Canada Law Journal

VOL. LVII. TORONTO, DECEMBER, 1921. No. 12

INTERNATIONAL BAR ASSOCIATION.

By DR. B. MASUJIMA.*

I call you my brethren being a member of the Middle Temple, although I would so address all the members of the Bar throughout the world. I thank you for permitting me, who am somewhat an intruder, to address you on the aims of the International Bar Association, which I am so fortunate as to represent as president this year. The Association has great ambitions, although it was born in the Far East, where the institution of Bar Association is not so fully developed, nor so thoroughly appreciated as on this Continent of North America. It is a very good omen for the future of the International Bar Association that it is being introduced into the Domain of Common Law jurisprudence, as represented by your Bar Association, whose destiny I maintain is to lead the world as peace-makers.

Although I cannot speak with adequate force in an adopted language, I hope to be able to make clear to you some ideas as to the importance and possibilities of the International Bar Association, in order that you may be persuaded to take some action to make the work of the Association our common enterprise.

The broad object of the Association as stated in the constitution is: "To promote justice by the co-operation of the members of the Bar throughout the world." This clause is concise, yet comprehensive enough to cover such aims as may be cherished for the purpose of advancing the interests of the Association, whose ultimate aspiration it is to attain the permanent peace of the world by the power of a commonly accepted standard of justice.

* This was an address delivered at the annual meeting of the Canadian Bar Association by Dr. Masujima, of Tokio, Japan.

The membership is intended to include all National Bar Associations, Occidental and Oriental. To be practical, the word "National" should be interpreted to mean "Local" in an extended sense, and applied agreeably to circumstances in each case. All members are equal, and no difference is made by reason of size, each member-association having only one vote. The member-association are absolutely independent of the central association, individual members themselves being in fact also members of the Association. These individual members are so qualified, because they belong to member-associations, which hold and retain full powers over them. The International Bar Association has no direct authority over these individual members except while sitting in general meeting.

The dominating character of the Association is democratic, yet its government is not absolutely political; but consensual, as bound together by the free will of its individual members, associated for one common, grand purpose,—to build up an international standard of justice. It has no selfish interests of its own or for its members collectively, as has a political association. It is not a political organ, nor an emissary of governments. It is not a law association or academy whose aim and work are generally scholastic. It is a legal entity in the broadest sense, with "the Supremacy of Law" for its battle cry! The Association may be called the Empire of jurisprudence created by experienced members of the Bar, which will rplace the Empire of despots! It is the most advanced type of any democracy, ancient or modern. If there be no perfect democratic body, the International Bar Association could be made a unique example of democracy at its best. The International Bar Association is the Government of Law by its members not for themselves but for the world at large. The Association aims to be a guardian of justice, as manifested in that legal embodiment of reason which is called "International Law." This we intend it shall be, in the new and most advanced form of that science, so that more reality and authority will be instilled into it, and a deeper sense of obligation impressed into the minds of nations. It

aspires to make international justice more certain and international peace more secure. Hereafter, we cannot doubt that those large bodies and successive generations of officials or politicians designated by the high sounding title of statesmen, will, in the interests of peace and human happiness, be replaced in international affairs by representative members of the legal profession, a state of things that will be the natural result of the complete development of the International Bar Association.

No other body of men is so well qualified as members of the Bar, by education, culture and experience to act as mediators or peace-makers. The sense of justice is their proud possession. Their noble and elevated morals, uplifted as the result of legal training, acquired after years of practice spent in ascertaining the truth of facts to be tested by the Law—will guide them in measuring the real standard of justice. Their sound judgment and their initiative and administrative capacity will most aptly fit them to conduct and assist in the advancement of universal affairs and interests of humanity as regulated by the international standard of justice. They can allay the suspicions, correct the misunderstandings and enlighten the ignorance and darkness of nations as they daily do in the case of individuals and corporations. They are one in mind, although of different jurisdictions. They are best qualified to render disinterested service in a world of strife and distrust, establishing mutual knowledge and good-will among nations.

The jurisdiction of the Association is world-wide. Its domain is so extensive because its aim and work are concerned for the peace of the whole world. The Association has no local home; its seat is shifted from year to year to different countries, where its general meeting may be held. The field of its operation should be limited to those states where modern governments exist with matured jurisprudence and necessary system of judical administration, supported by a strong Bar to maintain its validity and independence.

Regions most favourable to begin the work of the Associa-

tion are North America where the Institution of Bar Association has taken its root. The idea of the institution is not generally known elsewhere as in America and Canada, not even in England and those countries which have followed her system. This is the reason why the International Bar Association should first look to you, North American lawyers, and seek to enlist your sympathy in its cause, and this in spite of England's being the cradle of the Common Law. Through you and your co-operation, the membership should be extended to England and Ireland, later to the other British Commonwealths, having the Common Law as jurisprudence; then to Scotland and South Africa, where Common Law and the Roman Law are in process of fusion, and later, but not last, to India and the British settlements along the Asiatic coast, where the Common Law and Indian or Eastern Laws are in course of amalgamation. We should not forget European and South American countries, in which the Roman Law is the foundation of jurisprudence, and nothing should be left undone to enlist their sympathy and co-operation.

The League of Nations, formed at the conclusion of the Great War, is far from being a perfect instrument, and its authority has not been strong enough to solve many vital problems arisen as the outcome of the Great War, and no goal of ultimate peace, order, and happiness has been reached. In these days of enlightenment and information there should be no problem between nations such as originating in ignorance, misapprehension, or suspicion. Peoples are naturally prejudiced so as to be totally incapable of judging others as they really are, and are liable to judge all by the same rules as those by which they judge themselves. Such ignorance, misapprehension, or suspicion can be enlightened by the tribunal of a World Bar Association alone. Most of us are at present sound critics of the League of Nations. We like to think we know what is wrong, and how that wrong can be righted; but in all seriousness and humility, the real, practical way to adjust or minimize the failings and short-comings of the League is to have them harmonized and regulated by the common standard of inter-

national justice, such as could be formulated by the members of the Bar only, whose sense of fairness and deep experience and learning are peculiar to them, or should be, and who are really the statesmen of the age, as proved by the Constitution of the United States framed by lawyers.

To-day the members of civilized societies are hardly yet conscious of the power and authority of the Bar in the making of modern civilization, but the time of this recognition must come, and the sonner the better. The Bar of the world should resolve that its voice, its influence, its love of liberty, its conception of truth, and its sense of justice be made to serve in directing and settling the destiny of mankind. What intelligent mind can doubt that it is the Bar alone which is qualified to give real, impartial advice towards the construction and maintenance of the League of Nations, and that the integrity and independence of the Bar can assist in the dictation and administration of justice at the permanent International Court such as would be organized, were the League of Nations solidly instituted?

The Association would confer an immense benefit upon mankind, would establish common understanding, and extend the principles of democracy into the relations between the nations, regardless of race, language, religion, or other limitations of life, and speed the promotion of amity among nations in as great a degree as, indeed in a greater degree, than the League of Nations, so soon as the world came to realize the power of the Bar in the making of civilization. Is not the time now more than ripe for the nations of the world to move under the enlightened guidance of the Bar of the Common Law countries, to demonstrate that there exists that high standard of international justice which can and will secure the peace, progress and happiness of mankind?

We are most anxious that all the North American Bar Associations will join the International Bar Association. The Association supported with your prestige will stimulate the members of the Bars of other continents to follow in what I trust will be our common enterprise. The International Bar Association, thus expanded and strengthened, should

acquire in time among all nations authority to dictate the standard of international justice to be enforced by all the sanctions at the command of civilization, and this would prove to be the one essential bond of union and understanding between the Occident and the Orient.

Until there shall be convened a general meeting under the joint auspices of both Occidental and Oriental Bar Associations, the International Bar Association cannot be said to have entered upon its real existence.

The inauguration meeting of the International Bar Association took place at Tokyo in April last year. The first regular meeting of the duly constituted International Bar Association will be held on the 24-26 October next in Peking. I shall be proud to welcome the day when the International Bar Association meets in the Capital of your Great Dominion.

APPEALS TO THE PRIVY COUNCIL.

By HON. L. A. TASCHEREAU.

As this subject comes up for discussion from time to time, its literature will be enriched by the remarks of Hon. Louis A. Taschereau, Premier of Quebec, in an address delivered in Toronto on the occasion of his being given the degree of LL.D. by the University of Toronto. From one occupying the high position he holds in his own Province, his views will carry weight. He spoke as follows:—

"'How does Quebec feel on the advisability of appeals to the Privy Council?' we are often asked. And then come the resulting questions: Are we not a self-governing country? Does not Canada possess judicial minds big enough to sit in a court of last resort? Why leave the ultimate interpretation of our laws to men who often know very little of Canada? Is not the Privy Council the rich man's court? Are not the long delays and heavy expenses incident to these appeals a serious impediment to the best administration of justice?

"Strange to say, these objections do not, as a rule, come

from the French province of Quebec. Although we feel that too many cases are brought before the Privy Council and that the class of appeals should be restricted; although we also know that matters are so arranged that the assistance of an English counsel is almost necessary, with all the resulting retainers and refreshers, which sometimes do not retain but surely never refresh our poor clients, nevertheless I believe it is the general desire of my province that, especially in constitutional cases, the right of appeal should be maintained.

"The Canadian Confederation was a compromise. Half a century of marvellous progress and development shows the wisdom and foresight of the men who framed it. But when so many conflicts of a racial, religious or ethnical nature are liable to arise, have we not all a greater sense of security from the fact that the decisions to be rendered will come from the men who preside over the Privy Council, men remote from our local strifes and disputes, unprejudiced by their surroundings?

