

# 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.

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.

ETHICAL FOUNDATIONS OF LAW.—A philosopher has recently said in one of the English reviews that society can only exist on the assumption that its members (a) speak the truth, (b) act honestly, and (c) do their duty. This, by the way, sounds a good deal like the three rules of ethics to which Justinian sought to have the Roman law respond. Even the English common law, in which many critical jurists find no higher purpose than that which is entirely pragmatic and utilitarian, seeks to have men truthful, honest and duteous in their social relations. Our philosopher also goes on to say that "Duty is simply the discipline demanded by the unit [the Stâte] as the price of survival." Quite so, but isn't Law the instrument by which the indispensable duties resting upon men in society are enforced? In so far as the cardinal rules of law and those of morality are in contact the one complements the other in respect of discipline. Both find their ultimate test in the normal man's consciousness of right. That consciousness has been in the world for a long time. We do not know the song the Sirens sang to Ulysses, but its burden must have been the allurements of departure from the strait road of right.

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WISE COUNSEL.—Ex-Governor Alfred E. Smith, of New York, writing in a popular journal concerning the general indifference of the electorate in respect of public affairs remarks that while he re-

gards democratic representative government as the best, it is not perfect. Enlarging upon his theme he advises the rank and file of the people to take "an all year-round interest in their government," treating their representatives "as they would any other paid representatives engaged in the business of looking after their interests." He concludes his strictures upon the inertness of the electorate as follows:

"Apathy of the people and lack of interest in their own affairs gives rise from time to time to the suggestion of a dictatorship. That can only be successful when the dictator himself is right—but that is too much of a chance to take. I prefer to leave the government in the hands of the people themselves with the hope that some day there will be a livelier interest, a better understanding and a keener sense of responsibility on the part of the rank and file who make the State."

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THE OPTIONAL CLAUSE AND ITS SIGNATORIES.—A writer in *The Spectator* makes the following observation on the risk assumed by the nations who consented to become parties to it:

"Is it not very risky," people ask, "to sign this Optional Clause which makes it binding upon us to accept the judgment of the Court?" The answer is that law is not an absolute thing. We must *help* it to grow. Constructive interpretation, as Sir Frederick Pollock has said, is the life of the law—it certainly is of our own Common Law—and therefore if the Permanent Court be not used to its fullest extent it will never serve its real purpose of putting law above war. A Court is a maimed thing if an offender cannot be cited before it—if parties can come into that Court only by agreement. The Optional Clause makes it possible for one party to bring an action against another. We cannot admit that any risk that is new is taken by his development, because any nation can already cite any other nation (though by a much more circuitous course) before the Assembly of the League at Geneva.

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ONE OF OUR VISITORS.—The Honourable Hugh M. Kennedy, Chief Justice of the Irish Free State, is not one of our visitors from overseas who finds more to criticise than to extol in Canada and its people. A very kindly and appreciative account of his reception last year as a guest of the Canadian Bar Association is published in the current volume of *The Irish Law Times*. Each city which he visited in his tour from Victoria to Montreal receives some pleasant notice of its leading features, and what he says about those who entertained him is what we would naturally expect from a cultured Irish gentleman. Nor did he forget to say a commendatory

word for the CANADIAN BAR REVIEW to his compatriots. We should like to have the story of his experiences in Canada in the form of a book so that it would be more readily available to readers in this country where he has made so many friends.

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LOW NEWSPAPER STANDARDS.—*The Times* has recently complained of the frivolous and unworthy matter that is being served to their readers by the London popular newspapers. It mentioned as an instance of the truth of its criticism the fact that when General Dawes made his speech at the Pilgrims' Club no comment at all was made on it by several of the most widely read newspapers in London, although the speech was of great international moment. Yet these papers publish columns of twaddle every day about the doings of the vulgar rich who are robbing English society of all the fine qualities that characterised it in the past. Moreover it is the daily practice of these newspapers to rub the noses of their readers thoroughly in the dirt of the divorce and criminal courts. In these respects we think the press of the English metropolis as a whole compares unfavourably with that of the great centres in the Dominions of the British Commonwealth. Certainly the leading newspapers of Canada are more regardful of the "news that is fit to print" and the sensibilities and good taste of their readers.

