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PRESIDENT ONTARIO BAR ASSOCIATION.

Canada Law Journal.

VOL. LI. TORONTO, FEBRUARY, 1915 No. 2

ONTARIO BAR ASSOCIATION.

PRESIDENT'S ADDRESS.

Delivered by Mr. F. M. Field, K.C., at the Eighth Annual Meeting.

We meet under extraordinary conditions; the great Empire, of which we form no inconsiderable part, is at war. Viscount Haldane, the Lord Chancellor of England, in his splendid address on "Higher Nationality" at Montreal in September, 1913, used these words:—

> "In the year which is approaching a century will have passed since the United States and the people of Canada and Great Britain terminated a great war by the Peace of Ghent. . . . We should steadily direct our thoughts to how we can draw into closest harmony the nations of a race in which all of us have a common pride . . . If that be now a far-spread inclination, then indeed may the people of three great countries say to Jerusalem 'Thou shalt be built,' and to the Temple 'Thy foundations shall be laid.'"

With these noble words ringing in our ears, we had been looking forward with eagerness and enthusiasm to a celebration befitting the culmination of one hundred years of peace between the two great English-speaking nations. The Presidential address of December, 1912, concludes with these words, which, however, can scarcely now be described as prophetic:—

> "The growing popularity of the Hague Tribunal is gratifying not only to the lawyer but to the world at large. . . . The peaceful message of the lawyer will go on until the ruffianism of war between two countries will be no more tolerated . . . and the lawyer's elysium will be realized.

"'When the war drum beats no longer,
When the battle flag is furled
In the parliament of man,
The federation of the world.'"

Happily for us the ravages of war have been, so far, remote from our borders, but, with the declaration of war on the fourth of August, the possibility of the realization of the dream of the poet has again become remote, and our plans for a peace celebration of the Anglo-Saxon communities have been shattered; not, indeed, I am glad to say, by any disturbance of that century of peace, but because our thoughts are necessarily engrossed with the conflict, the greatest that history records.

The theme of our war lyric strangely enough lays stress upon the exploits of love rather than of war, and if "Tipperary" stands for the pursuit of happiness rather than the pomp and pageantry of war, then, indeed, may we say just at this moment, "It's a long way to Tipperary, It's a long way to go." However, as with Tennyson in his "Vision" and Ex-President Mikel in his propheey, so I am sure each of us will say, "My heart's right there."

So much by way of assurance to our distinguished guests from across the border, whose disappointment is doubtless as keen as ours, that the celebration of the century of peace between us must be postponed; not, indeed, as I have intimated, because of any rupture of those good relations which we have striven to maintain and value so highly, but because of a little matter of more pressing concern engaging our particular attention just now.

In case the stranger within our gates on this occasion, seeing us here assembled as of yore, may entertain a doubt as to what is foremost in the work of this Association, I might recall the fact that in this very hall the call to arms was answered by even a greater rally of the Toronto Bar than we have present this morning. Then was formed the Osgoode Hall Rifle Association, in which I am proud to have been enrolled as a full private. In this very building, indeed, an indoor rifle range has been installed and regular rifle practice takes place. This military organization has been signally honoured by the Court, over which the Honour-

able Chief Justice Sir William Mulock presides, adjourning to the Armouries to witness its first review. I believe at the head of the Rifle Association is the Honourable Featherstone Osler, so long a distinguished member of the late Court of Appeal. A notable supporter of the organization is Sir Glenholme Falconbridge, Chief Justice of the King's Bench, whose encouraging sentiments have met a warm response. Only the other day Lieut.-Col. Stewart received from the hands of the Chief Justice of Ontario, the Hon. Sir William Ralph Meredith, the sword that marks his rank as Commander of the Home Guard in this great city.

At a recent meeting of the Special Committee of our Association having in charge the arrangements for the Annual Meeting, the son of the late Chief Justice of Ontario, Charles A. Moss, prominent in the profession and public life of this city, attended in khaki uniform—a badge of his enlistment as an officer in training for foreign service. Several members of our Association are in the First Canadian Expeditionary Force, and, among our officers, are sires whose sons are serving the Empire in this great war on European soil, and in both the armies and navies of Greater Britain are found sons whose fathers adorn the Bench of this Province, and of the Supreme Court of Canada, one of whom, at least, Naval Lieutenant Victor Brodeur, has been in action on His Majesty's Ship Berwick, on the occasion of the sinking of the German cruiser Spreewald, maintaining the traditions of that Navy whose boast is that its flag has braved a thousand years, the battle and the breeze.

These passing references to activities beyond the realm of law may perhaps be permitted to one like myself still on the Reserve of Officers in His Majesty's Battery of Heavy Artillery at Cobourg, of whose record at this crisis in our history I feel I can be justly proud.

