Greenshields, Chief Justice of the Superior Court of Quebec, occupied the chair at the afternoon session. After Mr. E. K. Williams, K.C., Honorary Treasurer, had presented the financial statement for the year, the members listened to instructive addresses by Maitre Olivier Jallu, of the Paris Bar, Professor Xavier Janne, of the Law Faculty of the University of Liège, Belgium, and Signor Salvatore Galgano, Secretary of the Institute of Legislative Studies, at Rome.

Maitre Jallu spoke, in French, on "The Judicial Nature of the Air Space." After pointing out that recent rapid developments in aviation had resulted in altering the positive law to some extent, Maitre Jallu proceeded to say that under the doctrine of International Law the airspace, like the seas, is free. The future of aviation, it is declared, is tied up with this freedom. But individual States seek control of airspace above

their territories. All existing diplomatic conventions have agreed upon this principle, that each sovereign State is master of the air-space above its territory. Consequently, it is only with the permission of each sovereign State that planes or other aircraft may be flown over its domain.

In the projected short air route between Europe and this continent via the Arctic airway Maitre Jallu saw an advantage to Canada, which controls that part of the Arctic waters which are an extension of the Dominion proper.

Professor Janne, speaking on the "Unification of Laws relating to Bills of Exchange," said that bills of exchange are something more than instruments of payment, they are also instruments of credit and credit is indispensable to the modern commercial world. The attention of lawyers should be directed to a comparative study of the laws of different States relating to Bills of Exchange in order that harmony of law may be obtained in respect of so important a medium of international dealings.

Signor Galgano explained that the fundamental and characteristic object of the Institute of which he is a member is the promotion of the study of foreign and comparative law; and he pointed out that these studies had taken on added importance since the Great War.

On Wednesday evening a large audience gathered in the Rose Room of the Windsor to hear Lord Tomlin speak on the "Year Books" which are the main sources of English case-law before the system of reports by named reporters began. The Right Honorable Sir Robert Borden, P.C., occupied the chair in the place of the Honourable Hugh Guthrie, Minister of Justice and Honorary President of the Association, who was unable to be present. Sir Robert introduced Lord Tomlin as "a worthy successor of the great jurists of the past who have invested the Privy Council with tradition and renown."

Before giving his address Lord Tomlin conveyed greetings to the Association from the Lord Chancellor of England, from Sir Reginald Poole, on behalf of the Solicitors of England and Wales, and from General Cunliffe.

Taking up his subject, Lord Tomlin explained that the "Year Books" consist of MSS and black-letter printed books containing notes of cases mainly heard in the Court of Common Bench at Westminster or in the Courts of Eyre, that is, the courts of the Commissions of Justices who from the reign of Henry II to the tenth year of Edward III were sent from time

to time by the king into the several counties to try pleas arising therein.

Instances of humour, and the blending of French and English, were cited by Lord Tomlin as appearing in the Books. Sometimes the judge spoke his mind very plainly to the parties. Once John of Mowbray told the Bishop of Chester who was defendant "to go to the great devil."

"We do not see what will become of the first plea if this issue be entered," counsel says on another occasion. "It will go to the winds as does the greater part of what you say," responded the judge. When judges went into the country to hold an eyre they sent a commission of four knights to all the inns in every town they visited to test the quality of the drink. It is not known whether the knights were able after the tests were over to make an intelligible report.

The same consideration was not shown everybody before the courts. Once the Books carried this judgment: "Pauper . . . il faut payer costs ou be whipt." Even riddles were to be got out of the Year Books. The regular fee of a serjeant at law was known as an 'angel'. This varied in value from time to time. The riddle was: Why is a serjeant at law like Balaam's ass? And the answer was "Because he never speaks unless he sees an angel."

At the close of the address, upon motion of Sir Lyman Duff, Lord Tomlin was accorded a hearty vote of thanks.

The proceedings on Wednesday closed with a reception in the evening by the President and Mrs. Rowell, followed by dancing.

The session on Thursday morning was presided over by the Honourable W. H. Harrison, K.C., Attorney-General of New Brunswick. The only item of business was the presentation of the report of the Registrar, Colonel W. N. Ponton, K.C. The loss by death during the year of an exceptionally large number of members—70 in all—was feelingly referred to by Colonel Ponton. In his unavoidable absence the report was presented by the Editor of the CANADIAN BAR REVIEW.

The remainder of the morning was devoted to sectional meetings in which round table discussions took place upon the reports of committees. The sectional meetings were well attended and free and full discussion was had upon the subject-matter of the several reports. The chairmen of the committees had reason to be pleased with the increased attendance and interest manifested in the round table discussions.

