

BRITISH COLUMBIA: A RETROSPECT.*

I hope, Mr. President, that the members of the Association from other parts of Canada will look with an indulgent eye on what may seem to be something like a mellowness of sentiment in what I have to say about British Columbia. In truth, Mr. President, British Columbia is my legal fire-side, here my legal adolescence and my early manhood in the law were nurtured and sustained. Mr. Vanderbilt will forgive the petty pilfering from Webster's mighty masterpiece. Here I acquired in that only effectual school — the school of actual practice in the Courts — my first knowledge of the juridical art. I have been, and my friends think, too long a truant, but now, even in the crepuscular years when the vital forces are no longer in full tide it is gratifying and comfortable to be here once again with real prospects of opportunities of renewing the happy experience.

May I, Mr. President, presume upon this domiciliary relationship with you to say how gratified I am to meet here so many brothers in the law from every part of Canada, as well as the guests who are here from beyond the borders of the Dominion. I cannot, with propriety, expatiate on the many claims to our regard which Lord Finlay has; but, I can say this, and I know it will not be displeasing to him, that independently of any merits of his own, there is no part of Canada in which he would not be gladly welcomed in legal as well as other circles, as the bearer of the honoured name of his father. I am going, ladies and gentlemen, to be indiscreet. I am going to tell you something of a private conversation which I had within the last few years with the Chief Justice of the United States; the subject of it was, and what he said was expressed in generous and unstinted terms of admiration, the invaluable services of Lord Finlay as a member of the Hague International Tribunal upon which the Chief Justice and he, for some years, served together as colleagues. Lord Finlay's fame is secure, he stands in need of no man's praise; but he was above all a human being, a big and sympathetic heart, and I know that such words of appreciation coming from Chief Justice Hughes would have been welcomed by Lord Finlay himself; and, as I listened to what the Chief Justice said to me, I could not help feeling that his admiration for his colleague, expressed, as it was, with so

* Speech by Rt. Hon. Sir Lyman Duff, P.C., Chief Justice of Canada, at the Annual Dinner of the Canadian Bar Association held in Vancouver, B.C. on the 18th August, 1938.

much generous feeling, illustrated his own large-minded and liberal nature so well known to his own fellow-countrymen.

Mr. President, it is perhaps not unfitting that I should say to Mr. Vanderbilt that on the last occasion on which the Canadian Bar Association met in Vancouver, the official representative of the American Bar was Mr. Severance, but there was present also in an unofficial capacity as a friend of Lord Shaw of Dunfermline, Mr. John W. Davis, whom I need not say lawyers all over the English-speaking world hold in the very highest regard and admiration. Mr. Vanderbilt is one of that great company of trained, accomplished and high-minded American lawyers to which Mr. Davis belongs, to whose labours in so many high causes the United States, and indeed, the world, owe so much. As to our friend who is now with us, other and warmer expressions are passing and will continue to pass freely among us beyond his hearing.

Once again, I hope you will not think I am presumptuous, because I have, of course, no official connection with this Association, except that of a humble member, when I take it upon myself to say that it gives me the very keenest pleasure to see among us so large a number of representative lawyers from the Province of Quebec, a distinguished Chief Justice of the Superior Court, and 15, I think, leaders of the Bar. We all have a very warm feeling for the Bar of that Province. We know something of the natural hesitation which many of them felt at the outset respecting the functions of this Association—that feeling soon passed away because in this whole Dominion from the Atlantic to the Pacific there is no profession, there is no class more ready to reciprocate generous thoughts and generous words than the Bar of Quebec. I personally have, for reasons upon which I will not dwell, regard of a very special kind for the lawyers of that Province. Apart from the fact that I count among them some of my dearest friends, I can never repay the spontaneous kindness of which I have been the recipient from the Bar of Quebec as a whole.

I am tempted once more into the field of personal reminiscence. I shall ask one of my old British Columbia friends whom I knew in the old days on the stricken fields of pleadings and cross-examination to give me the signal when the time has come to stop. At the end of the year 1903, or, it may have been in January or February of 1904, a friend of mine, who was practicing in Vancouver, asked my advice as to the selection of counsel to take a brief before the Supreme Court of Canada,

necessarily, in the circumstances, counsel from one of the Eastern Provinces. I said, without hesitation, Aimé Geoffrion. Aimé Geoffrion needs no introduction to any company of lawyers in Canada today, or, indeed to any other company in any part of Canada. He was then a very young man and I believe that was the first brief that he ever held from one of the common law Provinces. But, I had spent two months arguing with him — or perhaps conducting reciprocal slang matches with him would be a better description—in connection with the Alaska boundary arbitration in London, and I knew his mettle then as well as I know it today.