However alluring the topic of war may be, and, no doubt, is, the motto in the British Empire and His Majesty's Dominions beyond the Seas is, I believe, "Business as Usual," and I therefore invite your attention to a few matters that may be deemed noteworthy in the aims, objects and achievements of the Ontario Bar Association.

I find it has been customary for our Presidents to review the history of the Ontario Bar Association from its inception. My predecessors in this office have averred that the Ontario Bar Association was *well born* and its record so good that its grandfather, the Law Society of Upper Canada, no longer doubts its legitimacy. The proofs of these allegations are to be found scattered through the addresses of past Presidents, and in the election, as Honourary Presidents of the Ontario Bar Association, of Benchers of the Law Society. The courtesies extended to us last year and so kindly repeated this year by the Benchers are a sufficient refutation of the allegation that the junior organization is not *persona grata* to the senior. How keenly we all regret that he whose genial presence made the Benchers' luncheon of last year such a successful function is with us no more. The Law Society and the Ontario Bar Association suffered a deplorable loss when the late Sir Æmilius Irving, and our late Honourary President, James Bicknell, K.C., were called home, and we feel assured that his successor, Sir George Gibbons, K.C., whom we are glad to greet as Honourary President, recalling our departed colleague, longs with all of us "for the touch of a vanished hand and the sound of a voice that is still."

This is the Eighth Annual Meeting of the Association, and I believe that we start the year 1915 with the largest membership in our history. We believe that the objects of the Association are such as entitle it to the good-will of the whole community and the active interest and support of every member of the profession. These will bear quoting again, and are to be found in Article 2 of our Constitution, stated in these terms:—

> "The objects of the Association are to facilitate the administration of justice, to promote reform in the law and procedure, to assist in upholding the honour and dignity of the profession of the law, to bring about united action, to conserve its interest, to encourage interchange of ideas and closer intercourse among members of the profession in Ontario, and to maintain friendly relations with the profession in other jurisdictions."

We began the year 1914 with an ambitious programme, much of which we have had the satisfaction of seeing accomplished. The most notable achievement to which this Association lent its active support was the formation of the Canadian Bar Association. It will be recalled that by resolutions of this Association passed at several successive annual meetings, the desirability of this project was affirmed—not, indeed, without much debate and some misgivings even on the part of those who favoured a National Association. The Manitoba Bar Association took it up with the vigor that characterizes the West, and with Sir James Aikens, K.C., M.P., as sponsor, decision overcame hesitation, and more or less nebulous discussion ended in organization. It is expected that the first anniversary of the formation of the Canadian Bar Association will be celebrated in Montreal in March, and plans will then be formulated for accomplishing the objects thereof as set forth in the constitution, *viz.*:—

> "Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout Canada so far as consistent with the preservation of the basic systems of law in the respective Provinces, uphold the honour of the profession of law, and encourage cordial intercourse among the members of the Canadian Bar."

Now, I can conceive of nothing better calculated to promote that unity among the Provinces which is essential to a strong national life than uniformity of legislation. Our forefathers were evidently of that opinion when the Dominion of Canada was formed. Section 94 of the British North America Act, 1867—the Constitution of Canada—reads as follows:—

> "Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces and from and after the passing of any Act in that Behalf the Power of the Parliament to make Laws in relation to any

matter comprised in any such Act, shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof."

(I reproduce this with all the capitals as it appears in vol. IV. of the Revised Statutes of Canada, 1906.)

I do not hesitate to characterize our neglect of the opportunities afforded by this section of our Constitution as a disgrace to a profession, which, while doubtless conservative in the best sense of the term, ought to be and I believe is progressive. Admitting that Quebec must still be excluded from the Provinces wherein uniformity of "Law relative to Property and Civil Rights" is possible of achievement, there remains a vast territory in Canada over which such uniformity can and should prevail. Why should there be in the legislation of our Provinces pitfalls for the practitioner of a sister Province in statutes relative to Voluntary and fraudulent conveyances—Assignments and preferences by insolvents—Conveyancing and law of property—Mortgages of real estate—Conveyances, leases and mortgages—Devolution and distribution of estates—Wills—Insurance—Trustees and executors and administration of estates—Bills of sale and chattel mortgages—Conditional sales of goods—Mechanics' and wage earners' liens—Wages—Master and servant—Compensation to workmen for injuries—Property of married women—Landlord and tenant?

The mere enumeration of the more important of such statutes indicates the scope for the work of a competent commission to report on the matter of uniformity of legislation on such subjects.

In the matter of procedure (scarcely less important) the reformer will find abundant opportunity in endeavouring to accomplish uniformity in respect of Arbitrations and references—Replevin—Dower—Libel and slander—Limitation of actions—Execution—Absconding debtors.

