

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 Fifteenth Annual Meeting of the Canadian Bar Association will be held in the City of Toronto on the 15th and 16th days of August, 1930.

* * *

AN EMINENT LAWYER PASSES.—Once more within all too short a period the Bar and the Canadian people as a whole have been called upon to record a grievous loss by death. The passing of Eugene Lafleur, K.C., on the 29th ultimo removes from our midst one of the rapidly thinning company of distinguished men who have brought the sound intellectual training of the nineteenth century to the solution of the juristic and social problems that confront this young nation at the present day. Mr. Lafleur's mind was so varied in its acquirements that he seemed to have made himself master of the whole domain of modern thought. Yet his modesty was such that only his intimate friends knew the affluence of his knowledge. Outside that circle his fame rested on his remarkable gifts as a lawyer. In the law he found his most congenial sphere of endeavour, and in Canadian legal annals of his time no career has excelled his in substantial achievement and fineness of professional conduct. His distinction was quite as freely acknowledged by English judges

sitting on the Judicial Committee of the Privy Council as by the judges of our own courts.

Mr. Lafleur was born at Longueuil, P.Q., in 1854, of Swiss descent. He received his early education at the Montreal High School, and then attended McGill University where, on graduation in Arts, he won the gold medal in mental and moral philosophy. Proceeding to study law, he was called to the Quebec Bar in 1881. He was created a Queen's Counsel in 1899. He became bâtonnier of the Montreal Bar in 1905 and bâtonnier-general of Quebec province in 1908. During the centennial celebration of McGill University in 1921 he was granted the honorary degree of Doctor of Laws, as a tribute to his services as lecturer on international law in that institution and a just recognition of his professional eminence. The fact that he was chosen as one of the arbitrators in the settlement of the boundary dispute between the United States and Mexico in 1911, demonstrates the high opinion of his legal attainments entertained in foreign countries. We understand that Mr. Lafleur had been nominated as Canadian representative in the arbitration about to be had between the Dominion and the United States in the famous "I'm Alone" case.

Mr. Lafleur twice refused appointment to the Bench. He was one of the most ardent supporters of Sir James Aikins in the founding of the Canadian Bar Association, and always took a prominent part in its deliberations. At another place we publish some tributes to his memory expressed by the Bench and Bar of the Superior Court in Montreal the day following his decease.

* * *

DEATH OF THE SPEAKER OF THE SENATE.—The Honourable Hewitt Bostock, Speaker of the Senate of Canada, died after a brief illness at his home in Monte Creek, B.C., on the 29th ultimo. Speaking of his demise the Right Honourable Mackenzie King said: "The tragic suddenness of Speaker Bostock's death has cast a gloom over Parliament and over the Capital. His death occasions a distinct loss to the public of Canada and will be felt in all parts of our country." Before coming to Canada to take up fruit growing, Mr. Bostock had been called to the English Bar.

* * *

THE NAVAL CONFERENCE.—Mr. Ramsay MacDonald's comment on the Naval Conference, whereof the sole practical achievement was the Three-Power Agreement between Great Britain, the United States and Japan, was not only wise but stimulating: "This is not the end of a volume; it is only the end of a chapter." To have

obtained even this measure of success in an undertaking so fraught with uncertainty as to the issue is but an earnest of still greater success at forthcoming conferences of a like kind. The Coolidge Conference of 1927 was something of a frost, the delegates of the Powers leaving Washington full of distrust and suspicion of each other. Now, at least, the foundations of peace have been laid for those who go down to the sea in ships. The Honourable Mr. Ralston, who represented Canada at the London Conference, in the course of a public address since his return to Ottawa pointed out that the tripartite agreement would result in a naval reduction of approximately 550,000 tons from the tonnage provided for in the authorized programmes of the parties to the agreement. We quote the following passage from Colonel Ralston's address:

Someone may say that a good deal of this tonnage is on paper and not actually constructed. That is so; 278,000 tons is not yet built, but there is little doubt in my mind, or in the mind of anyone else, that if the London Naval Conference had not been held, this building programme would have been proceeded with. Authority had already been given, and the worst of it is that no one can say that that programme would not be far exceeded. We only have to remember the building programme which was launched immediately after the failure at Geneva, to realize how quickly these things get almost out of hand where there is no stability and reassuring agreement against competition.

As to the capital ships which, under the terms of the Washington treaty would have been replaced between now and 1936, this would have meant the building of twenty-six new ships. Under the London agreement not one of these twenty-six ships will be built, at least until after another conference has been held. It means that the old ships will have to do duty, and that the people of the world will take time to consider whether they had better not be allowed to rust out.

