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.

☞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, at the Osgoode Hall Law School, Toronto.

TOPICS OF THE MONTH.

The Fourteenth Annual Meeting of the Canadian Bar Association will be held in the City of Quebec on the 5th, 6th and 7th days of September, 1929.

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TO ATTEND THE ANNUAL MEETING.—Our readers will be pleased to learn that the Right Honourable the Master of the Rolls, Lord Hanworth, has accepted the invitation of the Canadian Bar Association to be its guest at the Annual Meeting in Quebec.

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IN AID OF THE REVIEW.—The late Sir James Aikins took a lively and helpful interest in the affairs of the CANADIAN BAR REVIEW from the time of its coming into existence until the date of his death. His Will contained the following generous bequest:

"To pay to the Canadian Bar Association Thirty thousand dollars to be by such Association held in trust to invest for income and to use the income therefrom for the improvement and maintenance of the Association's Magazine the CANADIAN BAR REVIEW and to further the other statutory and constitutional objects of the Association."

JUDICIAL APPOINTMENTS.—On the 9th ultimo the Honourable Robert Alfred Ernest Greenshields, a Puisné Judge of the Court of King's Bench in the Province of Quebec, was appointed a Puisné Judge of the Superior Court in and for the Province of Quebec with the rank and powers of Chief Justice of the said Superior Court in the District of Montreal.

On the same date the Honourable Aulay MacAulay Morrison, a Puisné Judge of the Supreme Court of British Columbia, was appointed Chief Justice of the said Court; and Mr. Alexander Ingram Fisher, K.C., was appointed a Puisné Judge thereof.

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LAW SCHOOL CHANGES.—Mr. John E. Read has resigned the position of Dean of Dalhousie Law School to take the responsible position of Legal Adviser to the Department of External Affairs at Ottawa. Mr. Sidney E. Smith, a member of the staff of The Osgoode Hall Law School, has been offered and has accepted the position at Dalhousie University vacated by Mr. Read. Mr. Smith will enter upon his new duties at the beginning of the next academic year. It will gratify our subscribers to know that Mr. Smith will continue to act as Assistant Editor of the CANADIAN BAR REVIEW, a post that he has filled with distinction during the past seven months.

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DISRAELI AND THE LAW.—Thanks to M. André Maurois everyone has been talking of late about Disraeli. We shall follow suit for a moment here. In the early part of the nineteenth century Disraeli, using *Vivian Grey* as his mouthpiece, thus dismissed the law as his profession: "The Bar: pooh! law and bad jokes till we are forty; and then, with the most brilliant success, the prospect of gout and a coronet. Besides, to succeed as an advocate, I must be a great lawyer; and, to be a great lawyer, I must give up my chance of being a great man." Yet about the time that this oracle was uttered England was full of great lawyers who were also great men; and all the greater because they were lawyers. A year after the nineteenth century came in Eldon became Lord Chancellor and nearly wore the woolsack out by sitting on it for twenty-five years. Eldon was a great lawyer and undoubtedly a great man, although not a great statesman. Then at the Bar there were Brougham, Campbell, Copley (afterwards Lord Lyndhurst), Romilly, Scarlett,

Thesiger and Tindal, all of them winning distinction at the Bar and in Parliament. So that Disraeli would not of necessity have surrendered his chance of becoming a great man if he had been called to the Bar instead of abandoning his intention of entering it after having eaten his dinners at Lincoln's Inn for nine terms. But no doubt Disraeli was fortunate in choosing the senate rather than the forum for the exercise of his intellectual gifts. Like his acknowledged master, Burke, his mind was too audacious and undisciplined to be tied down to what Blackstone, in his 'poetic moment,' described as:

"The toil by day, the lamp at night,
The tedious forms, the solemn prate,
The pert dispute, the dull debate,
The drowsy Bench, the babbling Hall."

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INTERNATIONAL AMENITIES. — We have been favoured with a copy of a *brochure* containing the speeches made at the Dinner tendered by the society known as The Pilgrims of the United States to the Honourable Vincent Massey, Minister Plenipotentiary to the United States from Canada, and other guests representative of the public life of the Dominion, in December last at the Waldorf-Astoria hotel in New York. It is interesting reading to all men of good-will in both countries, and we commend it to the attention of Mr. L. J. Maxse of the *National Review*, published at the centre of the British Commonwealth, who has been doing his best to "feed fat any ancient grudge" between England and the United States ever since the Great War.

We quote one or two passages from the speech of Dr. Nicholas Murray Butler, who presided at the Dinner.

