

## THE CANADIAN BAR ASSOCIATION

### TWENTY-FOURTH ANNUAL MEETING

It was a pleasurable thing that the annual meeting of the Canadian Bar Association was fixed to take place in August of this year in the City of Quebec, for in May last that city was privileged to be the landing-place of Their Majesties the King and Queen on their ever memorable first visit to Canada. One of the outstanding features of that great event was the enthusiastic demonstration of loyalty to the Crown that marked the welcome extended to Their Majesties by the whole body of Quebec's citizens. Loyalty is the tap-root of patriotism; and genuine patriotism denotes not only a love of country but also an abiding zeal to defend it and its political institutions whenever and howsoever they may be menaced. So far as the French-Canadians are concerned the record of their loyalty extends far back in British colonial history. In proof of this one has only to turn to the text of their memorial to King George III in the year 1773. There they spoke of him as their "most illustrious and generous Sovereign", and prayed him to grant them "in common with your other subjects the rights and privileges of English citizens."

Visiting members of the Association were pleased to hear reaffirmations of this loyalty in the official addresses of welcome that opened the proceedings of the twenty-fourth annual meeting on Wednesday, August 16th. In the course of his address the Hon. E. L. Patenaude, Lieutenant-Governor of Quebec, reminded his hearers that it was in Quebec city some seventy-five years ago that a conference of delegates from the Canadian provinces — 'the Fathers of Confederation' — was held for the purpose of securing a federal union of the provinces, and that the resolutions of this conference formed the basis of the British North America Act of 1867. Concerning this statutory frame-work of our Constitution Mr. Patenaude said :

"We have good reason to be proud of it; and we have above all the duty of interpreting it according to the spirit of high equity which conceived it and alone can make it produce the fruits of concord and progress which were embodied in seed in its text."

The Hon. Maurice Duplessis, K.C., Premier and Attorney-General of Quebec, in his address declared: "The Province of Quebec is loyal. It is loyal to the Throne and loyal to Canada. . . . Quebec was the cradle of the white man's law,

and the cradle of civilization in North America. It was a place where parliamentary institutions were most respected and cared for."

Mr. Lucien Borne, Mayor of the City of Quebec, in extending the city's welcome to members of the Association and their guests, expressed great pleasure in greeting at this convention representatives of the world's major democracies. He invited those in attendance to study the history of the ancient city which had been chosen as the place of meeting, declaring that it was here that "every sphere of human activity in this country had its source." Bearing in mind that the promotion of national unity in Canada is one of the prime objects of the Canadian Bar Association, the following observations by Mayor Borne were particularly gratifying to the visiting members :

We are proud to see many prominent Quebec jurists taking an active part in the work of the Association and occupying important positions on its Council. True to the traditions of our old province, they have always devoted themselves to the preservation of the French character of our laws which form the richest part of the inheritance we received from our forefathers.

They have always found in the Association the same desire to improve our law without interfering with the rights of anyone or injuring the character of the judicial institutions so much more valuable to us in that they are very ancient.

\* \* After Mr. D. L. McCarthy, K.C., of the Toronto Bar, had expressed the thanks of the Association to the several gentlemen who had spoken in courteous terms of welcome to the members and delegates in attendance, the formal programme of the annual meeting was entered upon.

The first item of business was the delivery of the Presidential Address. For this purpose the Hon. J. W. de B. Farris, K.C., D.C.L., LL.D, took the chair and called upon President Beaulieu to proceed with his address. The full text of the address appears in the present number of the REVIEW. We cordially commend it to our readers in respect both of substance and form. On the one hand it presents an instructive commentary on a branch of the law of Quebec which has been the subject of criticism within and without that province, and on the other furnishes an example of the mastery acquired by the French-Canadian Bar of the grammatical subtleties of the English tongue.

During the afternoon session on Wednesday, Professor E. R. Hopkins of the Law Faculty of the University of

Saskatchewan read an instructive paper on "Administrative Justice in Canada." After pointing out that in democratic countries the last fifty years have seen the attempted working out of a new theory of government which, while repudiating the various forms of State idolatry prevalent elsewhere, contemplated the co-functioning of amelioration and control on the part of the State with self-interested action on the part of the individual, Professor Hopkins proceeded to say that—

Due to economic and political causes, including the difficulty of either Dominion or province enacting constitutionally sound legislation, Canada was less advanced than other countries in the realm of collectivist legislation. But the fact there had been such a development suggested a strong current of public opinion favouring the new theory of Government. There was likely to be more such legislation.