It is quite true that our Legislatures in their wisdom have striven to assimilate the laws of the Provinces, and much has been done in that direction. We cannot but be encouraged in this laudable enterprise by our observation of the working of Dominion

legislation relating to Bills and Notes, Banks, Insurance, Railways, Patents, Companies, and Crimes.

At a preliminary meeting of a number of the members of the Bars of all the Provinces of Canada held at the Chateau Laurier, Ottawa, in February last, I had the honour of seconding the motion made by Mr. J. E. Martin, K.C., Batonnier of the Montreal Bar, "That . . . it is desirable to form a Canadian Bar Association."

At the inaugural meeting held in Ottawa on the 31st March I proposed, on behalf of the Ontario Bar Association, seconded by Batonnier Martin of Montreal, the election of Sir James Aikins, K.C., M.P., as President of the Canadian Bar Association. Our late Honourary President, Mr. James Bicknell, K.C., became First Vice-President for Ontario, Mr. E. F. B. Johnston, K.C., being subsequently elected to that office on the demise of Mr. Bicknell. Already Sir James Aikins has started in, with his characteristic industry and energy, to inaugurate a new era in law and procedure in Canada. The *Manitoba Free Press* of 22nd December devotes three columns to the report of the Banquet at the Royal Alexandra Hotel under the auspices of the Canadian Credit Men's Trust Association, very largely attended, at which Sir James Aikins presented the case for standardizing laws affecting commercial and financial transactions in the various Provinces. During this annual meeting I would like to see a resolution carried urging the Ontario Government to co-operate with the other Provinces by making an appropriation to defray the expenses of a special committee of the Canadian Bar Association to grapple with this project.

The most notable event of the year in the narrower field of our own Province is undoubtedly the adoption by the Legislature of Ontario of the Workmen's Compensation Act as prepared by Chief Justice Meredith. As Sir William pointed out in his splendid address at our last annual meeting, this measure eliminates a large class of damage actions, and involves, therefore, some sacrifice of income on the part of those members of our profession who apply themselves to the work of the Courts. Nevertheless, we greet the legislation with approbation, and rejoice with the

community in general that our Province thus takes a foremost place in the world in its regard for the welfare of our artisans. We hope and believe it will prove to be a "monument more enduring than brass" to the heart and brain of the great Canadian who, regardless of the weight of years, spent much time in gathering information, exchanging ideas, and ascertaining results in Europe and America that the outcome of his labours might be worthy of his native Province. When representing our Association at the annual meeting of the New York State Bar Association in January last, I had the great satisfaction of hearing Sir William Meredith's draft bill (not then enacted into law) described by an expert as the most advanced measure of relief ever laid before the legislature of any country. It has relegated to the realm of limbo the intricacies and subleties of the law of contributory negligence and proximate cause in the vast majority of cases that have heretofore engaged the attention of the Courts and the legal profession in that branch of law. The Toronto *Globe* of January 1st gave this statute a New Year's greeting in these terms:—

> "At 12 o'clock last night the new Act to provide for compensation to workmen for injuries sustained and industrial diseases contracted in the course of their employment came into force. After years of waiting what it is hoped will be the most effective piece of social legislation of its kind in this country is now operating to protect the lives and dependents of those whose earning capacity is impaired through accidents which happen in the daily pursuit of a livelihood. Notwithstanding all the protest and argument that has been occasioned by the promulgation of the rates of assessment to be paid by employers of labour in the Province, the Act will start with an accident fund of about $100,000."

This has been a strenuous year in the history of this Association. There have been five meetings of the Executive Council; the first, on 8th January when we were the guests of Vice-President W. J. McWhinney, K.C., at his residence; the second, on 10th February, at the University Club; the third, on 24th March, in

the Reception Room of the Parliament Buildings, where Cabinet Ministers, the Leader of the Opposition, and several members of the Legislature, were our guests; the fourth, on 19th August, at Cobourg; and the fifth on 19th November, at Dunnings Hotel, in Toronto. All of these meetings were well attended by members resident in Toronto and elsewhere. At all of these meetings not the least pleasant feature was the social part, and I cordially concur in the sentiments so well expressed by Hon. Mr. Justice Hodgins in his address as President in April, 1910:—

> "There is indeed great need for a closer drawing together of the members of the Bar, not only for the sake of the common interests of our strenuous life, but also so that we may not entirely lose what is the greatest charm connected with practice of the law, the intimate companionship of congenial minds and the enjoyment of the lighter and more social side of our incomparable though jealous profession."

During the past year the new Surrogate Court tariff of fees has been adopted, and some progress has been made with the revision of the rules relating to procedure in the Surrogate Courts. The draft of these rules as submitted to our Executive is somewhat of a disappointment, however, as the work indicated a revision without simplification. The Revised Statutes of Ontario, 1914, have come to us as a great relief, for which we are grateful.

