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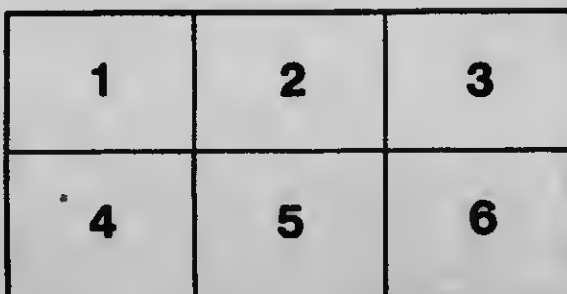
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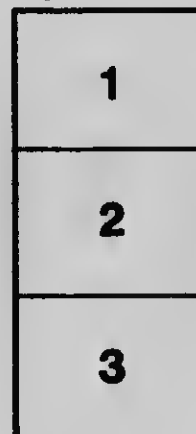
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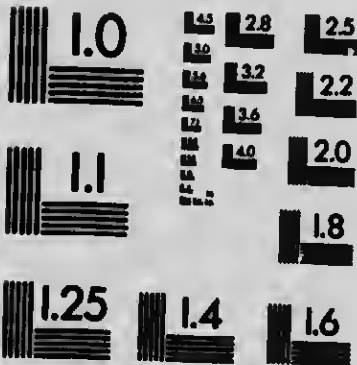
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**ADDRESS BY**  
**Right Honourable VISCOUNT CAVE**  
at the  
**Fifth Annual Meeting**  
of the  
**Canadian Bar Association**  

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**Ottawa, September 1st, 1920**



## ADDRESS BY RIGHT HONOURABLE VISCOUNT CAVE

OTTAWA, SEPTEMBER 1ST, 1920

Your Excellency, Mr. Chairman, Ladies and Gentlemen:-

I should like first to say that I have felt it a great pleasure, as well as an honour, to be invited to attend this meeting of the Canadian Bar Association and to give you an address.

To be on Canadian soil is itself a delight. For me—as for most Englishmen—Canada, with her wide spaces, her fertile plains, her lakes and rivers, her people, her history, her romance, has a special appeal. The early struggles of the Canadian settler against wild nature and untamed man; the expansion, first slow and arduous, hut afterwards rapid almost beyond belief, of the area under his control; the growth of a small community into a nation destined for greatness, as settlement grew into colony and colony into Dominion; the business enterprises which, with a population relatively small, has produced factories humming with work, agricultural areas bearing grain for the use of the world and great railway systems linking East with West; and, above all, the wise moderation which has blended two races into that union which is strength—that is the story which fills us in the Motherland, not with interest only, hut with pride that we and you are members of one Commonwealth.

But if this was our feeling before the War, you can imagine how much deeper and more vibrant the sense of brotherhood has been rendered by that great event. For us the War, in which the very existence of our land and the safety of all that we cared for were at stake, was as the uprooting of our lives, was for the time being the only thing that mattered. Who was with us was as the gods, who was against us was leagued with the powers of evil. And from the beginning to the end Canada was with us heart and soul. The initiative and the decision came from her. In the early days of August, 1914, she offered to send troops. In a few weeks 30,000 of them were on the high seas. Before the War ended they grew towards the half million; and Ypres and Vimy Ridge and many another gallant struggle shewed that Canada had sent us not numbers only but MEN:—

They saw with brighter vision  
The Empire's direst need;  
They came with swift decision  
To do the utmost deed;

and the memory of those days and of the hurden which we bore  
and of the victory which we won together will last as long as time.

Let me add that I am glad too to meet so many members of the Canadian Bar. We are not altogether strangers to one another; for at intervals during the last two years I have seemed though bodily present at the sittings of the Privy Council in London, to be living in a Canadian atmosphere. The sturdy comhativeness of the corporations of Ontario, the courteous but firm insistence of the Province of Quebec on her rights, will, in an assembly of lawyers, receive nothing but approval; and to me they have brought this great advantage, that through them I have made the acquaintance of many able members of the Canadian Bar whose arguments have persuaded or coerced the Board into giving (as is its custom) the right decision. I am glad indeed to meet them here once more.

