

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.

C. B. A. COUNCIL MEETING.—The mid-winter meeting of the Council of the Canadian Bar Association was held at the Chateau Laurier, Ottawa, on the 14th instant. There was a good attendance of members, and the business before the meeting was fully and satisfactorily disposed of. Calgary was chosen as the place of the sixteenth annual meeting of the Association, the date of which was fixed to begin on Wednesday, the 26th of August next, and to continue on Thursday and Friday, the 27th and 28th respectively. The meetings of the Conference of Governing Bodies of the Legal Profession and the Conference of Commissioners on Uniformity of Legislation will, as usual, take place before the first day of the annual meeting of the Association.

At a dinner tendered by the President of the Association, Mr. Louis S. St. Laurent, K.C., to the members of the Council and certain guests, the Right Honourable the Prime Minister, the Honourable N. W. Rowell, K.C., and the Right Honourable Arthur Meighen, K.C., delivered addresses. The speakers were in fine form, and it was generally remarked that the dinner was one of the most enjoyable social events in the history of the Association.

OPENING OF THE DOMINION PARLIAMENT.—A new departure in Canadian history occurred on the 12th instant when a Canadian citizen, the Right Honourable Lyman P. Duff, P.C., acting Chief Justice of Canada and Administrator of the Government, opened the second session of the seventeenth Parliament of the Dominion. The event was attended with all the customary pomp and circumstance. The Administrator rode to Parliament Hill attended by an escort of cavalry, and on his arrival at the Peace Tower he was greeted by a vice-regal salute of nineteen guns and the strains of the National Anthem played by the band of the Governor-General's Foot Guards. After inspecting the Guard of Honour, the Administrator proceeded to the Senate Chamber and took his seat in the Speaker's chair. The scene in the Chamber was a particularly brilliant one. The Prime Minister was present, wearing his Windsor uniform, and Ministers representing the United States, France, and Japan, and consular representatives of a dozen or more other foreign countries attended to do honour to the occasion. The High Commissioner for Great Britain, accompanied by Lady Clark, was present, together with the Lieutenant-Governors of some of the Provinces. Judges of the Supreme Court of Canada, members of the Defence Council, and other high rank officers of the Canadian military, naval, and air forces, leading members of the civil service as well as dignitaries of the Churches, were also in attendance.

A large number of the gentlemen present were accompanied by their wives, whose handsome gowns lent additional colour to the ceremonial proceedings.

After Black Rod had summoned the members of the Commons to the Bar of the Senate, His Excellency the Administrator proceeded to deliver the Address from the Throne both in English and French.

This closed the opening ceremonies, and after His Excellency retired, *pro forma* sittings of both Houses were held, followed by the usual Speakers' receptions.

* * *

CANADIAN MINISTER TO WASHINGTON.—The Canadian Bar has been honoured in the selection of Major William D. Herridge, D.S.O., M.C., K.C., as the new Canadian Minister to the United States. Announcement of the appointment, under the approval of His Majesty, was made by the Prime Minister of Canada on the 7th instant. In making the announcement Mr. Bennett remarked that

in his opinion Major Herridge was eminently fitted for the post, and possessed a thorough knowledge of the problems with which he would be confronted in the exercise of his office. Commenting on the appointment the Honourable Hanford MacNider, United States Minister to Canada, said:

Major Herridge is well and favourably known to President Hoover and to the heads of our State Department, with whom he will come in close contact. It is of the greatest personal satisfaction to my own family that our good friend and neighbour in Ottawa will represent Canada in our own country.

Major Herridge served with distinction in the Great War and on his return from overseas entered actively into legal practice as a member of the well-known Ottawa firm of Henderson and Herridge. His many professional friends were pleased to read the following statement given to the press by Mr. Louis S. St. Laurent, K.C., President of the Canadian Bar Association, when he learned of the appointment:

I have wired the Honourable William D. Herridge to congratulate him on his acceptance of the office of Canadian minister plenipotentiary at Washington. His appointment cannot fail to be gratifying to the legal profession throughout Canada. After the Honourable Vincent Massey's successful career in that office, we cannot, of course claim any monopoly of the qualifications which it requires; but nevertheless, the qualities which so eminently fit Mr. Herridge to occupy it with no less distinction than his predecessor, are precisely those which we prize most highly in our profession.