The trial of divorce cases, which has been the subject of much debate at several of our annual meetings, was discussed in Parliament on the resolution of Mr. W. B. Northrup, K.C., M.P., "That the same should be taken into immediate consideration by the Government with a view to reform during the present session."

Many influential members, in addition to the mover of the resolution and the Prime Minister, endorsed the resolution, but the result makes it evident, I think, that if our Courts are ever to have jurisdiction to try divorce cases, as is done in several of the Provinces, the reform must be obtained with the aid of our Legislature.

During the year, invitations were extended to our Association

to send delegates to the meetings of the New York State Bar Association at New York, the Manitoba Bar Association at Winnipeg, the American Bar Association at Washington, D.C., and the Lawyers' Club at Buffalo. Mr. W. J. McWhinney, K.C., represented us at Winnipeg, and spoke in enthusiastic terms of his reception there, where he advocated the formation of a Canadian Bar Association. Mr. E. J. Hearn, K.C., and other members of our Association, welcomed the Lawyers' Club of Buffalo in Toronto when en route to the Thousand Islands during the summer, and Mr. H. A. Burbidge of Hamilton has since represented our Association at a Club Dinner in Buffalo. I was delegated to the meetings at New York and Washington, the one at the end of January, the other at the end of October. Both of these meetings were very interesting and the hospitality unbounded. Having regard to the great numbers of the legal profession in the State of New York and the United States, one comes back from these meetings to our own, assured that, in proportion to the numbers available, our meetings are quite as well attended as theirs. The Washington meeting was very largely attended, as might have been expected, on account of the many distinguished men that could be conveniently gathered there in those delightful October days. The Honourable Sir Charles Fitzpatrick, Chief Justice of Canada, made an address on "The Constitution of Canada," in the course of which he laid stress upon our position in the Empire, which drew forth the applause of the Canadians and a sympathetic cheer from our hosts. Indeed, with the assurances received on every hand and the strains of "Tipperary" in our ears we could quite believe the Washington lady's proclamation of "boiling neutrality."

We extend a hearty welcome to the distinguished Judges and members of the Bar from the United States and from the Province of Quebec, as well as from our own Province, who have so kindly undertaken to participate in our proceedings by preparing papers and making addresses at the Annual Banquet. Their association with us at the social functions of these meetings as our guests does much to maintain that enthusiasm without which this organization cannot thrive.

In the eight years of its existence this Association has done enough to justify its organization, but let no one think that nothing remains to be done. Perfection in law and in procedure of the Courts is unattainable in a community such as ours.

"New occasions teach new duties.
Time makes ancient good uncouth:
They must upward still, and onward,
Who would keep abreast of Truth."

In addition to our Reception Committee, whose duties began at 10 this morning and will end at 6 p.m. to-morrow, we have had Standing Committees at work throughout the year on Law Reform, Legislation, Legal Ethics, and Legal History. The reports of these Committees have been printed for distribution, and are now available.

The work of the year has been rendered very agreeable because of the earnest and able men who have served on these committees. I regard myself as most fortunate in having had such support during my term as President. I desire to thank you for the honour conferred upon me a year ago in electing me President of the Association, and to wish you, one and all, a Happy and Prosperous New Year. Whatever may happen to us individually, I am sure it will be counted a happy and prosperous year if, in the Providence of God, we shall live to see right and justice triumph in the mighty conflict in which we are engaged.

Gentlemen, in conclusion, I commend to the consideration of all of us, in this our time of trouble, those noble sentiments uttered by that great Imperialist, Benjamin Disraeli, Earl of Beaconsfield, in a notable address at Manchester forty-two years ago, as true now as then:—

> "I express here my confident conviction that there never was a moment in our history when the power of England was so great and her resources so vast and inexhaustible.
>
> "And yet, gentlemen, it is not merely our fleets and armies, our powerful artillery, our accumulated capital, and our unlimited credit on which I so much depend, as upon that unbroken spirit of her people, which I believe was never prouder of the imperial country to which they belong. Gentlemen, it is to that spirit that I, above all things, trust."

THE DEFENCE OF THE SUEZ CANAL.

