

# THE CANADIAN BAR REVIEW

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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.

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## TOPICS OF THE MONTH.

THE BANISHMENT OF FEAR.—Wordsworth, contemplating the feebleness of those in authority in a European country some hundred years ago, directed the minds of Englishmen to the conduct of their great men of the past in time of national stress—men of moral worth and mental power—“who knew how genuine glory was put on” by a people. It was by the leadership of such men and those who followed in their steps that England reached the climax of her greatness in the nineteenth century. That she will emerge from her present troubles depends upon whether the multitude is disposed to accept the guidance of those inheritors of the greatness of the past who place country before class and party, or whether they will follow those whose course must inevitably spell national disaster.

So far as the prospects of Canada's emergence from her industrial and financial depression are concerned, it is not a question of political revolution but a question of her people's courageous faith in the providence of God and the resilient power of the great resources of the country. The counsel of some of our statesmen to the people to be of good cheer has been nobly seconded by others of our public men outside the sphere of politics; nor has the appeal to courage in the circumstances failed of support and emphasis in pulpit and press. At a time like this it is good for the common man to realize that he is “the heir of all the ages” and that he speaks the language that heroes

spoke of old. The very thought of this is discipline for the will to power. Turning to the profession of the law in particular, it is well for us to remember the words of one of England's greatest philosophers and lawyers in the past: "Nil terrible nisi ipse timor"—Nothing is terrible except Fear itself.

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THE LAWFUL MIND.—Under this title, Sir Robert Falconer, who has recently retired from the post of President of the University of Toronto, delivered a most timely and instructive address to the students of the university on the 30th of last month. In the course of his address he spoke the following wise words:

Our modern democracy is held together by confidence, which is a by-product of the practice of simple, commonplace virtues. . . . This human faith, or belief in one another which holds the community together, lies beneath all law. In fact, law is helpless without it. The honest citizen who lives in the spirit of the law is hardly ever conscious of its statutory enactments, and if he transgresses them it is by inadvertence or unwillingly. His wholesome conduct is the best antidote to the infection that spreads from those in any community, shrewd manipulators or bootleggers, high in affairs or banned by polite society, who make their lawless living with such cleverness as to escape the court or the judge. . . .

If we are to remain a law-abiding people we must all, high and low, practice the law-observing mind. That should be obvious to those who have attended the university. For here we are taught that the whole course of human progress has consisted in the discovery of the range of law. We have learned how adumbrations of it have given way to clearer visions, so that civilised men to-day no longer fear the influence of evil spirits which were supposed to work their will capriciously upon mankind, and made mortals all their life subject to bondage. In spite of our uncertainties, alarms and distresses, progress in the knowledge of the range of law has lifted a great burden from the hearts of men. The mere fact of believing that there is order in the universe will at least beget a calmer frame and more temperate spirit in average men. Like the stoic they will accept what they believe to be inevitable, even when unhappily they have not the consolations of religion to persuade them that a beneficent purpose lies behind the regularity of law. Those who win this attitude towards the universe will possess at least a modicum of comfort in this mysterious world.

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BREACHES OF GOLD STANDARD ACT.—We learn from editorial reference to it in a late number of *The Solicitor's Journal* that a question has been raised in England as to the possibility of enforcing an order made by the Treasury, under the authority of sec. 1(3) of The

Gold Standard (Amendment) Act, 1931, imposing restrictions on the transfer of funds abroad, where neither the Act nor the order itself specifically imposes penalties for a violation of the said restrictions. In other words, the question is whether the order, lacking as it does a definitive sanction, is juridically enforceable against a transgressor. Our contemporary is of opinion that a violation of the order can be treated as a common law misdemeanour and punishable accordingly. Reference is made to the case of *R. v. Harris* (1791), 4 T.R. 202, where neither the statute nor an order made by the King in Council thereunder, prescribed a penalty for disobedience of the order, yet the court held that such disobedience was an offence at common law. The case of *R. v. Hall*, [1891] 1 Q.B. 747, was also referred to. In that case Mr. Justice Charles makes an exhaustive review of the authorities bearing on the question and reaches the conclusion that "where an Act of Parliament creates an offence and prescribes no remedy for it, the offence is indictable at common law."

