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 Sixteenth Annual Meeting of the Canadian Bar Association will be held in the City of Calgary on the 26th, 27th and 28th days of August, 1931.

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MR. JUSTICE HOLMES.—The Honourable Oliver Wendell Holmes, one of the Justices of the Supreme Court of the United States, in celebrating his ninetieth birthday last month might have said: "Non sum uni angulo natus; patria mea totus hic est mundus." For it seemed that all the world, moved thereto by the range of his human sympathies, had taken notice of the interesting event and tendered him congratulations. The *Harvard Law Review* for March contains a series of appreciations of the great judge and jurist written by men who have attained greatness themselves—the Honourable Charles E. Hughes, Lord Chancellor Sankey, Attorney-General Jowitt, Judge Cardozo and Sir Frederick Pollock. Indeed it is hard to find any legal publication printed in English that has not seized the occasion to acclaim Mr. Justice Holmes in terms that would rank him as a compeer of Marshall and Story in the annals of the American Bench.

Mr. Justice Holmes is a son of Dr. Oliver Wendell Holmes, in his lifetime one of the most distinguished of American literary men. We think the following extract from one of his poems may be applied with singular aptness to the man who has extended the fame of the family in such a remarkable way:

> Call him not old, whose visionary brain
> Holds o'er the past its undivided reign.
> For him in vain the envious seasons roll
> Who bears eternal summer in his soul . . .
> Turn to the record where his years are told,—
> Count his gray hairs,—they cannot make him old!

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LORD MACMILLAN'S COMMITTEE.—At the moment of writing Lord Macmillan's Committee on Banking, Finance and Credit has not reported its conclusions to the British Government although it has been sitting for over a year. In the meanwhile the resentment of the Labour extremists against high money rates, perhaps the chief inducement the government had for appointing the Committee, has turned out to be ill-founded because money has for some time been procurable at lower rates than have prevailed for many years, and yet trade is still stagnant. Then, again, it has been demonstrated that instead of trade being hindered by a lack of credit it has suffered from the surfeit of credit it got in the two years following the War when Cabinet Ministers induced the banks to "open up" in order to rush a trade revival, which can only hasten slowly to be safe. The boom of 1920 was made possible by easy credit, and as a result the prices of commodities soared at the expense of real trade prosperity. So that on the whole we need not expect Lord Macmillan's Committee to suggest any breach in the defensive wall of England's banking system.

* * It is interesting to recall what Walter Bagehot said of the English banking system some fifty years ago. After quoting the saying of Demosthenes that "commerce proceeds not from the borrowers, but from the lenders" he proceeds:

> Ages of diffused confidence are necessary to establish such a system, and peculiar circumstances in the banking history of England, and of Scotland still more, have favoured it. But here until within a hundred years there was no such concentration of minute moneys, no such increment to the loan fund, and abroad there is nothing equal to it now. Taking history as a whole, it is a rare and special phenomenon.

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THE SELDEN SOCIETY.—In his biographical sketch of Frederic William Maitland, Mr. H. A. L. Fisher says "The Selden Society, planned in the autumn of 1886 and founded in the following year "to encourage the study and advance the knowledge of English law" was the creature of Maitland's enthusiasm, and of all his achievements stood nearest to his heart." Maitland believed that the law ought to be a part of the literature of England. "It will someday seem a wonderful thing," he said, "that men once thought that they could write the history of mediaeval England without using the Year Books." In the first volume of the Society's publications—*Select Pleas of the Crown,* 1200-1225—Professor Maitland demonstrated the sureness of his evaluation of the part that the early reports of cases in the courts would play in disclosing the social manners and customs of the times. Since he edited the initial volume of its publications the Society has issued forty-two others, all of great historical interest to lawyers and students of sociology. Among them is found Sir Frederick Pollock's admirable edition of the *Table Talk of John Selden.*

The Selden Society has not received the support that it deserves from Canadians, but it numbers many Americans on its roll of members. We are glad to note that Mr. Justice Hodgins, of the Supreme Court of Ontario, has recently been elected to the Council of the Society, and he will no doubt take steps to promote an active interest on the part of Canadian lawyers in the laudable work of the organization.

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RIGHT OF AGENT TO ASSERT CROWN'S IMMUNITY.—Lord Darling returned to his former Court—the King's Bench Division—recently and heard an interesting case. The Administrator of Hungarian Property, appointed under the Treaty of Trianon, claimed from one Finegold £128 6s. and 5d. as the balance of a sum alleged to be due for goods sold to a partnership, of which Finegold was a member, by one E., a Hungarian national, in the year 1914. The defendant contended that the plaintiff was estopped from maintaining his claim because he had received a dividend in the bankruptcy of the defendant's former partner. Defendant also pleaded the Statute of Limitations. The latter ground of defence was chiefly stressed on the argument. Lord Darling held, following *Rustomjee* v. *The Queen* (2 Q.B. Div. 69), that as the plaintiff was the agent of the Crown under the treaty to collect the money and to distribute it to the persons entitled thereto, he was entitled to assert the immunity

of the Crown from any bar to the action arising under the Statute of Limitations.

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INTERNATIONAL ARBITRATION.—The British House of Commons in acceding to the General Act of International Arbitration has advanced the pacific settlement of international disputes another stage. Mr. Henderson, the Secretary of State for Foreign Affairs, supported the Act as the logical complement of the Kellogg Pact and the Optional Clause. The latter provides for the arbitration of justiciable disputes, while the Act goes farther and covers non-justiciable disputes. Opposition was offered to Great Britain's accession to the General Act on the ground that the possibility of an appeal under the Act from the recommendations of the League Council would weaken the authority of the League. But the British Government have imposed certain conditions on their adhesion to the Act, by virtue of which they reserve the right to bring any case they see fit before the Council of the League.

