

# 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.

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.

~~For~~ Special articles must be typed before being sent to the Editor at the Exchequer Court Building, 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.

CONCERNING THE SEASON.—The stupid realism of the age has despoiled our children of the stimulus to their imagination (that priceless quality!) subsisting in the myth of Santa Claus, but so long as men and women practise the virtues that raise them above the level of the brute the great festival of Christmas will not fail to be observed. Commercialism has undoubtedly impaired to some extent the old-time spontaneity and simplicity of its expressions of good-will, but nothing can spoil its essentially spiritual quality. *Vicisti Galilæe!*—the saying ascribed to the dying Emperor Julian—is of deeper meaning to-day than it was in the fourth century.

It has been the custom of the REVIEW to extend its salutations at this season both to its contributors and its subscribers. It is a pleasure for us to so greet them at the close of the present year of grace. While the year has visited the Canadian Bar Association with grievous loss in the death of its founder Sir James Aikins, it has nevertheless seen no abatement in the progressive achievement of the purposes for which the organisation was brought into being. We are glad to say, too, that the continued success of the Association has been reflected in the fortunes of the REVIEW. With its circle of contributors steadily enlarging there can be no doubt of the permanence of its appeal to the profession in Canada.

ASSISTING THE COURT.—Any lawyer in active practice knows how frequently Counsel fail in doing their full duty in presenting a case to the Court, and also knows that there are occasional cases where the lower Court does not do its whole duty in so elaborating its judgment as to enable an Appellate Court to have a proper appreciation of the merits.

There have been two instances within the last year in which the Supreme Court of the United States has taken a firm stand in matters of this kind. In litigation over the five cent. fare in the Interboro Subway, it surprised the Attorneys on both sides of the controversy by sending back all their written arguments with a demand that they be rewritten with a proper regard for brevity and logic. Incidentally, one may pause to regret that some of our Courts cannot compel Counsel appearing before them to pay proper regard to brevity and logic in the presentation of their oral arguments.

Recently, again, the United States Supreme Court took strong ground in connection with an important railroad case which had come from a special Court of three Judges, who did not take the trouble to express properly their opinions in writing, and to whom the Supreme Court sent the matter back with the intimation that the questions involved were too important to be dealt with without a statement of the reasons.

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THE WAGES OF SIN.—In the recently published autobiography of the woman known as "Chicago May" (May Churchill Sharpe) the age-long truth that it does not pay to become a professional criminal is exemplified with peculiar vividness. Mrs. Sharpe at the tender age of thirteen ran away from her Irish home with the sum of £60 belonging to her father. At fourteen she became the mistress of a crook, then a wife and a widow in the good city of Chicago before she attained her sixteenth year. Thereafter crime became her livelihood and vice her congenial atmosphere. Her enterprises were cosmopolitan in scope. She was in a gang who robbed the American Express offices in Paris, and was arrested by the French police. She assisted in the murder of the infamous Eddie Guérin, and was sentenced to fifteen years imprisonment in England. She died during the present year at the age of fifty-three, having first written a plain tale of her experiences as the devil's disciple. Thus while in her death she was unwept and unhonoured, she was not unsung—but her song is not likely to reach the ears of the young people in America who contemplate a life of revolt against law and morals.

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A FEDERAL FRANKENSTEIN.—Attorney-General Mitchell has made public a statement that on June 30th, 1929, there were some 1,827 prisoners in the United States federal penitentiaries for violations of the prohibition Act, and that sixty-one per cent. of the inmates of these penitentiaries were there for breaches of federal laws against the drug traffic, liquor traffic, automobile thefts, and fornication. Mr. Mitchell demands more penitentiaries to house the great and growing number of prisoners. In view of this it would seem that the assumption by the federal authority of jurisdiction over matters which it was the obvious intention of the framers of the constitution to assign to the individual State governments is proving a veritable Frankenstein monster. The time is ripe for the "uplifters-by-legislation" to read some of the letters in the *Federalist*. Thus Madison:

The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people.

Failing that they may learn something to their advantage by a perusal of the Right Honourable Winston Churchill's strictures on the American venture in prohibition. We quote a passage:

Has a majority—perhaps in fact a minority—a right to do anything which it can get voted by the legislature, or do its powers when extended beyond a certain point degenerate into tyranny? Is it necessary for the purposes, "Life, liberty and the pursuit of happiness" that vast sums of money should be spent and hordes of officials employed against sober and responsible citizens who wish to do no more than drink wine or beer as they would in any other country in the civilized world? Is not the State, on this question, exceeding its duties? Is it not needlessly and wrongfully interfering with the individual and with that very liberty which it has been called into existence to guard?

On the abstract merits there are of course two opinions, but on the practical results there can be only one. A law which does not carry with it the assent of public opinion or command the convictions of the leading elements in a community may endure, but cannot succeed; and under modern conditions in a Democratic country it must, in the process of failure, breed many curious and dangerous evils.

