# 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, Dalhousie Law School, Halifax, N.S.

## TOPICS OF THE MONTH.

THE OFFICE OF GOVERNOR-GENERAL.—We venture to think that the Lord Chancellor displayed excellent tact in defending, before the House of Lords, the decisions of the Imperial Relations Committee of the recent Imperial Conference. He admitted the force of the criticism of Lord Hailsham and Lord Buckmaster to the effect that any attempt to crystallize great constitutional relations into statute form was hazardous, but contended that nothing had been done by the committee which was not the legal and logical result of the report of the Imperial Conference of 1926. There is no answer to that. Lord Balfour was the *deus ex machina* of that Conference, and it is for the future to decide whether his achievement there was for the salvation or the destruction of the British Empire. It seems to us that statesmanship of a higher quality than he had ever before displayed marked the late Earl's work in that epochal event.

But there is one thing that has emerged as a by-product of the two conferences which gives us little pleasure, and that is the possibility of losing distinguished men from Great Britain as our Governors-General. It has already happened in Australia — and Australia at one time was disposed to fleer at Canada's tendency to weaken those intangible but very real ties and influences that make

the British one people the world over. We hope it will be a long time before so sharp a corner on the new imperial road will be turned by Canada. It isn't that we have no men amongst us who are fit to represent the King; it isn't a question of intellectual equipment or probity; it is a question of loss to our racial qualities, and our sense of touch with the outside world, when the last Englishman goes out of Rideau Hall. We do not wish to repeat the experience of the United States—a history of cultural decadence and a loss of that distinctive moral fineness that should have been theirs by inheritance—since the beginning of the nineteenth century, when the influences of the home-land became extinct and a rawness of manners and self-centredness took their place.

The influence of Englishmen of imperial mould upon us at this period is clearly too vital to be lost.

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PRACTICAL RESULTS OF THE CONFERENCE.—As to the results of the recent Imperial Conference *The Law Journal*, of the 22nd November, speaks as follows:

> Hitherto the Mother Country has had a legislative supremacy. In practice it may have been in abeyance, but in theory it has existed. The Dominions, however, have discovered that it is inconsistent with "Equality of Status" the formula with which the late Lord Balfour introduced harmony in the Conference of 1926. So the Conference on the Operation of Dominion Legislation reported at the beginning of the year that it must go and the Imperial Conference has adopted their Report. The various clauses which were suggested in the Report for giving effect to legislative equality are all, with slight amendment, to be incorporated in an Imperial Statute. This means:
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> (1) That no future Act of the Imperial Parliament is to extend to a Dominion as part of the law in force in that Dominion, unless it is expressly declared therein that the Dominion has requested and assented to the enactment thereof;
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> (2) That the Parliament of a Dominion has full power to make laws having extra-territorial operation;
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> (3) That the Colonial Laws Validity Act, 1865, shall not apply to any future law made by the Parliament of a Dominion; and
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> (4) That no future law made by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of an existing or future Act of the United Kingdom; and the Parliament of a Dominion may repeal or amend any such Act, so far as the same is part of the law of the Dominion.

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LAWYERS AND JUDICIAL OFFICES.—The REVIEW, as the organ of the Canadian Bar Association, ventures to commend the action of

the Ontario Government in appointing Mr. Glen E. Strike, of the Ottawa Bar, to the office of Deputy Police Magistrate for Ottawa City, and Mr. George Russell Boucher, Barrister, of the Ontario Bar, to the office of Police Magistrate for the Counties of Carleton and Russell, both these offices being formerly held by the late William Joynt, a layman.

The advantage to the community of having men learned in the law appointed to magistracies of importance need not be argued, and it is to be hoped that these two appointments are an augury of a settled policy to be pursued in the future wherever and whenever lawyers are available. There are too many laymen and laywomen holding judicial offices in this Dominion which could be better administered by lawyers of either sex. A government which ignores this fact not only adopts a cynical attitude towards the legal profession, but submits itself to the criticism of being careless in the administration of justice.