> When two nations so proud, so powerful and so much in earnest as the Dominion of Canada and the United States can turn their faces toward the light of reasonable justice and away from the darkness and cruelty and carnage of war, the world is moving rapidly toward a new and finer goal. . . . The British Commonwealth of Nations is the most impressive and the most extraordinary political development which the world has seen since the fall of the Roman Empire. It is neither imperial in form nor federal in form. It combines and exemplifies the advantages of both and is sufficiently elastic to compass the globe and to give to its constituent elements freedom, self-government, independence, combined with loyalty to a common sovereign, a common purpose, and a common tradition. That British Commonwealth of Nations deserves and has the affectionate regard and respect of the people of the United States.

While a sound knowledge of public affairs and a fine spirit of amity pervaded the remarks of Dr. Butler, the speech of Mr. Massey was on an equally high plane and demonstrated in the fullest way his capacity to represent Canada at Washington. The following extracts serve to show how Mr. Massey appreciates the relations now existing not only between the United States and Canada but also between the United States and the whole British World:

> Diplomacy between our two countries here in North America has after all a simple technique, or perhaps it would be true to say—no technique at all. In all our mutual dealings with each other, each nation has learned to assume on the part of its corporate neighbour just the same common sense and spirit of give and take that it expects of its own citizens. Our mutual frontier offers proof enough of this. . . .
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> I have mentioned our domestic harmony. There is a second harmony in a wider field which we have taken our share in bringing about. Not a conciliation within ourselves this time but within the family—the reconciliation between two principles in the great empire of which we are a member. Again we have the unity of the whole harmonized with the full development of the parts which compose it. On Canadian soil many of the great issues in the history of the British Commonwealth were worked out. As we assumed, at each step, a fuller measure of autonomy, our loyalty to the larger unity and our devotion to the Throne which symbolizes it were sensibly deepened and quickened.

Excellent speeches were also delivered at the Dinner by the Honourable Ernest Lapointe, K.C., the Honourable L. A. Taschereau, K.C., and the Reverend Canon Cody. We subjoin a passage from that delivered by Mr. Lapointe:

> I do not wish to overestimate the history of our common past, but such international documents as I have mentioned and the fact of a century-long peace between Canada and the United States must reveal to the rest of the world the possibility of contiguous frontiers with continuous friendship. Let them realize that if our prosperity has been constantly growing, it is due to the constant peace which has existed. Such peace and friendship stand as unchallenged witnesses that militarism is poor Christianity, poor humanity, and even poor business. What the United States and Canada have done, all other countries can do, if they have the right spirit, and die-hards should realize it. There is no better contribution to the welfare of the world than this example of our two countries, and there is nothing finer in international relations than the firm determination and the strong will on the part of your people and of our people to maintain that peace and that friendship unbroken. . . .

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ADVISING THE JUDGES. — An interesting discussion took place recently in the English Court of Appeal between the Judges and coun-

sel present in the business before the Court. It concerned matters which may be said to fall chiefly within the domain of judicial etiquette. Mr. Justice Scrutton invited the opinion of counsel as to whether a Judge had the right to go into the jury room and talk to the jury during the consideration of their verdict. It appears that the counsel thought that there was no such right available to the Judge. On this point reference might be had with advantage to the article "Strangers in the Jury Room" published in our March Number (7 CANADIAN BAR REVIEW, p. 169). Mr. Justice Greer propounded a more radical question when he asked what a Judge should do if, during the speech of counsel, one of the jurors asks: "My Lord, must we listen to this nonsense any longer?" It does not appear what reply counsel made to this query, but his Lordship ventured the opinion that he had no right to stop counsel under such circumstances. Mr. Justice Scrutton closed the discussion with the remark that "It is one of the traditions of the English Bar for counsel to stand up to Judges when they are wrong." This incites us to ask who is to decide in such a case that the Judge is wrong?

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BRITISH ROYAL COMMISSION ON POLICE POWERS.—The recent Report of the British Royal Commission on Police Powers has been received with mixed feelings by the lay press. It is meeting with praise and dispraise. As would be expected the legal periodicals review it without emotion or bias. *The Solicitors' Journal* for March 30th comments on the point stressed by the Commission that there is great danger in requiring the police to enforce laws which the general public regard as unfair, and claims that the Commission has followed *quoad hoc* repeated warnings given in its columns some three years ago. The *Law Journal* of the same date characterises the Report as "essentially a common-sense document." It also refers to the point particularly mentioned above and adds that the majority of instances in which the police find any real difficulty in carrying on are those where the general public regards the offence charged as venial and one involving unnecessary restriction upon freedom of conduct. The *Law Times* of even date promises to deal with the Report "more fully in a subsequent issue," but does not hesitate to say that while it does not 'white-wash' the police, it rebuts the sensational charges against their good faith in general so freely made a year or so ago.