Protection for Minorities.

"To express my thought in a few words, I will venture to say that in a country such as ours, which is blessed with minorities, the Privy Council is the protection of those minorities. Solicitude for minorities is not unknown to British fair play and constitutional principles. Enjoying this blessing, if we want Canada to progress in peace, harmony and concord—and surely this is our common desire, as we feel that national unity and material development hinge on a true Canadian spirit—is it not necessary that some of these vexed questions that unfortunately have divided us in the past should be finally settled by men whose decisions will not be open to the charge of sectionalism or provincialism? To my mind there is nothing so destructive of the respect due to the law—and, after all, is not this respect the foundation of our civilization—as to see the members of a court, on a racial or religious question, divided apparently according to their own reglious or racial feelings.

Such things have happened, and such a result cannot satisfy public opinion.

"I am aware that decisions of the Privy Council in what I might call international matters have sometimes been open to the reproach of being founded on Imperial interests at large, with the result that Canadian interests suffered heavily. I claim for myself no degree for diplomacy, but leave the answer to this reproach to those who wish to retain for Canada the full and unfettered rights and privileges of her young and progressive nationhood.

"The appeal to the Privy Council is a tie, one of the last ties, we are sometimes told, between Canada and the Mother Country. A tie may be broken by pulling on any one of its ends; Quebec will not pull on her end, but let us hope that there will not be too many unwise pullers on the other end."

Remarks of Mr. Justice Scrutton.

Mr. Justice Scrutton, of the English Bench, in a recent address referred to the Judicial Committee of the Privy Council as being an important and interesting link between the units of the British Empire. He spoke as follows:—

"One of the threads which held the different units of the Empire together was the Judicial Committee of the Privy Council. Indian communities come to ask that court to decide whether a certain god has a right to pass through the street of a certain Indian town with elephants or not. Then comes sometimes the Commonwealth of Australia for the settlement of disputes between the states of Australia and the Commonwealth as to the exact limitations of the jurisdiction of each. Then comes very frequently the Dominion of Canada, and then come representatives from the Mauritius, Trinidad, the Cape, etc. Every colony brings the oddest questions to be decided by that perfectly impartial and trusted tribunal. The result is that the Privy Council is known in the most obscure parts of the Empire, although the people do not know what it is. There is a story that in one of the most obscure parts of India there was found an altar with worship going on. The traveller asked the people whom they were worshipping, and they answered: 'We do not know, but it is the great god Privy Council.'"

CANADIAN BAR ASSOCIATION.

PRESIDENTIAL ADDRESS BY HON. SIR JAMES AIKINS, K.C., LL.B.

The Association was incorporated as you wished by an Act of Parliament assented to on the 15th of April last. Its objects, with one or two additions, are the same as they were when the Association was first formed. Its powers are ample. Its form of management and administration flexible. Flexible because it can be made and varied as the Association desires by by-laws and rules. Meanwhile, the constitution, by-laws and rules of the incorporated Association continue until altered or repealed at an annual or general meeting of the Association.

The Act provides that the Association may establish a Council with executive power and may determine the method of election or appointment or selection thereof, define the constitution, powers, duties, quorum and term of office of such Council and of the officers, committees and local executives and branches. While the previous method of appointing the Council and the officers at the annual meeting on the nomination of the provincial members then present may be convenient, it is very doubtful if it places upon the Council the most enthusiastic, capable and interested members of the Association. It has been suggested that the members of the Association who are of a provincial bar should be empowered prior to the annual meeting either to elect or nominate the representatives from that Province for the council by such method as those members may think proper.

Provincial Sections and Executives

It is further suggested; that the members of the Association in each province should be regarded as a section or unit of the Association to further and promote its purposes to consider between annual meetings any matters of general interest to the whole bar of Canada and make recommendations to the Association; also that the officers and members of the Council living in that province should form the sectional executive acting under the general council,

thus securing harmonious action with other Provincial Sections. Though each province has its official or statutory Law or Bar Societies and councils with fixed powers and duties, mainly pertaining to the qualifications, discipline, libraries and the reporting of cases. They do not give opportunity to the members of the Bar generally to consider together the many and very important matters relating to the profession which lie entirely outside the duties and powers of the official bodies. To meet this need, the lawyers of British Columbia, Saskatchewan, Manitoba and Ontario, have formed provincial voluntary Bar Associations, the objects and purposes of which are substantially the same as those of this Association. It has been the thought of some that these Associations might transmute themselves into sections of the Canadian Bar Association, and that where none such exist, the provincial sections or units of the Canadian Bar Association would meet the requirement. We can readily see that such provincial sections or units actively engaged in the work of the Association in each province and co-operating with each other, will be of immense advantage in furthering the purposes of the Association.

Official Societies of the Provinces

Section 2 of the Act mentions that one object of the Association is to foster harmonious relations and co-operation among the incorporated law societies, barristers' societies and general corporations of the Bars of the several provinces. Those societies and corporations have usually appointed two of their members to the Council of this Association. This has been beneficial for they and the other benchers and provincial councillors have done excellent service in inducing those official corporations to put into effect the recommendations of the Association. This Association is not executive. It could not be so without interfering with the provincial bodies but it does hope that they will make operative what the whole Bar of Canada through its Association advises to be for the best interests of the profession as a whole and of the people. To have concerted action in this it is highly desirable that the

benchers and others occupying similar positions should convene for consultation at our annual gatherings. Some are of opinion that the members of the Judiciary in each province should name representatives for the Council.

When satisfactory by-laws and rules are passed under Section 4 of the Act for the administration and management of the business and affairs of the Association, and for carrying into effect the suggestions just mentioned, the organization will seem to be complete. Yet we all know, however perfect the machinery, it is helpless without having infused into it the power to operate it. However beautiful the form, it is a thing of dust into the spirit is breathed into it, and then it lives, and realizes the purposes of its creation. It is concerning the mind of that spirit I wish to address you this morning. The Association is a fine ideal, with great possibilities for usefulness. It is for us to make it real and demonstrate these possibilities, for us to make that mechanism move with well directed energy, to make that form to pulsate with vitality. The Association corresponds to a great present day need in the social and public life of Canada, therefore it should not fail. If it does, it will be by reason of the apathy or the lack of comprehension on the part of the members of our Canadian profession. That failure will indicate in those who should be leaders in our nation such a lack of united Canadian spirit, such a weak national consciousness that we cannot expect our country to be united to be free from disorder and weakness. My reason for saying that is a nation is a society organized under the same government, or if you prefer, under the same supreme law. Law is inate in a state or nation. The one cannot exist without the other and as the people progress the law changes suitably to that advance.

Now societies mean an alliance, in law a partnership. Both imply co-operation. The word 'sequor' from which it is derived implies leadership. But by whom? History shows that in prospering nations lawyers generally have been leaders.

Politics are said to be the science of government, and

government means the making and the application of the law, and all lawyers who properly understand and correlate their duties to their client, the public and themselves are ministers and agents of the law whether in their office practice or at the bar or on the bench. Even if they never take part in the making of the law as municipal, provincial or federal legislators, they are constantly exposing the defects of the law or its unsuitability and demonstrating the need of amendment or suggesting remedies, so that the courts and their officers the lawyers have been and are the occasion of national political development. Every legislative change in the law, every modification of political practice comes sooner or later under their scrutiny. Therefore the character of our lawyers, their mental attitude and their vision have much to do with the continuance of sane measures and the improvement of the law and the quick destruction of vicious or inapt legislation.

It used to be said of sympathetic courts that hard cases make bad law. Such judgments become precedents and unsettle the law and its application. Nowadays, some voter, aggrieved because he thinks an injustice has been done him by the application of a law, no matter how sound, loads up his legislative representative, who, under stimulus of votes, secures an Act to prevent a repetition of the imagined grievance. Such temperamental cases make still worse law. In times past the law was less susceptible to change. Antiquated law had to be endured till its harshness, becoming too severe, was mitigated by the Judges introducing fictions and equities. Now changes are dangerously empirical by reason of the easiness with which legislation can be secured, and the lack of comprehension in the legislator of the general principles of the law. To check this, members of the Bar should regard it as a duty to be in our law-making assemblies.

De Tocqueville, in his "Democracy of America" says: "In studying their laws, we perceive that the authority they have entrusted to members of the legal profession and the influence which these individuals exercise in the government is the most powerful existing security against the excesses

of democracy. . . . . Men who have more especially devoted themselves to legal pursuits derive from this occupation certain habits of order and a taste for formalities and a kind of distinctive regard for the regular connection of ideas which render them very hostile to the revolutionary spirit or the unreflecting passions of the multitude. . . . . In all their governments, of whatsoever form they may be, members of the legal profession will be found at the head of all parties. . . . . A people in democratic states does not mistrust the members of the legal profession, because it is well known that they are interested in serving the popular cause, and it listens to them without irritation because it does not attribute to them any sinister designs. . . . . I question whether democratic institutions could be long maintained and I cannot believe that a republic could subsist at the present time if the influence of the lawyers in public business did not increase in proportion to the power of the people. . . . Does it so increase in Canada? This Association is but newly born, but born, let us hope, to be the heir and clear expression of the best traditions of the Bar in all ages.

