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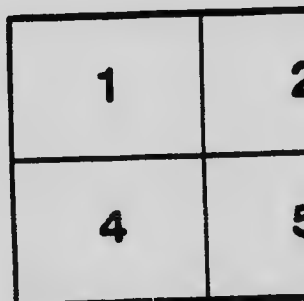
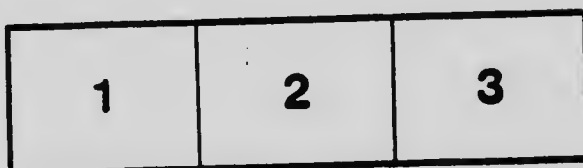
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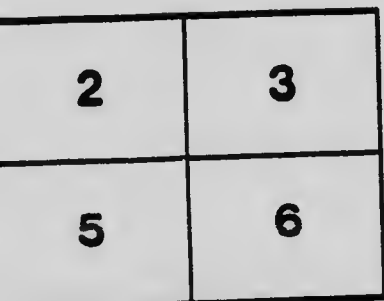
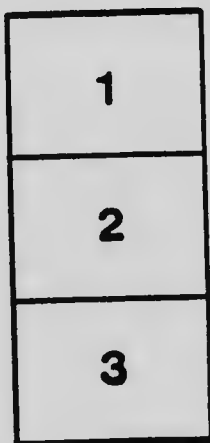
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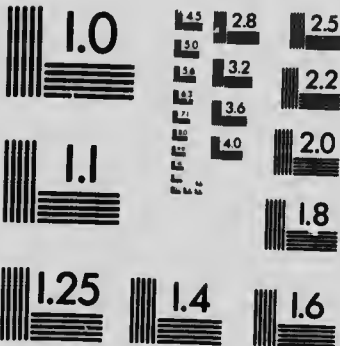
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Canadian Nationality

A N D

the Relation of Canada to the other
Britannic Commonwealths

Address before the Canadian Bar
Association at Ottawa

—BY—

HON. W. E. RANEY, K. C., Attorney General of Ontario

The Second of September, 1920

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NO. 222

part 4

Printed by
THE RYERSON PRESS.



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CANADIAN NATIONALITY

Your Excellency, My Lord Cove, Mr. Chairman, Ladies and Gentlemen

Let me first congratulate the Canadian Bar Association on the national and international character of this event—international at all events in an Anglo-Saxon sense—and especially in a Britannic sense.

Stupendous things have happened since the birth of the Canadian Bar Association five years ago. These things interfered with the growth and development of the association and at the annual meeting last year the air was still heavy with the sulphurous fumes of war, and we were still too close to the cataclysm to get a detached view either of ourselves or of other peoples. Now the outlines of our surroundings are fairly well defined, and big though the time is with political and social turmoil, we are meeting at the capital of our beloved country under most auspicious circumstances, so far as Canada is concerned, and indeed so far as all Anglo-Saxon nations of the world are concerned. But there are great problems ahead of all the nations, and the lawyers of Canada must not return to their briefs with the comforting assurance that, God being in his heaven, all will be well with the world, without any assistance from them. As perhaps never before, the times call for wise counsels and for the active participation of all the best citizens in the affairs of their country.

One of these public affairs in which all Canadians, and especially all Canadian lawyers, ought to be interested is the status of the British overseas Dominions.

A by-product of the war is said to have been the birth of Canada and Australia and South Africa as nations. Others prefer to say that the war only led to the discovery of what had already long been the fact. Be that as it may, this is at all events true that there was no official recognition of the overseas dominions as autonomous states until the war, and that now the fact is officially conceded not only by Great Britain, but by all the other nations of the world.

Of course the birth of a nation, or the discovery of the birth of a nation, and of their own nation at that, must be a profound event for the lawyers of Canada, and it was fitting that they should invite their relations to assist in the celebration of the event. May we therefore regard this as a lawyers' national birthday celebration, and Viscount Croke, and Mr. Taft and Sir Auckland Geddes as wise men from the East and South come to honour the new star in the national firmament.