The validity of the measures which the Egyptian government recently took to clear the ports of the Suez Canal of the German merchantmen which were lying up there for refuge and impeding the ordinary commercial use of the waterway has received a further justification this week by the grave development of affairs in the Near East. The Ottoman Empire is now at war with England, and the safety of the international canal is threatened by the power which was originally designated as its protector. Turkey's place, however, as the territorial sovereign of the country through which the canal is cut, has been taken by England in virtue of her protecting function in Egypt: and it is to the English fleet and the English army now, as in 1883, at the time of the Arab rising, that the defence of the highway of nations is entrusted. Had the German ships been left in port, it is not at all unlikely that they would have chosen this moment for working mischief; and, by sinking themselves in the narrow channel, have struck a terrible blow at the world's and especially at England's commerce. But as the agents of the powers in Cairo, who are the chosen council for the protection of the canal in times of emergency, confirmed England's right to take exceptional steps against the danger that lay in the ports, so now, doubtless, they will confirm our right to ward off by all possible means the danger that moves from the desert. According to the stipulations of the Convention of Constantinople, 1888, to which Great Britain adhered in 1904: (1) no act of hostility is allowed either inside the canal or within three miles of its ports; (2) belligerents' men-of-war and their prizes may not stay longer than 24 hours, except in case of absolute necessity, within the harbours of Port Said and Suez; and (3) belligerents may not station men-of-war in these harbours. These provisions are declared to apply even if Turkey is a belligerent, and so, too, if Egypt is at war; but the most authoritative of English jurists, the late Professor Westlake, suggested that they do not prevent the power which is best able to safeguard the

freedom of the canal from taking any measures necessary to that end, even if they are not in accordance with the provisions. At the time of the Arabi revolt, England found it necessary to land troops at Ismailia to check any attempt at wrecking, and she may now have to keep her warships in the waterway and its ports and to fortify the banks. We have not protested against the American claim to fortify the entrances to the Panama Canal, because in the present weakness of treaty sanctions we recognize the need for some effective guardianship of neutralized waterways, as well as of neutralized countries. In taking whatever steps are necessary in the Suez Canal, England will be upholding public law as fully as when she went to the help of Belgium.—*Central Law Journal.*

THE ARMING OF MERCHANTMEN.

The right of a merchant ship to defend itself against capture by the enemy in time of war, and to arm itself for that purpose, has never until quite recently been doubted.

The carrying of guns for defensive purposes was a common practice in the British merchant service during the Napoleonic wars. A reminder of those days may still here and there be found in the bulwarks of sailing vessels painted white and black to represent dummy gun ports.

The vessels of the East India Company and the Hudson Bay Company were at one time specially exempted from the duty of sailing under convoy, in consideration of the sufficiency of their armament. In *James' Naval History,* some particulars may be found of the armament of three East Indiamen convoyed from the Hooghly in 1809. The "*Stratham*" and the "*Europa,*" each of 800 tons register, were armed with 20 medium guns and 10 carronades. The "*Lord Keith,*" of 600 tons, carried 10 or 12 guns. As late as 1855, the ships engaged in the opium trade were armed for the protection of their valuable cargo against pirates and others. Unquestioned as the right of defence for

merchantmen may have been, it was a right that had fallen into almost complete desuetude during the last century, so far as this country was concerned.

The revival of this ancient practice on the part of the British Admiralty was announced by Mr. Winston Churchill last year. The new policy was explained by him in the House of Commons, on the 17th of March last, in the following terms:—

"Forty ships have been armed so far with two 4.7 guns apiece, and by the end of 1914-15 70 ships will have been so armed. They are armed solely for defensive purposes. The guns are mounted in the stern and can only fire on a pursuer. Vessels so armed have nothing in common with merchant vessels taken over by the Admiralty and converted into commissioned auxiliary cruisers, nor are these vessels privateers or commerce destroyers in any sense. They are exclusively ships which carry food to this country. They are not allowed to fight with any ships of war. Enemies' ships of war will be dealt with by the Navy, and the instruction of these armed merchant vessels will direct them to surrender if overtaken by ships of war. They are, however, thoroughly capable of self-defence against an enemy's armed merchantman. The fact of their being so armed will probably prove an effective deterrent alone on the depredations of armed merchantmen and an effective protection for these ships and for the vital supplies that they carry."

This new departure in British Naval Policy was received very differently in different quarters. Lord Charles Beresford declared his conviction that it was equivalent to an addition of 15 Dreadnoughts to our naval resources. Great shipping firms expressed their patriotic readiness and desire to fall in with any recommendations of the British Admiralty, but declined comment. Jurists and shipowners of neutral countries expressed themselves as unfavourable to the proposal—both as tending to enlarge the burdens and operations of naval warfare, and as contrary in spirit if not in letter to the terms of the Declaration of Paris. I have before me a bundle of letters from experts in

neutral countries, from Belgium, Holland, Norway and Sweden, who with entire unanimity express themselves as unfavourably impressed by this development of naval warfare, which indeed raises many interesting and serious problems, some of which may be solved in the course of the present war.