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NON-CONTRACTUAL POSITION OF CIVIL SERVANTS.—In a recent case heard before Mr. Justice Clauson in England certain retired civil servants asked the court to declare that the Treasury Minute of 1922, introducing variable instead of fixed pensions, was null and void, and that they were entitled to have their retiring allowances calculated under the Superannuation Acts. Their action was dismissed, the court holding, in line with earlier decisions, that the

relation existing between the Crown and its servants was not one of contract, and there was no jurisdiction to grant the relief sought.

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SEARCHING OF TITLES TO REAL ESTATE SIMPLIFIED IN ONTARIO.—The Investigation of Titles Act has wrought important changes in the registry laws of Ontario which will not only be welcomed by the general public, but also by solicitors who are engaged in the investigation of titles of real estate. After June 1, 1930, a good title for forty years will be all that the vendor of land will be required to show. The provisions of the Act release the land from any claim existing prior to a forty year period preceding any dealing with the land unless within that period the claim is acknowledged or specifically referred to or contained in an instrument registered against such land. The operation of the Act has been suspended until June 1, 1930, so as to enable any person who may have a claim, which by the Act will expire if not registered, to register a notice of it before that date, and because of this suspension the automatic release of any claim unregistered during the forty year period preceding a dealing with land will not seriously prejudice any person. The effect of the Act will be that practically one hundred years of the early part of every title in Ontario will pass out of history so far as the necessity of investigating its validity in every individual case is concerned.

The provisions of the Ontario Statute might well be considered by the other older provinces where solicitors are satisfied only if they investigate a title back to the Crown grant. Apart from the saving of labour in making this extended search every time there is a dealing with a parcel of land, the statute operates as a Statute of Limitations which puts at rest stale claims.

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DISBARRED BY REQUEST.—Sir James O'Connor, formerly Lord Justice of Appeal in Ireland, by requesting to be disbarred in England in order that he may practise as a solicitor, has displaced the wisdom of the old saw that there is nothing new under the sun. No similar request, it seems, has ever been put forward in the history of the English Bar. It is reported that Sir James had made a previous application to the Irish Bar which was granted.

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THE LEGION AND THE FLAG.—Many important matters of business affecting the surviving members of the Canadian contingent in the Great War were dealt with by the Canadian Legion during the annual meeting of the organisation in Regina last month. One resolution affecting Canadians as a whole was adopted—that expressing the views of the Legion on the question of a distinctive flag for the Dominion as a unit of the British Commonwealth. The text of the resolution is as follows:

Whereas the question of the adoption of a distinctly Canadian flag is at present agitating public opinion throughout the Dominion of Canada.

And whereas it is believed that the general feeling of the members of our organisation is that the Union Jack, under which we fought and under which our comrades died, should be retained as the flag of the Dominion.

Yet, nevertheless, the pressure of public opinion may be such that the adoption of an individual flag will become a question which has to be decided.

Therefore, be it resolved that this convention instruct the Dominion Council that in the event of any concrete proposition for the adoption of a distinctly Canadian flag being presented to Parliament, that Parliament be advised that no device will be acceptable to the ex-service men of Canada in which the Union Jack is not the predominant figure, and if the question is to be decided that we strongly recommend the retention of the Union Jack with some device, such as the Maple Leaf or the Canadian Coat of Arms, super-imposed thereon.

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CLEMENCEAU PASSES.—Georges Clemenceau, in many respects the greatest Frenchman of his day, died in Paris last month at the great age of eighty-eight years. What he did for his country in her dire hour of need in the War ravage of 1914-1918 need not be told here. He died as he lived—bravely and unostentatiously. No statesman ever did more to avoid the plaudits of a grateful country; in his last moments he arranged his obsequies in such a way that no State funeral could be accorded him. In his autobiography he has left a legacy of inestimable value to the history of our age. The whole world would have been the poorer if fate had prevented its completion by his own hand.

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A WHITE AFRICA.—In his initial lecture of the Rhodes Memorial Course for this year, given at the Sheldonian Theatre, Oxford, General Smuts dealt with the problem of a white Africa extending from Rhodesia to Kenya. Amongst other things of prudent counsel, he said:

Now that Great Britain held these territories from north to south in one unbroken chain she had an opportunity greater even than Rhodes ever dreamt of to carry out her historic mission and establish in the heart of the African continent, and as a bulwark of its future civilisation another

white dominion. It seemed to him the next critical step in the evolution of the British Commonwealth of Nations. These fragments of Crown Colonies should be put in the way of becoming in time another important self-governing unit of the Empire.

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LEST BUREAUCRACY BECOME AUTOCRACY.—In view of the publication of Lord Hewart's "The New Despotism," it is interesting to learn that the Lord Chancellor has appointed a Committee, under the Chairmanship of the Earl of Donoughmore, K.P., "to consider the powers exercised by or under the direction of (or by persons or bodies appointed specially by) Ministers of the Crown by way of (a) delegated legislation and (b) judicial or quasi-judicial decisions; and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law."

Mr. H. J. Laski, formerly a professor in McGill University, is a member of this Committee.