It is said that a corporation which has been for some time in existence and has a history, and noble purposes, acquires a personality which is quite distinct from the personality of its members. One has often heard it said of business corporations, expecially before juries, that they have no bodies to be kicked or souls to be damned. Such a conception is entirely inappropriate to other great corporations (conventional or legal) which through passing years have developed an esprit de corps such as universities, churches and some compact nations. These have a compelling influence over their members, a centripetal attraction which brings supporting loyalty and creates a oneness of thought and feeling which means power in that organization.

The learned professions have that esprit de corps to some extent. In exists, though not in a very cohesive way, among lawyers. De Tocqueville, speaking again about lawyers, says, "they naturally constitute a body not by any previous understanding or by an agreement which directs them to a

common end, but the analogy of their studies and the uniformity of their proceedings connect their minds together as much as a common interest could bind their endeavours."

Professor Maitland, one of England's keenest legal intellects, however, goes further and approves the theory of such a corporate psychological entity. He says: "It is no fiction, no symbol, no piece of states machinery, no collective name for individuals, but a living organism and a real person. . . . . It is not a fictitious person; it is a group-person, and its will is a group will."

It is the hope of the members of this Association that their definitely joining together for its worthy purposes, their intercourse through the opportunities it affords and their common ideals and aspirations, their hopes and struggles, will not only connect their minds, as De Tocqueville says, but will develop such a group spiritual personality as will inspire and uplift our profession and so bless and unite our young nation under their leadership. Most of you members present have reached by passing time the maturity of your development. You are using that development for your appointed task and for public service. You have succeeded. The spirit which called you and our guests here is not a spirit of selfishness but the spirit of the profession, to which you are responsive. It prompts you to do what you can to advance the profession and make it more efficient. You know that the best means to that end is to influence and direct your law students and young practitioners; to keep ever before them that which is best in our ideal and traditions and to give them fullest opportunity to learn the law and its practice, and to encourage in them the habit of service to their clients and to the public. Every earnest youth who seeks entrance to the profession has aspirations without which there can be no real progress. Those are quickened by the story and example of noble lawyers. (I do not say successful lawyers, for there may be different definitions of a successful lawyer.) Ambitious students are usually hero worshippers. Before Homer wrote his Iliad, the Greeks were a rude and simple people. In the etherial of imagination he unveiled an Achilles whose attributes

were compiled from the best qualities of human greatness as then understood. Athenian youths fixed the Iliad in their minds and began to repeat Achilles in their lives, and soon the ideal hero was looking down upon many thousands of living Achilles moving in the streets of Athens. With admiration we recall the intellectual achievements, the literature, the philosophy, the art, the spirit of those Athenians inspired and made great by an ideal. Why not repeat that in Canada? Why not in our Association?

Now what are some of the professional ideals and qualities which attracted us and which this Association should assist the Benchers and councils of the official societies to keep ever before and develop in the students and thus advance a truly Canadian soul in the Bar from coast to coast, and a suprme spirit in our temple of Justice to which we may pay homage?

We all recall the transforming influence upon us, when students, of those whom we regarded as then pre-eminent at the Bar. Every provincial Bar, except the recent ones of the prairies, had then their great lawyers. You know them, for they attracted you. May I mention four in Ontario whom I, as an articled clerk, knew and regarded highly —Edward Blake, Matthew Cameron, Thomas Moss and James MacLennan. These great lawyers were gentlemen, jurists who knew the law and its practice, scholarly, and of public spirit and action.

They were not discourteous in manner or bullies in court or unreliable in practice or mean in their methods of getting business. Yet they were strong men. Gentleness is an inflexion of strength. We admire good form whether at the Bar or on the Bench. The German word meaning good form which Lord Chancellor Haldane used before the American Bar Association, Montreal, 1913, is omitted. Evidently the Huns did not know its meaning.

Unfortunately, there are lawyers in all our Bars whose ethical standards are not desirable, whose greed outweighs their conscience and who regard the law as a business rather than as a profession. But contrasted with the membership of Bars elsewhere, we have no reason for congratulation.

Such lawyers with us are few, thanks to the care of our law societies and Bar councils. That some should slip past is unavoidable, for we have no sure test of the character of the student before coming to our law societies, and we cannot well adopt the testing system of Venice 2,000 years ago as described in the Memoirs of Carlo Goldoni. He says:—

"I began to reflect on the profession of which I had made choice. There are generally two hundred and forty advocates in the list at Venice; of these there are from ten to twelve in first rank, twenty perhaps in the second, and all the rest are obliged to hunt for clients, and the pettifogging attorneys are willing enough to become their hounds on the condition of sharing together their prey.

"While I was thus musing by myself, and building castles in Spain, I observed a fair, round and plump woman of about thirty, advancing towards me, of a tolerable figure, with a flat nose, roguish eyes, a profusion of gold about her neck, ears, arms and fingers, and in a dress which announced her to be of the inferior orders, but in easy circumstances; she accosted me and saluted me. 'Good-day, sir.' 'Good-day, madam.' 'Will you allow me to pay you my compliments?' 'On what?' 'On your admission; I observed you making your obeisance at court.' . . . . 'So you know me, madam?' 'I! I know every person here from the dogs to the clerks of court. . . . . I was born and brought up in these gilded halls, and you see I have gold upon me.' 'Your story is very singular; so you follow the footsteps of your mother?' 'No, sir, I do something else.' 'And what is that?' 'I solicit lawsuits.' 'Solicit lawsuits, I do not understand you.' 'Do you know, sir, that such as you see me, I have made the fortune of a good dozen of the most famous advocates at this Bar? Come, take courage, sir; with your good leave, I shall also be the making of you.' I was amused with listening to her; and as my servant did not arrive, I continued the conversation.

" 'Very well, madam, have you any good affair at present?' 'Yes, sir, I have several, and some of them excellent. I have a widow suspected of having concealed effects; another anxious that a contract of marriage drawn posterior to its date should be held good; I have girls who demand to be portioned; I have wives who wish a separation; and I have people of condition pursued by their creditors; you see, you have only to choose.'

" 'My good woman,' said I to her, 'I have allowed you to speak, and I wish now to speak in my turn. I am young and

entering on my career, and desirous of occasions of employment where I may appear to advantage; but the desire of labour and the itch of pleading will never induce me to undertake such bad causes as those you propose to me.' 'Ah, ah,' said she, 'you despise my clients because I told you there was nothing to be gained; but listen, you shall be well paid, and even paid beforehand if you choose.' I saw my servant at a distance; I rose, and said to the woman with a firm and determined tone, 'No, you are not acquainted with me; I am a man of honor.' She laid hold of my hand, and said with a serious air, 'Bravo, continue always to entertain the same sentiments.' 'Ah, ah,' I said to her, 'you change your language.' 'Oh, yes,' said she, 'and the language which I now use is better than that I have quitted. Our conversation has not been without mystery; bear it in mind and take care never to mention it. Adieu, sir, be always prudent and always honorable, and you will find your account in it.' On this she went away, and I remained lost in astonishment. I could make nothing of the matter; but I afterwards learned that she was a spy; that she came for the purpose of sounding me; but I never either learned or wished to learn by whom she had been employed."

Administration of Justice.

A purpose of this Association and of all lawyers should be to promote the administration of justice.

An attribute that we should give to the spirit of our Association is fairness and a controlling sense of justice. In almost every age that has been the ideal of great jurists.

Ulpian, whose writing on the subject of "Justice and the Law" was digested by Justinian, said: "We (lawyers) may rightly be called the priests, for we are given over to the service of justice, and the knowledge which we profess is that of the right and the equitable." Pollock and Maitland's History of the English Law, referring to Bracton's debt to the Roman lawyers and his quotation from Ulpian, says: "This old phrase is no cant in Bracton's mouth. He feels that he is a priest of the law, a priest forever after the order of Ulpian."

The lawyer is, in practice, the agent of his client, and it is true that it is the interest of his client which it must always be his most immediate concern to secure and protect. That

is in the interests of justice, and it in no way conflicts with the statement that his office is the bringing about of justice. But it is not the interest of his client alone which he is to consider. In no transaction, in no department of his professional activity, can his true duty to his client be in conflict with his paramount function, from which indeed his duty to his client is derived and upon which it depends, the function of contributing, so far as in him lies, to the bringing about of justice.

The Science of Jurisprudence.

The spirit of our Association should impel all its members to aid in realizing another of its objects, the advancement of the science of jurisprudence.

Jurisprudence is said to include three things: (1) The ethics of the law or those principles of political morality which should control legislation; (2) the logic of the law, or an analysis of legal conceptions and the consequent fixing of legal terms and the orderly arrangement of the corpus juris; (3) the history of the law.

David Hume advises passion for science, but he says: "Let your science be human and such as may have direct reference to action and society; be a philosopher but amidst all your philosophy be still a man." The jurist studying human conduct in social relations is in his philosophy above all other philosophers a man. Social life, like all life, is change and development, and the law-giver and jurist will be neglecting one of their most important functions if they refuse to meet the demands of that ceaseless evolution. The law must always be in the process of becoming, and in this respect is as variable as man himself.

What then are the immediate practical steps which this Association can take to advance that science? There is no "open sesame." Advance must be made through the industry of the agents of the law, the lawyers; who else?