In this connection the Canadian case of *The Union Colliery Company v. The Queen* (1900), 31 S.C.R. 81, may be referred to. There the court was dealing with a section of the Criminal Code of Canada which defined a certain legal duty but prescribed no penalty for breach of it. In delivering the judgment of the majority of the court Mr. Justice Sedgewick said:

It is true this section has no penal provision attached to it; it does not state what the consequences shall be if the offence, therein specified has been committed; but it clearly covers the offence specified here . . . It is not, I think, necessary to search through other provisions of the Code to find a penalty. The common law . . . prescribed it—a fine.

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NEW LAW BUILDINGS AT YALE.—One of the most important events in the history of American law schools was the dedication of the Sterling Law Buildings of Yale University on the 3rd instant. These magnificent buildings occupy an entire block in the City of New Haven, and were erected at a cost of \$5,000,000, derived from a bequest by the late John W. Sterling, a graduate of the University and a lawyer by profession. Mr. Sterling's large fortune, amounting at his death to \$17,000,000, was left almost entirely to his alma mater. The new law buildings are collegiate Gothic in design, and provide a complete and beautiful centre where the students can live and learn somewhat in the manner prevailing in the English Inns of Court. They contain lecture rooms, library, seminar rooms, lounges for students and instructors, dormitories, and a dining hall. They

also contain apartments for distinguished visitors. With this magnificent housing and equipment for its students, the Yale Law School hopes to realize in the most abundant way its aim to prepare men to take their places in practical affairs as lawyers and judges as well as to provide them with training and vision for leadership in all that pertains to order and justice according to law.

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ATTORNEY-GENERAL MITCHELL AT YALE.—The dedicatory address at the opening of the Sterling Law Buildings referred to in the preceding item was delivered by the Honourable William D. Mitchell, Attorney-General of the United States. Speaking of overcrowding as one of the evils affecting the legal profession at the present day, the Attorney-General said:

No doubt we have too many lawyers. Our 1920 census showed that we have one lawyer for each 862 of population. In England and Wales in 1921 the proportion was one lawyer for about 2,000 of the population; in France in 1928, one to 4,500; in Sweden, one to 16,000. The United States with three times the population, has seven times as many lawyers as Great Britain. The result is that there is too much competition for business, especially when times are bad. This causes a lowering of professional standards under economic pressure, a search for business, ambulance chasing and a temptation at any cost to obtain results satisfactory to clients.

We might gain if we could do with our overproduction of lawyers what the Brazilians have recently done with their overproduction in coffee—dump the poorer grades overboard. . . .

Our systems are being attacked and defects are pointed out in general terms, but our reformers often fall short in driving the attack home to a practical result by concrete proposals for improvement.

Research, statistics and compilation of suggestive facts are necessary. They form the only sure and safe foundation for change, but the final and most difficult task is that of the man who sits down with all these facts, figures and generalities and endeavours to translate them into a definitely worded statute or administrative order which will do just what is needed and dovetail in a practical way into our system.

The men who perform that final task must be more than experts in research. They must have more than idealism and vision. They must combine with those qualities long years of practical experience in the administration of the law. Without that final step in the process of reform we will have only voluminous reports, tables of statistics, general suggestions, which attract public attention for the moment and are then filed away for future reference.

My point is that legal education, to produce real results in reforming the administration of justice, must be so directed that our law schools send forth men trained for the active practice of their profession, but with inquisitive minds, not disposed blindly to accept things as they are, and with a vision and idealism to mix with their practical experience, which will make them effective instruments for improvement. Such men can be expected

to give the final punch needed to accomplish practical results by concrete measures, which will gain the approval not merely of idealists but of hard-headed men.

