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.

CANADIAN BAR ASSOCIATION. — The 16th annual meeting of the C.B.A. will be held in the Manoir Richelieu Hotel, Murray Bay, P.Q., beginning on Wednesday, September 2nd, 1931. It is hoped that the programme of addresses and reports, and discussions thereon, can be dealt with on the 2nd and 3rd September, leaving Friday, the 4th, available for social events. The Manoir Richelieu is regarded as one of the finest hotels in the Dominion, being beautifully situated on the north bank of the St. Lawrence. Members of the Association will be glad to know that as the annual meeting will occur after the close of the summer season at the hotel, the management has given a special rate of $10 per day for each person, covering both room and meals. This price is considerably less than would be paid by the average member attending a meeting, if held in a first-class hotel in one of the larger cities. As it is probable that all those attending will be guests of the hotel under this arrangement, it is felt that a registration fee of $5.00 in lieu of the usual charge of $10.00 will be sufficient to provide for the entertainment of the guests of the Association and other expenses incidental to the meeting.

It is impossible at the present moment to state the names of the guests of the Association from Great Britain, France and the United

States, but all of them will be men of distinction, so that all the traditions of success in the annual meetings of the Association will be amply maintained. It is hoped that the programme will be printed and ready for distribution about the 25th July; this will give ample time for the members intending to be present to familiarise themselves with the subjects of the addresses, and it is to be hoped that participation in the discussions at the meeting will be very general. Only in this way can the attendance at the annual meetings be made profitable as well as pleasurable.

The Conference of Commissioners on Uniformity of Legislation will meet at the Manoir Richelieu, on August 27th, and the Conference of Governing Bodies of the Legal Profession in Canada will meet there on the morning of Tuesday, September 1st.

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CANADIAN POLITICAL SCIENCE ASSOCIATION.—The subjects of the addresses, and the discussions thereon, at the third annual meeting of the Canadian Political Science Association held in Ottawa last month established the value of the organisation as a medium of education in matters of national importance. One doesn't have to think hard to realize in these days that if our country is to make any substantial progress along the road to greatness, a nation-wide interest must be aroused in the economic, social and political factors that will contribute to that end. To arouse that interest is the object of this Association and to educate that interest when aroused is its avowed function.

At a complimentary luncheon tendered to the members of the Association in attendance at the meeting, the Right Honourable R. B. Bennett freely acknowledged the national value of the work of the Association and especially commended the interest shown in the meetings by the younger group of members. While all the papers read were abundantly informative, two of them were especially so to members of the legal profession in attendance. We refer to those presented by Professor N. McL. Rogers, of Queen's University, and Professor F. R. Scott of McGill University. The subjects of these being respectively "The Compact Theory of Confederation" and "The Development of Canadian Federation."

Through the courtesy of the executive committee of the Association we are privileged to publish Professor Rogers's paper in this number of the REVIEW.

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MORE CRITICISM OF THE JURY SYSTEM.—The *Rouse* case, with its aftermath of criticism of the jury which convicted the prisoner on dubious evidence, had hardly ceased to absorb public attention in England before the *Wallace* case launched another attack upon the fallibility of the Jury system. In that case the wife of William Wallace, a respectable insurance agent in Liverpool, was murdered and the husband arrested for the crime. Wallace, on the evening before the murder, was announced to compete in a local chess championship game, and a telephone message was received at his chess club asking him to call on business at an unfamiliar address three miles from his home on the following evening. On the night of the crime, at 6:45 o'clock, Wallace left his home to keep this appointment, which turned out to be a bogus one. He declared that he returned home at 8:40 o'clock to find his wife brutally murdered. Mrs. Wallace was last seen alive by a milk boy who called at the house, and who gave the time as between 6:30 and 6:45. Witnesses who saw Wallace during his abortive journey to keep the bogus appointment were of opinion that he could not have returned home between 6:45 and 8:40 o'clock. While some suspicion against the accused arose from the circumstance that the telephone message was sent from a call-box 400 yards from his home, it was countered by the fact that the crime was committed on a night in the week when Wallace was accustomed to have insurance moneys in his house, which may have induced an attempt at robbery leading to the murder by some one acquainted with this fact. The case for the prosecution was based upon the theory that Wallace had made the bogus appointment himself, but there was no positive evidence to support it; and against the presumption that he murdered his wife was set the fact that he had apparently lived on the best of terms with her for 18 years. Again, it was admitted that 15 minutes was the maximum time in which the crime could have been committed by Wallace, and for him to have removed every trace connecting him with it. The trial Judge in summing up declared that "not a trace, as far as he could see, remained which would point to anyone as the murderer." Yet the jury convicted the accused husband.