In Thursday's afternoon session the chair was taken by the Honourable A. W. Roebuck, K.C., Attorney-General of Ontario. The report of the Council of the Association was presented by Mr. Robert Taschereau, K.C., Honourary Secretary, as the first item on the agenda. This was followed by the report of the Insurance Committee submitted by the chairman of that committee, Mr. E. K. Williams, K.C. He explained that his committee had been appointed as a result of a suggestion made at the last annual meeting by R. Leighton Foster, K.C., Superintendent of Insurance for Ontario, and he added "the general view of the members of the committee seems to be than an insurance section which would serve as a clearing house for the exchange of ideas would have many advantages. Many cases arise in the practice of insurance law which are never litigated and many litigated cases are not reported in the law reports. At a meeting of the insurance section these cases could be considered and an exchange of views arising out of such a discussion would be of great benefit to the individual members of the Association taking part in such discussions.

A resolution was adopted on motion of J. A. Mann, K.C., that the special committee on insurance law be continued and report at the convention next year. Members of the Association were invited to bring before the committee all legal problems affecting insurance.

The report of the Committee on International Law was submitted by Mr. O. M. Biggar, K.C. The report dealt with the present unrest among the nations in Europe, Asia and South America, and declared that Canada is in a position to throw her weight on the side of a reasonable and legal solution of the problems involved.

Mr. S. L. Springsteen, of the Windsor Bar, presented the report of the Committee on Membership. The report showed that the membership now numbered 2,300, an increase of 200 having been secured during the past year. Mr. Springsteen suggested the advisability of holding mid-winter meetings in various provinces to allow younger members of the profession to take a more active part in the work of the Association, as many of them are unable to afford the cost of attending the annual meetings. He also suggested a drive for life membership (\$100.) as a means of recouping the finances of the Association.

Mr. D. J. Thom, K.C., Regina, reported on behalf of the Committee on Noteworthy Changes in the Statute Law, of which he is chairman. Mr. Thom thought the outstanding

piece of recent legislation was the Special Powers Act of British Columbia. This act he considered of far-reaching importance and an outstanding departure from ordinary legislative procedure. The act gives to the Lieutenant-Governor in Council power in the full measure to which the powers of the legislature extend to do and authorize within the province such acts and promulgate such ordinances as he may under the circumstances consider necessary or advisable.

Another outstanding piece of legislation is what was termed the N.R.A. of Alberta, in which this province is proposing to set up business codes for industry. It was indicated by the committee that this law is being watched with keen interest from the constitutional point of view.

Latest developments in debt legislation comprised the action taken by the three western provinces to control creditors. Boards are provided for to which debtors who feel they are badly used may have recourse in order to attempt to obtain an easing of their burden.

Chairman Roebuck said that he was interested in the debt adjustment Act of the West, in his capacity as Attorney-General of Ontario. Something of that kind would be tried soon in his province, he said. The time must soon arrive, he thought, when the "stereotyped moratorium Act" will come to an end. It is ineffective and full of technicalities. The best it has done is to stave off the evil day when the debtor must pay up.

In the matter of Dominion and provincial co-operation, the committee noted that it is being urged with increasing frequency that there must be some amendment to the B.N.A. Act with respect to the distribution of powers, if requisite economic and social legislation which the times seem to call for is to be made effective.

Without discussing the question of amendment, the committee noted that a way is being explored to surmount the difficulty by provincial validation of Dominion legislation and other similar co-operation between the two jurisdictions.

The report of the Committee on the Administration of Criminal Justice was presented by Mr. J. C. McRuer, K.C., Toronto, in the absence of Mr. A. G. Slaght, K.C., chairman. A very lively discussion was evoked by the suggestion of the Committee that the lash should not be inflicted on a prisoner sentenced to more than five years imprisonment for kidnapping. In the course of the debate His Honour Judge Constantineau, of Ottawa, expressed the view that the Criminal Code already

allows the lash to be imposed in too many cases. "In most civilized countries the lash seems to have been abolished; and it seems confined to the British Empire, he said. If the lash is necessary in the Commonwealth, said the Judge, one is forced to the conclusion that its people are not civilized as in other countries. The lower the civilization of a country, the greater the tendency to inflict corporal punishment".

Chairman Roebuck said he did not favour the lash, agreeing that it was a barbarous hang-over from a previous age, but was in favour of its imposition if the prison sentence was not longer than five years. He added that at the next Legislature in his province he hoped that a bill would be brought down empowering the police to suppress the bank account of a kidnapped person and his relatives. The Attorney-General also said that measures were contemplated to unify all police forces in Ontario under a superintendent for emergency purposes, such as kidnapping.

Mr. R. L. Calder, K.C., a former Crown Prosecutor in Montreal, was not in favour of withholding the lash as punishment for kidnapping. He reminded the meeting that the British Empire has always held in reserve two dreadful punishments for serious crimes—hanging and the lash—and by applying them when necessary has succeeded in becoming the most orderly community in the world. The timely application of the lash, he held, has often prevented sporadic outbreaks of crime. To the suggestion that the lash would not act as a deterrent because a criminal rarely gives thought to possible punishment to follow the commission of the crime, Mr. Calder pointed out that this is true of crimes of impulse but not of crimes of calculation. That of kidnapping falls in the latter category.