When I was a school boy, we were taught that there were some half a dozen first rate powers in the Western World—there were Great Britain, the United States, Russia, Germany, France, Austria and perhaps Italy. Then there was a list of second rate powers headed by decrepit old Spain: and finally there was a list of third rate powers—Switzerland, Denmark, Portugal, Greece, Mexico and so on. And if any of the boys noticed that Canada was not included in any of the lists they were told that Canada was not a nation, but only a colony—and no other explanation was thought necessary.

It is true that some of the fathers of the Canadian Confederation saw visions and dreamed dreams, and in his correspondence with Lord Carnarvon over the jurisdiction to be given to the Supreme Court of Canada, Edward Blake made a brave attempt to establish the court on a national rather than a colonial basis. But whilst the Minister of Justice at Ottawa had the best of the argument the Colonial Secretary in Downing Street had the last word.

Even a quarter of a century later, when the Australian Confederacy was being born, Mr. Joseph Chamberlain was able, in spite of the vigorous protests of the Australians, to impose the colonial status upon the Supreme Court of the island continent.

But many things have happened since the Blake-Carnarvon correspondence of the middle seventies of the last century, and many things besides the automobile, and the flying machine, and wireless telegraphy, have happened even since the beginning of the present century. Some political dreams have come true and some visions have taken on form and substance. The war has not only torn down, but it has built up, and whether we like it or not the political world of 1920 is a different world from that of the natal year of Australia twenty years ago, and a vastly different world from that of the natal year of Canada more than fifty years ago.

Germany, the great Babylonia of the modern world, is fallen, bankrupt morally and materially. Austria has all but disappeared from the map. Russia is another name for anarchy and old chaos come again. France and Italy are war-torn and weary and will not recover from the shock in a generation. Besides they have no area for expansion and no reserve for natural resources. So that the geographers' list of first rate powers of my boyhood has been pretty well shot to pieces, and the Anglo-Saxon nations alone emerge comparatively and potentially greater than they were before and therefore with correspondingly greater responsibilities. The North American continent, from the Rio Grande to the Arctic Circle, the continent of Australia, New Zealand, South Africa, and lastly, the right little, tight little islands, set like gems in the mist of the seas, the Kingdom of Great Britain and Ireland, mother of the free institutions and of the common law of them all—in the hands of these nations, for good or for ill, is to a very large extent the destiny of the world.

And if any division of the nations of the world into classes were now to be made by geographers or historians for the information of the rising generation, Canada and Australia would certainly be included among the first half dozen names, and any study of the present, or forecast of the future, relations of the Britannie nations must take notice of this change of status of Canada and Australia. It has ceased to be a question for academic discussion. It is not a matter of theory or argument. It is a matter of conditions and of fact.

Greatness in a nation does not depend wholly upon any one factor. It certainly does not depend upon numbers—else China would be the greatest country in the world. It does not depend upon area alone, or Russia would be greatest. Both numbers and area are factors, but the greatest assets of a nation and therefore the greatest factors in nationality are in the character, the intelligence, the energy and the initiative of her people.

Canada has vast area and boundless reserves of natural resources and 9,000,000 of people unsurpassed in intelligence, energy, initiative and character by the people of any nation in the world, and if not now actually in the front rank of the

nations, she is so potentially and before the middle of the 20th century will, if she is true to herself, take rank in wealth and world influence beside her elder sister on this continent.

That is the material and practical side. There is also the sentimental side. The young poet, Rupert Brooke, wrote in his diary just before his death, away in the war, that he intended to write a poem on the "non-locality of England." Wherever his dust might mingle with mother earth—whether on an island of the Aegean, or under the burning sands of Egypt, or in the Southern Seas—there would be a spot of old England, there would be the lanes and hedgerows of the banks of Avon, there the larks would soar and sing.

But England is not the only country, of which "non-locality" can be predicted. In Flanders fields lies the dust of 50,000 or more of the sons of Canada, and wherever one of them who was born in Canada lies buried—and many of them were of the fourth or sixth and even the tenth generation of Canadians—there is a spot of Canada, a lot of the blossom-scented apple orchards of the provinces down by the sea, or of the blue skies and clover meadows of the valley of the St. Lawrence, or of the wild free life of the prairies, or of the mountain vistas of the Pacific slope.

