

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.

CANADIAN BAR ASSOCIATION.

FOURTEENTH ANNUAL MEETING AT QUEBEC (1929).

PROGRAMME.

(NOTE:—Some minor changes may occur in this programme, but its main features are finally settled).

Thursday, September 5th.

10.00 a.m.—Opening Session—Chairman, Honourable Wallace Nesbitt, K.C., President of the Association.

Presentation of Distinguished Guests.

Address of Welcome:

His Honour the Hon. H. G. Carroll, K.C., Lieutenant-Governor of Quebec.

His Worship the Mayor of Quebec.

Response to Welcome:

Mr. L. S. St. Laurent, K.C., LL.D., Vice-President for Quebec, will take the Chair.

Presidential Address—Honourable Wallace Nesbitt, K.C.

Memorial Resolution regarding the late Honourable Sir James Aikins, K.C., LL.D.:

Honourable Sir François Lemieux, Chief Justice Superior Court, Quebec; Honourable N. W. Rowell, K.C., LL.D., Vice-President for Ontario; Mr. Isaac Pitblado, K.C., LL.D.

Memorial Resolution regarding the late Honourable Chief Justice Martin:

Honourable R. B. Bennett, K.C., LL.D.; Honourable Mr. Justice Surveyer; Mr. H. J. Sims, K.C.

Introduction of Resolutions.

1.00 *p.m.*—Luncheon—Chairman, Honourable R. B. Bennett, K.C., LL.D., Dominion Vice-President.

Address—Honourable L. A. Taschereau, K.C., LL.D., Prime Minister and Attorney-General of Quebec.

2.30 *p.m.*—Afternoon Session—Chairman, Honourable John B. M. Baxter, K.C., LL.D., Prime Minister and Attorney-General of New Brunswick.

Appointment of Nominating and Resolutions Committees.

Report of the Council—Mr. Pierre Beullac, K.C., Honorary Secretary.

Address—Representatives of the Bar of Paris.

9.00 *p.m.*—Evening Session:

Chairman—Right Honourable F. A. Anglin, Chief Justice of Canada.

Address—Right Honourable Lord Hanworth, K.B.E., Master of the Rolls.

10.30 *p.m.*—Reception and Dance at the Chateau Frontenac.

Friday, September 6th.

10.00 *a.m.*—Morning Session:

Chairman—Honourable R. W. Craig, K.C., Vice-President for Manitoba.

Financial Statement presented by Mr. George H. Montgomery, K.C. D.C.L., Honorary Treasurer.

Reports of Committees:

1. Comparative Provincial Legislation and Law Reform.
2. Noteworthy Changes in Statute Law.
3. Membership.
4. Editorial Advisory Board of "The Canadian Bar Review."

Address—"Theories of Law and the Constitutional Law of the British Empire"—Professor W. P. M. Kennedy, M.A., LL.B., Litt.D., Professor of Law in the University of Toronto.

Address—"The Notarial Profession in the Province of Quebec"—Joseph Sirois, N.P.

2.30 p.m.—Chairman—Honourable N. W. Rowell, K.C., LL.D., Vice-President for Ontario.

Statement by Representative of Conference of Representatives of the Governing Bodies of the Legal Profession in the Provinces of Canada.

Address—Right Honourable Sir Robert Borden, G.C.M.G.

Reports of Committees:

1. Administration of Justice.
2. International Law.
3. Legal Education.

Report of the Registrar.

8.00 p.m.—Annual Dinner.

Chairman—Honourable Ernest Lapointe, K.C., Minister of Justice, Honorary President.

Addresses—Right Honourable Lord Hanworth; Representative of Paris Bar; Honourable John W. Davis; Honourable Mr. Justice Maclean; Honourable L. A. David, K.C.

Saturday, September 7th.

10.00 a.m.—Chairman—Mr. S. B. Woods, K.C., Vice-President for Alberta.

Address—Mr. Ferdinand Roy, K.C.

Address—Honourable Mr. Justice Hodgins.

Statement by Representative of the Conference of Commissioners on Uniformity of Legislation in Canada.

Reports of Special Committees:

Report of Nominating Committee.

Report of Resolutions Committee.

Unfinished Business.

1.00 p.m.—Luncheon—Chairman, Honourable Wallace Nesbitt, K.C., President of the Association.

Address—Mr. Gurney E. Newlin, President of the American Bar Association.

Afternoon Social Events.