Mr. McRuer said that the publicity given the question would act as a warning to the underworld which is guided to some extent by public opinion. The idea should not get out, he said, that Canada is afraid to whip its kidnappers, whom he described as brutal criminals.

On the suggestion of the Honourable Mr. Justice Baxter, of New Brunswick, that it was inexpedient for members of the Association to discuss details of punishment and that legislation is not the field of discussion of the convention, the recommendation of the committee was altered to carry merely the suggestion that the code be amended to provide more severe penalties than now exist.

Statements concerning the work during the year of the Conference of Commissioners on Uniformity of Legislation in Canada, and of the Conference of Governing Bodies of the Legal Profession in Canada, were then presented and the reports of these bodies formally adopted.

Thereafter the meeting was addressed by Mr. D. H. Laird, K.C., Vice-President of the Association for Manitoba, on "The Doctrine of *Stare Decisis*." Mr. Laird outlined the authority of judicial decisions, and noted that this doctrine, followed in all of Canada except Quebec where the civil law prevails, has established itself through long standing, having its origins in the early judicial history of England.

Mr. Laird's address was followed by Mr. Jean-Marie Nadeau's paper entitled "*L'Évolution du Droit Civil Franco-Canadien*," in which Mr. Nadeau traced the development of the civil law as it obtains in Quebec from the days of the early settlement of the province until our own time.

The Annual Dinner of the Association occupied the evening of Thursday. His Excellency the Governor-General of Canada honoured the occasion with his presence and a most excellent speech. Other speakers on the programme were Lord Tomlin, M. Olivier Jallu, M. Pinguet, the Honourable Clarence E. Martin and the Honourable André Fauteux, K.C.

His Excellency reminded those present that three years ago, at the Bar convention at Murray Bay, he was accorded membership in the Association. "I am not quite certain if I was then qualified to perform the dual function of barrister and solicitor, and in recording the doubts as to my duality, I do not forget that a modern Oxford writer has said : 'Our solicitors are the frail barriers which we have erected at a trifling cost between civilization and the jungle.'"

Referring to the presence at the convention of delegates from Great Britain, France, the United States, Italy and Belgium, the Governor-General stressed the international scope of the legal profession and its potential influence for good in the world.

"It is one of the greatest privileges of the office which I hold, humbly to contribute whatever I can to the cause of international and world peace. And I know of no meeting of the hearts and minds of men more calculated to enlarge and strengthen the understanding and goodwill on which that peace depends, than this concourse representative of ancestors and descendants of ancient enemies but present and, I hope and believe, eternal friends—Canada, the United States, France and Britain.

"Tonight we celebrate our unity in the faith and brotherhood of the law. I suppose that at no time in the history of mankind and especially in the history of the great nations represented here this evening, has the law stood more majestically upon its ancient foundations.

"And while the whirligig of Europe sometimes seems to approach a cycle of Cathay and tumult is on the march, we may, I hope, not vaingloriously, but none the less proudly, rejoice in that fine Anglo-Saxon concept of the law that blossoms into freedom, and of freedom that flowers in the law."

His Excellency quoted a striking passage from the Year Book of Henry VI: "The law is the greatest possession that the King has, for by the law he himself and all his subjects are governed; and if there were no law there would be no King and no kingdom."

In concluding his speech His Excellency recalled the greeting that the British troops, on the first Christmas day of their co-operation in the field, sent to their American comrades in arms: "We welcome you," said the message, "as brothers in the struggle to make sure that the world shall be ruled by the force of law and not be the law of force." The struggle, he said, "still availeth. The truth still stands outlined against a tempestuous sky."

Lord Tomlin after, as he said, "talking shop" for a moment about the Privy Council, told some excellent stories of lawyers and judges. Proceeding, he expressed the fear that in these days when people were all having the same education, drinking the same cocktails, playing the same bad bridge, driving about the same roads at a hundred miles an hour from the place they did not want to stay in to the place they did not want to go, it was a question whether to-day they were not losing that individuality which was the real source of stories, and he much doubted whether the next generation of lawyers would have any stories told about them. The world was going at too much speed and if there was an All-Seeing Eye they must have very much the appearance of herds of buffalo charging about the prairies with no more individuality than a couple of ants in an ant-hill. Those were not conditions that produced good stories, and he suggested that the Association might set up a committee to consider how best to maintain and produce individuality in lawyers in order that the supply of legal stories should not come to an end in the next generation.

Lord Tomlin seriously assured the Canadian Bar of the interest and affection with which, in the Old Country, they regarded the Dominion. He assured them also that in the Old Country they regarded the profession as one both here and at home, and they appreciated and admired the efforts made to maintain the high standards and traditions which were common to them both. They appreciated to a large extent the difficulties which from time to time Canadians were faced with and assured them they would meet with on all occasions sympathy and not criticism.

Maître Olivier Jallu referred to the unique position Canada occupies in uniting within herself the two great branches of the human family—the Anglo-Saxon and the Latin. The civilization of the world depends upon these two, he said, and it is Canada's destiny because of her racial composition to set an example and guide the world along paths of peace and harmony.