There are two essentials in that advance, one a thorough knowledge of the law, and an experience in its application; the other a practical participation in the making of the law. As to the first, one reason why, on the average, the Bar is not better versed in the law and cleaner in its practice is

because there are too many in it, and too many of an inferior class. We have all heard the expression, "Well, we must live." When said by a lawyer, it implies much. Sometimes that the speaker mixes up his professional work with insurance or business agencies and cannot devote his time to the study of the law or careful practice of it, or sometimes that he resorts to methods which he himself knows are not creditable. How can the Bar or our provincial corporated bodies exclude or winnow out such persons? As already suggested, by more careful scrutiny of the applicant's character, which should be of the highest, and by insisting upon more thorough educational tests, perhaps a longer course, and more careful supervision in their training. Some say that is discriminatory and unfair, and does not give to all young equal opportunity. It is deliberately discriminatory, for it is the intention to exclude the indifferent of character and education. Animals should not be permitted to deceive the public by a clothing which signifies protection for the people. But it is not unfair as alleged, for if unequal opportunity exists, it exists in the fact that some have not an even chance with others to prepare themselves to enter upon the study of the law.

What makes the outcry against our profession is that all its members do not approach that ideal or attain the needed qualifications. I have noticed that in American law magazines the statement that one cause of the superiority of the English barristers as a class over the American is that the former are almost all university men, the latter only a small percentage, and further, that a careful study of the subject shows that proportionately fewer judgments of well-educated or university men are reversed on appeal than of less broadly learned Judges. I do not vouch for the correctness of these statements.

Much as is the Association's ideal lawyer needed in active practice, he is more required for the well-being of our nation on the Bench. But there cannot be such on the Bench without being such at the Bar. The greatest curse that can be placed on any country is an ignorant, unfair, careless or corrupt judiciary.

To say it is the duty of the Judge to apply to the hard facts of a case the inexorable law is a harsh way of putting a truth, but a truth in which imagination plays an important part. I use the word as its derivation signifies. In that sense it should be developed. Both counsel and Judge should be able to form quickly an image or picture in their minds of the facts pieced together or supplied by sane deduction from the evidence or supported by the common sense of jurymen. Occasionally jurymen rely upon imagination for their facts. When the image in the mind of the lawyer or Judge is complete, then to apply the law, which should be perfectly known by the Judge and not imagined, the law which most closely and substantially fits that picture or image.

Courts provided to settle disputes and to curb the anti-social members of society may conceivably perform those offices without law, but if they were to perform according to law, they must perform them with certainty and in a uniform manner, for certainty and uniformity are the essential attributes of law and of justice.

"The discretion of a Judge," said Lord Camden, "is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper, passion. In the best it is oftentimes caprice; in the worst it is every crime, folly and passion to which human nature is liable." The same idea is expressed, in a somewhat less severe form, in the celebrated passage in Selden's Table Talk, comprising the law with equity as it was in his day: "Equity is a roguish thing. For law we have a measure—know what to trust to. Equity is according to the conscience of him that is Chancellor; and as that is larger or narrower, so is equity. It is all one as if they should make the standard for the measure that we call a foot, a Chancellor's foot. What an uncertain measure this would be! One Chancellor has a long foot, another a short foot, a third an indifferent foot. It is the same thing in the Chancellor's conscience."

As time goes on there is always a larger room for discretion in the law of procedure; but discretionary powers, in applying the principles of the law, can only be safely en-

trusted to Judges whose impartiality is above suspicion, whose knowledge of the law is accurate and whose every act is exposed to public and professional criticism.

The possession of an overriding power of deciding in any case according to what they should consider to be equity and good conscience would throw a very great responsibility upon the Judges which most would certainly be loath to assume. The number of cases which have been decided by justices expressly upon grounds of "equity and good conscience" is exceedingly small when compared with the vast number which have been disposed of according to law or according to the view of the law taken by the justices.

The public is more interested than it knows in maintaining the highest scientific standard in the administration of the law. The interest thus created in the profession is one of the best guarantees for purity of administration. Genuine lawyers are supremely anxious to be right in their law. They may not always succeed in freeing themselves from class prejudices and party tis, but their interest in abstract law makes them generally incapableof showing favour to individuals.

Many err in estimating a lawyer's eminence by his success in getting business, in winning cases, swaying juries, securing a large reputation and big fees. Those things are desirable and needful, but not as an exclusive ultimate of a lawyer's aspiration. The one who thus succeeds may be utterly selfish, a stranger to public service, and sometimes is. The ideal object of our profession has been and continues to be the proper administration of justice and service to others in the line of our calling. There is no variance between that and the highest idealism that has ever found expression or the best ethical standards now generally accepted, for instance—that seer and prophet Micah said: "He hath showed thee, O man, what is good; and what doth the Lord require of thee but to do justly and to love mercy and to walk humbly with thy God." And a still greater authority has said: "Whatsoever of you will be the chiefest shall be servant of all," and "Whosoever will be great among you shall be your minister."

In a previous address I pointed out that the Provincial Legislatures had given protection and privilege to the members of our profession so that they might serve the people in the administration of justice and the making of our laws, serve them as Ministers of Justice, agents of the law and officers of our Courts. Seeing then that there have been given to us such privileges for a great purpose and for expected results, we are in duty and in quickened conscience bound to render to the people conspicuous service in professional and public life, particularly in improving and stabilizing our law, compelling observance of it and in insisting upon respect for our Courts, which is just as important as respect for the law; they two are inseparable. The further obligation is upon us to protect our national institutions of freedom under law which the ages have so wisely and substantially built, and at so great cost, from the iconoclast and the revolutionist who would destroy them merely for the sake of seeing them perish or to pilfer from the wreckage.

May I quote from an address to the American Bar Association of Chief Justice Cooley, of the United States Supreme Court: "What I desire to impress at this time upon members of the legal profession is that every one of them is or should be from his very position . . . . a public leader and teacher, whose obligation to support the Constitution and laws and to act with all due fidelity to the courts is not fully performed when the fundamental organization of society is assailed or threatened, or the laws defied or likely to be in the community in which he lives, as a result of revolutionary purpose, or of ignorance, or unreasoning passion, unless he comes to the front as a supporter of settled institutions and of public order, and does what he properly and lawfully can to correct any sentiment, general or local, that would in itself be a public danger, or be likely to lead to disorder or unlawful violence."

It is no vain boast to say that the members of the profession in Canada generally in their practice and the members of the Association in their endeavour to effectuate its objects are under the constant influence of the high ideals which I

have mentioned and the best traditions of the Bar. To them seem applicable the words which Kipling applied to the "Sons of Martha":—

"The sons of Mary seldom bother, for they have inherited that good part,
But the sons of Martha favour their mother of the careful soul and the troubled heart.

It is their care, in all the ages, to take the buffet and cushion the shock.
It is their care that the gear engages—it is their care that the switches lock.

They do not teach that their God will rouse them a little before the nuts work loose;
They do not preach that His pity allows them to leave their work when they dam-well choose.

As in the thronged and the lighted ways, so in the dark and the desert they stand,
Wary and watchful all their days, that their brethren's days may be long in the land.

Not as a ladder from earth to Heaven, not as a witness to

But simple service simply given to his own kind in their common need.

And the Sons of Mary smile and are blessed—they know the Angels are on their side.
They know in them is the Grace confessed, and for them are the Mercies multiplied.

They sit at The Feet—they hear The Word—they see how truly the promise runs;
They have cast their burden upon the Lord, and the Lord he lays it on Martha's Sons!"

The lawyers! guides to keep the people law-abiding, guardians of their rights and liberties. I am sure I express your hope that this newly-born incorporation, this Association, may develop its own high spirits and such a corporate soul and group that may still further uplift the character and reputation of the Canadian Bar.

Ever studious, ever alert, tireless in service, strong in courage, true to their clients, courteous to their brethren, respectful to the Courts, fearless alike of the frown of a tyrant or the clamour of a mob. With such a Bar, Canada will never be lacking in leaders who will bring the people by safe ways into the sunlight of national blessedness and strength.

CANADIAN BAR ASSOCIATION.

ADDRESSES AT ANNUAL MEETING BY HON. W. H. TAFT, CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

I feel like saying, here I am again. (Laughter). I have a home feeling here. As I walk along the streets of Ottawa I meet gentlemen and greet them with exactly the same feeling of acquaintance that I do in New Haven and New York, and even in Washington. I haven't any sense of the boundary line between here and the United States at all, because I have been in politics and been abused on both sides of the line. (Laughter.) I have sat on the bench on both sides of the line. (Laughter.) I have dissented on both sides of the line. (laughter), and have realized in those dissents the errors of men.

I remember that, for I have been in this same presence before. I note the presence of a distinguished—a leading member of the Bar in Ontario, who took part at that meeting in a little episode which perhaps has escaped your memory, but which remains somewhat clearly in my own. The Attorney-General of Ontario I do not see here (laughter), but I remember hearing him in this room expressing his view on the constitutional relation, or the should-be-constitutional relation between the Judicial Committee of the Privy Council and the Courts of Canada, and the Governor-General and the Dominion of Canada. They

did not seem to meet with the unanimous concurrence of those who were present, and that made me feel very much at home. (Laughter.) For if there is anything we of the American Bar enjoy, any atmosphere in which we live with pleasure, it is the atmosphere of a somewhat acute discussion of constitutional jurisdiction. The gentleman to whom I referred took occasion the next day, in the room here, to express his views on the part of the Ontario Bar as to that same constitutional question and as to the views of the Attorney-General.

You are here for useful purposes again this year. You honour us in our country by giving one member, or more, from the Bar of the United States an opportunity to come here and discuss matters of importance, matters relating to the interests of both countries and the friendship that should exist, and does exist, and must exist between the two countries. Yesterday I was sorry to be absent and to be deprived of hearing Judge Alton B. Parker, of the New York Bar—a gentleman who, like some of the rest of us, has had political experience, has profited by it, and has ceased to continue it (laughter), but who stands in the foremost rank of our Bar, and who, I am sure, commended himself to you by what he had to say.