* * There is another matter, germane to that we have discussed above, which needs correction, and that is the possibility of a lay appointee to judicial office using, with legislative sanction, the title of "Judge"—a learned and honourable title which has hitherto been significant, in countries where the English legal system prevails, of one who, chosen from the Bar, is invested by law with the power of hearing and determining causes in a court of record. Let there be an end to any opportunity for a Canadian layman to flourish the frank misnomer "Judge" when he registers in some hotel outside of the locality where he is empowered to exercise his official functions. This is no idle and splenetic criticism. The continuance of such an anomaly is not only a slight to the Bench but constitutes a stigma upon the good taste of the community where it exists. If laymen must be appointed to these positions, then purge the statutes of the offending title.

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THE TRIALS OF JURORS. At the London Central Criminal Court recently, when counsel was cross-examining a witness on points of character, one of the jurymen naïvely asked "What has it got to do with the case?" The Recorder, Sir Ernest Wild, K.C., rebuked him, telling him that his duty as a juror was to listen patiently to the evidence, to which the juror responded that he had been held in attendance on the court for three weeks. It turned out that the boredom of the juror had magnified in his mind the exact period of his service, which had only extended over a period of six days. This being established the juror apologised for causing any annoy-

ance. In accepting the apology the Recorder explained that one of the hardest things he had to do in his Court was to study the convenience of juries.

This recalls to us the vigorous criticism of the system of trial by jury by Dr. H. E. Barnes in his book "The Repression of Crime," published some four years ago. After sketching the origin and history of trial by jury in England, he came to the conclusion that everywhere the system "is far from the divinely created and sanctioned bulwark of human liberty which right-thinking men now suppose it to be." He was disposed to think that while in the sixteenth century jury service represented the intelligent and cultured class of Englishmen, issues falling to be considered in the light of medical knowledge, sociology and jurisprudence, *and democracy,* have today outstripped the possibilities of percipience by the average juryman and made the system "as preposterous and out of date as the sun-dial of James I or the coach of Charles II." He then proceeds to say that after a few days of bewilderment in the new atmosphere of the Court the minds of the juryman from the farm and of the juryman from the city "settle down into a state of mental paralysis," which renders them impervious to the task of balancing testimony or apprehending the rulings of the Court. Wishing they were home again, personal affairs absorb their thoughts. "The farmer wonders whether his hens are being fed or his horses properly bedded down, and the drummer bemoans his lost sales and 'dates.'"

Dr. Barnes undoubtedly presents a forcible critique of the jury system, but it must be remembered that he has the present-day American jury in mind. In Canada the jury system is functioning at least to the satisfaction of our law-abiding people.

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MINERAL RESOURCES AND INTERNATIONAL RELATIONS.—In the course of an address on "Mineral Resources and their Effect on International Relations" before the Royal Institute on International Affairs in June last, Dr. Foster Bain said that as different countries have different capacities for using minerals, it is in the interest of all nations that these minerals should find their way to countries where they are most needed. He argued that a nation which is not industrialised should not keep untouched within its borders a very large supply of one of the minerals which more progressive countries need for manufacturing purposes, and that the measure of responsi-

bility resting upon the nation possessing this unused mineral to make it available to industrialised countries was among the international questions pressing for consideration at the present time.

In view of ethical principles entering so largely into the rules of international law, the suggestion of Dr. Bain runs perilously close to Ahab's gesture towards Naboth and his vineyard, and we fancy it would meet with some strong opposition if attempted to be put into practice. It is conceivable, too, that a nation industrially backward may at any time shake off dull sloth and take on a position of importance equal to that of the nations who are now coveting its natural resources.

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CONSTITUTIONALITY OF TRADE-MARK LEGISLATION.—At another place in this issue we publish an article by Professor W. P. M. Kennedy of the University of Toronto, discussing the legislative power of the Dominion Parliament with respect to trade-marks. The great importance of this question needs no demonstration. Professor Kennedy intimates to us that he wishes his readers to understand that he has approached his subject from the point of view of the constitutional lawyer and not as an expert in the law of trade-mark.

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LEGAL EDUCATION.—In the report of the Committee on Legal Education, submitted at the annual meeting of the Canadian Bar Association, the question of the training of students in the practice of the law is put forward as one of high importance at the present time, and the attention of the profession is called to the necessity of considering the most effective means by which such training can be given. The Committee very prudently suggests that the problem should be thoroughly investigated before any solution of it is attempted, and recommends that the members of the Association give it special study and consideration before the next annual meeting.