They all died for Canada and for freedom and justice and the right of Belgians and Serbians and of all nations everywhere to control their own affairs free from the dictation of more powerful neighbours—and their memory will abide for evermore.

The eabled newspaper reports of the recent argument of the Russell case before the Judicial Committee of the Privy Council credited Lord Haldane with the remark that "more and more the principle of self-government is being granted" to Canada. If Lord Haldane was correctly reported his words were not well chosen, for it is not necessary for Englishmen and Irishmen and Scotchmen and Welshmen at Westminster to grant self-government to Englishmen and Irishmen and Scotchmen and Welshmen or their descendants in Canada. We already have it.

It is true the shell of the old colonial order remains, but the life is as extinct as the dodo.

It only remains to make the necessary adjustments and the Blake-Carnarvon correspondence of forty odd years ago, as indeed Lord Haldane admitted in his remarks in the Russell case, could not be repeated in the 20th year of the 20th century. There are no differences between Englishmen and Canadians on this point.

In short the old colonial bottles will no longer hold the new national wine.

Under the new order which is now here Canada will in the future amend her own constitution and make her own treaties.

The issues of peace and war for Canada will be determined, both actually and technically, at Ottawa and the Governor-General of Canada will be appointed by the King on the nomination of His Majesty's Privy Council, for Canada. (Not of course that Canada has any fault to find with the Governors-General of the past or present. They have been of the very highest type of British statesmen, which means the highest type of statesmen in the world.)

Moreover, a nation cannot be a nation and have its ultimate court of judicial appeal located outside its own boundaries and independent of its own government. And, as this is a subject in which the Canadian Bar Association has a special interest, I will be pardoned if I discuss it briefly.

The Judicial Committee of His Majesty's Privy Council has rendered great service to the old order, and it will continue for many years and perhaps for generations to carry the white man's burden of "the lesser breeds without the law." But besides acting as an appellate court for India and the crown colonies it may render a great service to the new political order, the confederacy of British nations.

British, Canadian, Australian, South African statesmen—all are agreed that in this confederacy—or as Lord Cave prefers to call it, Imperial Commonwealth, and perhaps that is a better word—there will be no superior and no inferior. All will be of equal status, as are the provinces of Canada in the Canadian federation, and the different states of the Union of the United States of America. The great state of New York has no right of suzerainty or superiority over Rhode Island, or Ontario over Prince Edward Island. If that is the correct basis—and that is of course the only possible basis—the jurisdiction of the reconstituted Judicial Committee must be on the footing of the reciprocal rights and responsibilities of the nations in the Confederacy—Great Britain, Ireland, Canada, Australia, New Zealand, South Africa, Newfoundland, and in good time, India and the West Indies.

And here may perhaps be found the solution of the age-long Irish question—or to this High Court of International Justice for the Imperial Commonwealth will be referred—not as now questions between citizens of Canada, or between citizens of Australia, or even between different provinces of Canada or different states of Australia (all of these will be determined finally by the supreme courts of those nations) but questions between the different nations represented in the international court—between Great Britain, for instance, and Ireland; or between Canada and Newfoundland; or between South Africa and Australia.

Mr. Elihu Root is advocating an international court for the members of the League of Nations. The court that I am now suggesting will be a different court from that. It will be a Britannic court, a court for the British League of Nations, another happy phrase for which we are indebted to my Lord Cave—and that court is now at hand and almost ready made in the great tribunal in which Lord Cave is a distinguished member. Mr. Root's court will be composed of judges speaking different languages and schooled under different systems of law—the Common Law of England, the Code Napoleon, the Civil Law, the Law of Mohammed and what not? But the Britannic International Court will be composed wholly of Judges speaking the English language and schooled in the Common Law of England—except when a French Judge is named from Canada, or a Dutch Judge from South Africa. This will be a wonderful advantage, and that Court, call it if you like (and there could be no better name) the Judicial Committee of His Majesty's Privy Councils (observe the plural), will be an invaluable guide and mentor to the other more cosmopolitan and less cohesive court proposed by Mr. Root, should that court be established.