In looking around for a subject which we lawyers might discuss together on this occasion I found it difficult wholly to get away from the War, and it occurred to me that it might interest you if, for a short time, I dwelt on some of the legal aspects of that event, and that such a review might even be of some use for future reference. As a Law Officer in the early part of the War, and afterwards until the Armistice was signed as Secretary of State, I saw the War under many aspects more or less closely connected with our profession, and I propose to speak of some of them, taking care, first to avoid telling any secrets which ought not to be told, though there are few of these left, and secondly, to keep away from ground which was covered in so interesting a fashion by my noble friend, Lord Finlay, last year.

And first, as a lawyer, I cannot resist the temptation to say something of the part which our lawyers, whether solicitors, barristers or judges, bore in the War. I do not refer only to their share in the fighting, which was splendid. Every man who could go went; and if their practice went to pieces and for good, they let it go. Many, very many, gladly gave their lives; and to them may fitly be applied that stirring sentence uttered by Rudyard Kipling in his address to the Edinburgh students:—

“They willingly left the unachieved purpose of their lives in order that all life might not be wrenched from its purpose, and without fear they turned from the open gates of learning to those of the grave.”

But those whose hard lot it was to stay behind were eager to make their contribution too. The Inns of Court Volunteers (familiarily referred to as the “Devil’s Own”) became an Officers’ Training Corps and I believe that over 5,000 officers were trained at their headquarters.

Of our judges, Lord Haldane put his trained intelligence and his experience of military organization at the disposal of the War Office, Lord Moulton gave his great scientific knowledge and organizing power to the study and manufacture of explosives,

Lord Sumner rendered invaluable service on the Reparation Commission, Lord Sterndale was Chairman of the Dardanelles Commission, Sir Henry Duke presided over the Compensation tribunal which was known by his name, Lord Justice Young over a Committee dealing with prisoners of war, and Mr. Justice Sankey over Committees on aliens and on the mines. There were other judges and lawyers above military age who undertook like duties for war purposes, many of them arduous and irksome and (so far as the public were concerned) largely unknown and unrecognized—cannot be counted; and indeed you could not, in those days, enter a Government office in London without running into some distinguished jurist who was quietly but strenuously working there for his country. No doubt your experience here was the same and I think that our profession has no reason to be ashamed of its part in the organization of the Empire for War.

In the next place let me refer to the War Emergency legislation in Great Britain. It ran into volumes, which will form a mine of information for the historians. The long chain of statutes, Order in Council, regulations and Proclamations shows how large a part the legal armoury played in the conflict.

Of the Military Service Acts and their attendant Orders I need not speak to you at length, for you were prompt and resolute in adopting that compulsion of military service which we adopted just in time and without which the War must have been lost. Of course there were doubtful problems and hard cases. Among the former was the competition between the Army Council, who naturally wanted the best men for military purposes, and the Ministry of Munitions and other Government Departments, who, quite as naturally, objected to have the munition factories, the mines and the farms denuded of their best hands. Ultimately the decision was entrusted to a Ministry of National Service; and in case of serious dispute, the Cabinet decided. Among the hard cases were those of the one man business which (it was said) would perish if the owner went to the War and the widow's son, his mother's sole support. Such questions as these too difficult and poignant to be solved by general administrative rules, were left to the discretion of voluntary local tribunals, which (with some notorious exceptions) did their work fairly and firmly. I am not sure whether that strange being, the Conscientious Objector, emerged in any force here. He was ever with us and, while I was at the Home Office, he was among the most difficult of our problems. On the one hand, there was the statutory imperative to serve based on clear duty and the national need, and, on the other, the plea of the individual—often genuine though quite unintelligible to the plain man—that while his own home was in dire peril his conscience bade him leave to others the task of defending it. The claims to exemption on conscientious grounds were dealt with by the local tribunals;