Commenting on the case, one writer says: "The Achilles heel of the English criminal legal system has always been the jury system; it is a *pis aller*. Recent cases have demonstrated certain grave shortcomings in its functioning."

* * Before going to press we learn that the conviction in the *Wallace* case has been quashed by the Court of Criminal Appeal.

No report of the case on appeal is at the moment available to us, but we venture to think that the Court held that the conviction was unreasonable because the evidence did not support it.

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INCREASE OF CRIME IN GREAT BRITAIN.—The criticism of the English jury system referred to in the preceding item recalls to one's mind the attacks of orators and satirists on the inefficiency, as instruments of justice, of the dicasteries of Greece and the senatorial jury-courts of Rome in ancient days. But it may be that the present attitude of English juries is attributable to panic on the part of "the twelve good men in the box" over the sharp increase in crime throughout the realm. We observe by the statistical records of 1929, which have just been published, that the number of indictable offences amounted to 134,581 as compared with an average of 97,924 in the five years preceding the War. For this increase the Home Office finds no satisfactory explanation, but it is apparent that the problem is one that centres in the youthful portion of the community. In 1907, out of 50,000 persons found guilty, 16,000 were under 21 years of age; in 1929, out of 53,000 the number under age was 21,000. Among suggested causes for this depravity in the young are the decay of religion, unemployment, the cinema, and the example of people living in Chicago!

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THE DAY OF DEMOS.—Although the Englishman carries with him a high opinion of the free institutions of his country while he walks abroad, he is inclined to be severely critical of them when at home.

Lord Eustace Percy in his recent book *Democracy on Trial* points out that discontent in England with Parliament is no new and unprecedented thing. That is abundantly true, so true that it is almost platitudinous to set it down in print. But the discontent that marks the present day is more serious than any earlier manifestation of it because it is born of longer and more varied experience of the short-comings of Parliament as operated on the democratic plan in its plenitude. One hundred years ago Macaulay said:

> The distrust with which the nation regards the House of Commons may be unjust. That it exists cannot be denied. This alarming discontent is not the growth of a day or a year. The taint has been gradually becoming more extensive and more malignant, through the whole life-time of two generations.

That was before the passage of the Reform Act of 1832, when the tonic of Franchise extension, which it was fondly hoped would improve the health of representative government, was first prescribed. But in 1861, John Stuart Mill, an advocate of political reform who "had the grandest and most sanguine dreams for the future of the race," saw a latent danger in wider suffrage and warned England of the possibility of her proletarians, when they acquired the power, insisting on legislation which would favour their class against all others. He thought they might endeavour to throw the whole burden of taxation on the richer classes. Was he a false prophet in this regard? Then, after 1867, when Disraeli had accepted the argument for a further extension of the Franchise—which, in Gladstone's mouth, he had denounced as the "doctrine of Tom Paine"—we hear Sir Henry Maine likening a dominant labour class to "a mutinous crew feasting on a ship's provisions, but refusing to navigate the ship to port," and Carlyle predicting a short career for democratic parliamentary government and its termination by some new Cromwell.

Again, in the first quarter of our own century, we find Sir Henry Jones saying:

> I am not concerned so much about what will be done for the workers as what will be done by the workers . . . The road to ruin for an ignorant and selfish democracy is far shorter than for any other kind of misgovernment, the fall is greater and the ruin more complete.