The smaller carriers of aircraft, that is 10,000 tons and under, which were not dealt with at Washington are now recommended to be included and to be charged to the total aircraft carrier tonnage.

It is to be regretted that neither France nor Italy could repose enough faith in the view that the spirit of the new age demands the outlawry of war, to constitute the Three-Power Agreement a five-party one; but the door has been left open for them ultimately to make it so. It is also to be noted that the treaty between the three signatories only covers the short period of five years. But that is sufficiently long for the intensive scheme of education against war, now being carried on by the League of Nations, to make a larger naval disarmament possible in 1936. After all, the peace of the world rests in the public opinion of the nations; and that public opinion is firmly set against war at the present time. The tragedy

of 1914-18 could not be staged to-day, and education of the young can make any future recurrence of it impossible.

* * *

LAWYERS AND SCHOLARSHIP.—Undoubtedly the present century falls behind the nineteenth in the amount of broad scholarship possessed by members of the so-called learned professions in the English-speaking world. This is particularly true of the law, and yet we were glad to hear a short time ago, from one well qualified to speak on the subject, that in any gathering of educated people to-day the lawyer was easily first not only in the fine quality of his spoken word but in the soundness of his knowledge. Both in England and the Dominions as well as in America there are still some lawyers and judges who are free of the great field of the humanities. Proof of this may be found in the books recently published by Lord Birkenhead and Mr. Augustin Birrell. The former has recently, to quote from a contemporary, "diversified that comparative leisure which retirement from active politics may be presumed to have given him by entering the ranks of the prophets." His "The World in 2030" shows what a powerful mind can do even in an unfamiliar sphere. It is great reading. Mr. Birrell has added another delightful volume to the series of essays which began with "Obiter Dicta," published nearly fifty years ago. Although he is an octogenarian, his newest literary venture, "Et Cetera," has all the liveliness and charm of his earlier work. But this is not the place to review it. Here we can only recommend it to those of our readers who love "the dainties that are bred in a book."

* * *

THE NEW LAUREATE.—Although John Masefield has become a Royal Poet, he will retain his citizenship in the Republic of Letters. He is the fourteenth successor of John Dryden, with whom the office of Poet Laureate had its formal beginning—although Ben Jonson practically held the office under Charles I. It is to be hoped that Masefield did not make it a condition of acceptance, as Wordsworth did, that no merely ceremonious outpourings should be required of him. We have reason to expect something good of Masefield's official muse, and big things to stir the imagination are happening in these days throughout the English-speaking world. The visit of the English Bar to Canada and the United States in August next is one of them.

* * *

THE VOICE OF A STATESMAN.—We hope that the address delivered by the Honourable L. A. Taschereau, Premier of the Province of Quebec, at a recent convocation of Queen's University, Kingston, will be printed and distributed throughout the Dominion. It embodies the wisdom and vision of a statesman who loves his country and knows the things that pertain to her welfare as a young nation. We were not privileged to hear the address, but so much of it as was published in the daily press convinces us that it constitutes a real message to the Canadian people at the present time. It is a direct and provocative challenge to the sense of patriotic duty of those who are being trained in our universities, and it is more. Its duteous note is not without value to all of our young people who are disposed to forsake lightly the land which they received as a heritage from their forefathers; nor does the more sectional but cognate obligation resting upon the people of Ontario and Quebec to combine in an effort to make Canada a united nation fail to be stressed. The following passages from the published report of Mr. Taschereau's address recall to us the spacious days of the past when patriotism was a greater thing than politics:

Thirty years of public life have taught me that the vision of the men who dreamt of and built up the Canadian Confederation was true and unerring. These men read correctly into a dim and rather uncertain future. They had the foresight to anticipate coming events and guard against possible dangers and rocks on which the ship of the young Dominion could be wrecked. We all know that the old Union had outlived its time. The Canadian Colonies were hopelessly divided; internal strifes and external animosities stopped all progress. I shall not recall more particulars of those momentous days when the very future of Canada was at stake. It has been said that every nation, in its moments of danger, produces men capable of coping with these perils. Canada was true to this rule and gave birth to statesmen whose patriotism, energy and foresight created this great Dominion.

Their dream, which came true, was to unite Ontario and Quebec, which were then practically the whole of Canada in bonds of friendship and common interest.

They were successful and it is up to us to continue their work and give no rude awakening to their dreams.

I believe that the university is the best instrument to continue and consolidate sixty years of Canadian success and progress.