In transitional periods, such as the Tudor period in England and the present, there was need for discretion in the legal order. If history repeated itself, however, the discretion now exercised would in time resolve itself into rules and standards of administrative justice which would increasingly approximate justice as administered in the courts according to established law.

Later in the afternoon of Wednesday at a special convocation of Laval University, presided over by Cardinal Villeneuve, Archbishop of Quebec and Chancellor of the University, the honorary degree of Doctor of Laws was conferred upon the following gentlemen in attendance at the annual meeting of the Association: Rt. Hon. Lord Maugham, Lord High Chancellor of England; Maître Jacques Charpentier, Bâtonnier of the Bar of Paris; Hon. Frank J. Hogan, past President of the American Bar Association; Rt. Hon. Sir Lyman Duff, Chief Justice of Canada; and Mr. L. E. Beaulieu, K.C., President of the Canadian Bar Association.

Monsignor Camille Roy, as Rector, presented each of the five for the degree, and each made a brief speech of thanks after being garbed in the academic insignia appertaining to his new dignity. Mr. Hogan said the meeting of the representatives of four countries under the auspices of Canada's oldest university was symbolic of the union of Britain, France and the Americans in the cause of liberty in a democratic way.

"In this dark world and in a mad hour there can be no division between us" he said.

At the evening session on Wednesday an address to the members and their guests was given by Rt. Hon. Lord Chancellor Maugham, who attended the convention as a representative of the British Bench and Bar.

In his opening remarks Lord Maugham said, in substance, that he had prepared in the form of an address what might be regarded as an excursion into the domain of dry law suitable to a gathering of the profession when in a purely studious mood, but as the duty had fallen upon him to speak to an evening audience, possibly comprising some who were not numbered of the profession, he was persuaded that he should adapt himself to the occasion and say in a somewhat informal way what he would like to say about law and justice as they had developed throughout the ages, and how these great matters were affected by conditions that prevailed in the world of today. Proceeding with his theme he said in part :

But for a few recent events the history of law and justice had been one of steady improvement with scarcely a setback. The recent setback occurred in Central Europe where a change of mind had taken place which led to a complete disregard for law in both international and civil affairs.

It is not one or two incidents but repeated incidents which have led us to the conclusion that in Central Europe there is no longer any law as we understand it.

It was true Hitler had done marvellous work for Germany. He had made the country the strongest military power in that part of the world.

Until he took what I think was the fatal step of marching into Bohemia and Moravia all his actions had some colour of right. However much we might dislike his methods so long as he was getting German people into the Reich there might have been ground for his actions.

It may be asked if he will get all of Europe under his protection? It must be remembered that every step he takes toward other nationalities than his own carries with it the germs of defeat. Feelings of nationality are stronger in Europe than ever before and every extension of German boundaries sows seeds of hatred and hope of rebellion.

Sooner or later the German people may become aware of the hatred they are building against themselves and realize that a thirst for conquest can be assuaged at too great a cost.

The British were slow to anger and slow to move, always apt to think the other side might have something to say for itself.

Hitler, however, had achieved what seemed impossible. The British people had moved. The Government was firm in its position with a united people behind it and if Germany did not heed the frequent warnings there would be war. France was a brave and gallant ally, equally determined to prevent the domination of Europe by force, and preparations for war in both countries had been phenomenal. Other peoples in Europe would fight with France and Britain.

We know the cost, said Lord Maugham, the destruction of our cities, the lives of thousands of innocent people. We have counted all that but we cannot stand by while Hitler, and whatever friends he may have, proceed to eat up Europe and force on people who are not Germans a régime which they detest.

Our country, its people and its government, are ready to face the issue whatever it may be.

At the conclusion of his address, on motion of Hon. Mr. Justice Davis, past President of the Association, Lord Maugham was made an honorary member of the Association.

Wednesday's programme closed with a reception and ball given by the Bâtonnier and members of the Council of the Bar of the District of Quebec.