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THE LEAGUE WITHIN THE LEAGUE.—The more one familiarises himself with the deliberations and achievements—and the latter have been in no sense negligible—of the League of Nations the more is the conviction strengthened that the work of that organization is tremendously influenced by the sentiment and support of the minor League of Nations which is known as the British Commonwealth. Take the so-called Optional Clause for instance, which binds its signatories to the provision of the Statute of the Permanent Court of International Justice requiring the submission of certain specified classes of legal disputes to arbitration. Happily, all the six governments of the British Commonwealth signified their approval of it. As pointed out in the discussion of the proposal to sign by the Right Honourable Ramsay MacDonald it might very well involve one of those "risks of peace" which have to be run if the purpose of the greater League to banish war is to be ultimately achieved, and yet it is conceivable that one or other of the Dominions of the Commonwealth might have had practical reasons to urge against

compulsory arbitration in some legal dispute arising between the Dominion and a foreign country—say, with regard to immigration. It, therefore, seems most important that the adherence of Great Britain to any policy formulated or fostered by the League of Nations should be attended by the common consent of all the units in the British Commonwealth.

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NEW ONTARIO JUDGE.—The elevation of Mr. Charles Garrow, K.C., to the Supreme Court Bench of the Province of Ontario has been received with very distinct approval by the profession of that Province. The son of a father who distinguished himself in the former Court of Appeal, and himself for some years favourably known to the profession as Master in Chambers, the new Judge had already proved his qualifications, and there is no question as to his being an undoubted acquisition to the Bench.

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A DANCING JUDGE.—Baron Pollock, when the burden of years had visited him, was waited upon by his kind friends who wished him to resign, suggesting it was for his own sake, entirely with a view to the prolongation of his own valued life. The old man arose, and being particularly proud of his legs, began to dance and caper about the room with a certain amount of vivacity, concluding with a fling of his foot that resulted in his nearly kicking the deputation downstairs. There were no more anxious inquiries after his health based on the hope of his retirement.

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PROFESSIONAL SERVICES EVALUATED.—There are two ways in which a lawyer's services may be of value. First, to himself, and, secondly, to his client and, incidentally to the public at large. Instances falling within the former class, and which occasion adverse comment, not only by the public but by less fortunate members of the profession to whom large fees are unknown, are of sufficient frequency to speak for themselves. As an instance of valuable services rendered by a lawyer to his client and to the community at large we might recall the case of *Walker v. Walker*,<sup>1</sup> which was the means of introducing the jurisdiction of divorce into Manitoba. The petitioner in that case was a woman in very poor circumstances who was anxious to get rid of a worthless husband. The lawyer

<sup>1</sup> 28 Man. R. 495; [1919] A.C. 947.

who acted for her knew well that the law of divorce had never been recognized as having been introduced into Manitoba. But he also knew that many laws have from time to time been found to be in force here although their introduction had not been noticed by the Courts. After many weeks of study and perusal of statutes and other authorities, he concluded that his client had at least a fighting chance. So he launched a petition which was promptly refused by the first Judge before whom it came. But an appeal was taken to the Court of Appeal and judgment was given in favour of the petitioner. From that decision an appeal was taken to the Privy Council, who upheld the judgment of the Court of Appeal; and so for many years past they have had a divorce law in force, at slight expense, in Manitoba, to the relief of numbers of unfortunate men and women. The lawyer, whose efforts had succeeded so fully, realised less than forty dollars in costs over and above disbursements.

It is also proper to recognize that the lawyer who receives large emoluments from his practice often performs legal services for poor clients gratuitously.