It is a great pleasure to come here and to meet not only the members of the Canadian Bar, but distinguished members also of the English Bar. You know so well the English Bar that perhaps you do not regard that as an uncommon pleasure; but to those of us in the United States, to whom the practice in the English Courts is only a matter of the consulting of the reports and the reading of Campbell's Lives and the other sources from which young lawyers get their views of the English Judges, to come into contact with a man who wears a wig, and the silk, or who wrestles with the distinguished Judges on the Bench, and who leads that romantic life of an English barrister, and a leader of the Bar, is a great privilege.

There is something about the English Bar that is sweet to me, as it must be to every man who is affected by the debt we owe to the Common Law and to England for having

it grow up for the benefit of the generations of Anglo-Saxon people spread over the earth. And when I come into contact with an absurd tradition that is preserved religiously until it really affects somebody's rights, and hurts to abolish it, I cherish it with the same degree of worship as an English barrister does. (Laughter.) The English Judges of the world round are noted for their capacity to do justice between man and man without favour. It is the basis of the strength of English rule in India and in all the countries whose people are of retarded growth of government. It teaches these Oriental peoples what it is so hard for them to find at home among their own people—that sense and administration of justice that is not affected by personal considerations.

And yet in that system you do have some anomalies that are almost humorous in their departure from the principle of absolute impartiality in the person of the Judge. Take, for instance, the Lord Chancellorship, which Sir John Simon refused. (Laughter.) I would like to argue that out with him, as to why he refused it. (Laughter.) Take that office. It began with the King as a means by which the King could interfere with justice—by which, if he did not like it, he could make it better; and under the influence of this Anglo-Saxon sense of justice, the Lord Chancellor grew to be a bigger Judge than any of the Judges with whom he was going to interfere. And yet he does not acquire and maintain and absolute impartiality in all his conduct and functions which we are apt to think necessary to the impartiality of the work of the Judge. He may be a partisan of the partisans when he speaks in the House of Lords on a partisan question. I know it was said of Lord Cairns that he was the greatest equity Judge they had ever had, until he got into a political discussion, and then he did not have any of the judicial qualities at all.

The Chancellor is not only an equity Judge who has most important quasi-executive functions—but he is an ecclesiastical Judge, one who has something to do with the Church. And I have observed that the Lord Chancellors who have seemed to enjoy most of his canonical jurisdiction are the

Lord Chancellors to whom you would least ascribe either the desire or possibly the capacity to deal with Church matters. (Laughter.) Certainly Lord Westbury was a gentleman who would not have commended himself as a deacon of a church. (Laughter.) He would not have led a prayer meeting, or, possibly, conducted the service; but he did not hesitate to tell the bishops and the archbishops of the Church where—if I may use a colloquial expression—"they got off." (Laughter.). And I understand there is a more recent Chancellor who has not hesitated also to express his views of the Archbishop of Canterbury and others, in which he quotes Matthew as against the Archbishop. (Laughter.)

Yet it works out that England retains that highest judicial officer, who in so many respects seems to have functions and seems to be permitted to take part in things that are so unjudicial. Yet the fact remains that English justice represents the highest type of that God-given thing, and you, so directly sitting under the English Courts, and we who follow their authority, and are glad to have an English authority, are grateful, and should be grateful, for the lessons that the English Bar and the English Bench have given us.

The Judicial Committee of the Privy Council is a body that has grown up in that delightful way in which institutions are created in England and at the Bar, and, while I dare not express a view as to how its jurisdiction should be limited with respect to Canada (laughter)—because I know the Attorney-General of Ontario, and he would want to be heard on the subject (laughter)—I hope that it will long continue to exercise that world-wide jurisdiction, decisions under which have done so much to help the British Empire and therefore to help the world.

Now, when Sir James Aikins brings me here, I feel like saying something about him. It does not do to refer to the past in his case and say that he is the best President that the Canadian Bar Association ever had (laughter), because the number of presidents of that Bar Association is limited, as I recollect. But he is a president that we in the United States envy you. If we could get a president who would

think it his duty as president to give us a foundation such as Sir James has arranged for your association, we would elect him on the stop. (Laughter.) And certainly no man can claim to have organized any association and to have been its initial mover as fully as Sir James Aikins can with reference to this Canadian Bar Association. (Applause.) We in the United States feel as if we were in a sense in loco parentis towards you, because you date your birth, as I recollect it, from the time when we met in Montreal in the American Bar Association and listened to a distinguished Lord Chancellor discuss with us, in 1913, the benefits of German Lemuthlichkeit. (Laughter.) And a beautiful address it was, but when we look into the future we are all of us likely to be mistaken. We have been looking into the future in the board of arbitration over the Grand Trunk to-day, and we have differed. One of us will be right (laughter)—perhaps two of us.

When I was here before, you were discussing ethics, and there was a gentleman from Ontario—I think he came from Toronto—who insisted that the formulation of legal ethics was not wise; that those who were unethical would not be induced to become ethical by the statement of what ethics mean, and that those who were ethical did not need any ethics. (Laughter.) But, as I recollect it, your association did adopt a code of legal ethics, and followed in that respect the example of the American Bar Association; and I am glad you did. It may not help many people, but it is very useful for young lawyers, and it is very useful, too, in respect to nice distinctions that occasionally occur in the lawyer's life, to have a rule by which the course to be taken can be clearly determined. It certainly does not hurt anybody to tell him how to be good (laughter), and it may help.

We have, with us, a discussion of a good many questions that perhaps do not trouble you. Perhaps you are not behind in the administration of justice here, as we are. We have a good many cases in the Federal Courts, for instance, growing out of what you may not know in this country, because you are so far removed from it and so uninterested in what happens over there in that respect—growing out of

the Eighteenth Amendment (laughter); and that, with other assumptions of jurisdiction, has thrown upon the Federal Courts more business than under the present arrangement they can do. We are attempting to secure legislation that shall give us eighteen District Judges, distributed in the nine circuits—two to each circuit—who shall act in a sense as light cavalry, with the powers of District Judges, but not tied down to a particular district; to be distributed according to the executive principle, so that you shall mass your judicial force to dispose of the arrears in the places where those arrears are: because when you have districts filled rigidly by Judges assigned to those particular districts permanently, you will have some Judges who have but little to do, and other Judges who are swamped. There is not the slightest reason, now that we have so much business, with so wide an expanse of jurisdiction—there is not any reason why we should not apply the principle that we shall use the force where it is needed, even though that may require travelling; but it does mean a quasi-executive body that shall take over the responsibility of the assignment of Judges for temporary purposes, so that we can meet the necessity.

We had Sir John Simon at Cincinnati. I am sure he will recollect being there—he will never forget it. The heat in Cincinnati (it is my native city) was as great as I ever experienced it there, which is putting the superlative, and it lasted for three days. It began just as soon as we appeared, and went just as soon as we left—an attention to our presence that was complimentary but not comfortable. And Sir John said that the name of the city reminded him of the story of Cincinnatus, who was farming at the time he was called to the head of the armies, and who was described in classical history as being naked at the time. (Laughter.) Sir John said that there were reasons in the atmosphere that made him and others regret that we did not live in a simpler civilization.

Now, my friends, I have talked on without saying anything, but just to express to you my sense of fellowship, my enjoyment in being with you, in your company, and my

appreciation of the warm welcome that you have given me in the past and the kindly welcome that you have given me to-day.

REPORT OF COMMITTEE ON ADMINISTRATION OF JUSTICE.

This Report presented by the Committee on Sept. 7th is among the most important of the work undertaken by the Association. It is not necessary to give it in full. It appears in the report under the following heads:

Judiciary.

The Report of this Committee, which was submitted at the last meeting of the Association, having been dealt with by the recent Act of the Dominion Legislature (11-12 Geo. V. ch. 36), need not be further referred to.

Legislation.

The alleged invasion of the Dominion field of legislation by enactments of Provincial Legislatures, creating a species of criminal procedure for the enforcement of provincial laws, was brought to the notice of the last Committee and has also been the subject of representations to the present Committee.

Since then, however, these objections appear to have been disposed of by the decision rendered on the 22nd July, 1921, by the Judicial Committee of the Privy Council in Canadian Pacific Wine Co. Ltd. vs. Tuley et al. (37 T.L.R. 944.)

One of the questions submitted for decision in that case was the constitutionality of the Summary Convictions Act passed by the legislature of British Columbia. (R.S.B.C. 1911, chap. 218.)