THE CANADIAN BAR REVIEW tenders Major Herridge its sincere congratulations on the further opportunity thus accorded him for rendering his country patriotic service.

* * *

THE RETIREMENT OF JUDGE MORSON.—His Honour Judge Morson retired from the County Court Bench in the early part of the present month.

Gruff, kind, forceful, whimsical, with ripe experience and a judicial temperament compounded of shrewd humour and a practical common sense that sees through shams and sweeps technicalities aside, Judge Frederick Montye Morson will be sorely missed from the County Court Bench and will long remain a delightful tradition. He is retiring, on account of age but not of infirmity, after 40 years constant service as Judge of the Toronto Division Courts, during which time he has tried many times as many cases as probably any other Judge in Canada. The long lists of trials

which confronted him, week after week, meant a gigantic, and, one would think, a heart-breaking task for any one man; and perhaps by no other methods than those which Judge Morson has made peculiarly his own could any one man have continued to deal with them. With him, Court opened at ten o'clock, on the dot of the hour; woe betide lawyer or litigant who was late! All formalities belittled, all superfluous issues put on one side, he went by quick, incisive questioning at once to the heart of the matter. "This isn't a Court of law; this is a court of equity and good conscience" was often his quizzical answer to objectors to his short cuts to justice; and there were few to complain that equity and good conscience suffered at his hands. He was an out-of-doors man in his youth; is yet; only a sound and vigorous constitution could have stood the strain of so trying a judicial career. The young lawyers have a deep affection for him; he was appointed in 1891 (the last Judge to be appointed by the late Sir John Macdonald) partly as a result of petitions from the Junior Bar of Toronto; and the Toronto Bar is now voicing protests against his retirement. A year or two ago the Lawyers' Club gave him a complimentary dinner; the young fellows cheered him again and again—a unique demonstration, stirring the veteran judge to deep emotion. But good things cannot last forever; the time has come to congratulate him, as we do most heartily, on a good race well run, assuring him that love, honour, troops of friends will be his as he withdraws, still hale and vigorous, fresh and unwinded, from the course.

* * *

NEW TITLES FOR SIR EDWARD COKE.—The personal and professional character of Sir Edward Coke has been a target at which many missiles of disrespect have been hurled, but it has remained for the Honourable Robert H. Elder, of the New York Bar, in a radio address on the desirability of abolishing Jury Trials in Civil Cases, to endow the sturdy old champion of the Common Law with some new claims to rest among those who "were honoured in their generations, and were the glory of the times." After inadvertently elevating Sir Edward to the peerage by describing his as 'Lord Edward Coke,' he refers to him as 'a big law chieftain in the reign of James I' and again, as 'the distinguished barbarian Coke.'

We have been favoured with a printed copy of Mr. Elder's address. Beyond the quotations we have made from it we are not persuaded that it adds anything to the argument against the maintenance of jury trials in civil cases.

THE LAW SCHOOLS AND SOCIOLOGY.—In reviewing Dr. Hallis's book on "Corporate Personality," in the January number of the REVIEW, we stressed the advisability of practical lawyers heeding what the jurists are now saying about keeping the law in step with social evolution. For the day has gone by when the law can be regarded as a set of rules formulated by some ancient and arbitrary sovereign will as a restraint upon individual freedom. The policeman's club as a symbol of the meaning of law no longer holds good, because the rule of law is sought to be interpreted as an exercise of service and not of tyranny. Speculative minds are now turning away from a consideration of the genesis of law to an enquiry into its present purpose and function; the value of legal rules and the instrumentalities by which they are administered are being measured by the extent to which they advance the ends of society. If we pursue the history of any system of positive law we shall find that it has its root in social needs and keeps pace with them in its development. Law is not the creator of civil society but rather is its creature. It has been called the cement that holds the social fabric together. Yet as a science law is distinct from sociology, although closely related to it. Dr. Hallis declares that they are two separate departments of thought, and must not be confused. "Sociology," he says, "studies the teleological character of social life. Jurisprudence studies the latter in terms of the realisation of order and justice."