The resumption by private merchantmen of the use of defensive armaments, which may apparently include naval guns of any size and in any number which the shipowner or the Admiralty of his country may deem advisable, and may apparently include the strewing of mines to delay or defeat the pursuit of a hostile cruiser, might greatly aggravate the position of neutrals in future naval warfare, and the increased power of naval weapons seems to render it even more desirable to-day than in the days of the Declaration of Paris, that the use of these improved instruments of destruction should be confined to vessels officered and manned by regular officers and men trained in the observance of the complicated code which ought to regulate naval warfare.

So far no action by armed merchantmen (other than regularly commissioned auxiliary cruisers), whether for purposes of defence or offence, has been reported in the present war. It is, however, interesting to consider some of the legal questions that may arise out of their existence before this war is ended, and in *Armed Merchant Ships*, Dr. Pearce Higgins has very clearly dealt with the position in International law of armed merchant ships, their crews and cargo. These vessels must, of course, be distinguished from the auxiliary cruisers which both Germany and ourselves have converted into men of war and regularly commissioned. They may be described as "defensively armed and uncommissioned merchant ships."

The right of merchant ships to arm for self defence has, as Dr. Higgins points out, been recently denied by German jurists.

At the meeting of the Institute of International Law at Oxford last year the following rule (Article 12 of the *Manuel des lois de la Guerre Maritime*) was adopted after discussion.

"La course est interdite . . . les navires publics et les navires privés, ainsi que leur personnel ne peuvent pas se livrer à des actes d'hostilité contre l'ennemi. Il est toutefois permis aux uns et aux autres d'employer la force pour se défendre contre l'attaque d'un navire ennemi."

Professor Triebel of Berlin opposed the latter clause on the ground that an enemy merchant ship had no right to resist capture, and since then Dr. George Schramm, legal adviser to the German Admiralty, in *Das Prisenrecht in seiner neustengestalt*, has maintained that there is no legal foundation for the rule allowing a merchant ship to defend itself, and that the crew of such a vessel unless duly enrolled in the enemy forces, would be subject to the criminal law!

The usual view is that they would become prisoners of war, and this view is expressed in the United States Naval Code, and the United States has, it is believed, expressly recognised the status of our armed merchant vessels in the last few weeks.

By the defensive arming of their ship, the crew are deprived of their right under the Eleventh Hague Convention of 1907 to be released, if captured, on a written undertaking not to engage while hostilities last, in any service connected with the operations of war.

In Dr. Higgins' view, the defensively armed merchant ship may, if attacked, lawfully capture its assailant. He does not deal with the question of whether such a vessel may lawfully assist a sister ship which is the subject of attack. Probably not, but the situation might well strain the conscience of an English merchant captain.

The position of neutral goods on board a defensively armed merchant ship, may create some difficult questions for our Prize Courts. Neutrals will obviously incur some additional risk in shipping goods by these vessels. For the law as to their position is far from clear. In almost contemporaneous decisions in 1814-1815, Lord Stowell in *The Fanny* (1 Dods. 448), and the United States Supreme Court in *The Nereide* (9 Cranch 441), expressed opposite views. Lord Stowell, dealing, it is true, with a case of a

vessel armed with 16 guns and carrying letters of marque, held that prize salvage was payable by the owners of neutral goods on board. The United States Supreme Court held that neutral goods on an enemy armed merchantman, were not liable to confiscation under American Prize Law.

Dr. Higgins expresses the view that neutral cargoes placed on merchant ships which may be converted into warships under the terms of the Hague Convention, 1907, would be liable to be condemned, while those placed on armed but unco-nmissioned merchant ships should, under the Declaration of Paris, be released. It is not, however, clear that the Declaration of Paris governs the matter, still less what view a German Prize Court might take of the case.

The hitherto recognised laws of naval warfare may possibly suffer some unexpected usage before the present war is brought to a conclusion.—*Law Magazine and Review.*

LAW STUDENTS AND THE BIBLE.

It is unnecessary, at this late date, to enlarge to any intelligent reader on the advantages of a thorough knowledge of the Bible to every student of the law. This subject was discussed in a recent address by President Barker, of the State University of Kentucky, to the students of the College of Law of that University. He strongly advised them to study the Bible, as being very important to them in many ways. He said: "The Bible is the foundation of modern law, and for this reason a working knowledge of it will be of much benefit to the young lawyer." The writer in the publication above referred to says: "This was good advice. It is, in a sense, unfortunate that the Bible should have become fixed in the popular mind with a wholly theological significance. For thus its legitimate claims as literature have been quite ignored. To the general reader the Bible has been more or less a sealed book, and its priceless historical, philosophical, ethical and poetic treasures have been open mainly to the often purblind sectary and religious enthusiast. In some quarters it may seem irreverent