Honourable Mr. Martin, who brought greetings from the American Bar Association, spoke of the contribution Canadians have made to life in the United States, and of contributions made by Americans in Canada. The three thousand miles of undefended border, said he, are witness of the interdependence and trust of the two countries in each other. The common law of England was the heritage of both of these countries, and that system of jurisprudence had been a great contributing factor in the maintenance of world peace.

Maître Peringuey brought kind greetings from the lawyers of France to the members of the Association. He spoke of the legal profession as soldiers of peace because of their service in the interests of justice. Their ideals can do much to further the attainment of universal peace.

The Honourable André Fauteux, in a brief speech spoke of the pride and satisfaction that his compatriots of the French race always exhibited towards the prevalence of British institutions in Canada.

The Honourable N. W. Rowell, who presided at the dinner, read a message from the Right Honourable R. B. Bennett, Prime Minister of Canada and Honourary Life President of the Association. Mr. Bennett expressed regret at his unavoidable absence from the Annual Meeting. He proceeded to say :

“It has been in the past few years a matter of keen regret to me that I have found it impossible because of public duties to take an active part in the deliberations of the Canadian Bar Association.

"We cannot blind our eyes to the fact that we are to-day experiencing a period of dynamic world transition. On all sides we see revolution in incipient or accomplished stages. So far it has been the peculiar genius of British people to direct into constitutional channels the great human forces that destroy public institutions or mould them to their will.

"I cannot think of any public body of men and women whose deliberations are more important in shaping the world's immediate course than that of the legal profession."

At the Friday morning session Mr. R. Andrew Smith, K.C., Vice-President of the Association for Alberta, was in the chair. The first item of business was the presentation of the report of the Committee on the Administration of Justice by Mr. J. A. Mann, K.C., chairman. Among the recommendations of the report is one relating to the provision by the State for the maintenance of the widows of Judges. It is to the effect that the Council of the Association, at its next meeting, consider a bill to amend the Judges' Act which should, as early as possible, be put before the Minister of Justice for the consideration of the Cabinet. Mr. Mann suggested that the dignity of the profession demanded that widows of judges who were in needy circumstances should be provided for, and he suggested further that legislation providing for this should be of permissive or compassionate character, that is, the government should enquire into each case and decide whether the applicant should receive assistance.

Mr. D. C. Wells, chairman of the Junior Bar Committee, presented its report to the meeting. The committee suggested that an attempt be made to come to some conclusion as to what methods are desirable to raise the standard of entrance to the legal profession throughout Canada; to improve and develop among members of the Junior Bar higher standards of professional conduct; to ensure effective presentation of proper ethical standards to law students during their training; and, if such steps are necessary, to broaden the scope and to raise the general standards of legal education throughout the Dominion.

Mr. F. C. Kronkite, K.C., Dean of the Law Faculty of the University of Saskatchewan, presented the report of the Committee on Legal Education. Speaking to the report Dean Kronkite said that a programme of legal education should have for its aim a learned profession. This learned profession, qualified as practitioners, should consist of an enlightened body of men, possessed of such knowledge and ideals as will enable them to

administer and develop the law as a means to the end of social welfare. On the question of preliminary education, while the completion of the work of the second year in the Arts course in an approved University prior to admission to the study of law ought to be regarded as an absolute minimum, sentiment in favour of a degree in Arts as a prerequisite to legal studies has increased. The case for requiring a degree rests on the desirability of an educated bar.

The report of the CANADIAN BAR REVIEW Committee was presented by Mr. T. W. Laidlaw, Secretary of the Association, in the absence of Mr. George F. Henderson, K.C., chairman. The report showed that the list of contributors was a wide and distinguished one, articles being received in increasing measure from prominent legal writers abroad. Foreign publications make it a usual practice to note subjects discussed in the pages of the REVIEW. Tribute was paid to the valuable aid received from Mr. Sidney E. Smith (now President of the University of Manitoba) during the period in which he acted in the capacity of Assistant Editor. Feeling reference was also made to the illness of Mr. Henderson who ever since the foundation of the REVIEW has laboured indefatigably in its behalf. The report urged that the members should do their utmost during the coming year to extend the circulation of the official organ of the Association. Honourable Mr. Rowell supported the appreciation expressed in the report concerning Mr. Henderson's share in the success of the REVIEW, and hoped that he would soon be able to resume his accustomed activities in the general interest of the Association.

When the routine business of the morning session was closed the members listened to a most instructive address by Mr. James Whitehead, K.C., of the English Bar. The subject of Mr. Whitehead's address was "Unfair Trading", and he very fully explained the work of the recent convention in London on international industrial property, at which representatives of more than thirty countries took part in the deliberations. This convention was chiefly concerned with the question of improving legislation in all countries in order to eliminate unfair competition in trade. The countries that took part and became parties to the provisions agreed upon, bound themselves to wage war against unfair competition, which he defined as all acts intended to create confusion with the goods or services of a competitor, or any unfair tactics in business and industry by means of which a competitor in business would be subjected to detriment. Mr.