May I tell you a secret? There is a mountain peak in British Columbia, of which none of you has ever heard, that bears the proud Norman name of "Geoffrion". There is another mountain peak that bears the name of "Wade," named after our old and dear friend, Fred Wade, who practiced law for many years in Winnipeg, Vancouver, Dawson, and later was for many years the distinguished Agent for British Columbia in London. There is another peak also which bears the humble name of "Duff". These geographical distinctions we owe to the geographers, who were charged with the duty of surveying the boundary line between British Columbia and Alaska pursuant to the directions of the award of the arbitrators. With the geographers, both Americans and Canadians, concerned with the arbitration we spent some, I am afraid I must admit many happy convivial hours, and the official baptism of these peaks that I have mentioned was a felicitous tribute to the social acceptability of my two friends and myself.

You will not think it unnatural that my thoughts turn to the British Columbia of forty-five years ago. Many faces of my legal generation are absent. I make no apology for mentioning the fact that forty-five years ago I came to this Province as a result of the urgent invitation of my friend, Gordon Hunter. Our friendship had begun years before that, at the very beginning of our undergraduate days and had swiftly ripened into an intimacy which was broken only by his death. I need not remind you here of his brilliant intellectual gifts, of his power of attracting the goodwill of everybody who came within his influence, of his easy mastery of his Court, of his robust common sense, of the large accent of authority which marked his judicial utterances, of the humour that ever and anon lit up the dullest subject.

Mr. E. P. Davis is unhappily not present. May he long be spared to us. I think I may say that the leadership of the Bar in my early years in this Province was shared by him and my partner, E. V. Bodwell, of whom it is sufficient to say that he was worthy of Davis's steel. Of Davis himself—having myself had some experience of advocacy from the point of view of the Bench and otherwise—I can say, without the slightest affectation, that I have never known, either in a Court of first instance or in a Court of Appeal, advocacy more powerful than his.

Happily, many are still with us. There are here tonight two former colleagues of mine on the old Supreme Court of British Columbia—the Chief Justice of British Columbia, whose judgments have so often been the envy of us all, and Chief Justice Morrison, who, if he will permit me to say it, enjoys the regard, esteem, affection and respect of those who practice before him in a degree that might be the pride of any Judge.

Mr. Justice Murphy I knew as a law student. Now looking back upon his long career on the bench, Walter Bagehot might say about him what he said about Lord Lyndhurst, "if a wise man had a good case, he would naturally desire to have Denny Murphy as his Judge."

Mr. L. G. McPhillips is still here rejoicing in his strength, and I should like to congratulate my old friend, Ernie Burns, upon the just expression of the esteem of his confrères in his election to the Treasurership of the Law Society. Mr. Justice W. A. Macdonald and Mr. Justice M. A. Macdonald and Mr. Justice Robertson were still at the Bar when I left for Ottawa. W. A. and I fought some hard battles side by side and some on opposite sides.

I see others around me whom I knew as law students, as brethren at the Bar, and as partners.

Mr. President, I am glad of the opportunity to express my pride in my former connection with the administration of justice in British Columbia. The history of the administration of justice in this Province affords ample grounds for self-congratulation by the legal profession here. I am thinking particularly of its very early history. In the nineties there was nothing very remarkable in the fact that the Bench in any Province of Canada was manned by competent, high-minded and independent Judges who had the assistance of a competent, honourable and independent Bar. It is not of that time I repeat that I particularly wish to speak, although when I came

to British Columbia there were on the Bench two Judges who would have been marked for distinction in any community. Some of you will well remember Mr. Justice McCreight. Mr. Justice McCreight was a Judge remarkable for the scope as well as for the accuracy of his learning, legal and other, a man of profound religious convictions, with strict, even severe standards of life and conduct; but his Puritanism was tempered by the promptings of a heart as tender as that of any woman. His noble countenance bore the stamp of his noble nature.