but there followed the more difficult problem, how to deal with men who had failed to satisfy the tribunals that they were genuine Conscientious Objectors but who still refused on the plea of conscience to conform to military discipline. For a time it was left to the military authorities to enforce the law, but the question soon arose whether the extreme penalty of death, the ultimate sanction of military discipline, should be exacted, and this was determined in the negative. From that time offenders of this class were handed over to be dealt with by the civil arm, and went to prison, where many of them by hunger striking and otherwise gave us as much trouble as they could. We got through somehow; but if (which God forbid) War on a great scale should break out again, this problem will have to be faced from the beginning and solved on clear lines.

In the same unhappy contingency, another and a different question connected with compulsory service will also require timely consideration. Was it right that, while our soldiers bore the burden of the trenches and hazarded life and limb in the firing line upon a mere subsistence allowance, those who remained at home for the purpose (no doubt equally indispensable) of making munitions and performing other works of national importance, should be allowed to exact a large and constantly increasing wage? The conception of compulsory national (as distinct from military) service did not take shape with us until we were approaching the end of the War; but our successors may wonder why this generation failed to evolve some scheme which would have put the soldier and the home worker upon more equal terms.

Now let me say something about another form of Emergency Legislation—The Defence of the Realm Acts, sometimes compendiously referred to under their initials as D.O.R.A. or more affectionately as DORA. DORA has been the butt of much harmless humour, but I often wonder where we should have been without her. The first Defence of the Realm Act authorized His Majesty in Council to make regulations "for securing the public safety and the defence of the Realm"; and provision was made for the summary punishment of offences against the regulations so made. The Orders in Council made under these statutes were numerous—I think they numbered about 100—but of course they were consolidated from time to time—and they covered in time almost the whole area of action in the United Kingdom calculated to help or impede us in the War. The regulations were not confined to matters immediately connected with defence and national safety, such as the acquisition of property required for defence against invasion or for the manufacture of munitions, the protection of naval, military and munition areas against undue curiosity, the supply of information to the enemy, the control of persons of hostile origin or associations

and the prevention of seditious speeches and publications. They went much further and empowered the Admiralty or Army Council to appropriate or control factories, to take possession of materials useful in the War such as hay, wool or flax, to use patented inventions, to control the production and supply of food of all kinds, the making and selling of bread, the malting of barley, the felling of timber, and the disposal of securities, and to take command of the mining, railway, canal, shipping and liquor industries. They even condescended upon such smaller matters as the rearing of pheasants, the holding of race meetings or dog shows, the supply of cocaine, the lighting of vehicles, and (to the relief of all London) the whistling for cabs. Is it surprising that DORA became something of a legendary figure and appeared to dominate for good or evil the daily life of the people? But in fact the despotism was a benevolent one; and had all the matters been left in wartime to the mercy of competition and private caprice, the War must have been prolonged and the nation must have suffered. When, therefore, you think of DORA, imagine her, not as a malignant tyrant, but as a kindly if somewhat grandmotherly matron who if she chastised us did so for our own good.

Apart from the Defence of the Realm Acts there was much other special war legislation. The prohibition of trading with the enemy, which is part of our common law, was defined and extended by proclamation and statute, and in this connection the "Black list" to which Lord Finlay referred last year—the list of enemy agents trading under neutral or friendly colours—was of great service. The great prize court case of the "Kinj" in which Lord Finlay and I were on opposite sides, illustrated several phases of this much discussed question. The suspension of patents and trade-marks registered in the names of enemy subjects was dealt with by legislation. The law intervened to suspend remedies for debt, to postpone the maturity of obligations, to protect tenants from eviction and mortgagors from foreclosure, to limit the production and consumption of intoxicants, and (a difficult task) to limit war profits. As to liquor control I will say nothing here lest I should arouse the stimulating controversy which hovered over the recent meeting of the American Bar Association and found a place in most of the speeches delivered at that interesting gathering. There is no doubt that the excessive consumption of intoxicating liquors and the consequent convictions for drunkenness decreased during the War, but, whether as a consequence of State Control or because many diligent consumers of liquor in peace time were better employed elsewhere, is a matter still debated among us. As to the Acts against profiteering, I doubt whether they were a success, but at least they were evidences of good intentions.