Whitehead's observations were much appreciated by those of the Bar who practice in trade mark cases, particularly where he said :

"If all business men of all nations were animated by two of the Ten Commandments—thou shalt not steal and thou shalt not bear false witness—then there would be no need for legislation, for three-quarters of anything that could ever be done would be accomplished to restrain unfair competition."

At the conclusion of the address, Mr. Justice Surveyer, of the Superior Court, Montreal, remarked on the absence of a Canadian representative at the London Convention on International Industrial Property, and suggested that the Dominion Government should be asked to send representatives to every conference of international importance.

Before the close of the morning session Mr. Cuthbert Scott, of the Ottawa Bar, read a most interesting paper on "Legal Aid to the Poor." Mr. Scott put forward an earnest plea for the Bar in all the Canadian provinces to furnish voluntary professional services to persons who had suffered wrongs remediable by law but were unable to pay counsel to enforce their rights. At the present time Mr. Scott said that there were only three places in Canada making provision for legal aid to needy litigants. Alberta has legislation on the subject; the Junior Bar of Saskatoon provides such aid; while in Windsor, Ontario, the municipal council has passed a resolution that the city solicitors should give their aid to indigents. Mr. Scott claimed that it was as much the function of the State to defend as to prosecute, and pointed out that the value of a public defender has been recognized at various meetings of the Canadian Bar Association.

After receiving the reports of the Resolutions and Nominating Committees the morning session adjourned.

At the luncheon on Friday the Honourable L. A. Taschereau, Premier and Attorney-General of Quebec, delivered a stirring address on the administration of the Criminal Law in Canada. He was introduced by the chairman, Mr. Isaac Pitblado, the newly elected President of the Association. Mr. Taschereau was disposed to find fault with some of the principles "that have activated British justice since the time of Queen Anne." He thought the solemn warning to prisoners before they were questioned to the effect that anything they might say could be used against them savoured of mediaeval times and now defeated the ends of justice. He thought, too, that prisoners should be

compellable witnesses, the French system, in his opinion being better than ours in this regard. He said :—

“I cannot agree with our present methods. A man is called upon to say whether he is guilty or not, but cannot be asked where he was on the night of the murder or of the burglary, why he bought a revolver or some poison, what he was doing with the victim when they were seen together. Not only can these questions not be put to the accused, but it is fatal to the verdict if the jury are told that the prisoner could have explained some of the facts of the case, but failed to testify when he had the right to do so.”

Mr. Taschereau deplored the technicalities upon which mistrials were declared on appeal. The result was a serious deterrent to the fear that swift and prompt conviction would instil in the minds of criminals and gangsters. He suggested a special division of three judges of the Court of Appeal to hear all criminal appeals. No reprieves or tickets of leave should be granted to burglars, kidnappers, or armed bank robbers, such being an incurable menace to society.

Proceeding, he said :—

“In a civil case, the code provides that no verdict will be set aside unless the court is of the opinion that 12 reasonable men could not have come to that conclusion. Why not have a similar provision in our Criminal Code? Moreover, is not the appellate court sometimes inclined to invade the domain of the jury on questions of fact? And please remember that in the majority of cases when verdicts are quashed, it is for misdirection by the presiding judge.”

The Nineteenth Annual Meeting closed its festivities on Friday afternoon with a Garden Party given by the Montreal Bar at Laval-sur-Lac Golf Club.

It only remains to be said that the meeting in every item of its activities was an outstanding success, and that the Montreal Bar richly deserved the formal resolution of thanks that was ordered to be placed on the minutes.

Our readers are referred to page ii of this number for the new list of officers of the Association.

THE DOCTRINE OF UNJUSTIFIED ENRICHMENT.—Under this title in the current volume of the *Cambridge Law Journal* Mr. H. C. Gutteridge, K.C., of the English Bar, and Professor R. J. A. David, of the University of Grenoble, pursue an instructive enquiry as to how far the principles of natural justice are applied

in French and English law to raise an obligation on the part of one who has been enriched at the expense of another to make restitution or compensation. Professor David points out that the *Code Napoléon* followed the Roman law in creating an obligation only in certain specified cases of the kind, and this express limitation in the written law gave rise to the problem whether the doctrine expounded by Pothier, namely, that the principle of *Équité* (a term more nearly equated in meaning to natural justice than our technical word 'Equity') should prevail over *la subtilité du droit*, might not be invoked to create a remedy in other instances of unjustified enrichment. Professor David observes that down to the year 1892 the decided cases neither affirm nor negative the rule enunciated by Pothier but "are always suppositiously based on an Article of the Code." But since the year mentioned he says that the French Courts have yielded to the influence of the text-writers and—

"have steadily declared that one may not without justification derive an enrichment from the detriment of another. The Court of Cassation, which deals only with points of law, will always reverse a decision which violates the principle of unjust enrichment. This rule, which is given effect to by an action known as '*de in rem verso*' is as much a part of modern French law as any of the Articles of the Code Civil."