We are living in a great age of democracy, especially on our side of the vast Atlantic, where democracy has captured most of the strongholds of aristocracy. But, if democracy has emerged from its infancy and childhood, if it is triumphant in almost every sphere of our national life, if it has given to the people rights and liberties undreamt of by your forefathers, if, on the whole it has perhaps added to the welfare of the community, democracy has not, as yet, said its last word, nor attained its final development, in the social fabric of the world. In some respects it is still

in the experimental stage. This being so, a restraining power, a guiding hand, may be necessary to direct the world in its process of evolution. Democracy is international, and clever leaders, by more or less wide appeals to classes, may shake foundations built on ages of experience, thought and statesmanship.

If a guiding hand, and a restraining power, are necessary to allow humanity to pause and think, I believe that the task rests with a certain class of aristocracy. Not the aristocracy of blood, lineage or money, but the aristocracy of learning, science and knowledge.

Here is the part that universities must play in our world of modern democracy.

The aristocracy of knowledge and learning is open to every democrat, however obscure his origin may be. This kind of aristocracy must realize its responsibilities and convince democracy by its science, independence and disinterestedness that the world in its rapid modern evolutions must still depend on high ideals, order and knowledge to live and endure.

Universities have therefore a momentous national and social mission to fulfil: the creation of the new aristocracy of knowledge that shall rule the world, heal and solve the difficult problems that face all the nations in the troublesome days that we are living.

But, in Canada, another task rests with the universities. I shall confine myself to Ontario and Quebec.

. . . I have referred to the aims of the Fathers of Confederation and said that the main object they had in view was to unite Canada. Have they been entirely successful?

I shall leave that question unanswered, but I do say this: Ontario and Quebec, if they want to play in this Dominion the part that they are entitled to by their wealth, population and geographical situation, must stand hand by hand and not waste their energies in petty feuds and differences. You are English, and we are French. The great war has taught that we can fight a common battle and win, if united.

There is no question of opposing East to West. We have our problems; the Westerners have theirs. If we lived in the West, we would think as they do; we ask them to understand our point of view. But I do ask Ontario and Quebec to unite their best energies to solve the problems that are common to both and to realize that Confederation was not a melting pot into which all our assets were thrown indiscriminately to form an alloy. It was a contract, willingly entered into, to put in common certain things, but also to retain some others that are as dear to a people as his home is to the heart of a man. Let each contracting party retain and cherish what was retained and cherished sixty-three years ago.

* * *

THE OUTLAWRY OF WAR.—Viscount Cecil has declared at Geneva that the British Government will attempt at the next session of the League of Nations Assembly to incorporate the outlawry of war principles underlying the Kellogg Pact into the Covenant of the League. Of course the proposal will meet with stiff opposition from some quarters, but the very fact of the attempt being made demonstrates how real an instrument for peace the League has become.

* * Dwelling upon the increasing tendency of those who once scoffed at the League to admit the possibility of it triumphing by sheer persistence in its aims, we are disposed to think that in a very few years the voice of the critic who has no faith in human progress will be hushed by a general chorus of support and praise for the League. The reason why war has hitherto persisted in scourging civilization is that there has been no common and organized effort to prevent it. We have had preparedness for war but no preparation for peace worthy of the name. The world was accustomed to an atmosphere where war-clouds were perpetually lowering on the horizon, and army manoeuvres and displays of naval strength filled the public eye. School children were taught to sing the hymns of jingoism, and learned that patriotism consisted in believing that one's country was never wrong in entering into armed conflict with another nation. There were philosophers even in the British Zion who would say with Treitschke: "God will see to it that war always recurs as a drastic remedy for the human race." We think that in the second quarter of the twentieth century all this mischievous nonsense is losing its countenance. What was said by General Smuts in London after his New Year visit to the United States and Canada encourages this opinion. We quote:

We see one solid step after another being taken, and if we maintain the pace we have kept for the past ten years, my own conviction is that in another generation the mechanism of peace through arbitration and law courts and conciliation will be so complete and all-powerful that it will be practically impossible for a great war to occur again. You will have in the world at large a state of affairs very much approximating to the state of permanent peace existing in the British Empire. Gradually the mentality of nations will alter. You know that credit rests not on money but on belief. If it is not power, it is the mental state of people which makes all the difference for security, and if you build up your mechanisms of peace and move forward as we have been moving, you effect that fundamental change in outlook and atmosphere which has to be effected. People will think less of war and arms and navies, they will think less of securities, because they are in actual security. Peace produces security. There will be less fear, and the whole mentality of mankind will be recast so that the peaceful order becomes the reality for the world, just as for the nations in the British Empire. To my mind it is not a work which you can do at once; it will not come like Athena, full-grown from the brain of any Jupiter, but it will grow. It will develop and grow until it is something which is really calculated to do the task for which it is intended; and if we do what is our duty, if we back the institutions of peace by every means in our power, I feel quite certain that that new order to which I referred at the start of my address will come about, and we shall see something of immense importance for mankind, something really creative and epoch-making arising from the tragedy through which we have passed.