Finally we extract the following blast from an article in a recent number of *The English Review*:

> Unless representative government rehabilitates itself within the next few years, it will be discarded. We cannot meander for long in our present slough of cynicism. If we could, we should probably do so; but, fortunately, life does not offer us this easy and enervating choice. What it *does* offer is the simple alternative: on the one hand, the reform of our present institutions so as to make government responsible to the people who are willing and competent to concern themselves with public affairs, or on the other, the destruction of our present institutions and the experiment with dictatorship.

But to our mind it is wise and intrepid *leadership*, and not *dictatorship*, that England requires in our time. Who knows but what a King will provide such leadership, if the people fail in that behalf? England was in a worse case of confusion before Henry VII laid the foundations of her greatness.

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THE INCOME TAX AND PENSIONS.—In *Stedeford (Inspector of Taxes)* v. *Beloe* (171 L.T. 393), the Court of Appeal in England decided rather an important case with respect to the liability of pensioners to income tax assessment. The respondent had been headmaster of a college, and in 1928 tendered his resignation, which was accepted in view of ill-health, and an annual pension of £500 was granted to him. The Crown claimed that the pension was liable to income tax under Sched. E. of the Income Tax Act 1918 on the ground that it was not in the nature of a personal gift or charitable donation, but accrued to the recipient by virtue of his office. The case was tried by Mr. Justice Rowlatt at first instance, and he pronounced against the contention of the Crown. His decision has been upheld by the Court of Appeal. That Court distinguished the case from *Duncan's Executors* v. *Farmer*, ((1909) 5 Tax Cas. 417), because the annuity was granted in consideration of the recipient resigning his office, whereas here the payment could be revoked by the managing body of the school at any moment. The Court of Appeal also reached the conclusion that although the payment to the headmaster was made because of services previously rendered, it was not made because it was part of any contract for those services, and could not therefore have been received "by virtue of an office." The latter phase of the case was held to distinguish it from that of *Herbert* v. *McQuade* (87 L.T. Rep. 349; [1902] 2 K.B. 649), where money paid to an incumbent from the Queen Victoria Clergy Sustentation Fund was held taxable because, although a voluntary payment, it accrued to the person in question by virtue of his office. The Court of Appeal also held that the headmaster was not a beneficiary under any trust, enjoying as of right, and his case therefore was not governed by the decision in *Drummond* v. *Collins* ([1915] A.C. 1011).

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DECLINE OF HUMOUR IN THE LAW REPORTS.—Commenting on the fact that the author of *Lorna Doone* was not only famous by reason of his fascinating novel but also because of giving his name, some sixty years ago, to the leading case of *London and Southwestern Railway* v. *Blackmore* (L.R. 4 H.L. 610), a writer in a recent number of *The Law Times* says: "About that time there was not infrequently a touch of the humorous in head-notes and reports generally which the modern reporter rarely seeks to emulate, with a consequent diminution of the enjoyment of seekers after legal truth mingled with a little light reading." Shall we ever know a

return to the fashion of reporting followed by Saunders in *Wheatley* v. *Lane* (1 Saund. 219) where he appends this note to the judgment: "It was argued twice and much debated, and I believe is now settled: *but the conveniences or inconveniences which may follow are not yet known*"? Or shall we once again be regaled with the unconscious humour found in Sir John Strange's reports to the following effect: "It was only Mr. J. Wright who said this," followed by the citation of a case to the contrary. And again: "It was only Mr. J. Chapple who said this, and he was wrong?"

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Britain and America.—Sir John Reith, Director-General of the British Broadcasting System, while in New York last month broadcasted a message of international good-will which was indeed "blessed with the soft phrase of peace" and with power to "push forward the pursuit of wisdom" in the English-speaking world. He deprecated the tendency on both sides of the water to dwell on petty irritations that ought to be as transitory in effect as they are unfortunately inescapable in practice. He said:

> If Britain and the United States do not maintain and consolidate their friendship, it will be a calamity for the world. If they allow small differences to keep them apart, the peace of the world will be subjected to a terrific strain. The two nations together can do more to advance the happiness and the peace of the world than any other alliance or consortium of nations.