Yet the reader is warned that there are many decisions to the effect that this action will not lie where the enrichment proceeds from a contract, even where the contract is entered into with a third party. Furthermore it must be understood that the action *de in rem verso* is not available where the law provides other remedies for correcting the detriment sustained. However it is clear from Professor David's essay that the courts have to a notable extent built the doctrine associated by the text-writers with the phrase *enrichissement illégitime* into French jurisprudence. So that in this fact we have another instance of the impossibility of confining the law to the limitations of a code. The stream of positive law resists canalization. It is constantly being swollen by the waters of natural justice.

In Mr. Gutteridge's portion of the monograph under notice we are led to see that English law is indisposed to recognize "any general obligation to restore a profit which is in the nature of an unjustified enrichment." That is due to the intractability of the procedural side of the common law and its theory of enforceable obligations. Lord Mansfield did his best in *Moses v. Macferlan* (1760, 2 Burr. 1005) to rest the action for money had and received on the principles of natural justice, but his

view has not prevailed although its influence may be traced in some of the subsequent cases.*

"It would seem," says Mr. Gutteridge, "that the theory of unjustified enrichment received its death blow in *Sinclair v. Brougham* ([1914] A.C.398). Lord Dunedin, a Scots lawyer, seems to have been prepared to admit the existence of a 'supereminent equity' in cases of unjust benefit, but the views of the other Law Lords were crystallized by Lord Sumner when he said that money paid cannot be recovered back merely because 'it would be the right and fair thing that it should be refunded to the payer'."

* * *

THE COURTS AND THE EXECUTIVE.—Those who are disturbed at the growth in our time of what Carlyle characterized as "that Continental nuisance called Bureaucracy", will extract some comfort from the judgment of a Divisional Court in England, consisting of Lord Ewart, C. J. Avory and McKinnon, JJ. in *Rex v. Milk Marketing Board; ex parte North* (78 Sol. Jour. 536). Under the Agricultural Marketing Act, 1931, a distributing organization is empowered to ascertain the prevailing local price of milk in a specific area and then to fix the price at which milk may be sold therein. A price of sixpence a quart had been so fixed for the area in question in this case, and under a resolution of a tribunal established by the Marketing Board one North, a milk retailer, was fined £50 for selling at five pence a quart. North was required to attend before the Board on a certain date. Before he arrived, however, a statement of facts upon which the charge of underselling was based was circulated among the members of the Board. A further statement, grounded upon an alleged interview with the retailer, was given by a member of the Board. These statements were not placed before North, nor was he made aware of their being made. Thus he was afforded no opportunity of correcting or contradicting them. North resisted the imposition of the fine and filed an affidavit in which he alleged that he had been unfairly treated by the Board, and obtained a rule nisi for certiorari calling on the Board to show cause why the resolution imposing the fine should not be removed into the High Court in order to be quashed. The Divisional Court held that the case came within *Board of Edu-*

* See *Baylis v. Bishop of London* (1913) 82 L. J. Ch. 61. Particularly note Lord Justice Farwell's remark that, "It is, in my opinion, impossible for us now to create any new doctrine of common law." How does this comport with the "continuity in legal development" of the common law, and its "flexibility, and power to expand"—qualities which we have been taught to believe perennially attach to the common law?

cation v. Rice, [1911] A. C. 179, where Lord Loreburn, L. C., observed that departments or officers of state in exercising their authority to decide questions of law and fact "can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting any relevant statement prejudicial to their view." In the opinion of the Divisional Court North had not been given a fair opportunity to correct or contradict the statements in question, and in the result the court found that the resolution of the Board was in excess of its jurisdiction and should be quashed.

**In connection with the above the following extract from Professor C. K. Allen's "Bureaucracy Triumphant" provides some food for thought :—

"Unless we are prepared to admit that the whole constitutional centre of gravity has moved from the legislature to the executive: unless we are willing to be governed not by ourselves through our representatives but by officials who are responsible to no electorate: unless, in short, we are disposed to revise the whole theory and practice of the constitution which has so long been our boast: unless we are prepared to go thus far, then what is most urgently needed, and what is in no sense beyond practical possibility, is to make administrative power as responsible *de jure* as it is efficient *de facto*. And this we believe will be done only by means of a wholesome body of administrative law developed in harmony with the traditional principles of the general legal system."

* * *

LAW OFFICERS AND LEGISLATION.—In the correspondence department of *The Spectator* for July 27th appeared a letter from the Secretary of The Council for Civil Liberties explaining that in a previous letter published in that journal the Society had no intention of charging the Attorney-General of "serious and deliberate misstatement of fact" in addressing the House of Commons on the second reading of the Disaffection Bill. The Attorney-General had formally intimated to the Society that he so interpreted the tenor of the impugned letter. While retracting anything therein which might suggest that the Attorney-General purposely misstated the law, the Society in its subsequent communication nevertheless speaks with its 'hay high on the horn.' We quote;

"If our legislative institutions are to be preserved it is essential that Members of Parliament be correctly informed of the nature and extent of the changes in the law which they are asked to sanction. We wish to emphasize this point. We consider that the method in which the Disaffection Bill was presented to the House of Commons was one of the worst examples of that new despotism of the bureaucracy about which the Lord Chief Justice has written so eloquently.