\*\* Thursday morning's programme was entirely devoted to the sectional meetings of the standing committees. The Committee on the Administration of Justice, under the chairmanship of Mr. R. L. Maitland, K.C. (Vancouver), discussed, *inter alia*, the report of a special committee appointed to wait upon Rt. Hon. Ernest Lapointe, Minister of Justice, concerning amendments to the Criminal Code that had been recommended by the Association. The Committee on Commercial Law under the chairmanship of Mr. A. Kelso Roberts (Toronto), heard two addresses during its session, one by F. G. Gardiner, K.C. (Toronto), on "Hire Purchase Obligations", and the other by René Duguay (Montreal), on "An Act respecting the turning to account of the Mineral Resources of Quebec". A discussion on Aviation Law led by B. V. Richardson, K.C. (Winnipeg), was another interesting feature of the session.

At the session of the Committee on Comparative Law, under the chairmanship of Hon. Mr. Justice McTague of the Supreme Court of Ontario, a paper on "Some Practical Aspects of Comparative Law" was read by Professor P. W. Thayer, of the Law School of Harvard University. The paper proved to be a distinctive contribution to the literature of Comparative Law.

During the session of the Committee on Insurance Law, under the chairmanship of Mr. F. Phillipe Brais, K.C. (Montreal), discussions on Fidelity Insurance were led by Mr. A. Leslie Ham (Montreal), and Mr. T. J. Agar, K.C. (Toronto). Other discussions on certain branches of Insurance Law took place during the session.

The Junior Bar Committee, under the chairmanship of Mr. Benjamin Guss (St. John, N.B.), chiefly concerned itself with consideration of a report to the Association on Legal Aid. The

Committee on Legal Education and Training, under the chairmanship of Dean Vincent C. MacDonald, K.C. (Dalhousie Law School), had as its chief subject of discussion the report presented to the Association at its last annual meeting by F. C. Cronkite, K.C., Dean of the Law School of the University of Saskatchewan.

The sectional meetings of the several committees were largely attended by members of the Association and the discussions were fruitful of instruction in respect of the matters under consideration.

At Thursday's afternoon session of the Association Mr. Arthur Vallée, K.C., Vice-President of the Association for Quebec, held the chair. A statement on behalf of the Conference of Commissioners on Uniformity of Legislation in Canada was presented by Mr. P. J. Hughes, K.C. (Fredericton). It was announced that the Conference had under preparation a draft Evidence Act to be submitted for adoption by the various provincial legislatures in Canada. The Conference also recommended that a central registration office be set up in each province for the registration of encumbrances or liens on motor vehicles.

The next item on the programme of the afternoon session was a valuable paper read by Mr. Gerald Fauteux, K.C., (Montreal), on "Criminal Conspiracy to invade Civil Rights".

Later on in the session, Maître Jacques Charpentier, Bâtonnier of the Paris Bar and an honorary member of the Canadian Bar Association, was invited by the chairman to address the audience present. Maître Charpentier's fine qualities as a public speaker were made known to the members of the Association when he was present at the twenty-second annual meeting of the Association which took place in Toronto in the year 1937. They anticipated an interesting and instructive address from him, and they got it.

Speaking in French, Maître Charpentier outlined the provisions of law obtaining in his country in relation to moving pictures. We quote here a portion of his address :

The central problem in the law of France related to the ownership of films. French courts had decided the producer was the owner of a film although he might have obligations to the author of the scenario, the stars, the photographers and various technicians whose creative work formed part of the film.

Even where a film was made from a novel it was regarded in France as a new artistic creation. The tribunal of the Seine had decided a film based on a novel was a new work in that it proceeded from a different technique and had a different aim.

So far Poland was the only country to legislate on proprietary rights in films but in France legislation was being drafted.

In time it was possible there might be an international agreement governing these rights as was the case with copyright in books. M. Charpentier said he had no doubt the final solution of the problem would be a general recognition of the rule that the producer was the owner.

Whenever anything went wrong with a moving picture the public and the courts usually held the producer responsible. They did not look to the author or the star or the photographer.

Thus in France if a person on the street had a picture taken of him without his consent which appeared in a movie in such a way as to cause injury to him he could recover damages from the producer.

The afternoon session closed with the reception of the report of the Membership Committee presented by its chairman, Mr. H. A. Armstrong, K.C. (Toronto), and that of the Committee on Noteworthy Changes in the Statute Law presented by its chairman, Mr. W. S. Montgomery, K.C. (Toronto).

Later in the afternoon members of the Association and guests were entertained at tea in the Chateau Frontenac by the Judges of the high courts of the Province of Quebec and their wives.

