

ONTARIO BAR ASSOCIATION.

Seventeenth Annual Meeting.

BY ARTHUR A. MACDONALD, RECORDING SECRETARY.

Of recent years there has been a steadily increasing recognition of the importance of the objects and of many of the achievements of the various Bar Associations in Canada, and the Annual Meeting of this Association recently held at Osgoode Hall, Toronto, bore fresh testimony to this interest. The meeting was one of the most successful, if not the most successful, in the annals of the Association.

President Francis King, K.C., of Kingston, took the chair at 10.30 a.m. on the 21st ult., and thereupon called on the retiring Honorary President, the Honourable Mr. Justice Hodgins, who, in a brief address, welcomed the members and guests present and mentioned the more important functions of the Association as well as some recent measures for which it has been sponsor. The learned Judge was followed by Mr. King, who, in a very lucid and interesting paper, dealt with a subject which was novel to many, though familiar ground to practitioners in the Admiralty Courts, namely, the question of division of loss in cases of contributory negligence. By a singular coincidence, a paper by Mr. Angus MacMurchy, K.C., covering virtually the same ground, was read at a later stage of the meeting, dealing with the subject from a view point identical with that of the president, and without any previous collaboration or understanding between them. The president's text was, in a word, that when the plaintiff and defendant have both been guilty of negligence contributing directly to the happening of an accident, with resulting damage, there is no good reason why the loss should be borne entirely by one party while the other party escapes. The doctrine, of course, runs counter to the natural conservatism of all who have been schooled under the well-established doctrine of contributory negligence in English law. But as to this the president's closing remarks, anent his proposition to change the law so as to correspond to the rule in admiralty, are of interest:

“Prominent among the few objections to the proposal are: (1) the fact that we would be abandoning a good old common law doctrine which has been the subject of a

tremendous amount of study and labour and is now almost worthy of a text-book devoted to its sole consideration, and

(2) the fact that all the jurisprudence on the subject would have to be scrapped. The first objection mentioned is so ultra-conservative in its nature that it is not likely at present to invite popular acceptance; and the second, on a moment's consideration becomes an argument in favour of the change."

The matter was of more than academic interest to the meeting because Bill Number 68 now before the Provincial Legislature proposes to make a change in the law somewhat along the lines advocated in the two addresses delivered, and a resolution was brought before the meeting by the Committee on Resolutions to the effect that, while the Association recognizes the injustice of the application of the doctrine of contributory negligence in all negligence cases, it was deemed inadvisable that the Bill should be made law at the present Session of the Legislature, and the Committee recommended that the enactment be deferred until the public and profession have had opportunity to consider the matter more fully . . . This resolution provoked much discussion and was in the end, carried by a substantial majority, but not until it had been amended so as to provide that the subject should be referred to the Council of the Association *for action*.

The Reports of the Standing Committees bore internal evidence of much careful attention to their duties by the members of those committees, and covered matters of very direct interest to all lawyers. Of only the more outstanding of these matters can brief mention be made, owing to limitations of space.

Legislation.—Mr. T. D. Cowper, K.C., presented this report in writing containing a résumé of the principal Dominion and Provincial legislation of the past year, coupled with several recommendations and notably the following:

1. That under the Assessment Act the principle of Income Taxation might be applied to all business premises, such as apartment houses, so that the tax should be on the earnings of the building, instead of on its assessed value.
2. That the former practice of publishing the Statutes in the Ontario Gazette immediately on prorogation of the Legislature should be resumed, so that the public, as well as the profession, may have a reasonable opportunity to learn what Legislation has been enacted by the House within a reasonable time after it becomes law.

3. That the Dominion Statutes should be revised and consolidated at as early a moment as practicable.

Criminal Law.—This Report was presented by Mr. W. K. Murphy, of Toronto, Convener of the Committee, and comprised a very elaborate treatise on the whole field of Criminal Law and its administration, with recommendations for numerous changes, both in matters of procedure and in matters of substantive law, and, in particular, concerning the method of dealing with prisoners after conviction, with a view to reclaiming the maximum number possible for good citizenship. The principal recommendations contained in this Report were adopted and referred to the incoming Council for appropriate action.