Upon this point the Lord Chancellor, who delivered the judgment, made the following observations:—

It was contended at the Bar that this statute was ultra vires the provincial Legislature, on the ground that it was an attempt to enact provincial legislation for "criminal law," including procedure in criminal matters, within the words of section 91 (27) of the British North America Act, 1867. But that section only declares that it is to be lawful for the Sovereign, with the advice of the Dominion Parlia-

ment, to make laws for the peace, order and good government of Canada generally, in relation to all matters not coming within the classes of subjects by the Act exclusively assigned to the Legislatures of the Provinces, and the enumeration of matters which follows in section 91 to which the exclusive authority of the Dominion Parliament extends is only a declaration that certain subjects fall under this description. When the language of section 92, which defines the matters to which the exclusive legislative authority of the Province extends, is scrutinized, this definition is found to include the administration of justice in the provinces embracing the constitution, maintenance, and organization of provincial Courts, both civil and criminal, and procedure in civil matters in these Courts. Sub-head 15 of section 92 expressly adds the imposition of punishment by fine, penalty, or imprisonment for enforcing any law of a province made in relation to any of the classes of subjects enumerated in the section; and sub-head 16 gives exclusive legislative power to the provincial Legislatures in all matters of a merely local character. Reading subsections 91 and 92 together, their Lordships entertain no doubt that the Summary Convictions Act was within the competence of the Legislature of British Columbia. It relates only to punishment for offences against the provisions of the statutes of the Province, and is to be read as if the provisions to this end were expressly declared in some such statute. No other conclusion would appear to be in harmony with the principle of construction laid down by the Judicial Committee in Attorney-General for Ontario v. Attorney-General for the Dominion (12 The Times L.R., 388; (1896) A.C., 348.).

Among the amendments to the Criminal Code contained in Chapter 25 of the Statutes of 1921, Section 1055a calls for attention. It provides that when an offender has been convicted of an indictable offence other than one punishable with death, a judge of the Court of Appeal may direct an application to that court for a revision of the sentence. Upon such application the Court considers the fitness of the sentence passed and may upon such evidence, if any, as it thinks fit to require or receive:—

(a) Refuse to alter that sentence; or

(b) diminish or increase the punishment imposed thereby, but always so that the diminution or increase be within

the limits of the punishment prescribed by law for the punishment of the offence of which the offender has been convicted; or

(c) otherwise, but within such limits, modify the punishment imposed by the sentence.

The report also refers to the Law of Bankruptcy, and to the law relating to copyright. These have also been dealt with by the Statute of 1921. The same remarks apply to the Amendment of the Exchequer Court Act, and to the Act to authorize the ratification and carrying into effect of the matters relating to the permanent Court of International Justice.

Marriage and Divorce.

In connection with the recommendation made by last year's Committee that uniform laws on the subject of marriage and divorce should be enacted by the Dominion Parliament and that the administration of such laws should be left to the Provincial Courts, your Committee think it interesting to note that in the Province of Ontario not less than one hundred divorces were obtained by Acts of Parliament during the session of 1921.

On the other hand, applications for such relief no longer come from the several provinces whose Courts have, by recent decisions of the Judicial Committee, been held to have jurisdiction to grant decrees of divorce.

Appeals and Appellate Courts.

Three recommendations made by last year's Committee upon this subject were referred back to this Committee for re-consideration.

These were:—

1. That the present right of appeal to the Privy Council should be maintained without the suggested limitations to constitutional questions.

2. That the Supreme Court of Canada should have its numbers increased with a view to the strengthening of that Court on the equity side of our jurisprudence and that the Court should be composed of an unequal number so as to avoid the occurrence of dismissals by virtue of equal division;

3. That the rendering of one judgment as the judgment of the Court, instead of individual judgments, should be adopted.

Your Committee consider that all these matters are of sufficient importance to deserve the careful consideration of all the members of the Association. For that reason, while inviting a full and free discussion at the conclusion of this report, they would respectfully deprecate any hasty conclusion arrived at after the somewhat rambling discussion which often takes place on such occasions. Objections have more than once been registered against a snap vote following a rather heated discussion, and your Committee are of a opinion that possibly the best procedure to adopt would be, after discussion, to refrain from pressing these questions to an immediate vote, but to adjourn the discussion so that the members may consider these matters in all their bearings until the next meeting of the Association. And your Committee entertain the hope that as a result of such discussion, those members who are interested in these important subjects will put their views in writing and publish them in time to allow their fellow members to understand their point of view.

LAW SOCIETY OF UPPER CANADA.

This name keeps alive the historic remembrance of the days when none but the few who had the larger vision ever dreamed of the "Province of Ontario" and the enormous Provinces and Territories to the West and North of it; nor of the various Law Societies and the comprehensive Canadian Bar Association that now seeks to bind together and unify the professional units that are now scattered through the vast Dominion that once were the un-united Maritime Provinces and Upper and Lower Canada.

These reminiscences arise in connection with that part of Upper Canada now known as Ontario. Until a short time ago a well known and respected member of the Bar of that Province was its representative head as Treasurer of the Society. We refer to the late John Hoskin, K.C., D.C.L., who passed away in October last. The vacancy caused by his death has been filled by the election of Hon. Featherston Osler, ex-Judge of the Ontario Appellate Court. No

better selection, and we think none so good, could have been made. Mr. Osler is a representative lawyer in the best sense. In his career at the Bar, and on the Bench, he was an ornament to the profession; a profound lawyer, faithful to duty, painstaking, patient and courteous, he gained the respect of all with whom he came in contact.

Dr. Hoskin became Treasurer in January, 1916. His predecessor was George F. Shepley, K.C., who was elected December 5th, 1913, dying January 16th, 1916. He succeeded Sir Aemilius Irving, who held office from May 20, 1895, until his death on November 27th, 1913.

BREACH OF PROMISE OF MARRIAGE.

The policy of our law which permits actions for breach of promise of marriage claiming damages as a solatium for wounded feelings has often been attacked, and Mr. Justice McCardie last week added his voice to those who condemn it. Rather more than forty years ago Lord Herschell (then Mr. Herschell) moved a resolution in the House of Commons in favour of abolishing the action altogether "except in cases where actual pecuniary loss has been incurred by reason of the promise, the damages being limited to such pecuniary loss." This proposition commended itself to the then House of Commons, but the motion has never been translated into an Act of Parliament, and, as everyone knows, the action continues to flourish. Most continental codes view the subject from the same standpoint as Lord Herschell's resolution, none, so far as we are aware, permitting an action for general damages. The German Civil Code is the most specific on the point. After enacting that no action on a contract of betrothal is maintainable for the specific performance of the marriage, and providing that any stipulation for the payment of a penalty in case of the non-completion of the marriage shall be void, it proceeds to deal with the state of things consequent on a breach of promise, and here we have Lord Herschell's proposition almost literally reproduced.—Law Times.

REVIEW OF CURRENT ENGLISH CASES.

Specific performance—Conditional offer "subject to title and contract" — Agreed terms embodied in draft contract — Verbal approval of contract by vendor—Contract not signed.

Coope v. Ridout (1921), 1 Ch. 291. This was an appeal from the decision of Eve, J. (1920), 3 Ch. 411 (noted ante p. 149); and the Court of Appeal (Lord Sterndale, M.R., and Warrington and Younger, L.JJ.) have affirmed his decision, that no formal contract having been signed, there was no enforceable contract.

Will—Construction—Devise—Gift over—Death without issue who attain twenty-one—Wills Act, 1837 (1 Vict. c. 26), s. 29— (R.S.O. c. 120, s. 33.)

In re Thomas, Thomas v. Thomas (1921), 1 Ch. 306. This was a case for the construction of a will whereby the testator gave freehold property to a niece absolutely, with a wish that it should not be sold and "if she should die without issue who shall reach the age of 21" it should go to a nephew. The testator died in 1906. The niece died in 1910. The nephew died in 1915. The point to be determined was whether the gift over in favour of the nephew was valid. Russell, J., held that it was not, because it was the intention of the testator to give the property over on failure of issue to attain 21, whether that event occurred in the lifetime or after the death of the niece. He therefore held that s. 29 of the Wills Act, 1837 (R.S.O. c. 120, s. 33), did not apply, and the gift over was void for perpetuity.

Husband and wife—Compromise—Reconciliation deed—Provision that deed was to be void in the event of either party "taking legal proceedings" for divorce—"Void"—Public policy.

In re Meyrick, Meyrick v. Meyrick (1921), 1 Ch. 311. In this case the construction of a reconciliation deed between husband and wife who had been living apart was in question. At the time the deed was made divorce proceedings at the instance of the wife were pending, and the deed in question

was made with the object of the parties renewing cohabitation, and contained a clause that in the event of either party thereafter taking legal proceedings for divorce the deed should be void and the trustees should hold the trust fund therein referred to for the wife. The wife, having brought an action for divorce, claimed that the deed was void and that she was absolutely entitled to the trust fund. On the part of the husband it was contended that until the Court could determine whether the proceedings were warranted, the trustees should hold the fund; but Russell, J., who tried the action, held that the fact of the proceedings being taken was sufficient, and that the wife was immediately entitled, and that the provision in question was not against public policy.

Easement—Right of way—Simultaneous conveyances by common owner to different persons—"Appurtenances"—Express grant—Contrary intention—Implied grant—Conveyancing Act, 1881 (44-45 Vict. c. 41), s. 6 (2), (4)—(R.S.O. c. 109, s. 15.)

Hansford v. Jago (1921), 1 Ch. 322. In 1911 the owner of a piece of land built four cottages upon it, leaving in the rear a strip of land upon which access could be gained by back doors made in the walls of the gardens in rear of the cottages, and through which doors the refuse from the cottages could be removed along the lane. The occupants of the various cottages had been thus accustomed to make use of the strip in the rear. In 1919 the cottages were put up for sale and sold separately, and simultaneously the owner conveyed the cottages to the respective purchasers, each conveyance covered that part of the strip in rear of each cottage. The purchaser of one of the cottages claimed to exclude the other purchasers from using that part of the strip in rear of his cottage, and brought the action for an injunction. Russell, J., who tried the action, was inclined to the opinion that in the circumstances there was an express grant of an easement over the strip to each purchaser under the word "appurtenances" in the deed, or by virtue of the Conveyancing Act, 1881, s. 6 (2), (4) (R.S.O. c. 109, s. 15 (1)), or at all events there was an implied grant of it as it had existed and had been used by the occupants of the cottage up to the time of sale. The action was dismissed.