The Annual Dinner of the Association took place in the Ball Room of the Chateau Frontenac at 7.30 o'clock on Thursday evening. Following the dinner those at table and many others admitted to the room listened to speeches delivered by the three distinguished delegates to the annual meeting from abroad, and by Rt. Hon. Ernest Lapointe, K.C., LL.D., Honorary President of the Association. Although the speeches were pervaded to some extent by the somberness occasioned by the prospect of war, they were all of that high quality which enshrines itself in the memory of the listener.

The morning session of the Association on Friday was presided over by Mr. Isaac Pitblado, K.C., LL.D., past President of the Association. After the reception of the report of the sectional meeting of the Committee on Legal Education and Training, the report of the sectional meeting of the Committee on the Administration of Justice and the report of the sectional meeting of the Junior Bar, the chairman called on Mr. John E. Read, K.C., of the Canadian Department of External Affairs, to address the meeting.

The subject of Mr. Read's paper was "The Practising Lawyer and External Affairs," and what he had to say about it was abundantly informative to those of the legal profession who had the advantage of listening to him.

After stating that the Department of External Affairs was established in 1909 under Dominion legislation, Mr. Read explained that while it was created as a separate Department it was to be presided over by the Secretary of State for Canada. In 1912, however, by amending legislation the Department was placed under the presidency of a "Secretary of State for External Affairs," the portfolio to be held by the First Minister. Provision was also made in the amending legislation for the appointment of a deputy head, to be called the "Under-Secretary of State for External Affairs", and for a departmental staff. Referring to the provisions relating to the Department contained in R.S.C. 1927, c. 65, s. 5 Mr. Read pointed out that this statutory prescription of powers and duties is in broad terms. The thirty years following the inception of the Department have transformed its activities, but it has not been necessary to revise the original statutory powers.

Having enumerated the various public offices maintained by the Department at the present time, he said :

In addition to these offices, the business of the Department is conducted through British Diplomatic Missions and British Consular offices, in places where there is no Canadian office available. When Canadian business is transacted by British Diplomatic Missions or by British Consular offices, the Department functions in substantially the same way as when the business is dealt with by a Canadian office. The initiative is taken by the Department, and the instructions are transmitted to the British Diplomatic or Consular Offices. In some instances they are sent directly; in others, they are communicated to the Foreign Office for ultimate transmission to the Mission or Consulate. The principles determining channels of communication are set forth in reports of Imperial Conferences (1926 Summary of Proceedings (Cmd. 2768) 20-27; 1930 Summary of Proceedings (Cmd. 3717) 27-31; 1937 Summary of Proceedings (Can. Print) 27).

Dealing next with matters of procedure he said :

From the point of view of the practising lawyer, there are two things of importance :

The first is that his representations in all cases in which Canadian interests are involved must be made to the Canadian Government. There is no specific rule prohibiting direct communication to a Consul, and Consuls do, in practice, act on the basis of requests received directly from lawyers or business men in routine matters. When any question of government policy is involved the matter is referred back to the Canadian Government.

The second is that Canadian interests are effectively looked after, not only in countries in which Canadian offices are maintained, but in all countries throughout the world.



The initiation of business is a simple matter. The universal channel of communication is a letter addressed to the Under-Secretary of State for External Affairs. In this communication there is one matter that should not be overlooked. Most business involves expenditure of money. You will save from two to ten days' delay by giving a formal undertaking as to costs and expenses when you send your first communication to the Department.

Procedural questions are the legitimate offspring of international trade. We are among the world's leaders in external trade, but are not so far advanced in external trading. Much of our business is conducted by other traders. We have been slow, therefore, in developing a consciousness of the importance of external procedural arrangements. Our business men are extending their contacts to the four corners of the world, and, while there has been an excuse for the lack of legal progress in the past, we cannot afford to lag too far behind.

A Canadian lawyer may need to take evidence, or to serve a document abroad. He may be concerned with an estate having part of its assets in a foreign country. Litigation may necessitate the obtaining of foreign documentary evidence. A judgment debtor may have assets abroad, and none at home. Even if his practice does not disclose any of these needs today, it does not follow that a client with wider interests will not appear tomorrow.

We have, in force, Conventions with twenty different countries dealing with service of documents, taking of evidence, judicial assistance, imprisonment for debt, and security for costs. They are restricted to civil matters, but include divorce and matrimonial causes.

In working out the procedure to be followed by a practising lawyer in service of documents or taking of evidence abroad, we have endeavoured to simplify matters so that the same course can be followed whether or not there is in existence a Civil Procedure Convention.