Legal Ethics.—Mr. W. J. Elliott, K.C., of Toronto, presented this Report, which was received and referred to Council. It contained a recommendation that the Committee of this Association on Legal Ethics should be clothed with authority to receive complaints of violations of the Code of Ethics by members, and to reprimand offending members and, in proper cases, to bring such matters to the attention of the Discipline Committee of the Law Society.

Legal History.—This Report was presented by Mr. W. S. Herrington, K.C., of Napanee, who, for many years now, has occupied with distinction, the office of Archivist and Historian of the Association. The Report took the form of a fitting tribute to the members of the Bench and Bar in Ontario who passed away during the Calendar Year, 1922, and concluded with some personal references to some of the outstanding figures amongst them.

Legal Education.—Mr. R. J. MacLennan, K.C., for the committee, presented a verbal Report and asked leave to report further progress at a later date. Some discussion took place on the subject of Legal Education generally. The feeling which has been demonstrated many times was again evident—that it is time some action should be taken with a view to raising the standard of entrance to the Law School and raising the standard of the Law School itself in the direction of a full-time course with a permanent professorate, etc. The Association is already on record on these matters but up to the present time—such is our unwillingness to take the effort necessary to effect change, as distinct from the mere discussion of change—no great advance

has yet been made, although the standard of entrance has recently been raised by the Law Society.

Law Reform.—This Report was presented by Mr. V. A. Sinclair, K.C., of Tillsonburg, and dealt *inter alia* with a subject which has occupied the public mind a great deal of late, namely, the question of devising some effective method of dealing with irresponsible salesmen of stocks and securities of companies and the marketing of shares in companies which, from their very inception, are doomed to financial disaster, and the committee noted, with satisfaction, that some attempt is now being made in the Provincial Legislature to deal with this feature in what is known as "The Sale of Securities Act," a bill now pending.

The matter of uniform life insurance laws for the Dominion, except the Province of Quebec, was also dealt with and great praise accorded to the Commission of the Canadian Bar Association on the uniformity of Statute Law for its work in this direction.

Two matters outside the contents of the foregoing Reports engaged the special attention of the meeting. They are as follows:—

ESTABLISHMENT OF A PERMANENT COURT OF APPEAL FOR ONTARIO.

This matter is perhaps one of the most important dealt with in the interim report respecting Osgoode Hall by the Commission which has been commonly designated by the surname of its chairman who is one of the outstanding members of our own profession, "The Gregory Commission." That report deprecated the present constitution of what is known as the Appellate Division of the Supreme Court of Ontario, consisting, as it does, of one permanent division known as the First Divisional Court, and a Second Divisional Court of a shifting or changing membership, whereof the members are appointed from amongst the Supreme Court Judges from year to year. The recommendation of the Commission was that all the Appeal Judges should hold office permanently—and that if nine Judges were appointed as Justices of Appeal, two courts, one of five and the other of three Judges, should sit concurrently or alternately, and one Judge should be available in the event of sickness, etc., of another, and a Court of three could hear County, District, and Division Court Appeals, and a Court of five hear other Appeals.

In view of the fact that at the present time matters involving unlimited amounts may be, and in many cases are, tried in the County Courts, and also for the reason that the importance of a decision on a question of law does not depend on the forum where it arose, and for other reasons readily apparent, the Association was almost unanimously opposed to that part of the Commissioner's Report which favored any distinction with respect to the hearing of appeals from various trial Courts, and the resolution which was finally adopted with practical unanimity was in the following language:—

“Resolved that this Association go on record as being of the opinion that it is in the interests of the Administration of Justice in this province that the Appellate Division of the Supreme Court should be a permanent Court composed of two Divisions of five Judges each. Further: That this Association is of opinion that it should be the settled policy of the Appellate Division so far as possible to have all appeals heard by a Court of five Judges and that, in the event of occasion arising necessitating an argument before a Court composed of four Judges, the appellant, in the event of an equal division of opinion, should have the option of a further argument before a Court of five Judges.”

RE WORKMEN'S COMPENSATION ACT.