SIR HENRY MCCARDIE SAYS THINGS.—Mr. Justice McCardie of the English High Court is one who attests for us the correctness of a saying of one of the Elizabethan dramatists that "a bachelor may thrive by observation." We use the quotation to include observation in the perceptive as well as in the vocal sense. In a recent case before him involving libel by a *femme covert,* he observed out of the abundance of his observation that "It is very difficult to describe the privileges of a husband in this modern England." Of the leading lady in the legal drama he said: "She threw the nobility of feminine life into the dust of perpetual amusement." Growing sententious, he added these winged words: "All life is a lottery; no Act of Parliament touches the greatest lottery of all" . . . "A bachelor is a man who looks before he leaps, and, having looked, does not leap at all." If Mr. Justice McCardie keeps on in this strain the studious sayings of the Seven Sages of Greece will pale their ineffectual fires before his casual utterances.

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CARNEGIE FOUNDATION AND LEGAL EDUCATION.—We have received a copy of the *Review of Legal Education in the United States and Canada* for the year 1928, and find a perusal of it abundantly interesting. It is a volume full of information concerning legal education in the two countries. The relation between law and politics, the organisation and financial resources of law schools, their entrance requirements, the elective method as it obtains in some of the schools, and the problem of the 'part-time' system are among the topics discussed in the present volume. In Section II requirements for admission to the Bar are considered in relation to certain changes that have been recently made in the United States as well as in Canada. There we are furnished in tabular form with a comparative view of the requirements now in force in each of the sixty American states or Canadian provinces. This is followed by a discussion of the essentials of a sound Bar admission system. Special attention is directed to the importance of an administrative provision requiring applicants to register at the beginning of their law studies.

In Section III are listed, with their tuition fees, student attendance, and time required to complete their course, the one hundred and seventy-three degree-conferring law schools of the United States, and the ten Canadian schools, in parallel columns, distinguishing

from the eighty-three "full-time" schools (of which five in Canada), those that offer instruction at hours convenient for self-supporting students or (in Canada) for law office clerks. Comparative Tables show the changes in the number of law schools of different types, and of their students, during the last forty years.

The danger of excessive standardisation is dealt with under the title "Present-day Law Schools" by Mr. Alfred Z. Reed. That the process of imitation and standardisation, which has characterized the activities of reformers of legal education during the past forty years, may be carried too far is the conclusion reached by Mr. Reed in the Carnegie Foundation Study, "Present-Day Law Schools." In this publication, as in an earlier volume, "Training for the Public Profession of the Law," he declares that the present need is for progressive differentiation, rather than for standardisation, of legal education.

The legal profession is greatly served by these annual publications of the Carnegie Foundation. Copies of the present volume may be had free of charge on application to the office of the Foundation, 522 Fifth Avenue, New York City.

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London School of Economics.—We have received a syllabus of the studies in the Department of International and Diplomatic Studies of the London School of Economics and Political Science (University of London) for the session 1928-29. We note that two gentlemen who held Professorships recently in McGill University are on the teaching staff of the London School, namely, Mr. Harold J. Laski, M.A., who has the chair of Political Science, and Mr. Herbert A. Smith, M.A., who occupies the Chair of International Law.

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New Director of Royal Trust Company.—The Honourable L. A. Taschereau, K.C., was appointed to the Board of Directors of The Royal Trust Company on April 9th last. Mr. Taschereau, Premier and Attorney-General of the Province of Quebec, was called to the Quebec Bar in 1889, of which he was Syndic in 1908 and 1909, and Bâtonnier in 1911 and 1912. First elected to the Quebec Legislature in 1900, he served as Minister of Public Works and Labour from 1907 to 1919 and became Prime Minister in 1920. He is an LL.L. and an LL.D. of Laval University.

OUR PACIFIC PROFESSION.—"People generally quarrel because they cannot argue," says Mr. G. K. Chesterton. If what this philosopher says is true then the legal profession cannot fail to be the greatest instrumentality for peace in every community.

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RESPECT FOR THE LAW.—The administration of justice in the courts of any country requires the attention of the daily press. If it be such that the press cannot commend it then the interest of the community demands that its defects should be exposed. If it is faithfully serving its purpose then commendation should not be withheld. To exercise this function, to praise and to blame upon proper occasion, carries the press far along the road of public service. The Judges will neither be offended by criticism nor spoiled by praise if they are not unmindful of the words of a celebrated member of the English Bench in the eighteenth century: "The character of the Judges is public property, and if they have done anything amiss they ought to be censured. But if not, their characters ought to be respected; otherwise the most mischievous consequences will arise to the public."