to suggest a secularization of the Bible. Yet something of the sort seems necessary in order more widely to diffuse its educative and cultural value. The argument that doubtless availed more than any other to exclude the Bible from the public schools was that it was being used in furtherance of sectarian propagandism. But it can hardly be gainsaid that there is a distinct loss to the youth of the present day in their being denied the early knowledge of the Bible which was brought home to those of former days when the good old custom prevailed of opening school with the reading of a chapter from the Scriptures No doubt the persistence with which in times past the Bible was forced upon the attention of the young, both in and out of school, was rooted in a narrowly religious purpose. But there were unquestionably certain valuable educative by-products in the process. One can hardly fail to see some connection between the character of Lincoln's writings and the fact that in his boyhood the Bible was one of the two or three books that were given to him to appease his voracious appetite for reading. His speeches and addresses abound with Scriptural allusions, and to the same source may be attributed that dignity and elevation of style which gave to much of his writing such matchless force and felicity. In the light of this conspicuous example law students may well be advised to read the Bible. They may not thereby acquire the style of a Lincoln—for in the last analysis 'the style is the man'—but they will add richly to their intellectual equipment, and by so much make better lawyers."

CHRISTIAN SCIENCE AND THE LAW.

The curious vagaries of this cult are referred to in *American Law Notes* in reference to a case recently brought in New York by a Christian Scientist against the Interborough Company for $30,000 damages for pain suffered by her by reason of a fall while entering a subway station, owing, as alleged, to the negligence of the company. The question arose, but was left undecided, as to whether a Christian Scientist, who denies that there is any such

thing as pain, can recover damages for pain caused by an accident. We are told that on the witness stand the plaintiff did not refer to her fall in the subway as having given her any pain. She merely admitted that she had encountered an "error," and that, after having stopped long enough to learn the "truth," she continued on her way to church. Her husband, however, who either was not a Christian Scientist, or was alive to the worldly necessity of speaking in a language that Court and jury could understand, testified that his wife had endured much pain on account of this "error," so much so, in fact, that she had to leave church in the middle of the service and go home, where a physician attended her and did what he could to assuage the internal pains which he, as a regular medical practitioner, felt certain she must have endured. The Court sidestepped the nice question of damages for a "painless" injury, and dismissed the case on the ground that the evidence shewed no actionable negligence on the part of the defendant. It may be surmised that in this action of the Court the plaintiff will think she has encountered another "error," and take the case to a higher Court.

PEACE SOCIETIES IN WAR TIME.

The American Society for Judicial Settlement of International Disputes, having a good deal of spare time on its hands at present, and being, so to speak, largely out of business, have issued a paper by one Theodore Marburg (apparently a German, from the name) on Law and Judicial Settlement. It was published first in German, but, as we are told in a note, "it is now thought useful to reproduce it in English." It is amusing to glance at its contents in view of the present position of things. If it was useless for any useful purpose in the prevention of war when printed in German in December, 1912, it is scarcely likely to be of any value when reproduced in the beginning of 1915 in the midst of a bitter war; a war started by Germany for universal dominion, the object of which is avowedly to Germanize all nations, and so, necessarily, to do away with anything "international," and make

a lasting peace by reason of there being no other nation to quarrel with. It would be well if this society were to spend the money they put into this foolish and useless literature in buying food for the Belgians, who are now being starved to death by Germany's brutality and its breach of international obligations. These peace papers and the proceedings of peace societies, such as the above, are now a ghastly farce and a cruel joke.

In another place (post p. 70) we refer to the death and give a sketch of the life of a frequent and valued contributor to our pages. William Edward O'Brien, LL.B. Though a member of the legal fraternity he was more widely known to the public in the ways there spoken of.

Correspondence.

ROYAL BANK CASE.

SIR,—Permit me to say a few words in reply to Mr. Lefroy. He takes exception to my saying that it was "a curious phenomenon that any astute and clear-minded lawyer should entertain the slightest doubt about either the perfect wisdom and justice of the Privy Council decision." I infer from his remarks that he entertains no doubt—he admits that it is a question that is "too high" for him. I therefore exonerate him from entertaining any doubts either as to the wisdom or the justice of the decision.

When a decision is not susceptible of attack on the score of either wisdom or justice, it is prima facie right as a matter of law. For the object of all law is the attainment of justice, and as our Rule 183 puts it, that judgment may be given "according to the very right and justice" of the case.

The common law has been said by great authorities to be the perfection of common sense and has been built up by judges having a constant regard to what they believed to be (sometimes perhaps erroneously) the requirements of wisdom and justice.

Wisdom and justice must also be constantly kept in view by

the Highest Court of the Empire in the construction of statutes and all constitutional questions. When a statute can be construed in accordance with wisdom and justice surely that construction is to be preferred to one which would result both in folly and injustice.

In the case in hand the Judicial Committee had to construe the B.N.A. Act. If they adopted Mr. Lefroy's view they would have to adopt a view which would result in both folly and injustice. It would sanction the confiscation of property contrary to natural justice and would have sanctioned the view that one province might legislate regarding property in another province which would inevitably have led to inter-provincial friction and possibly to civil war.

