

UNIFORMITY OF LAWS IN CANADA.

In his address to the Bar Association the Premier of Quebec took occasion to warn his hearers against attempting to interfere with Quebec's legal system. After pointing out that the laws brought from France by the people of Quebec "respond to French ideas, French traditions, French characteristics and French customs" and that they had been preserved as "a sacred heritage," the speaker went on to say:

I will ask you to go a step further and grant that in our Canada, inhabited by the two great races, English and French, each retaining its ethnical traditions and ideas, customs and modes of thought, even whims and fancies, uniformity of laws is an impossibility. I am well aware that some of our best legal minds, prompted by a real Canadian spirit, have advocated an all-Canadian Code. I will unhesitatingly pay tribute to their disinterested motives and genuine desire to improve our Canadian legislation, but, to my mind, they are chasing a rainbow.

The topic thus discussed is by no means a new one. At the first annual meeting of the Canadian Bar Association in 1915, Mr. Eugene Lafleur, an eminent representative of the Quebec Bar, gave an address upon "Uniformity of Laws in Canada," which he began by saying: "In the minds of many Quebec lawyers the mere title to my subject will arouse antagonism and alarm." Mr. Lafleur proceeded to allay the apprehensions of such persons by pointing out that, according to its constitution, the Canadian Bar Association aimed at uniformity only "so far as consistent with the preservation of the basic systems of law in the respective provinces." There were, however subjects upon which it would be desirable and practicable to aim at greater unity "without disturbing any fundamental principles in the basic systems of the several provinces of Canada and without trenching in the least degree on treaty rights and historic traditions." These subjects were to be found within the circle of commercial law. The principles of the law merchant, he declared, were much the same all over the world and even in countries where ordinary contracts are governed by the civil law, mercantile relations are frequently regulated by a commercial code based on international usage.

As to the portions of mercantile law not committed to the legislative action of the central parliament, there can be no difficulty in harmonizing the law of all the provinces whose systems are derived from the law of England. And even as to Quebec the differences in the law on this subject are negli-

gible. The codifying commissioners in their report on the fourth book of the Code dealing with Commercial Laws state that our system has been borrowed without much discrimination partly from France and partly from England, and that the laws of commerce are of universal application and for the most part differ little in different countries except in matters of detail. Again, the law of evidence in commercial cases is of English origin, and our Code provides (C.C. 1206) that, except in the rare cases where special provisions are contained therein for the proof of facts concerning commercial matters, recourse must be had to the rules of evidence laid down by the laws of England.

On the same occasion Sir James Aikins, in his presidential address on "The Advancement of the Science of Jurisprudence in Canada," quoted from an article by Dr. F. P. Walton, formerly Dean in McGill University, a passage dealing with the peculiar laws of Quebec, from which the following are extracts:

The law of property and civil rights which is peculiar to the province of Quebec has, to a large extent, been codified in the Civil Code of Lower Canada, and in the Code of Civil Procedure the latest revision of which was in 1897. With the exception of the mercantile law, of which an outline is given in the Civil Code, that code corresponds in form and contents somewhat closely to the Code Civil des Français, formerly designated as the Code Napoléon. . . . As early as in 1785 a statute was passed introducing the English rules of evidence in commercial matters. . . . The commissioners who drafted the Civil Code of Lower Canada state very clearly the difference between the commercial law and the civil law of the province in regard to their origin. They say: "In a few instances the rules of commercial law may be found in the statute book or in the ordinances of France, but much of it is to be sought in usages and jurisprudence. Our system, if system it may be called, has been borrowed without much discrimination, partly from France and partly from England; it has grown up by a sort of tacit usage and recognition, without any orderly design or arrangement, and has not as yet received any well-defined or symmetrical form from the decisions of our courts."

On the same occasion an address of welcome was pronounced by Mr. Gonzales Desaulniers, K.C., Syndic of the Bar of Montreal, in the course of which, correctly appreciating the aims of the Association, he said:

Commencez vos travaux, Messieurs, tout vous y invite, le temps, le lieu, les besoins. Une action commune des avocats de ce pays était une chose désirée depuis longtemps. Grâce à Sir James Aikins, cette action se précise aujourd'hui, et, je ne dirai pas des lois, mais de certaines lois (et elles sont nombreuses) elle est devenu nécessaire. Elle se fera, sans altérer en rien le caractère des divers groupes ethniques du Canada. Fondons dans un ensemble harmonieux toutes celles dont s'enveloppe l'âme commune de cette vaste confédération.

These extracts show clearly the attitude of the Bar Association upon the subject. They show no desire to interfere with the Civil

Code of Quebec or to impose upon that province a system founded upon traditions and principles foreign to French law. Similar sentiments have been expressed many times in the fourteen years that have intervened. On the very morning of the day upon which Mr. Taschereau spoke, Mr. Wallace Nesbitt, K.C., President of the Bar Association, also referred to the subject. Speaking of the Conference of Commissioners on Uniformity of Legislation in Canada, he said:

I venture to make special mention of the Conference of Commissioners on this occasion because I am afraid that the words 'uniformity of legislation' in its title have caused it to be regarded with some suspicion in the province of Quebec. This suspicion is wholly unjustified, as the object of the Conference is not to make any attack upon the Civil Code of Lower Canada or to assimilate the general law of Quebec and that of the other provinces. Most of the subjects discussed by the Conference have been modern commercial subjects, upon which the provincial legislatures have all been legislating, and upon which it is desirable from a business point of view, that legislation should be uniform throughout Canada. I feel sure that the Province of Quebec might advantageously make use of some of the Statutes prepared by the Commissioners, and it is certain that it would strengthen the Conference and make its work still more useful if it had the benefit of the collaboration of some Quebec lawyers.

Is it too much to hope that the leaders of public opinion in Quebec will accept the assurances, so frequently and authoritatively given, that the Code is not in danger of attack, and that it is no purpose of the Bar Association or of the Conference of Commissioners to encroach upon the ground occupied by the civil law? By so doing they may dispel needless suspicion and distrust and may assist in forwarding the growth of a strong, united national sentiment, one of the main objects for which the Bar Association was founded. Scotland, after more than two hundred years of union with England, still retains its civil law, but the two countries are bound together in a firm and indissoluble compact, with a common loyalty and equal devotion to a common flag.

R. W. SHANNON.

Regina.