Company—Winding up—Assignee of part of debt—"Creditor"—(R.S.C. c. 144, ss. 4, 12.)

In re Steel Wing Co. (1921), 1 Ch. 349. This was an application on behalf of the assignee of part of a debt due by a company to wind up the company. Laurence, J., held that the applicant, though not having a legal right to the part of the debt assigned, had nevertheless an equitable right thereto, and was pro tanto a creditor in equity and as such competent to apply for a winding up order without joining the assignor; but he also held that without the concurrence of the owner of the other part of the debt he could not make an effective demand for payment (see R.S.C. c. 144, s. 4), and therefore must establish the company's inability to pay its debts by some other means.

Company—Objects and powers of company—Chemical manufacturers — Grant for scientific research — "Incidental or conducive" to the main object—Ultra vires.

Evans v. Brunner (1921), 1 Ch. 359. This was an application to restrain a company from making a grant for purposes alleged to be beyond its corporate powers. The company was formed for the manufacture of chemicals, and inter alia by its memorandum of association was empowered to do all such business and things as may be incidental or conducive to the attainment of the main objects or any of them. At an extraordinary meeting the company passed a resolution authorizing the directors to distribute to such universities or other scientific institutions in the United Kingdom as they may select for the furtherance of scientific education and research the sum of £100,000 out of invested surplus reserve account. It was claimed that this was ultra vires of the company. Eve, J., who heard the motion for an injunction was satisfied from the evidence adduced that it was essential to the successful carrying on of the company's business that the proposed expenditure should be made, and that the advantage to be derived therefrom to the company were direct and substantive and not too speculative or remote, and he therefore refused to make any order on the motion.

Company—Winding up—Surplus of assets—Right of preference shareholders to participate in surplus assets.

Anglo-French Music Co. v. Nicoll (1921), 1 Ch. 386. The question in this case was whether preference shareholders were entitled to participate with ordinary shareholders in the division of the surplus assets of a company in the event of it being wound up. By the memorandum of association the capital was divided into ordinary and preference shares, and it was declared that the preference shares should entitle the holders thereof to a fixed cumulative dividend of 7 per cent. on the amount for the time being paid up thereon; and to the repayment of capital before any dividend was paid on capital repaid to the holders of ordinary shares, and to a further dividend calculated as therein mentioned. The company had power to increase its capital and was desirous of doing so, and applied to the Court for the construction of the clause in its memorandum above referred to. Eve, J., held that under the clause in question the company could pay dividends on the ordinary share capital subject only to the fixed cumulative dividend of 7 per cent. and the further specified dividend on the preference shares; and that in the event of a winding up the preference shareholders would be entitled to participate pari passu with the ordinary shareholders in any surplus assets. On the latter point he followed In re Espuela Land & Cattle Co. (1909), 2 Ch. 187, and In re Fraser & Chalmers, Ltd. (1919), 2 Ch. 114, in preference to In re National Telephone Co. (1914), 1 Ch. 755.

Corporation—Royal charter—Confirmation by statute—Regulations proposed exceeding powers of corporation—Ultra vires—Injunction—Right of member.

Jenkin v. Pharmaceutical Society (1921), 1 Ch. 392. This was an action by a member of the defendant society to restrain it from carrying out certain proposed regulations which it was alleged were ultra vires and might result in the society's charter being cancelled. The society was incorporated in 1843 by Royal Charter, subsequently in 1852 confirmed by Act of Parliament, for the purpose of advancing chemistry and pharmacy and promoting a uniform system of education of those who should practise the same,

and for the protection of those who carried on the business of chemists and druggists. By the regulations objected to it was sought to regulate (a) the hours of busines o. members, (b) the wages and conditions of employment between masters and employee members of the society, (c) the prices at which members should sell their goods, and (2) the expenditure of the funds of the society in the formation of an industrial council committee for (amongst others) the abovenamed objects, which would in effect convert the society into a trade union, and (3) the insurance of members generally against insurable risks. Peterson, J., held that these objects were not within the purposes or powers of the society, and that a private member was entitled to bring an action to restrain the society from committing such an act, and he accordingly gave judgment in favour of the plaintiff.

Bankruptcy—Disclaimer by trustees of shares subject to charge — Bankrupt's name still on register—Right of bankrupt to vote for mortgagee—Bankruptcy Act, 1914 (4-5 Geo. V., c. 59), s. 54.

Wise v. Lansdell (1921), 1 Ch. 420. In this case a bankrupt was owner of certain fully paid up shares in a limited company, which he had charged in favour of one Williamson, to whom he handed the certificates and a blank transfer and had subsequently given equitable mortgages thereon to other persons. The trustee in bankruptcy disclaimed all his interest in th shares under s. 54 of the Bankruptcy Act 1914. The bankrupt's name remained on the register as the owner. At a meeting of shareholders the bankrupt claimed the right to vote on the shares standing in his name. The chairman refused to accept his vote. The action was brought to declare certain resolutions passed by the meeting invalid on the ground of the rejection of the bankrupt's vote. It did not appear whether or not he was voting or intending to vote in accordance with the views of the mortgagees of the shares. Astbury, J., held that the vote had been improperly rejected, and that so long as th bankrupt's name remained on the register he was entitled to vote in respect of the shares as representing his mortgagees. It may be remarked that the provisions of s. 54 of the English Bankruptcy Act do not appear to have been adopte in the Canadian Act.

Railway company—Refreshment rooms—Option of renting—Assignability of option—Uncertainty—Ultra vires.

County Hotel and Wine Co. v. London and North Western Ry. (1921), A.C. 85. This was an appeal to the House of Lords from the Court of Appeal (1919), 2 K.B. 29 (noted ante vol. 55, p. 316). The action was to enforce an option contained in a lease made by the Railway Company, of which the plaintiffs were assignees. The lease contained an option to the lessees to lease certain refreshment rooms at one of the defendant's stations. McCardie, J., who tried the action, dismissed it, on the ground that it was ultra vires of the company to give the option, and even if it were not, the agreement was void for uncertainty. The Court of Appeal affirmed his decision on the grounds that in their opinion all that the alleged option meant was that if the Railway Company were decided to lease the refreshment rooms to anyone, the occupier of the plaintiff's hotel should have the option of becoming the lessee. Their Lordships (Lords Haldane, Cave, Shaw) affirmed the decision of the Court of Appeal, but Lords Moulton and Finlay dissented.

Policy — Warlike operations — Loss of ship — Navigating without lights under orders of Admiralty.

British S.S. Co. v. The King (1921), A.C. 99. This was an appeal to the House of Lords from the decision of the Court of Appeal (1919), 2 K.B. 670 (noted ante vol. 56, p. 114). The question was whether a loss occasioned to a ship by reason of its being navigated without lights by order of the Admiralty was a loss due to "warlike operations." The Court below held the negative, and their Lordships (Lords Cave, Atkinson, Shaw, Sumner and Wrenbury) affirmed the decision.

Landlord and Tenant—Lease—Forfeiture—Breach of covenant—Waiver—Acceptance of rent—Waiver required to be in writing.

The King v. Paulson (1921), A.C. 271. This was an appeal from the judgment of the Supreme Court of Canada. And the question was whether a mining lease had been forfeited, or whether the alleged forfeiture had been waived by the

subsequent acceptance of rent. The lease in question was made in 1904, and thereby the lessee covenanted to commence mining operations within a year and to work a mine within two years and thereafter continuously unless excused by the Minister of the Interior. The lease provided (1) that no waiver of any breach should take effect unless it was in writing, and (2) that if the lessee failed to perform any covenant therein contained which had not been waived, the Minister might cancel the lease. The lessee did not commence mining operations as covenanted, but down to the year 1909 the lease was periodically extended, and the rent, which was payable annually in advance, was accepted. In July, 1909, the lessee paid a year's rent, and it was accepted conditionally, pending the decision upon the application of the lessee for a further extension of time. In September, 1909, the Minister wrote to the lessee's solicitors stating that the lease "had been cancelled" and that the year's rent would be returned. The extension of time until 1 February, 1909, to begin operations was granted by letter of 25 November, 1907, and was, as their Lordships held, tantamount to a waiver in writing of all breaches of the lessee's covenants of which the writer was aware at the time it was written, and the subsequent receipt of rent, though accepted conditionally, their Lordships held, precluded the Crown from forfeiting the lease. Their Lordships were, moreover, of the opinion that the terms of the letter of cancellation were not within the terms of the lease inasmuch as under the clause the notice was intended to be the operative instrument, and the letter did not in terms cancel the lease, but merely stated that it "had been cancelled," and further that there was no evidence that the solicitors were authorized by the lessee to receive any such notice. The decision of the Supreme Court of Canada was therefore affirmed by the Judicial Committee (Lords Haldane, Buckmaster, Cave, Dunedin and Atkinson).

Municipal corporation—Power to establish public baths and washhouses—New scheme—Ultra vires.

Attorney-General v. Fulham (1921), 1 Ch. 440. This was an action against a municipal corporation to restrain it from an alleged ultra vires act. By a statute the defendant corporation was empowered to establish public baths and wash-

houses, and acting under the Act did establish washhouses where people could wash their own clothes. It was proposed in lieu of this scheme to establish a system whereby the corporation would by its servants collect, wash and return clothes to their owners. Sargant, J., held that this was not authorized by the Act in question, and granted an injunction against the defendant carrying it on.