We were moved to make the above observations after reading an editorial in *The Ottawa Journal* of March 26th last under the title "Upholding Respect for the Law." It refers to the conduct of certain trials before Mr. Justice Wright at the Spring Assizes of the Supreme Court of Ontario in Ottawa. We quote from the editorial below, believing that our readers will agree with us that it is admirably done both in spirit and substance:

> The assizes afforded a supreme example of how the courts of Canada should be conducted. From the moment the assizes opened, the presiding Judge, Mr. Justice Wright, made it apparent that a strict discipline was to be maintained. A certain laxity which had been apparent at court house trials was immediately checked up by his lordship. The doors of the court room were ordered closed immediately proceedings began and the Judge announced that no person would be allowed to leave while a court proceeding was in progress. Only while a witness was leaving the box, and another entering, would any other movement be allowed.
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> No more persons were allowed in court than could find seats. No one was allowed to stand in the aisles and when the Judge espied such, he promptly ordered their removal.
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> Talking was forbidden, even low whispered conversation being stopped by his lordship as soon as he noticed it. A court official was reprimanded for engaging in conversation with a lady. He was later threatened with removal for allowing a spectator to gain admittance while a court proceed-

ing was on. Strict punctuality was maintained, and jurors not present when their names were called were promptly fined.

The rigid discipline imposed created a sensation at first and a subdued atmosphere, not usually apparent, prevailed. As the days went by, tendencies to overlook his lordship's restrictions began to manifest themselves. They were promptly checked by him.

The result of it all was that cases were disposed of with despatch, and the dignity of the law maintained. During the period the assizes were in progress, from 2 p.m. on Monday last when the Grand Jury was sworn, until the middle of Saturday morning when a non-jury trial was disposed of, four jury cases and two non-jury ones were dealt with, in addition to the two criminal cases, which occupied more than a day apiece.

It should not be thought, however, that the Judge was merely arbitrary. Every consideration was allowed, to female witnesses particularly. In more than one instance the Judge manifested more solicitude for witnesses than did the latter for themselves. Offers of relief or assistance were made when it seemed to observers that the strain was getting too severe. Jurors in waiting were given permission to leave at once it became apparent to his lordship that the case in progress was not likely to finish that day, so their services would not be required until the next.

One or two practices which have grown up among counsel were checked by the Judge, and not before it was necessary.

Counsel examining witnesses have shown a tendency to irrelevant questioning, presumably with a view to disconcerting witnesses and by thus confusing them seeking to nullify their testimony. The strain upon persons under oath in the witness box, and who themselves possess some conscientious regard for the truth, is severe enough, without it being added to by such methods. His lordship showed his appreciation of this. "There must be some limit to this irrelevant questioning," he interposed in one case after considerable latitude had been allowed to counsel cross-examining a female witness who had been a long time in the box.

Another practice, perhaps more reprehensible, was checked with more than one counsel by his lordship. That was of gradually drawing nearer and nearer to a witness in an aggressive attitude, almost menacing, but which those used to such experiences would probably dismiss as simply attempts at "bull-dozing." Most witnesses are not built that way, however, and their appearance in the witness box only happens once in a lifetime. If at all temperamental, the ordeal of facing a crowded court in strange surroundings, giving evidence under oath, even though they are assured the truth is with them, is a trying one to them.

To most lawyers, of course, the atmosphere of a court room is as the breath of life. His lordship in checking the practice complained of performed another public service.

If respect for law is to be maintained in this country it is certain it will be more along the lines laid down by his lordship, than by continuance of such practices as those to which attention was drawn by him

DEATH OF EMINENT ENGLISH JUDGES.—During the early part of March two distinguished English Judges passed away in advanced age. Lord Finlay was eighty-six at the time of his death, and Lord Phillimore was eighty-three. Lord Finlay was better known to the Canadian Bar, as he was a guest of the Bar Association at the Fourth Annual Meeting in 1919 and was then made an honorary member of the Association. Although he qualified as a medical practitioner at Edinburgh University, he forsook that profession for the law. He was called to the English Bar in 1867. He became Lord Chancellor in 1916 and held office until the end of 1918. During his tenure of the Chancellorship he pronounced his interesting dissent in *Bowman* v. *Secular Society* [1917] A.C. 406, where he was indisposed to admit that Christianity was no part of the law of England.