THE METAMORPHOSIS OF MR. JOWITT.—The Attorney-General in the new administration of Mr. Ramsay MacDonald was able to change his party allegiance with, in Mr. Silas Wegg's picturesque language, "the sudden wiciousness of Jacks-in-boxes." Elected for Preston as a member of the Liberal party, he immediately accepted office in the Labour Government. *The Saturday Review* (Conservative) speaks of the event as follows:

It must be a long time since a political conversion in this country has occurred so suddenly and conveniently as that which has enabled the elected Liberal member for Preston, Mr. W. A. Jowitt, to accept office in the Labour Government as Attorney-General. Even in an age of speed this will take some beating. So much has been said and written in astonished admiration of this exploit that we will refrain from saying a good many things that occur to us. We have enjoyed particularly the unctuous tone adopted by convert and capturer in their published letters; such revivalist language well befits the spectacular nature of the conversion. The ship's company whom the new Attorney has abandoned have expressed their own opinions, as have other decent men.

The New Statesman (Labour) while congratulating the government and the country on Mr. Jowitt's acceptance of the attorney-generalship, says that:

He must have anticipated, and to that extent deserved, the public obloquy which he has suffered as a result of so quick a change of party . . . Some of us may feel that we could not have done such a quick change ourselves, but perhaps that is merely because we have not the courage to do something which is obviously right and in the public interest on account of the inevitable abuse to which we should be subjected.

The Law Journal makes this comment:

The Attorney-Generalship has proved a surprise. The attraction of the Labour fold, which was not strong enough before the election to prevent Mr. W. A. Jowitt, K.C., from contesting Preston as a Liberal, has proved strong enough after the election to win him from Liberal to Labour . . . The political flexibility of Mr. Jowitt is, we believe, without parallel in modern times.

The Solicitors' Journal discusses the matter in the following guarded way:

Of the new Attorney-General—Sir W. A. Jowitt, K.C.,—it can be said that for a number of years he has stood in the very front rank of advocates; and were it not perhaps for the unfortunate circumstances in which he has taken office—circumstances which have aroused in some circles a criticism more bitter than fair—his attainment of the highest position open to a member of the Bar would have been universally applauded. The ethical and political aspects of the controversy raised by the appointment we do not propose to discuss; we content ourselves by saying that Mr. Ramsay MacDonald has, in his new Attorney-General, a colleague who is equally powerful in debate and in his knowledge of law.

Mr.—or rather Sir—W. A. Jowitt is a young man and no doubt will live down this untoward incident in his public career. Had he postponed his acceptance of office until he had formally renounced his allegiance to the Liberal party and stood for election as a Labourite—which he has since done—much of the criticism of his conduct would have been disarmed. In the political life of our time a man ordinarily changes his opinions and loyalties with some measure of deliberateness if not manifest hesitancy; sudden conversions, with attendant gain rather than loss in the field of change, are always suspect.

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LEGAL CHANGES IN ENGLAND.—The recent elections in England have naturally been attended with changes on the Bench and at the Bar. Sir John Sankey has been translated from the Court of Appeal to the Woolsack, and Sir Henry Slessor, who was the Attorney-General in Mr. Ramsay MacDonald's first administration, has been appointed a Lord Justice of Appeal. Mr. W. A. Jowitt, as we have stated above, has been made Attorney-General, and Mr. J. B. Melville, K.C., Solicitor-General. The new Lord Chancellor won golden opinions by the tact and ability displayed in his chairmanship of the Coal Industry Commission in 1919, and he made an excellent reputation for courtesy and legal knowledge as a Judge of the King's Bench Division. There is one thing certain about him and that is that he will bring a sense of humour to an office where it has not always abounded. When he was appointed to the King's Bench Division in 1914 he said it followed upon a period of persistence on his part in carrying appeals to the House of Lords in workmen's compensation cases, adding that very appropriately his appointment might be regarded as "an accident arising out of and in the course of his employment." In a lecture he delivered last year on Bureaucracy—something which the REVIEW cannot but regard as an endoparasitic disease of the modern State—he pithily observed: "It would be strange if we had escaped the frying-pan of the Prerogative to fall into the fire of a Minister's Regulations." As to the new Lord Justice of Appeal, Sir Henry Slessor has filled a larger place in the public eye as an essayist on theology and metaphysics than he has as an outstanding member of the Bar, although by practice and authorship he has made himself a master of trade-union law. But that is only one, and by no means the most important, of the many fields of law with which the Court of Appeal has to do. The professional

press is not to say enthusiastic over the appointment, but we think the new Judge will make good. Undoubtedly he is a man of parts, and brings culture to his office. Therefore we may be hopeful of him—*les gens de qualité savent tout sans avoir jamais rien appris.*

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LAWYERS IN THE NEW PARLIAMENT.—According to *The Times* there are sixty members of the Bar and fourteen solicitors in the new British Parliament. This would indicate that the ship of State will neither be lost in the whirlpool of Communism nor wrecked on the delusive coast of doctrinaire Socialism during Labour's second trial at governing Britain. Reform for the lawyer is usually tempered with common sense.