An institution for legal education should work to this end, not by mere vocational training for the practice of law under our existing system nor by entirely subordinating vocational training and devoting primary attention to research or to theories of socialization of law but by a combination of the two.

The practising lawyers of this country are not as influential in public affairs as they were fifty or one hundred years ago, when public speaking was the principal means of directing public opinion, and lawyers completely dominated Legislatures. The press, the cultivation of public speaking by business men, the radio and other things have wrought changes.

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GREAT AND GLORIOUS GANGSTERDOM.—During his trial for income tax evasion it was not enough for Citizen Al Capone, of "these United States," to have the world informed about the preposterous value of the apparel and jewels that adorn his body but he must needs be spiritually exposed as a patriot and humanitarian by a scion of one of "America's first families." In a recent number of *Liberty*—which functions from week to week as a sort of journalistic alembic for the distillation of the cultural spirit that intoxicates so large a portion of the American nation—Mr. Cornelius Vanderbilt, Jr., publishes the record of an interview had by him with Citizen Capone in which the superficial world is led to believe that this king of the underworld is not only quite a decent chap but as a matter of fact is one of the master minds of civilization's new dark age. It is great reading. We subjoin some radiant passages in it:

Us fellas has gotta stick together.

This is going to be a terrible winter.

Us fellas has gotta open our pocketbooks, and keep on keeping them open, if we want any of us to survive. We can't wait for Congress or Mr. Hoover or anyone else. We *must* help keep tummies filled and bodies warm.

If we don't, it's all up with the way we've learned to live. Why, do you know, sir, America is on the verge of its greatest social upheaval? Bolshevism is knocking at our gates. We can't afford to let it in. We've got to organize ourselves against it, and put our shoulders together and hold fast. We need funds to fight famine.

We must keep America whole, and safe, and unspoiled. If machines are going to take jobs away from the worker, then he will need to find something else to do. Perhaps he'll get back to the soil. But we must care for him during the period of change. We must keep him away from red literature, red ruses; we must see that his mind remains healthy. For, regardless of where he was born, he is now an American.

Graft is a byword in American life to-day. It is law where no other law is obeyed. It is undermining this country. The honest lawmakers of

any city can be counted on your fingers. I could count Chicago's on one hand!

Virtue, honour, truth, and the law have all vanished from our life. We are smart-Alecky. We like to be able to "get away with" things. And if we can't make a living at some honest profession, we're going to make one anyway.

In the words of the immortal Mr. Squeers, "Here's richness!" But let us say in all fairness to the American nation as a whole that the mischievous foolishness of certain public prints and cinemas in keeping the exploits of the underworld favourably in the public eye meets with as much condemnation within as without the United States. Canadian lawyers know how the members of the American Bar Association view such damaging enterprises against law, order and good government, and wise laymen on the watch-towers of American civilization are affirming the fairness of Will Durant's recent indictment of his country:

Such is the American scene: Racial confusion and disharmony, sectarian division and hostility, agricultural bankruptcy and despondency, industrial chaos and ruin, selfish wealth and grinding poverty, political corruption and stupidity, educational extravagance and extravaganzas, cultural immaturity, literary crudity, decadent art, neurotic fads and crazes, sensational journalism, moral debasement, spiritual disillusionment, a dying creed and a dying race: let the lover of his country consider whether this is the America that Franklin and Jefferson dreamed of when they achieved through their wisdom and heroism its political and mental freedom; let him ask himself if it were not just as well that this America had never been born.