Lord Phillimore was born in a legal atmosphere. His grandfather had been Regius Professor of Civil Law at Oxford, and had written a book on Ecclesiastical Law. His father was a Judge of the High Court of Admiralty and the author of a well-known work on International Law. Lord Phillimore was appointed to the King's Bench in 1897, having previously succeeded to his father's title. He retired in 1916, when he was raised to the peerage. He was prominent in the task of establishing the League of Nations. He drafted the Statute which constituted the Permanent Court of International Justice.

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SELDEN AND SULLIVAN.—We have received the following interesting item from the Honourable Mr. Justice Riddell of the Appellate Division of the Supreme Court of Ontario:

'Big Tim' Sullivan, when objection was made that some proposed proceeding was unconstitutional, was wont to say: "What's the Constitution among friends?"

No one ever accused the New York ward politician of being too much addicted to reading—certainly not the English classics—and, if John Selden were mentioned in his presence, his first thought would be "What Precinct does he belong to?"

But Tim was a plagiarist—albeit, quite unconsciously. John Selden (1584-1654), the Temple lawyer, a man of omnivorous reading and far reaching erudition, who is described by Lord Clarendon as "a person . . . of stupendous learning in all kinds and in all languages," and who was equally at home writing of Syrian

Goddesses and English Tithes, speaking of the House of Commons, says: "The house of Commons is called ye Lower house in Twenty Acts of parliament. But what are Twenty Acts of parliament amongst friends?"

The learned Judge assures us that this may be found in the *Table Talk of John Selden, newly edited for the Selden Society.* London, 1927, p. 33—which he commends as admirable literature in every way.

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HONOURABLE W. D. MCPHERSON, K.C.—The Honourable W. D. McPherson, K.C., of the Toronto Bar, died on the 2nd instant after a lengthy illness. He was in his sixty-seventh year. Mr. McPherson had a first-rate place at the Bar, enjoying the honour of life Bencher of the Law Society of Upper Canada. He represented a Toronto riding in the legislature of Ontario from 1908 till 1919, when he retired from active politics. We publish in this number an address by the late Mr. McPherson to the graduating class of Osgoode Hall Law School in 1928.

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IMPROVEMENT OF LEGAL EDUCATION.—The Honourable Wallace Nesbitt, K.C., President of the Canadian Bar Association, has donated the sum of $10,000 to the Law Society of Upper Canada "for the improvement of legal education in Ontario, and the encouragement of legal research." The Society has undertaken to administer the fund in accordance with the wishes of the donor.

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LIEUTENANT-GOVERNOR OF QUEBEC. — The Honourable Henry George Carroll, K.C., was appointed Lieutenant-Governor of the Province of Quebec on the 2nd April to replace the late Sir Lomer Gouin. Mr. Carroll entered the administration of Sir Wilfrid Laurier in 1902 as Solicitor-General of Canada. In 1904 he was appointed to the Bench of the Superior Court of Quebec. In 1921 he retired from the Bench and assumed the office of Vice-President of the Quebec Liquor Commission.

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SIR HUGH JOHN MACDONALD.—Sir Hugh John Macdonald died at Winnipeg on the 29th March last in the seventy-ninth year of his age. At the time of his death he held the office of Police Court

Magistrate for the City of Winnipeg. He was a son of the illustrious Sir John A. Macdonald, one of the Fathers of Confederation, who was Premier of Canada for many years. Sir Hugh John himself was at one time a member of the Parliament of Canada, and held office in the Cabinet of Sir Charles Tupper. He was accorded a State funeral, the third of the kind in the history of the province of Manitoba. In 1915 he received the honour of knighthood.

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IMPERIAL EXPERT COMMITTEE.—The King's speech from the throne proroguing Parliament, contained an announcement of particular interest to Canada. This was that in accordance with the recommendation of the last Imperial conference an expert committee had been summoned to meet in London in October to consider operation of Dominion legislation in view of the altered relations between the component parts of the British Empire.

The committee will consist, in the official phrase, of "representatives of my governments"—in other words, of the governments of Great Britain, the dominions and India.

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JURY REFORM.—*The New York Times* thinks that the following contains a worth-while suggestion:

BETTER JURORS.

A Legion of Volunteer Jurors, made up of persons of high intelligence, is suggested as a means of improving the operation of justice:

Gangway for the Jurors' Legion!
  Marching, here we come.
Wisdom in the Law Court region,
  We will show you some!
Sage, alert and steady-thinking,
  Minds acute as tacks.
When the Justice ship is sinking
  We will stop the cracks.
Tangled matters, we'll untwist 'em,
  Dullness cannot daunt us.
We will save the jury system—
  If the lawyers want us.