* * In view of this close contact of the law with the social sciences it is interesting to read Professor C. M. Updegraff's article on "The Social Sciences and the Law Curriculum" in the current number of the *Illinois Law Review*. It is a plea for instruction in the relation of the social sciences to law to be given to law students after their first year in the schools, when such instruction would rest upon the foundation of some previously acquired knowledge of law. Professor Updegraff points out that certain law schools in the United States are already offering courses for the training of experts in the development of law by including a really thorough study of social science contributions under such familiar titles as Comparative Law, Jurisprudence, Legislation and History. In the course of his article he justifies the project he advocates as follows:

The legislators, the juristic writers, and the judges of modern times all express their willingness to follow the social scientist as closely as possible. They ask only that he produce social conclusions that are sound and that can be successfully expressed and enforced in terms of law . . . Law is to the social sciences what chemistry is to mining, agriculture, geology, zoology, and botany. Chemistry takes the products of the latter and, using them as raw materials, turns out a refined product. Each chemical discovery acts to

reflect greater value on the raw materials still in the earth, or as yet unproduced, as well as to refine the materials presently affected. It would be impossible to think of chemistry without the materials produced by the contributing sciences, and it is equally impossible to have prompt and satisfactory legal development without the contributions of the social sciences. This does not mean, however, that they are all a part of the same lesson and that they must be studied together. Orderly development of knowledge has always caused man to divide and classify, and with the various fields grown to their present great proportions, that division is now more necessary than ever.

The practising lawyer may never need to know the methods of the political scientist, the sociologist, the economist; he may be able to practise law successfully knowing only the legal tools and little of their origin. The same is true of the chemist; he may succeed without knowledge of the sources of his ingredients if he knows their qualities. He will be a better worker, however, if he knows the sources and the methods of finding and preparing the ingredients which he uses. An important question, however, is whether all lawyers should be required to develop to some extent the knowledge which the law-trained legislator, the juristic writer, and judiciary should have. If a school answers this in the affirmative, it should provide a workable curriculum for that kind of education of the student and a faculty which is capable of properly presenting the materials.

* * *

HAGUE CONFERENCE ON COMPARATIVE LAW.—The International Academy of Comparative Law will hold a Conference at the Hague in August, 1932. It will be an event of importance as those in attendance will comprise some of the leading jurists of the world. We learn that Dr. R. W. Lee, the Secretary-General of the Academy, has invited Dr. W. P. M. Kennedy, Professor of Law in the University of Toronto, to take steps to form a national Committee for Canada to assist in the work of the Conference.

* * *

ACADEMY OF INTERNATIONAL LAW.—The ninth year of instruction in the principles of International Law under the auspices of the Academy of International Law at the Hague, will begin on July 6th and continue until August 29th next. The Academy was founded with the support of the Carnegie Endowment for International Peace.

Ten scholarships of 400 florins each have been provided by the Government of the Netherlands and by the Academy for students, authors of essays, articles or books on some subject relating to International Law. The regulations governing the award of scholarships may be obtained, free of charge, from the Secretariat of the Managing Board of the Academy, Palace of Peace, at The Hague.

Special facilities are offered to all persons attending the Academy, during their stay, by the *Association des Auditeurs et Anciens Auditeurs de l'Académie de Droit International de La Haye* (Association of Students and Former Students of the Academy). Arrangements which have been made with hotels and boarding houses make it possible to reduce expenses to the average cost of living in other European cities. Information may be obtained from the Secretary of the above-named Association, Room 50, the Peace Palace, The Hague.