We like that word "consortium"; it has a far finer connotation than the word "League."

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Concerning After-Dinner Speeches.—If the saying attributed by Barrère to Talleyrand, *La parole a été donnée à l'homme pour déguiser sa pensée* be understood as limited to the after-dinner variety of speech it becomes a prudent saying and not a mere wisecrack. For after-dinner speeches are successful in so far as they suppress operose processes of thought both on the part of the speaker and his hearers. Dean Swift points the moral in this behalf when he says in one of his letters: "We were to do more business after dinner; but after dinner is after dinner—an old saying and a true, *Much drinking, little thinking.*"

It is not our purpose at the moment to elaborate this view but to furnish our readers with an extract from a modern example of an after-dinner speech by a member of the Bar. It was delivered at the annual dinner in March last of the Bombay Law Society, and

is reported in *The Bombay Law Journal* for April. We know of no parallel to it. The speaker was not only able to "disguise his thoughts," but seems to have bereft his audience of the mental power to evaluate the quality of his observations. Here is the extract:

> Mr. B. said: "Mr. President, and Attorneys of Bombay, because that is your proper name (Laughter). I did *not* receive an invitation in January (Laughter). I received it only four days ago. Nor have I passed any sleepless nights on receiving the invitation (Laughter). On the contrary, I have slept all the better for it (Laughter). I would have slept badly if I had been left out (Laughter). There is one thing which always cheers me and fills me with inspiration and hope and that is your President (Laughter). Although older than I, he is full of life and the joy of existence (Cheers). We have tonight a new father and a new child among our Judges (Laughter and cheers). And I must say that they are very well suited (Cheers). . . . . . Speaking *not on behalf of* the Bar, but as a member of the Bar, (Laughter) I should like you to know me better (Laughter and cheers). I think there is no more charming person than myself" (Laughter).

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SUPREME COURT OF NOVA SCOTIA.—The Honourable Joseph A. Chisholm has been appointed to the office of Chief Justice of Nova Scotia in succession to the late Honourable Robert E. Harris. Chief Justice Chisholm has been a member of the Bench of the Supreme Court of Nova Scotia since the year 1916.

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SPEAKING OF KING ALFONSO.—As would be expected the character of King Alfonso since his flight from Spain has been the subject of much discussion in the English press. Undoubtedly the weight of evidence concerning his public conduct makes him no rival of Solomon in royal wisdom. He is unpopular even amongst the most conservative members of the Spanish aristocracy. He treated his ministers badly throughout his reign, and responsibility for the Riff War is laid at his door. He could have retained his throne if he had summoned parliament in conformity with the Constitution of 1876 and abandoned his personal rule before the people became ripe for revolt. But he has followed the example of the first of the Spanish Bourbons in disregarding the law of the land, and as a result it would look as if he must now inscribe on his visiting card the historic legend: *Feu roi d'Espagne.*

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The Retort Courteous.—There is a good story going the rounds which may have had an earlier origin but is new to us. It seems that a witness in a certain court had been put through a prolix cross-examination in which the measure of success attained by the cross-examiner in modifying the statements made by the witness on direct examination was quite negligible. Recognizing his failure, along with the fact that the patience of the Court was at the breaking-point, the cross-examiner ended his unfruitful task with the remark: "Very clever, witness—very clever man, aren't you?" "Thank you," retorted the witness, "I would like to say the same to you, Sir, only I am on my oath."

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Copyright.—The May number of *The Burlington Magazine* contains an interesting editorial on the English Copyright Act, and our readers may find it useful in considering some of the features of the Copyright Bill now before the Canadian Parliament. The editorial referred to recommends an amendment to the English Act, either by way of providing that all rights should pass with the sale of a work of art, or that a copyright registry should be established in order to protect the public from infringements due to ignorance of undisclosed rights.