Two converging events make it impossible for the public men of Great Britain and the other Britannic commonwealths longer to ignore the question of the relations of their countries to each other and to the other nations of the world. Those two events are the consummation of the League of Nations and the British Imperial Conference which is to be held next year.

Canada claims to be entitled to representation in the Assembly of the League of Nations and her claim has been conceded. No public man in Canada or in England will question Canada's right to participate in world politics, but such

participation is obviously utterly and resolutely irreconcilable with the existence of a superior authority over Canada either in the Parliament of Great Britain and Ireland, or in His Majesty's Privy Council for Great Britain and Ireland.

The whole subject must be discussed at the approaching Imperial Conference and it is vastly important that it should be the subject of public discussion before the conference meets, in order that Canada's representatives at the Conference may be fully informed of Canadian public sentiment. In this discussion the lawyers of Canada will of necessity take a foremost part, and I am therefore making no apology for introducing the subject at this national meeting of Canadian lawyers. It is not to be expected that we shall all agree. Perhaps that is not to be desired. But what is desirable and what is essential is that there should be a free and frank exchange of views.

I am, of course, well aware that there are eminent members of this Association who look upon the control of Canada's constitution by the Parliament of Great Britain and Ireland, and the control of Canada's courts by a committee of His Majesty's Privy Council for Great Britain and Ireland, as links of empire. And so they were under the old dispensation—under the order of superior and inferior. But we have the high authority of the War Cabinet of Great Britain and of Sir Robert Borden and of Earl Gray and of many others including the Prince of Wales, that "the Dominions are no longer colonies, but sister nations of the British nation." In other words the only true bonds are the bonds of which Edmund Burke spoke more than a hundred years ago—bonds "light as air though strong as iron," the bonds of sentiment—bonds that grow stronger the lighter they are and the less they are felt. A common kingship is its sufficient expression. With all deference I venture to suggest that those who cling to the lesser so-called links of empire have their faces turned to the past.

Then there is that once large and still respectable school of political thought that looked, and still perhaps looks, for a partnership of the Britannic Dominions in an imperial federation. I am not proposing to discuss now any of the various plans that have been put forward from time to time for a closer political union of the spots marked red on the map of the world. I content myself with pointing out that Canadian and Australian and South African national autonomy is the antithesis of imperial federation, and that imperial federation is inconsistent with the representation of Canada and Australia and South Africa in the Assembly of the League of Nations—as inconsistent as it would be for the State of Massachusetts or Texas to claim such representation. Canada has elected definitely in favour of membership in the League of Nations and by that course she has elected in favour of autonomy and against imperial federation.

This election was not the result of argument, but of the development of events. In the language of the War Cabinet of Great Britain the question was forced to the front by the common effort and sacrifices of the war.

When a youth attains to manhood he assumes the rights, and with them takes on the responsibilities, of manhood. In assuming the rights of nationhood Canada must accept the responsibilities. In no other way can she play her part in the great world drama which is now unfolding so rapidly, and which will continue to unfold whether any individual nation does its whole duty or not. Thus only can Canada assist in the vast schemes of world betterment whose focus at the moment is in England—thus only can she be a branch of the great tree of international probity, comity and fellowship whose leaves—justice, freedom, right, truth and open diplomacy—shall be for the healing of the nations.

The Canadian Bar Association is honoured in having as its guests at this meeting representatives of the best traditions of the two great branches of the Anglo-Saxon race, Great Britain, and the offspring of her loins, the family of commonwealths known as the United States of America.

The Governor-General of Canada is, of course, one of ourselves in all things except Blackstone, and Mr. Taft was made one of us at the luncheon to-day, and I avail myself now of this opportunity given by the presence of my name on to-night's programme to move that Viscount Cave be also made an honorary member of this Association.