Mr. Read added to the value of his very thorough exposition of the course of procedure to be followed by the practising lawyer in dealing with the Department of External Affairs by a comprehensive analysis of the Civil Procedure Conventions now existing.

His paper as a whole will constitute an important feature of the published transactions of the Association for the current year.

The remainder of Friday morning's session was assigned to the reception of reports of committees.

The report of the Comparative Law Committee was presented by Hon. Mr. Justice Hague; that of the Committee on Commercial Law by Mr. A. Kelso Roberts (Toronto); and that of the Committee on Insurance Law by Mr. F. Phillippe Brais, K.C. (Montreal). These gentlemen have been respectively re-elected to the chairmanship of the committees above named.

Mr. Gordon Hyde, K.C. (Montreal), presented the report of the Resolutions Committee. In this report the Honourable E. L. Patenaude, K.C., Lieutenant-Governor of the Province of Quebec, and Madame Patenaude were formally thanked for hospitality extended to the members of the Association and their guests.

The report of the Nominating Committee was presented by Hon. Senator J. W. de B. Farris, K.C. After speaking in appreciative terms of the service rendered to the Association by Mr. L. E. Beaulieu, K.C., the retiring President, and Mr. Ward Wright, K.C., the retiring Dominion Vice-President, Senator Farris nominated Mr. D. L. McCarthy, K.C. (Toronto), as President and Mr. J. McG. Stewart, K.C. (Halifax), as Dominion Vice-President of the Association for the ensuing year. These gentlemen were unanimously elected to office. The full list of officers elected at the meeting appears on an earlier page of the current number of the REVIEW.

Dr. E. H. Coleman, K.C., Honorary Executive Secretary of the Association, announced the election of the following chairmen of committees : Canadian Bar Review, E. Gordon Gowling (Ottawa); Finance and Investments, R. W. Craig, K.C. (Winnipeg); Membership, C. H. A. Armstrong, K.C. (Toronto); and Noteworthy Changes in Statute Law, W. S. Montgomery, K.C. (Toronto).

With the exception of a meeting of the new council of the Association called for 2.30 p.m., the formal programme of the Twenty-fourth Annual Meeting was closed by a luncheon which took place in the Ball Room of the Chateau Frontenac at 1.15 p.m. on Friday. Mr. J. McG. Stewart, K.C., the newly elected Dominion Vice-President, occupied the chair.

Those present at the luncheon were privileged to listen to a brilliant address by Hon. Frank J. Hogan, representative of the American Bar Association at the annual meeting. Mr. Hogan in the course of his speech referred to the warning of imminent war in Europe given by Lord Maugham and Maître Jacques Charpentier at an earlier stage of the meeting. He declared that his feelings had been stirred by this warning and proceeded to say :

I hold no commission, I carry no authority that would permit me to speak of the official sentiments of my country. But I should blush if in that crisis of which the British and French representatives have spoken here, if in that hour, my country should lag. I cannot believe it. I will not believe it. It will not come to pass.

Upon motion of Mr. R. C. Maitland, K.C. Mr. Hogan was made an honorary member of the Canadian Bar Association. In returning thanks for the honour so conferred upon him he received the laughing applause of his audience when he said: "For once in my life I am the equal of a Lord Chancellor."

The many social courtesies extended to the visitors during the meeting were ended on Friday by a garden party given at Government House in the afternoon by the Lieutenant-Governor and Madame Patenaude, followed by a dance at the Royal Quebec Golf Club given in the evening by the Junior Bar of the City of Quebec.

\* \* Members of the Association cannot have failed to carry away from Quebec the conviction that events that are shaking the foundations of civilization elsewhere today are greatly advancing national unity in Canada. Of racial aloofness there was none. While two languages were to be heard in the proceedings the fact but served to show that cultural differences may co-exist with complete political unity between two peoples. A common concern for the welfare of the Dominion and its constitutional integrity marked the atmosphere of the meeting throughout. That is the patriotism which springs from the heart of a nation that believes it has a right to endure.

While thinking in this wise it is pleasant to recall what was said of us recently by an English historian; "Canada is the richer for its twofold national heritage, for being peopled from a Celtic as well as an Anglo-Saxon stock, for its pride in French as well as British customs and traditions, for its use of the two greatest languages and its access to the two greatest literatures of the modern world."

CHARLES MORSE.

Ottawa.