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UNIVERSITIES IN PARLIAMENT.—In the February number of the REVIEW we referred to the proposal to abolish the separate representation of the Universities in the British Parliament. This proposal took shape in the provisions of The Representation of the People Bill. On the 16th of March it was defeated by a small majority which embraced two Labour members and nineteen Liberals. This, *per se*, did not show any serious revolt against Mr. MacDonald or Mr. Lloyd George, but taken in connection with the fact that absentees included twenty-three Liberals and twenty Labourites it does look as if the old saying that two heads are better than one doesn't apply to the case of parliamentary government.

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CRITERIA OF RESPONSIBILITY.—We have received an interesting pamphlet under this title from the Canadian National Committee for Mental Hygiene. It is a print of an address delivered by Dr. C. B. Farrar, Director of the Toronto Psychiatric Hospital, before the fifty-ninth annual congress of the American Prison Association, held in Toronto in September last. Dr. Farrar points out that the law attempts to give some precision of meaning to the word "responsibility" when it relates it to criminal intent, but he thinks that this

leads to "mere philosophising on the doctrine of free will." Modern criminology is no longer pursuing "the visionary something called responsibility," it is seeking motives to conduct. Enlarging upon the subject, he says:

> In the penalties of nature there is nothing of passion or vengeance, but only the inevitable succession of cause and effect sequences. It is in some such way that modern criminology conceives of punishment. It is a matter of cause and effect. The individual cannot isolate himself from society; he is a part of it. If his act is injurious to the group its reaction strikes home to him as well. It infallibly follows that the kind of punishment meted out to the criminal which will best serve the interests of society, is that which carries the penalty only to the length required for the public safety and welfare.

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THE INTERPROVINCIAL CONFERENCE.—So far as Canada is concerned the constitutional questions arising out of the report of the Imperial Conference of 1926 and the recommendations of the supplementary conference held in London in 1929, were dealt with this month at a conference in Ottawa between representatives of the provincial governments and of the government of the Dominion. We have at the moment no official statement before us as to what particular conclusions were arrived at but we learn from the daily press that the following results were achieved:

1. That the status quo should be maintained insofar as the question of repealing, altering, or amending the British North America Act is concerned, and that definite safeguards should be inserted in the proposed Canadian section of the Statute of Westminster to ensure that no powers would be conferred by that statute in this respect.
2. That provision should be made that except as to the provisions of the British North America Act, the Colonial Laws Validity Act should no longer apply to Acts of the Parliament of Canada, nor to Acts of the Legislatures of the Provinces.

We also learn that before the conference adjourned on the 8th instant the Prime Minister of Canada announced that at some future date a constitutional conference would be convened at which representatives of the Dominion and of the Provinces might consider the conditions upon which the provisions of the British North America Act may hereafter be amended or modified.

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AUTOMOBILE INSURANCE RATES.—The Report of the Honourable Mr. Justice Hodgins, in his capacity of Commissioner appointed by the Ontario Government to enquire into the matter of Auto-

mobile Insurance Rates, is an interesting document. The Commissioner's enquiry proves to have been an exhaustive one and his findings will be of service to the public for a long time to come.

We summarise here the following findings as to rates charged by the insurance companies: (a) The premiums chargeable to *private passenger car owners* at the 1929 rates by the associated companies during the year 1929 were excessive to the extent of $654,318; (b) The premiums chargeable to *commercial vehicle and fleet owners* were "generally inadequate"; (c) The rates for all cars were inadequate in 1927 and 1928, and the associated companies thereby lost money. In other words, some increase in rates in February, 1929, was apparently justified, but not so great an increase as the companies actually made.

The Commissioner does not recommend that refunds be required to be made to individual policyholders; and he makes no findings as to 1931, and future rates, beyond intimating that they should be "lower" and "more uniform." We learn that Commercial car and Fleet rates are proposed to be increased. The Commissioner found that the existing rates for those types of risk were inadequate. The proposed rates for commercial cars represent an average increase above existing rates of about 12 per cent. We also understand that the associated companies propose a new scale of rates for private passenger cars for 1931 which will effect substantial savings to the Ontario public. None of the basic rates are proposed to be increased, and the percentage decreases proposed range all the way from 2 per cent. to 26 per cent. according to the coverage, the class of car and the territory where the automobile is principally used. It is estimated that if the premiums written in the province on private passenger cars total $6,500,000 in the year 1931, the aggregate saving to private passenger car owners as a result of the proposed lower rates will exceed $500,000.

It would appear from the findings of the Commissioner that nearly two-thirds of the insurance premiums are paid by private passenger car owners. It is also deducible from his report that the insurance companies may show an actual loss on a year's operations and yet maintain too high a scale of rates. This situation had arisen, in the opinion of the Commissioner, by reason of the rates not being uniformly adhered to by the companies.

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Poor Persons before the Courts.—Mr. James E. Jones, one of the Police Magistrates of the City of Toronto, writes in the present

number of the REVIEW an interesting article in which he advocates the adoption, by the proper authorities in Canada, of a system of legal aid to poor persons both in criminal and civil cases. He points out that the British Parliament introduced legislation of this character in respect of criminal matters so early as 1903. This legislation was amended in 1908 and again by an Act, entitled "The Poor Prisoners Defence Act," which came into force on the first day of January last. By a report of the Law Society recently published, it appears that the system is working successfully in the mother country. Measures of a similar character have also been adopted in some parts of the United States. So that it is high time for Canada to see that poverty is no impediment to access to the Courts for the vindication of any legal right.