You will see that the field of war legislation was very wide,

and, in view of the manifold activities of the law making authority, it could hardly be said that "inter arma silent leges."

Passing now from legislation to other matters interesting to a lawyer, I should like to say a few words about our Press Bureau. It was organized very early in the War by Mr. F.E. Smith (now Lord Birkenhead) and afterwards passed under control of Mr. Stanley Buckmaster (now Lord Buckmaster), Lord Birkenhead's able predecessor on the Woolsack. There was no censorship of the press, no obliteration of columns or passages and (except in a few flagrant cases of falsification or sedition) no seizure or suppression of newspapers. The obligations of the press were defined by the Defence of the Realm Regulations, and were enforced by prosecution, but the Press Bureau was always ready to furnish accurate information, to give sound advice as to the advisability from a public point of view of publishing any submitted matter, and to lay down rules for the guidance of the press. In only one category of printed matter, that of leaflets issued for the purpose of propaganda, was the imprimatur of the Bureau required. Truth to say, press men in war time were no less patriotic than other loyal men, and (speaking generally) were ready and willing that the publication of news and comment should be governed by a regard for the national interests.

In one field only there was a real and active censorship. Letters and telegrams were censored, mainly by the military authorities, to an extent hitherto unknown even in War. In the complexity of modern life, where spies, enemy traders and hostile propagandists find a ready instrument in the post, supervision was a necessary evil; and it was patiently borne. The staff employed in this work numbered, I think, about 4,000, and included experts in every language and in the detection of every form of cypher or of secret writings. The results were commensurate with the effort made. I remember how often it happened, when I was Chairman of the Contrahand Committee, that material obtained by the Censor assisted in the identification of cargo intended for the enemy; and the government control of the telegraphic system and the wireless stations was of paramount importance. Further, many apparently hum-drum communications on business or family matters were found on being tested to contain less innocent matter interlined in some invisible ink. Sometimes such discoveries led to immediate arrest. In other cases, after being read and photographed, they were closed down again and forwarded to their destination in order that the replies might receive a like attention; and more than one enemy agent rendered unconscious service to the British Government in this way. In one case a spy had been for some months under lock and key before his principals in Germany grew suspicious and desisted from furnishing him—and us—

with useful information in ink which under skilled treatment ceased to be invisible. Let me add that our Intelligence Departments, Naval, Military and Police, worked loyally together and in the contest of intelligence I do not think that Great Britain took a low place.

This leads me to say something about enemy spies, as to whom there was always a good deal of loose talk. Most of the spy stories were sheer nonsense; and I remember that in one short period 1,000 such stories were closely investigated by the police and were found to be groundless. No doubt there were German spies in England in 1914; Steinhauer's espionage department initiated in 1905 and continued down to the War, saw to that. But most of them were known to us and were quietly arrested and interred on the 4th of August, with the result that the German Intelligence system broke down and the passage of the first Expeditionary Force to Belgium was undisturbed. Of the other spies arrested in Great Britain, nearly all were caught in the first month or so of the War; about 30 were convicted and sentenced, and about 12—not including any woman—were executed. Of the other alien enemies in the United Kingdom who were not spies, by far the greater number were interned or deported; and although there was much grumbling because the remainder of them (mostly hairdressers, governesses and other small folk) obtained from Committees formed for that purpose exemption from internment, I know of no single case in which a person so exempted was proved to have committed acts of sabotage or to have given assistance to the enemy.