* * *

LORD MACMILLAN ON "GOOD ENGLISH."—In his address before the American Bar Association in August last the Right Honourable Lord Macmillan bravely raised his voice for the maintenance in our time of the age-old alliance of the law and letters. He said, amongst other excellent things:

There is no reason why legal arguments or judicial judgments should not be expressed in good English. There is every reason why they should. The advocate who can impart a literary flavour to his address adds to its persuasiveness and attraction. "Nor pleads he worse who with a decent sprig of bay adorns his legal waste of wig." Exotic flowers of oratory are not suitable adornments for our modern Law Courts, but the Temple has never disdained to deck its plots with the classic blossoms of the English flower-garden. It is of even more vital importance that those who sit in judgment should have a mastery not only of law but of letters, so that they may be able to use with ease and freedom—and I should like to add, with distinction—the vehicle of language in which their decisions must be conveyed. The draftsman comes to take a joy in his sheer craftsmanship. I venture to think that there are few higher intellectual pleasures than success in the task of expressing an argument or a conclusion in just precisely the right language, so that the thought is caught and poised exactly as we would have it. Clear thinking always means clear writing, and clear writing is always good writing.

* * *

A DISTINGUISHED NONAGENARIAN.—The Right Honourable Sir Edward Clarke, P.C., celebrated his ninetieth birthday on February 15th. Sir Edward's 'glorious hour' on this planet has been a long one, and the legal profession throughout the world rejoice thereat. It is unnecessary in extending him our congratulations to speak of his fame. "Why should I speak of Publius Licinius Crassus's study both of pontifical and civil law? . . . That is a noble saying of Solon that he grew old learning many things every day—than which pleasure of mind, certainly, none can be greater."

We had the very great privilege of meeting Sir Edward in London, in 1924, six years after he had written of himself under the title

of "The Story of My Life." He was then apparently hale and hearty, and so interested in the whirligig of change in England and the Empire that he might, with advantage to us all, bring out a second edition of the autobiography which he closed with his retirement from public life in the fateful year of 1914.

* * *

THE ROUSE CASE.—The history of crime as unfolded in the proceedings of the Courts reveals the utter inscrutability of human conduct, and the case of Alfred Arthur Rouse who was executed in Bedford, England, on the 10th instant for murder was a remarkable case for two reasons, first, because he was the only person in 145 years to be convicted in the absence of proof of the identity of his victim, and, secondly, because of the unswerving loyalty of his wife and one of his mistresses, both of whom laboured to the utmost to save the miserable man from the gallows. The conduct of these two women flatly contradict the view of certain of our psychologists that the female heart has forgotten how to love in the old tragic way. The newspaper story of the brutal crime and the trial, and of the subsequent events leading up to the execution of the sentence upon Rouse, reads like a saga. From this fact we may expect a spate of new fiction based on the psychological phenomena disclosed by the actors who walked the stage of the drama.

* * *

THE CHURCH MILITANT.—Ecclesiastical causes in the English courts and before the Privy Council are rare today as compared with the record of them in the nineteenth century. The echoes of the decision of the Judicial Committee in the Essays and Reviews controversy [*Williams v. The Bishop of Salisbury*, 2 Moo. P.C. N.S. 374], in which Lord Chancellor Westbury was said by a wag to have robbed orthodox members of the Church of England of "their last hope of eternal damnation," as well as the outcry aroused by the ritualist prosecutions, have almost faded out of hearing since the Great War. So that one is taken by some surprise in reading the case of *Notley and Others v. Bishop of Birmingham*, reported in (1931) 47 T.L.R. 257. There a motion was made, in an action by the plaintiffs, as patrons of the perpetual curacy of St. Aidan's, Small Heath, Birmingham, against the Bishop of Birmingham, for a writ to issue directing the Archbishop of Canterbury to admit and license a certain clergyman to the said perpetual curacy. In the action as launched the plaintiff had sought an order that the Bishop

of Birmingham should admit and license their nominee to the benefice, and as the Bishop had entered no appearance the Court made the order asked for [(1930) 46 T.L.R. 347]. This order was not obeyed. In granting the motion for the writ to issue to the Archbishop, Mr. Justice Maughan said:

It has been pointed out that, in the present case, there is difficulty in the writ going to the Archbishop while there is a subsisting order of the Court directed to the Bishop of Birmingham ordering him to admit and license Mr. S. to the benefice . . . That difficulty, however, can be overcome by the plaintiffs amending their notice of motion and asking that that part of Mr. Justice Bennett's order which directed the Bishop of Birmingham to admit and license Mr. S. may be discharged and that, in lieu of that direction, a writ may issue directed to the Archbishop in the form which I have mentioned.