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WHAT PRICE SOCIALISM?—Speaking of the period of financial and industrial storm and stress Great Britain is now undergoing, a writer in a recent number of *The Spectator* remarks:

Many people here and abroad of the extreme Socialist kind are rubbing their hands with glee at our discomforts and will try to persuade themselves that these are the result of what they call the Capitalist system. During and after the War the same kind of unreasonable people attributed the War to diplomacy which is now established more actively than ever. For fifty years diplomacy had day by day staved off War in Europe, and had checked the ever-present militarist, the hot-headed or coldly covetous politician, who would willingly have made fifty wars. In 1914 the militarists of Central Europe violently thrust the diplomats aside and made War. Was diplomacy to blame? To-day's troubles are not due to the Capitalist system which brought us, with all its faults, material wealth and prosperity, but to the steady attacks upon it. The advance of unsound finance along Socialistic lines—for which we do not blame the Labour Party alone—has warned those who saw most clearly what the end must be. We have flouted inexorable economic laws: the punishment may follow slowly with halting foot, but it strikes inevitably.

UNFAIR WILLS.—In the September number of the REVIEW we referred to the Bill introduced by Miss Rathbone in the British Parliament for the purpose of protecting a spouse or children left destitute by a testator who was responsible for their support during life. We pointed out that while the Joint Committee of the House of Commons did not approve of the Bill in its entirety the principle underlying it had their support. In closing our brief comments we ventured to suggest the adoption of legislation for a similar purpose in Canada, not being aware at the time that Miss Rathbone's beneficent gesture had been anticipated by some of the provinces in Canada. By reference to Mr. C. K. Courtney's letter, to be found on a later page of this number, our readers will see that British Columbia passed legislation on the subject so early as 1920. A friend in Edmonton has also been good enough to advise us that Alberta also has a law whereby a widow may apply to the Court to give her, in its discretion, a portion of the husband's estate which has been left away from her.

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THE LATE C. P. WILSON, K.C.—The Manitoba Bar has lost one of its most distinguished members by the death of Mr. C. P. Wilson, K.C., which occurred last month. Mr. Wilson throughout his whole career at the Bar exemplified the truth of the saying of a great English judge that "the administration of justice cannot go on without the aid of men skilled in jurisprudence, in the practice of the courts, and in those matters affecting rights and obligations which form the subject of all proceedings."

The deceased was born at Bradford, Ontario, on November 14th, 1859. He was a son of J. W. H. Wilson, K.C., who, after having practised with distinction at the Ontario Bar, removed to Manitoba and became the first District Registrar at Portage la Prairie. The son became a member of the Manitoba Bar in 1883, and quickly rose to a place of distinction in all the courts. The esteem in which he was held by his professional brethren found fitting expression in the fact that the funeral service was held in the Winnipeg Court House.

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MR. JUSTICE RIDDELL HONOURED.—The Honourable Mr. Justice Riddell, Justice of Appeal, Ontario, has been elected a Fellow (Honorary) of the *International Medico-Legal Association*, upon the recommendation of Professor Miloslavich, formerly of Vienna, an Association organised to include from all parts of the world, persons

who "by reason of research work, special study or contributions to the Medical or Legal world of theories, ideas or practical productions, are of aid in the furtherance of the Science of Medical Jurisprudence." The Honorary Membership is provided to be only of "such outstanding Professional men as are entitled to such honour by reason of their integrity, ability and accomplishments."

Professor Ladislas Thot, formerly Judge of the Imperial Court of Hungary, and later Judge of the Supreme Court of the Argentine, now Professor of International Law in the National University of La Plata, has asked Mr. Justice Riddell to translate from the Spanish into English, with Notes, his new work on the History of Oriental Criminal Law; and Mr. Justice Riddell has undertaken and is now engaged in this interesting task.

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AMERICAN BAR ASSOCIATION.—The Honourable William D. Heridge, K.C., M.C., Canadian Minister to Washington, was a guest and one of the principal speakers at the annual meeting of the American Bar Association held in Atlantic City last month.

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ROYAL TRUST COMPANY DIRECTORS.—At a recent meeting of the Board of Directors of the Royal Trust Company, Mr. W. N. Tilley, K.C., of the Toronto Bar, and Mr. D. Forbes Angus were elected members of the Board. Mr. Angus is Chairman of the Standard Life Assurance Company and a director of the Bank of Montreal.

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