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THE LAW IN LABOUR.—An association of barristers addicted to the political principles of Labour has been formed in London, under the name of The Haldane Club, which will bend its chief activities to the achievement of legal reform in England. It appears that the first subject for discussion was the abolition of the Death penalty in Criminal Law. Let us hope in this connection that the law in labour will not repeat the experience of Horace's mountain and produce a *ridiculus mus*.

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EX-ENEMY PROPERTY.—Mr. Philip Snowden has again demonstrated his right to be regarded as the one capable statesman in the curious group who make up the Government of the day in Great Britain. He has refused to return to Germany any further sums out of the £14,000,000 remaining from liquidated property of ex-enemy nationals. Mr. Snowden's action in this matter finds support in the provisions of the Treaty of Versailles which disregarded the principle recognised by modern International Law that private property of an enemy national seized in war time should be returned after the establishment of peace. The right to retain such property was also implicit in the Dawes plan. Although the British Government voluntarily returned some £5,000,000 in the way of "compassionate allowances," Germany's slackness in fulfilling her reparation obligations shows small appreciation of

Britain's generosity, and it is now time for magnanimity to give place to insistence upon acknowledged right. While Germany fails to play the game Britain ought to cease to play the fool.

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A TRAGIC STATESMAN.—Mr. Ramsay MacDonald's homecoming after his achievement in composing all international differences between Great Britain and the United States by pleasant conversations with Mr. Hoover in Washington was not quite that of one pavilioned in splendor and girded with praise. He found his political enemies combining their forces against him and the enemies within his own house doing their best to wreck his administration. Grim-visaged War is rearing his wrinkled front against him on every side. Maxton, within the family circle, has given the dole a truly Dantean quality by insisting that it be raised to a pound sterling instead of seventeen shillings, and his claim has raised a mutiny among the more conservative Labourites. On the other hand Mr. Lloyd George has thundered forth the warning that the House of Commons must have a better policy from the government for alleviating unemployment than is contained in the Lord Privy Seal's scheme, and if not, then woe betide! Major Nathan has demanded that an all-party conference be summoned for the purpose of preventing a national calamity. Mr. McDonald opposes the suggestion of such a conference, and declares that Mr. Thomas's plan is sufficient to meet the emergency and that he is willing to abide the issue. Clearly, it is no bogey of Bolshevism that will be responsible for another sudden death of Labour government in England. The party will be removed from power because it lacks the ability to govern the nation with prudence and security.

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INDIA AND DOMINION STATUS.—That the British Government is having a bad quarter of an hour over the demand of India for Dominion status is obvious from its efforts to forestall the effect of any adverse finding on the matter by the Simon Commission whose report at the moment of writing has not been presented. Lord Birkenhead has written to the press protesting against any attempt by the Government or Parliament to deal with the question until the report has been made public. He holds that each of these bodies is *functis officio* in the interim. No sensible people regard the present state of affairs in India as propitious for a grant of autonomy such as that implied in the term "Dominion status."

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SHAW, SAILORS AND STUDENTS.—Mr. G. Bernard Shaw in opening a University hostel in Plymouth recently said that undergraduates were like sailors because their training conferred good manners but destroyed original thought. Mr. Shaw has neither been trained on the sea nor in the university, hence his view is inexpert and pedestrian. The discipline of the sea almost daily calls for sharp and sudden thinking to avoid its dangers which regard not manners but measures; and if the undergraduate does not learn to think for himself then he is not responsive to the influence of the lecture room or the provocations of his environment. Mr. Shaw is more productive of thoughts that are light than those that are leading. Pshaw, Mr. Shaw! the sailors and students are bad mannered enough to bite their thumbs at you.

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THOMAS HOBBS.—The two hundred and fiftieth anniversary of the death of Thomas Hobbes, of Malmesbury, was celebrated at Hertford College, Oxford, in October. Hobbes is known to reading men as the chief English exponent of the "social contract" theory in which the individual assumed to give up his natural rights in return for the protection of the Sovereign. While this theory has been very effectually "busted" by political philosophers since his time, he has a permanent place in English scholarship. He lived to the great age of ninety-one despite his claim to sobriety based upon the fact that he had not been drunk more than one hundred times. So candid a confession induces the suggestion that he only remembered being pickled on these numerous occasions, and that there were others which had become "to dumb forgetfulness a prey." Horace vouches for the fact that wine is the handmaid of high poetry, and it may be that divine philosophy also demands that there be no prohibition of strong waters when she enters the study.

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LABOUR AND THE BRITISH GOVERNMENT.—The Labour Conference has demonstrated that all is not well between the extremists of the party and Mr. MacDonald's Labour Government. Mr. Thomas and Miss Bondfield have come in for some sharp criticism of their failure to carry out ante-election promises, if not pledges, and rumour has it that Mr. Thomas consequently is seeking retirement to the American ambassadorship.

On the other hand, Mr. Henderson is adjuring the extremists to forget their impracticable demands and to think internationally towards disarmament so that the whole world can be peacefully and industrially reformed.