It is common ground with all members of the legal profession in the Province of Ontario, who have had occasion to deal with the Workmen's Compensation Board, that that Board has been uniformly wanting in the degree of courtesy which a member of any honourable profession would be entitled to expect to receive at its hands. Protests have been made in times past and recently reiterated on the floor of the Legislature, and, possibly in the hope that the appropriate action may yet ensue if the plain facts are kept in view, a special resolution was brought before the meeting by the Resolutions Committee on this subject, and, after some discussion, was amended and adopted by an overwhelming majority, in the following language:—

“This Association again records its emphatic protest against the autocratic method of administration by the Board of the Workmen's Compensation Act. And the Association further deploras the persistent refusal of the Board to permit representation of any claimant for compensation before that body by any member of the legal profession, frequently result-

ing in great injustice to the injured party, and that a copy of this resolution be forwarded to the Attorney-General for Ontario."

It is proper to add that in the discussion of this resolution the emphasis was placed, not so much upon the indignities to which the lawyers are subjected, but on the manifest unfairness to their clients, who are the principal losers by the system at present in vogue and are in most cases working men unable to present their claims before the Board to the best advantage, and who are thus left in a position (there being no appeal) where they must take what they get and make the best of it.

The foregoing résumé of the proceedings of the Annual Meeting, necessarily sketchy as it is, deals only with some of the business transacted. Special addresses delivered by the distinguished guests and others will require separate consideration. The principal addresses delivered were as follows:—

An address by the Honourable Mr. Justice Hodgins, on "The Authority of English Decisions."

An address by Mr. Frederick L. Leckie, of the Cleveland Bar on "The Evolution of the Admiralty Law of the United States."

An address by the Honourable John Lord O'Brian, on "Present Tendencies in the Administration of Justice in United States."

An extemporaneous address by the Hon. J. B. M. Baxter, K.C.

An impromptu address by Mr. A. Moresby White of the English Bar, and an address by Mr. Angus MacMurchy, K.C. (already referred to), read in his unavoidable absence by his partner, Mr. J. D. Spence, K.C.

Each of these addresses was of a distinctly high order, and of great value and interest, and it is hoped that space may be found in *THE CANADIAN BAR REVIEW* for some or all of them, and in that hope the writer refrains from giving what would be at best an inadequate commentary on their general tenor. They will also be made to do service in the Year Book of the Association.

The Annual Dinner, held at the King Edward Hotel, Toronto, on March 22nd, 1923, was also one of the most successful the Association has held. One hundred and twenty persons sat down to dinner, including fourteen lady Barristers. The retiring president, Mr. King, presided, and brief after-dinner addresses

were delivered by Hon. Mr. Justice Ferguson, Col. Allan Magee, K.C., of Montreal, Hon. John Lord O'Brian, of Buffalo, Hon. Wallace Nesbitt, K.C., Rev. Dr. Bruce Taylor, Mr. A. Moresby White, Hon. J. B. M. Baxter, K.C., Mr. Aime Geoffrion, K.C., of Montreal, Mr. J. H. Michaud, of Montreal, Mr. Frederick L. Leckie, of Cleveland, Ohio, Mr. H. J. Symington, K.C., of Manitoba.

The officers and members of Council elected for the ensuing year are as follows:—

Hon. President—Hon. Wallace Nesbitt, K.C.

President—F. D. Kerr, K.C. (Peterboro).

Vice-Presidents—A. J. R. Snow, K.C. (Toronto), Nicol Jeffrey, K.C. (Guelph); J. H. Spence, K.C. (Toronto).

Archivist—W. S. Herrington, K.C. (Napanee).

Recording Secretary—A. A. Macdonald (Toronto).

Corresponding Secretary—W. R. Salter (Toronto).

Treasurer—H. F. Parkinson (Toronto).

Other members of Council, Judge Denton, Daniel Urquhart, K.C., H. S. White, K.C., T. A. Rowan, W. D. Gregory, E. Percival Brown, K.C., W. J. Elliott, K.C., T. H. Barton, W. K. Murphy, R. B. Henderson, K.C., all of Toronto; Judge Huycke, Peterboro; W. S. Ormiston, Uxbridge; F. P. Betts, K.C., London; W. N. Ponton, K.C., Belleville; Harold Fisher, K.C., Ottawa; J. S. Davis, Smithville; W. T. Henderson, K.C., Brantford; V. A. Sinclair, K.C., Tillsonburg; W. S. MacBrayne, K.C., Hamilton; and T. D. Cowper, K.C., Welland.