The checks on immigration and naturalization which were imposed during the War have to a great extent been continued since peace was signed; and I doubt whether the happy-go-lucky system under which England admitted anyone and everyone to her shores and converted Germans and Russians (many of them unable to speak the English language) into British citizens with little enquiry and few or no safeguards, will ever be restored. Naturalization is an Imperial question and I trust that the conversations on this matter that were commenced at the last Imperial Conference will lead us all to a wise solution.

The Prisoners of War in the United Kingdom were divided into two classes. The military prisoners were, of course, in the care of the Army, and those who escaped from that custody could be counted on one hand. The internment of civilians was under the control of the Home Office, and of those so interned a large number were confined in the Isle of Man, and were safer there than in Germany. Some thousands were employed in useful manufactures under Government control, and these were perhaps the least to be pitied of this unhappy class.

The British prisoners in enemy hands were, of course, a source of deep anxiety to us all. Of these the most fortunate

were those in Austrian hands, who, speaking generally, were not badly treated. The ignorance and neglect of the Bulgarian and the cruelty and inefficiency of the Turk rendered captivity in their hands a dreadful and often perilous experience, and I remember with how much relief the Committee responsible for their repatriation after the Armistice heard of the release of those who had survived. As to the treatment of British prisoners in Germany, I had special opportunities of forming an accurate judgment; for, in the summer of 1918, I went on a mission to the Hague for the purpose of negotiating an agreement as to their treatment and exchange. I believe that in the German mines—especially the salt mines—and (alas!) in some but not many German hospitals, our men suffered great hardships; and also that many British prisoners who should have been sent immediately after capture to the Prisoners' Camps were improperly retained for work behind the German lines with lamentable results. The treatment of prisoners in the Prisoners' Camps in Germany varied according to the character of the Commandant; and while in some Camps—notably those in the Tenth Army District—there were many instances of brutality or neglect, the conduct of other Camps afforded little ground for complaint. Among the many breaches of the rule that prisoners of war should be humanely treated one of the worst on record was the so called "punishment march" of some hundreds of British prisoners under vile conditions to a collection of exposed and insanitary hovels on the frozen Russian border, which ended in the death of many of the men and in lifelong injury to others. I shall not forget my talks with some of these gallant men in the hospitals at the Hague; and although I am not by nature revengeful, I hope with all my heart that a heavy punishment may yet fall upon those who were responsible for that outrage upon humanity.

It is right to add, first, that the Berne and Hague Conventions did, in my opinion, have a beneficial effect upon the treatment of prisoners by Germany; and secondly, that the British people owe a deep debt of gratitude both to Holland and to Switzerland for their kindly reception and care of the British prisoners (many of them wounded) who were interned in those countries or who passed through them on their return to the United Kingdom. I was at the Hague when some contingents of these men arrived there from Germany on their exchange. It was one of the most moving sights I have ever witnessed; and I remember that I did not please the diplomats at the Hague by saying that these prisoners appeared on leaving Germany to have emerged into the upper air. The Germans were annoyed to have the Fatherland compared even indirectly with the lower regions, but I still think that Holland may have seemed by comparison to be an earthly paradise.

But I must pass on, and will say a few words only on the

question of Contraband. I am strongly in agreement with the opinion expressed by Lord Finlay that when, at the commencement of the War, the British Government adopted the Declaration of London as their guide, they fell into error. And it is fortunate that, under the pressure of hard facts, the error was in time repaired. The fact is that nowadays when not armies but whole nations make war, and when success or failure depends as much upon the national spirit as upon prowess in arms, meticulous rules as to what is absolute and what is conditional contraband, or as to what is or is not a continuous voyage destined for the enemy, simply will not work. I remember the day when first a cargo of food intended for Germany was seized and held as prize, and the day when the same fate first overtook a cargo of cotton. If we had been bound by the Declaration of London it is probable that neither could have been seized. Both were detained and rightly detained, and action of that class helped to win the War. In saying this I do not intend for a moment to depreciate the value of the established rules of International Law or of well considered agreements operating in wartime. England kept her agreements and observed all the rules by which she was bound. Even Germany kept some of them; and there was no belligerent nation which did not pay at least a verbal homage to the principles of international law. It cannot be denied that those principles suffered in the War a partial eclipse; but I still think they were of service. I hope and believe that with the advent of a more reasonable spirit and under the fostering influence of the League of Nations they will speedily renew their strength; and I can conceive of no better augury than the agreement recently framed at the Hague for the establishment of a permanent Court of International Justice.