That is an ideal to work for and live for. We can all help, including us

old stagers, covered with blood and still sore from the blows and frictions of the past; but it is a work which ought specially to interest the young. I should like to see our universities and schools interest the young mind in this crusade of peace. If we can produce the right effect on our young people, we shall give an enormous impetus to the movement. And what a world it will be! With all the friction and waste of international ill-will and war eliminated, we shall move forward at a pace which will be something that has never happened before in history.

We should like to add some similar views expressed by Dr. Nicholas Murray Butler in an address delivered in Berlin on the 30th of April last. We quote:

For ten years past the civilised world has been marching, now consciously, now unconsciously, toward that happy goal which Immanuel Kant so clearly saw and so clearly defined. In the League of Nations the era of consultation has found an organ of expression and in the Pacts of Locarno the signatory powers have highly and finely resolved upon the peaceful settlement of their international differences, whether these be of long standing or have newly arisen. Finally, in the Pact of Paris the world has renounced war as an instrument of national policy, that policy which von Clausewitz defined as a policy which fights battles instead of writing notes. Hereafter we are to write notes, to confer together and to consult and to leave off fighting battles and preparing to fight battles.

* * *

MORALITY OF YOUTHFUL CANADIANS.—Mlle. Marie Chaptal, President of the International Council of Nurses, who was commissioned by the League of Nations to make an inquiry into the moral and social conditions of youth, has recently reported upon the business submitted to her. She spent some time in the United States and Canada, investigating conditions, especially in the larger cities. While she finds that the young people of Canada are growing up in an atmosphere which would compare most favourably with that in any part of the world, in her opinion the morals of children in the United States are being neglected, and she paints a rather lurid picture of the social influences that are undermining the religion and habits of American children. Indeed she does not hesitate to characterise the United States as a decadent nation, the chief causes of its lapse from its former high estate being Prohibition (*bélas!*) and the lack of family life.

* * *

PERMANENT COURT OF INTERNATIONAL JUSTICE.—The present Judges of the Permanent Court of International Justice were elected to office in 1921, the term of that office being fixed at nine years. Before the end of December in the present year the Assembly and Council of the League of Nations will, therefore, be called upon to

elect new members of the Court for a like term. During the Assembly's session of 1929, certain amendments to the Court's Statute including, *inter alia*, amendments in the articles relating to the composition of the Court, the election of its members, the duties and obligations of its members and the functions and occupations which are incompatible with membership of the Court, were drawn up by a Conference of representatives of the Governments, approved by the Assembly, and embodied in a Protocol, dated September 14th, 1929, which is open for signature and ratification by the governments concerned. Hope was expressed by the Conference and by the Assembly that these amendments would become effective before the forthcoming election. From literature at hand, dated at Geneva, March 15th, 1930, it appears that it was uncertain then whether this result would be obtained before the election. By a proposed amendment to Article 32 of the present Statute, it is provided that the President shall receive a special annual allowance, and the Vice-President a special allowance for every day in which he acts as President. The Judges, appointed under Article 31, other than members of the Court, receive an indemnity for each day which they sit. These salaries, allowances and indemnities are to be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office. The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court. It is also provided by the amendment that regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded. It is also provided that the salaries, allowances and indemnities contemplated by the proposed amendment to the section, shall be free of all taxation. In 1920 the Assembly of the League, under the provisions of Article 32 of the Statute, fixed the annual salary of the President of the Court at the sum of 15,000 Dutch florins, with a special allowance of 45,000 florins, making a total of 60,000 florins. The Vice-President was to receive an annual salary of 15,000 florins, with a duty allowance of 30,000 florins, or a total of 45,000 florins. Ordinary Judges were to receive an annual salary of 15,000 florins, and a duty allowance of 20,000 florins, or a total of 35,000 florins. By the suggested amendment to the text of Article 16, all the members of the Court are forbidden to exercise any political or administrative function, or engage in any other occupation of a professional nature. It is to be noted in the minutes of the Con-

ference of Government representatives that the words "occupation of a professional nature" were intended by the Conference to be interpreted in the widest sense; that is to say, to cover, for example, such an activity as being director of a company. Under the proposed amended text of Article 17, the members of the Court may not "act as agent, counsel or advocate in any case;" the words "in any case" have been substituted by the Conference for the words "in any case of an international nature" used in the original text of the article, and this obligation applies to all members of the Court.