On the second reading the Attorney-General stated—no doubt with no intention of purposely misrepresenting the law—that the Mutiny Act, 1797, made it an offence to seduce a member of His Majesty's Forces from his duty or allegiance and that clause 1 of the Bill merely re-enacted the existing law. It was to this that we referred when we said that the Attorney-General had stated that the provisions of clause 1 were identical with the provisions of the Mutiny Act. The Attorney-General has replied to us that we misrepresented him because he did not use the word "identical," but that he had said "substantially reproduced." A study of the second reading debate, however, shows that the House of Commons discussed the Bill under the mistaken impression that clause 1 and the provisions of the Mutiny Act were identical, and that the Law Officers of the Crown made no attempt to correct this misapprehension."

All of which is very interesting reading, and in the circumstances the members of the House may profit by pondering this happy transposition of the words of an old saw made by a witness in an English Court not long ago: "I know that ignorance is no excuse for the law."

* * *

ENGLISH MARRIAGE LAW.—In the weary pressure of this age it seems that even so alert a guardian of things ecclesiastical as the present Archbishop of Canterbury, may fall upon sleep at his post. At all events we find support for this averment in a recent number of our lively contemporary, *Law Notes*. We read there that a Bill extending the hours during which marriages may be solemnized from 3 P. M. to 6 P. M. was passed through the English Parliament in June without His Grace being aware of it. This legislation is said to be in direct conflict with existing canons of the Church of England which limit the performance of marriage to the hours between 8 A. M. and 3 P. M. *Law Notes* expresses the view that an amending canon is necessary to bring the Church law in conformity with the new Act.

* * *

DOMINION-PROVINCIAL CONFERENCE.—A letter prepared by Prime Minister Bennett before his departure for Geneva last month has been sent to all the provincial premiers requesting their agreement upon a date on which they will meet at Ottawa to discuss with the Dominion Government constitutional and other questions as tentatively arranged at the Dominion-Provincial Conference in July. The Prime Minister suggests in his letter discussion of the following questions, and such other matters as it may be agreed should be placed on the agenda:

1. What steps can be taken to reduce the evils of duplicate taxation and provide a more logical allocation of sources of revenue now available to Dominion and provinces?

2. Are the provinces prepared to surrender their exclusive jurisdiction over legislation dealing with such social problems as old age pensions, unemployment and social insurance, hours and conditions for work, minimum wages, etc., to the Dominion Parliament? If so, on what terms and conditions?

3. Is it desirable to endeavour more clearly to define the respective jurisdiction of the Dominion Parliament and provincial legislatures with respect to health and agricultural and other matters in which there is a duplication of effort by federal and provincial authorities?

4. Consideration of the extent to which there may be more complete co-ordination of the effort of federal and provincial authorities with respect to research work.

5. Consideration of the extent to which there may be more complete co-ordination of the effort of federal and provincial authorities with respect to gathering and publication of statistical information and what steps, if any, should be taken to secure uniformity and complete accuracy of Canadian statistics.

6. In the event of it being determined that the legislative jurisdiction of the Dominion Parliament and Provincial Legislatures as at present defined by the British North America Act should be modified, a determination of the form in which the amendment to the British North America Act should be made.

In the discussion of these weighty problems between the Dominion and the Provinces the highest qualities of statesmanship will be demanded of those who take part in it. A happy solution of them would dispel the possibility of national disaster arising out of clash and conflict between two jurisdictions seeking to function in the same legislative sphere; it would also extend the fame of the Canadian experiment in federalism. Professor W. P. M. Kennedy has said in one of his latest books that "Canada is one of the most important political laboratories in existence." Let us hope that when these problems are placed in the retort a genial spirit of compromise will be distilled.

* * *

SCOTTISH LEGAL HISTORY SOCIETY.—The proposed formation of a Scottish Legal History Society, assimilated in purpose to the Selden Society in England and bearing the name of "The Stair Society," is another manifestation of the desire of lawyers throughout the English-speaking world to regain in the present age the old-time reputation of their profession for wide scholarship. Lord Macmillan, ever alert to remind us of "study's god-like recompense", is foremost in the effort to bring the society into being. He points out the rich and too long neglected field

of study to be found in the early history of Scottish law and legal institutions. While Scotland is generally regarded as a country where the Civil Law prevails, it must not be overlooked that it has a Common Law of its own; so that its legal system as a whole occupies a distinctive place in the world by reason of this dichotomy. Professor Levy-Ullman, of the law faculty of the University of Paris, recently pointed out that as Code Law and Case Law are conjoined in the theory and practice of Scots law, a system so embodying the result of the greatest juristic thought in the world may prove to be a prototype of that prevailing in all civilized countries by the end of the present century.