The view is very generally entertained that young men entering the profession today are not as well trained in the practice and procedure of the courts as were those of a generation ago, and we think that it is due to the fact that the old system of training students under articles in law offices can no longer be successfully carried out in the rush of modern business, and the further fact that the law-schools

up to the present time have not been expected to furnish a complete course of practical training in the law. We publish below a portion of the Committee's report dealing with the possibility of this particular work being entrusted to the Law Schools:

If it should appear that service in offices no longer gives the student adequate opportunity for acquiring practical expertness, in the matters in which he needs to be made expert, to what extent should the law schools be called upon to afford the student that opportunity?

Training courses in one particular matter, the conduct of litigation, have been attempted in a number of American law schools, and in at least one Canadian law school. These courses vary considerably in character. Sometimes they consist merely of oral arguments before a mock tribunal on points of law. Sometimes dramatic features are emphasized by reproducing a complete trial with student witnesses and jurors. Sometimes the imitation of court practice is carried out completely, by having students go through all the steps in an action, from writ to trial and judgment, pleadings being prepared and attacked as they might be in an ordinary action. Your Committee would like to obtain definite information as to how far such courses have been found successful. If successful, what are the conditions of success? Is it necessary, in order that they be successful, that students should be divided into small groups—say groups of four, two for the plaintiff and two for the defendant? If such division is necessary, what additions will have to be made to the teaching staff of the schools to insure the success of such courses?

Then, again, if training courses in the conduct of litigation are found to be beneficial, should similar training courses be attempted by the schools in the drafting of other legal documents—contracts, deeds, partnership agreements, wills, etc.? And would additional staff be necessary for this purpose also? Moreover, if training courses of these kinds are to be given by the law schools, what modifications must be made in the present methods of combining office service with attendance at law school? Or, putting substantially the same question in another aspect, should the law schools be asked to undertake any such courses as these unless the number of hours of instruction at the law school is increased? Can time be taken from other courses in order to make room for such training courses? Would this involve a skimping, or even omission, of other courses which would be undesirable?

We recommend the whole report of the Legal Education Committee to the attention of the profession throughout Canada.

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C. B. A. Hospitalities Appreciated.—In our last number we reprinted from *The Law Journal* a letter signed by Lord Dunedin, Sir William Jowitt and Sir Roger Gregory, expressing on behalf of the members of the English Bench and Bar a cordial appreciation of the hospitalities received by them as guests of the Canadian and Ameri-

can Bars in August last. In the present number we are permitted to publish a letter addressed by the Lord Chancellor of England to Mr. Louis S. St. Laurent, K.C., President of the Canadian Bar Association, expressing his appreciation of the courtesies extended to the English delegates at the last Annual Meeting of the Canadian Bar Association. We are also permitted to publish a minute of the Council of the Order of Advocates of the Court of Paris, recording the thanks of the delegates of the French Bar invited to attend that meeting. The Lord Chancellor's letter and the resolution of the Council of the Paris Bar are given below.

HOUSE OF LORDS,
S. W. I.
15 October, 1930.

Dear Mr. President,—

All those who had the great pleasure and the great privilege of visiting Canada as the guests of the Canadian Bar Association are united in an expression of the deepest gratitude for the wonderful hospitality with which they were received. It is clear from the accounts which have been given to me that no stone was left unturned in the arrangements made for their entertainment and comfort. They have returned with a great store of interesting experience and memories which will never fade.

The exchange of thought has not only been of very real value to the members of the Bar, but also, in a wider sense, has increased still further the friendly relationship already existing between your country and mine.

I much regret that my duties prevented me from sharing in the experience of which I have received such happy accounts.

Please accept, Mr. President, my best wishes for the continued success of the Canadian Bar Association.

Yours very sincerely,
(Signed) SANKEY. C.

The President
The Canadian Bar Association.

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Conseil de l'Ordre des Avocats à la Cour de Paris.
Extrait du Procès Verbal
de la Séance du 21 Octobre 1930.

Le Conseil,

Profondément ému de l'accueil réservé à la délégation du Barreau de Paris par la Canadian Bar Association, adresse à celle-ci et à son éminent Président Monsieur Louis Saint Laurent ses remerciements chaleureux, et lui renouvelle l'assurance de ses sentiments confraternels.

Le Secrétaire du Conseil, Le Bâtonnier de l'Ordre,
(Sgd.) JACQUES CHARPENTIER. (Sgd.) FERNAND PAYEN.