Sir Matthew Begbie was a towering personality with commanding intellectual gifts as well as commanding character. To the vast advantage of the community he imposed his character upon the administration of justice. To many, no doubt, in the sixties and the early seventies he personified the justice of the Queen. After his death, he became a sort of legendary personage, bestriding the colony like a "Colossus"; but, he had another side — I have heard from many people of his unobtrusive, almost clandestine acts of kindness to settlers who found themselves in difficulties. No man had a warmer sympathy for the honest, struggling settler. A scholar with academic distinctions won at Cambridge, an accomplished man of the world, (with a wit that would have distinguished him in any society) conversing with Frenchmen, Germans and Greeks with perfect ease in their own tongues, and veritably a master of the English tongue, I am inclined to think that he was cast in a larger mould than most Judges of this Continent, and that very, very few, occupants of the Bench in Canada have rivalled him in his imposing gifts of character and intellect.

But, of the early history of the administration of justice in British Columbia, I should like to say simply this — the early population in this Province was largely a mining population attracted here by the lure of gold. It was in these circumstances that from the very beginning the honest and decent incomers found themselves in a community in which they could rest secure in the confidence that the law and courts of law existed for the vindication of the rights of the humblest and the most obscure as well as the most powerful and highly placed, where lawlessness was promptly suppressed, where order prevailed, and law-abiding people were free to pursue their affairs in security and peace. That, I venture to think, is something that ought to be a source of pride to the people of this Province and is something well worthy of note in this company of lawyers. Indeed, Mr. President, I think it exemplifies and illustrates

something which I myself believe to be one of the greatest, if not THE greatest achievement of the British people.

The people of the British Isles have sent forth from time to time streams of emigrants to every part of the world, who have been the unconscious emissaries of their inherited political creed which has always acknowledged the supreme value of civic liberty, which proclaims the supremacy of right over force, which recognizes the obligation of the State to provide judicial institutions to which the humblest may appeal with confidence for justice against the most powerful aggressor, even the servants of the State itself — justice enforced under the sanction of the whole power of the State. These emissaries went forth not consciously aiming at any such thing. They went forth, in some instances, to escape intolerable conditions at home, generally to gain a livelihood, to extract from nature, or otherwise to acquire a fortune, or, at least, a provision for themselves and their families — this was their immediate object. This they did deliberately, consciously, but what they actually did was something far greater and of vastly more permanent value to mankind. Unconsciously, or, almost unconsciously, they carried with them what was, so to speak, in their blood — a love of freedom, a respect for law, an attachment to an inherited tradition and a desire to set up or maintain in their new environment institutions similar to those under which the British people at home had lived in freedom. Thus we have institutions of the British type over so large a part of the world's surface today, under which peoples who do not speak our speech or worship our God have had security, peace and justice.

These things have a special interest for lawyers because no profession, no class of community has done more, or perhaps as much, has sacrificed more in defence of civic liberty or to establish the dominion of right over force.

Now, Mr. President, with one more observation I am through. These principles, which are the foundation of our inherited polity are now the object in other parts of the world of direct, aggressive, even menacing challenge. Notwithstanding all that has happened in the last twenty-five years, notwithstanding the war fought for the protection of democracy, these precious possessions of ours appear valueless even contemptible, in the eyes of millions of people — their value is passionately denied, and it is proclaimed with equal passion that any people which acknowledges the supreme value of human liberty as an essential principle of its polity, is a people doomed to futility—

political, social and economic futility. I utter here and now no word of criticism for any community that deliberately deifies the State and sets up a relation between the individual and the State which is founded upon the very negation of these things that we so much venerate and so deeply cherish. I utter no word of criticism upon the political institutions and the legal system of any people — that is no affair of mine, it is their own affair; but this I do affirm with confidence: We cannot be entirely indifferent to the facts. For my own part I have no fear that our polity is insecure because I believe it is founded in the hearts and character of our race, and, when I say that, I do not forget that the man who victoriously led the battle in England for parliamentary government was a Norman Frenchman, or that Norman French was the nursing tongue of the common law. It behoves us, nevertheless, as our President warned us in that great speech of yesterday—to be vigilant.

A very dear friend of mine, now dead, was the British ambassador at Washington during a great part of the Great War. He was a man of wide experience and he knew the character of the European peoples; he also knew much of the character of the people of this continent. He said to me, shortly before his death: "It is my settled conviction that here in North America, our civilization—the civilization we know—must find its permanent citadel." He profoundly believed in the truth of what he said. I am not so pessimistic. I do not believe that the light of France, which has meant so much to the civilization of the European race, will sink into endless night under some onset of barbarism, and that Great Britain will become a mere outpost of the civilization of this continent. We, at all events, can do our part. We can do our part to keep aloft the banner that for so many generations, and in so many parts of the world, has been the effectual guarantee of humanity and justice.