Associated with Lord Macmillan in the project of founding a legal history society for Scotland are Lord Dunedin, Lord Thankerton and Lord President Clyde. The Pilgrim Trust will assist in financing the preliminary expenses. It is fitting to call the society after Lord Stair—the most distinguished name in the annals of Scots law. It is interesting to know that Canadian lawyers will be eligible for membership.

* * *

STAFF CHANGES AT DALHOUSIE LAW SCHOOL.—Consequent upon the appointment of Dean Sidney E. Smith to the Presidency of the University of Manitoba and that of Professor H. E. Read to a Professorship at Minnesota Law School, the Board of Governors of Dalhousie University has announced the appointment of Professor Vincent C. MacDonald, as Dean, and of George F. Curtis as Associate Professor.

The new Dean had a varied and active career at the Nova Scotia and Ontario Bars prior to his appointment as Professor of Law at Dalhousie in 1930, during which time he had been a Lecturer at Dalhousie and at Osgoode Hall Law Schools and had served for three years as Legislative Counsel to the Nova Scotia Legislature. He is well known to the legal profession throughout Canada as the Editor of the "Dominion Law Reports" and the "Canadian Criminal Cases" and as the author of many articles on legal subjects in the CANADIAN BAR REVIEW and in other legal periodicals.

Mr. Curtis graduated from the Saskatchewan Law School in 1927 with great distinction and, having been appointed Rhodes Scholar for Saskatchewan, entered Oxford in 1928, where he took his B.A. in Jurisprudence with First Class Honours, followed by the B.C.L. with First Class Honours. At Oxford his career was so outstanding that he was named as *proxime accessit* for

the Vinerian Scholarship. In addition to this record of academic distinction at the University of Saskatchewan and at Oxford Mr. Curtis has had very considerable experience in the practice of law both before and after his graduation at Oxford. During the last three years he has practised with the firm of Gordon and Gordon, Regina, and more recently has served as a member of the staff of the Attorney-General of Saskatchewan and as assistant to the Legislative Counsel of Saskatchewan. He is a member of the Bar of Saskatchewan and comes to Dalhousie very highly recommended by those with whom he has been associated both as a student and as a barrister.

The other members of the full time teaching staff both of whom taught there last year, are John Willis, B.A. (Oxon.) and George H. Crouse, B.A., LL.B. (Dal.), LL.M. (Harv).

Mr. Willis, who taught at the Law School last year, returns as Associate Professor. Mr. Willis graduated some years ago at Oxford where he obtained a First Class in the Honour School of Jurisprudence. After teaching classics for a year at Harrow he was awarded a Commonwealth Fund Fellowship at the Harvard Law School, which he attended for two years, during which he prepared a book, "The Parliamentary Powers of the Departments" published as one of the Harvard Studies in Administrative Law. This book has been reviewed with extreme favour in many of the legal periodicals of England and the United States, and is regarded as the outstanding work on the subject of delegated legislation, a subject which has recently come into great prominence in the English-speaking world.

Mr. Crouse also returns to Dalhousie where he taught successfully last year. Mr. Crouse is a graduate in Arts of Dalhousie with High Honours in History and Political Science, and also graduated in Law, in 1932, after a notable record at the Law School. It was on the basis of this record that he was awarded one of the Langdell Scholarships in Law for 1932-33 by the Law School of Harvard University, and, after a year's graduate study there, he was awarded the degree of Master of Laws.

The Law School of Dalhousie which completed its half century last year, has been singularly fortunate in the character of its Deans, men of marked distinction who have contributed greatly to the cause of legal education in Canada as well as to the enhancement of the School's reputation. It is therefore of more than local significance that the appointment of Mr. MacDonald has met with striking approval from the Press and

Bar of Nova Scotia and the graduates and students of the School. Readers of this REVIEW will unite in the confident hope that this justly famous old Law School, under its new leadership and with its present able staff, will maintain the standards and traditions upon which its enviable reputation rested in the past.

* * *

CIVIL LAW CONFERENCE.—Under the auspices of the Montreal Bar an interesting conference on the Civil Law took place in that city last month. Delegates were present from European countries and the discussions were full of interest. The conference was opened by M. Henri Capitant of the Bar of Paris, whose address was greatly appreciated. Among Canadian speakers were Hon. P. B. Mignault, Mr. Justice Dorion, and Professor Le Mesurier of McGill University.

* * *

MONTREAL BAR HISTORY.—During the recent convention of the Canadian Bar Association in Montreal the members and guests of the Association were invited to inspect an interesting collection of documents relating to the early history of the Bar of Montreal now in the Advocates Library. The collection was arranged by the Archivist, Mr. E. Z. Massicotte. Mr. Maréchal Nantel, K.C., the Librarian, received the visitors and courteously explained to them the age and nature of the documents.