Service out of jurisdiction—Libel action—Injunction—Irish Rule Ord. XI., r. 1 (g)—(Ont. Rule 25 (f).)

Dunlop Rubber Co. v. Dunlop (1921), A.C. 367. This was an action brought in Ireland against a company whose principal place of business was in England to restrain the defendants from publishing in Ireland advertisements containing pictures of the plaintiff calculated to expose him to public ridicule. The plaintiff had invented a pneumatic tyre and had assigned the invention to the defendant company, and the pictures complained of were used as advertisements of the tyre. The House of Lords (Lord Birkenhead, L.C., and Lords Atkinson, Moulton and Buckmaster), on appeal from the Irish Court of Appeal, held that the service of the writ on the defendants out of the jurisdiction had been properly allowed.

Agreement for reduction of rate of interest on punctual payment—Construction—Estoppel.

Maclaine v. Gatty (1921), A.C. 376. This was an appeal from the Scotch Court of Session. The case turning upon the construction of a bond for the payment of money which provided for the payment of interest at 5 per cent. on the 1st day of February, May, August and November in each year, but that on punctual payment the interest should be reduced to four per cent. By a letter of April 29, 1918, the lenders demanded payment of the instalments of interest due on Feb. 1 and May 1, 1918, respectively, and stated that unless the interest were in future punctually paid interest at the rate stipulated for in the bond would be exacted. On May 13 payment at the lower rate for the two quarters was paid and accepted without objection. On August 7 the borrower sent a cheque for the instalment due on August 1

at the lower rate, which was rejected. The House of Lords (Lord Birkenhead, L.C., and Lords Finlay, Dunedin, Atkinson and Shaw) held that the lenders were entitled to insist on the higher rate and were not estopped by their conduct from insisting on their strict rights under the bond.

Riparian proprietors—Right of riparian owner to embank against flood—Injury to neighbour's land caused by embankment.

Gerrard v. Crowe (1921), A. C. 395. This is an appeal from the Court of Appeal for New Zealand. The plaintiff and defendants were owners of land on the opposite sides of a river. When the river was in flood it was apt to overflow its banks and flow over their respective lands, but the water ultimately found its way back to the river. In order to protect his land from being flooded, the defendant constructed an embankment which protected the defendant's land from being flooded, but had the effect of diverting a larger quantity of water on to the plaintiff's land, and he claimed damages and an injunction, which the Judge at the trial granted, but which the Court of Appeal set aside and dismissed the action. The Judicial Committee of the Privy Council (Lords Cave, Moulton and Phillimore) affirmed the decision of the Court of Appeal, being of the opinion that, as it was not proved that any flood channel was obstructed, or even existed, or that there was any ancient or rightful course for the flood waters which the defendant had diverted, the plaintiff had no cause of action.

Lawyers Lyrics

MANBY v. SCOTT.

1 Lev. 4; 1 Sid. 109.

The trouble all began one day,
When fickle Lady Scott
Made up her mind to run away,
And did it on the spot.

She did not ask her husband's leave,
But took her own without it—
A rather hard thing to believe;
However, it's undoubted.

Twelve years in all she stayed abroad
Beyond the day she flitted,
And then repentant homeward trod
And asked to be admitted.

Not only did her husband say
That he would not receive her,
But also he declined to pay
A penny to relieve her.

He cautioned all the tradesmen not
To give her any credit;
To Mr. Manby also Scott
Particularly said it.

But Manby knew a thing or two,
At least he thought he did,
And fitted her out all anew;
The bill was forty quid.

And, though he tried, he never got
A bit of satisfaction
Out of the stubborn fellow, Scott;
And so he brought the action.

The jury found the things she bought
Were such as she should wear,
Considering her rank; and thought
The prices, too, were fair.

In Term the law was found so nice
The Judges were divided;
And, though the case was argued thrice,
It still was undecided.

The Judges of all England then
Came in for consultation,
And all the law received again
Mature consideration.

Troysden and Mallet thought the wife
Could buy wh[illegible]she might need
To clothe her, ar[illegible]preserve her life;
And Tyrrel, J., agreed.

But Wyn[illegible]am said, "Upon my life
It put [illegible]e in a fury
To think a man should have his wife
Apparelled by a jury;

"She, like a hawk, might fly at will
And seize upon her prey,
And leave him just to foot the bill
Without a word to say.

"The mercer, gallant and the wife
Could thus combine to cheat him;
Again, I say, upon my life,
That's not the way to treat him."

And Foster, Bridgman, Hale and Hide,
And three more of their brothers
Were all upon the husband's side,
And so outweighed the others.

So Manby lost his wares and case,
And all of the expenses,
And found a Court of Law the place
To bring him to his senses.

Now, all who deal with wandering wives
Disgruntled with their lot,
Should regulate their business lives
By Manby versus Scott.

—E. D. A.

Book Reviews

The Law and Practice in Bankruptcy, comprising the Bankruptcy Act, 1914; the Bankruptcy Rules and Forms, 1915; The Debtors Acts, 1869, 1878, with Rules and Forms; The Deeds of Arrangement Act, 1914; The Deeds of Arrangement with Rules and Forms, 1915, and the Orders thereunder. By the Right Hon. Sir Roland L. Vaughan-Williams, Knt., late a Lord Justice of Appeal, and Edward William Hansell, M.A., a Bencher of the Inner Temple. Twelfth Edition by Wintringham Norton Stable, M.A., of the Middle Temple, Barrister-at-Law. London: Stevens and Sons, Limited, 119 and 120 Chancery Lane; Sweet and Maxwell, Limited, 3 Chancery Lane; Canada Law Book Company, 84 Bay Street, Toronto, Sole Agents for Canada. 1921.

The above, as our readers are aware, is the great English work on the Law and Practice in Bankruptcy. It was originally produced by one of England's greatest lawyers, and has now reached a 12th edition. There has been but little change in the English statutory law on this subject, but the numerous cases decided since the previous edition has warranted the present compendium, which now has swollen to a volume of 1,016 pages.

We of this Dominion are now again paddling our little canoe in the troubled waters of insolvency, and will be glad of any assistance for our new venture as set forth in the

Dominion Statutes of 1920, in the Act which came into force on July 1st of this year.

Our enactment of 1920 was based on the English Bankruptcy Act of 1914. Our rules also are largely taken from those in force in the mother country. This was the third attempt made by the Dominion Parliament to give a reasonable measure of relief to the mercantile and grading community, and it was hoped that at last we should have something more seaworthy than what was given by the legislature of 1869, and again in 1875. It is, however, stated that the present Act is not satisfactory to the general sense of the profession, nor to the banking community, so that further legislation is probable next session, and it will be remembered that there were some amendments last session by Geo. V., chap. 17. The profession is indebted to Mr. J. A. Cameron, M.A., K.C., Master-in-Chambers of the Supreme Court of Ontario, for the first elucidation of our Act, and it is excellent so far as its limits extend.

There has naturally been little litigation since the Act came into force; and the printers' strike has, in this and other matters, been responsible for the darkness that has overshadowed the legal horizon. When this disperses we shall, in the course of time, with the assistance of Mr. Stable, Mr. Cameron and others, hope to know all that need be known about the Law and Practice in Bankruptcy.

Browne and Watts' Law and Practice in Divorce and Matrimonial Cases, ninth edition, incorporating Oakley's Divorce Practive. By J. H. Watts, of the Inner Temple and the South-Eastern Circuit, Barrister-at-Law. London: Sweet & Maxwell, Ltd., 3 Chancery Lane; Stevens & Sons, Ltd., 119 and 120 Chancery Lane; Canada Law Book Company, 84 Bay Street, Toronto, Sole Agents for Canada. 1921.

The study of divorce law will soon become imperative for lawyers in most of the Provinces of the Dominion, unless indeed the progress of legislation in that direction is checked by some of the great religious bodies who will make a strong fight to prevent divorce going any further. Whether this is or is not desirable does not at present concern us. We are

only now desirous of calling the attention of the profession to an old, and now a new treatise on the subject.

It would be a waste of time and space to critically examine and report on the work before us. It has already made its reputation in England, and a ninth edition is a sufficient indication of what the profession think of it.

The various statutes governing divorce and matrimonial law and the rules in force in the Court which deals with these matters are given in full at the end of the volume.

Bench and Bar

APPOINTMENTS TO OFFICE

Hon. Humphrey Mellish, Judge of the Supreme Court of Nova Scotia, to be local Judge in admiralty for the Admiralty District of Nova Scotia.

Tecumseh Sherman Rogers, of the City of Halifax, K.C., to be a Puisne Judge of the Supreme Court of Nova Scotia. (November 25.)

Joseph Willis Margeson, of the City of Ottawa, Ontario, K.C., to be a Judge of the County Court of District No. 2, in the Province of Nova Scotia. (December 1.)

Flotsam and Jetsam

MINISTER OF JUSTICE IN ENGLAND.

It was suggested some time ago that work similar to that done in Canada by the Minister of Justice might beneficially be entrusted to a departmental head in England under a similar title. The proposition recently came before the Provincial Meeting of the Law Society at Scarborough, England, and was dealt with by the President in his opening address. He recommended that the Lord Chancellor should remain as at present Minister of Justice, and that his secretarial staff should be increased as it might be necessary. Probably no change will be made there, at least at present, especially as the Lord Chancellor and Lord Haldane have spoken against the proposal.

ANALYTICAL INDEX