Subject to the amendment being made, I see no objection to the issue of the writ. It seems to me that, in a case where the defendant not only does not appear but also evinces a determination not to comply with an order of the Court, it is far better to discharge that part of the order which directs him to do something which the Court cannot compel him to do than to attempt to enforce it by process in the nature of contempt, a course which would lead to a very unsatisfactory state of things.

* * *

HELPING A BROTHER.—In the course of an address by Sir Henry McCardie at a recent meeting of the Authors' Club in London, the Judge related some entertaining stories of the Bench and Bar. Our readers will doubtless be interested in the following:

Speaking of the good fellowship of the Bar, Sir Henry related an incident of his own early days as a lawyer. He was prosecuting a man for murder, and at the close of the evidence he noticed that his "friend," who was defending the prisoner, was white and trembling. When the Court adjourned for lunch he asked his opponent what was the matter, and the defending counsel replied that he really did not think he would be able to make his final speech to the jury.

"I had a dozen points in my mind," he added, "everyone of which I thought was in the prisoner's favour, but every one has gone from me." "We went out to lunch," said Sir Henry "and composed together a speech for the defence and I found his points for him one by one. I even wrote out a peroration of seven lines and I could give it you now but I won't (Laughter). The speech proved so effective that the jury reduced the verdict from one of murder to manslaughter." (Laughter and cheers).

Rather a curious story, that, in some respects.

* * *

BIRKENHEAD AS BIOGRAPHER.—It was said of Lord Campbell that, in his capacity of biographer, he added a new sting to death for those who had held the Great Seal of England. That remark

could not be applied to the late Lord Birkenhead, because in dealing with the memories of the dead he was more often kind than critical. For example, he closes his memoir of Sir James Fitz-James Stephen in *Fourteen English Judges* in these words: "Those who looked at him merely as a judge would not in his life-time have placed him as high as I have done in this article." It was otherwise when he appraised the qualities of living men by his tongue or pen. Then his purpose seemed to be to enforce the judgment of the classical moralist that "Men ought to be most annoyed by the sufferings which come from their own faults." This is obvious enough in his sketch of Mr. Ramsay MacDonald, completed only a day or two before the last stage of the illness that brought his brilliant career to an untimely end. It is to be found in *The Strand Magazine* for January. The admission that Mr. MacDonald has "won a high measure of respect, even from his most determined opponents, during his present lease of the Premiership" is countered by the remark that "MacDonald's Socialism was due to the warp caused by a fine intellect and a strong and ambitious character acting upon an insufficiently disciplined mind." Then he proceeds, in the style in which the noble lord was so great a master, to reveal the plight into which the Prime Minister's indecision has led him:

When I watch his tortured, but so far not unsuccessful efforts to maintain his control over the troublesome steed which he has bred and trained, I am reminded that he was born almost within the shadow of the castle where tradition has staged the murder of Duncan by Macbeth. MacDonald, hag-ridden by his followers, has something in common with that unfortunate, if uxorious, husband. Do we not hear the Maxtons and Mosleys intoning such sentiments as these, when they press their demands on their leader:

*"Glamis thou art, and Cawdor, and shalt be
 What thou art promised: yet do I fear thy nature;
 It is too full o' the milk of human kindness
 To catch the nearest way: thou wouldst be great;
 Art not without ambition, but without
 The illness should attend it: what thou wouldst highly,
 That wouldst thou holily; wouldst not play false,
 And yet wouldst wrongly win: . . . Hie thee hither
 That I may pour my spirits in thine ear,
 And chastise with the valour of my tongue
 All that impedes thee from the golden round."*

Mr. MacDonald must often wish in secret to be delivered from these ardent counsellors; yet, in his public acts, though he often protests his independence and never fails to clothe his purpose with seasonable explanations, he rarely disappoints the firm wills and valorous tongues who constitute his Left Wing.