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REFORM OF PATENT LAW.—Where legislative reforms touching matters of great industrial and commercial importance in England are concerned the business of reform proceeds in a much more systematic and helpful way than in Canada. Either Parliament, or the department of government involved in the business of reform, sees that the "spade work" is done by competent committees of experts, and the reports of such committees are of the utmost value. At the present time a reform of the Patent Law is under advisement, and a committee has been appointed by the Board of Trade to report on all desirable amendments. In addition to this the matter has been very fully considered by the committee of the British Science Guild, and a special committee of the Bar Council has been appointed to assist the Board of Trade Committee. Sir Ducan Kerly, K.C., acts in the capacity of Chairman of this Committee, and his colleagues are prominent members of the Bar experienced in patent matters. This committee has gone very fully into the report of the British Science Guild and finds it in the main useful in working out the desired reforms. They do not however favour the suggestion of the Guild that patent actions should be tried by the Comptroller. Although recognising that the conditions under which patent actions are tried by the Courts are not entirely satisfactory, they do not think that any better results could be had from proceedings before special boards. The financial interests in subjects of patents for invention are so important and wide-spread that litigants are prepared to exhaust every resource that the law or science affords in order to reach a final settlement of the questions in dispute.

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AMENITIES AT OSGOODE HALL.—We have much pleasure in reprinting from *Obiter Dicta* the following appreciation by Dean Falconbridge, of the Osgoode Hall Law School, of Mr. Sidney Earle Smith who, during the past four years, has been a lecturer at that school of law, and has now been appointed Dean of the Law Faculty of Dalhousie University:

“It is no exaggeration to say that the departure of Mr. Sidney Earle Smith from the Osgoode Hall Law School, to become the Dean of the Faculty of Dalhousie University, will be felt as a personal bereavement by his present colleagues. Four years of intimate companionship with him have not only inspired a real appreciation of his accomplishments as a lawyer and a teacher, but have also created a bond of affectionate friendship. It is not my privilege to speak for the students, but my strong impression is that something similar can justly be said of his relations with them. It is, in fact, difficult to imagine the law school without him.

“Mr. Smith came to our school with an already varied experience of life. His law course at Dalhousie had been interrupted by active war service overseas. He had also practised law and he had taught law.

“A teacher of law should, of course, be a sound lawyer, and Mr. Smith is a sound lawyer. But in addition to this technical equipment he has many inherent personal qualities which have enabled him to use his knowledge of law in superlatively effectual teaching. I hesitate indeed to enumerate these qualities, lest I should seem to be attempting to define a personality by a mere catalogue of virtues, but some at least of the outstanding characteristics of the newly-appointed Dean should be mentioned. He is indefatigably industrious and incorrigibly enthusiastic. He may sometimes be impatient about a heretical doctrine or an erroneous judicial pronouncement, but he is infinitely patient in getting to the root of a question or in making a point clear to a student. His enthusiasm manifests itself in an earnest search for the logical result, sometimes in an earnest advocacy of an archaic doctrine, for example, of real property law, more often in the most ingeniously devised examples or problems, the infinite variety of which age cannot wither nor custom stale.

“It is not given to all to discuss profound and ancient matter in a lively vein, but this gift is Mr. Smith's to a marked degree. No doctrine is so old or so crabbed but that he can clothe it in a newer and more attractive dress. And therein perhaps lies the secret of his remarkable success as a teacher. No one who has

with bated breath watched to see if the tentacles of the 'mud-hooks' are going to sink in and hold, or has with rapt attention followed the adventures of the famous watch, as its owner walks down the street with the watch chain dangling from his pocket, or as the watch is stolen, pawned or sold, can have failed to get a vivid idea of some doctrines of property law and, above all, of their *rationale*, so luminously expounded with the aid of these homely works of fiction.

"Mr. Smith came to us from Dalhousie, and it would be ungracious to bear any grudge when Dalhousie takes him back. The qualities which have made him a good teacher here will, I am sure, enable him to discharge with credit to himself and benefit to Dalhousie the responsibilities of his new position. We all wish him well."