I am reaching the end of my somewhat desultory discourse, and I desire only to refer to one further aspect of the War, namely, its effect upon the constitutional relations between the Old Country and the Dominions. For a generation some of the ablest statesmen of the time—Rosebery, Chamberlain, Grey and others whose names will occur to you—were considering how best a further link could be forged between the central and Dominion Governments, which should be neither so stiff as to gall nor so weak as to break under a strain. It may be that the problem has been solved quietly and almost unconsciously (as our habit is) by the establishment of the Imperial War Cabinet as an effective Council of the Empire. That assembly of the leading statesmen of the self-governing parts of the Empire, first called together in 1917 for the purpose of discussing the conduct of the War and some of the higher issues of Imperial policy, proved to be of so much service both to its members and to the countries concerned that it was unanimously determined at the instance of the British Prime Minister to keep it in being. And so other meetings took place at a later crisis of the War

and again when the terms of peace were under consideration. The experiment—for at first it was nothing more—proved an unqualified success; and to many of us it seems possible that the Imperial War Cabinet may (if the Imperial Conference should so determined) drop its middle name and, while remaining wholly voluntary and consultative, become in world affairs the nerve centre of the autonomous nations of an Imperial Commonwealth. I doubt whether the thought which underlies this idea has been expressed better than in the words used by Sir Robert Borden, when speaking, on the 3rd of April, 1917, to the Empire Parliamentary Association, he said:

“For the first time in the Empire’s history there are sitting in London two cabinets, both properly constituted, and both exercising well defined powers. Over each of them the Prime Minister of the United Kingdom presides. One of them is designated as the War Cabinet, which chiefly devotes itself to such questions touching the prosecution of the War as primarily concern the United Kingdom. The other is designated as the Imperial War Cabinet, which has a wider purpose, jurisdiction and personnel. To its deliberations have been summoned representatives of all the Empire’s self-governing Dominions. We meet there on terms of equality under the presidency of the First Minister of the United Kingdom; we meet there as equals; he is “*primus inter pares*.” Ministers from six nations sit around the Council Board, all of them responsible to their respective Parliaments and to the people of the countries which they represent. Each nation has its voice upon questions of common concern and highest importance as the deliberations proceed; each preserves unimpaired its perfect autonomy, its self-government and the responsibility of its Ministers to their own electorate. For many years the thought of statesmen and students in every part of the Empire has centred around the question of future constitutional relations; it may be that now, as in the past, the necessity imposed by great events has given the answer.

“With the constitution of that Cabinet,” he added, “a new era has dawned and a new page of history has been written. It is not for me to prophesy as to the future significance of these pregnant events; but those who have given thought and energy to every effort for full constitutional development of the overseas nations may be pardoned for believing that they discern therein the birth of a new and greater Imperial Commonwealth.”

I hope indeed that the belief so eloquently expressed by Sir Robert Borden may become a reality in our time. The

League of All Nations is a great conception, but much time and effort must be expended before it comes to full fruition. In the meantime there is a League in being—a League, strong, effective and peace loving, nurtured in independence, skilled in self-government, ambitious for no “world empire” but only for a world peace—the League of the British Nations. The bond which unites its great component units—Great Britain, Canada, Newfoundland, Australia, New Zealand and South Africa—is no chain of possession but the hand clasp of free men. It is founded on two principles, the autonomy of each and the voluntary co-operation of all, and while we are true to these principles, to each other and to our King, no enemy can prevail against us.