But as I shewed by the case I put, not only was the decision wise and just, but also perfectly in accordance with the law.

Mr. Lefroy disputes the parallel. He says the bank could not deny that it was a debtor in Alberta, whereas it is quite clear that it could. Mr. Lefroy does not attempt to explain in what respect the bank's position differed from A.B.'s agent in the case I put. It held a fund payable to a railway company on the performance of a condition—which condition was never performed. Therefore, no right of action in the company. Mr. Lefroy chooses to ignore the condition.

He could hardly maintain that because the bondholders had a right of action in Alberta against the bank, that gave the Alberta Legislature power to confiscate the fund. According to that view, if I hold a bank note of the Royal Bank in Toronto because I have a right to sue the bank in Alberta for it, that would give the Alberta Legislature authority to confiscate the bank's debt to me—surely a reductio ad absurdum.

G. S. H.

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT OF CANADA.

BELANGER v. MONTREAL WATER & POWER CO.

Que.] [Oct. 13, 1914.

Municipal corporation—Contract with company—Franchise for water supply—Protection against fire—Liability of company to ratepayer.

A municipal corporation, with assent of the ratepayers, entered into a contract by which it gave the defendant company the exclusive privilege for twenty-five years of constructing and maintaining a system of water supply to the municipality. The company was authorized to fix rates for water supplied for domestic purposes and was obliged, for protection against fire, to have hydrants at certain places and at all times, except when the plant was undergoing necessary repairs, to have hose of a specified size and capacity and maintain a specified pressure of water. The property of B., a ratepayer, was destroyed by a fire which attained serious dimensions owing to the pressure being at the outset much less than that required.

Held, Brodeur, J., dissenting, that there was no contractual relation between B. and the company; that the contract did not evidence any intention by the parties to it to give it a right of action against the company to each ratepayer in case of violation of the provisions for fire protection; and that B., therefore, could not maintain an action for the value of his property so destroyed.

Held, also, Brodeur, J., dissenting, that B. could not maintain an action for damages on the ground that the failure to maintain the pressure stipulated for in the contract constituted a *délit* or *quasi-délit* under the law of Quebec.

Appeal dismissed with costs.

Mignault, K.C., and *Duranleau*, for appellant. *Atwater*, K.C., and *Buchanan*, K.C., for respondents.

Que.] HOWARD v. STEWART. [Oct. 13, 1914.

Crown lands—Location ticket—Transfer of location—Issue of Letters Patent—Title to land.

The holder of a location ticket for a lot on Colonization lands assigned it to a lumber company which agreed to clear the land and pay the instalments required for the issue of letters patent. The company went into liquidation and its curator, with judicial authority, sold the lot to H. The Government officials having given notice of intention to cancel the location ticket the original holder paid the instalments due, satisfied the officials that the necessary work on the lot would be done and received the letters patent. He then sold the lot to S. who cut some timber on it. In an action by H. to be declared sole owner of the lot and by *saisie revendication* of the timber so cut,

Held, reversing the judgment of the King's Bench (Q.R. 23 K.B. 80), Davies, J., dissenting, that the assignment of the location ticket to the lumber company was a sale of the land and not a mere promise of sale; that such sale was confirmed by the issue of the letters patent, and that S., having purchased after the letters patent issued with knowledge of the prior transfers, had not obtained title to the land the title being vested in H.

Appeal allowed with costs.

Ferdinand Roy, K.C., for appellant. *G. G. Stuart*, K.C., and *Rousseau*, for respondent.

B.C.] CHAMPION v. WORLD BUILDING CO. [Nov. 30, 1914.

Appeal—Case originating in Superior Court—Supreme Court Act s. 37 (b)—Concurrent jurisdiction—Mechanics' Lien Act (B.C.)—Action to enforce lien.

For an appeal to lie to the Supreme Court in a case not originating in a superior court as provided in s. 37, sub-sec. (*b*) of the Supreme Court Act it is not sufficient that the inferior court has concurrent jurisdiction with a superior court in respect to its general jurisdiction; there must be concurrent jurisdiction as respects the particular action, suit, cause, matter or other judicial proceeding in which the appeal is sought.

In British Columbia the County Court alone may maintain an action to enforce a mechanics' lien. In such action, so far

as the parties or any of them stand in the relation of debtor and creditor, the Court may give judgment for the debt due whatever its amount and if it exceeds $250 there may be an appeal to the Court of Appeal.

Held, Duff, J., dissenting, that though an action for the debt could be brought in the Superior Court the foundation for the County Court action is the enforcement of the lien as to which there is no concurrent jurisdiction and no appeal lies to the Supreme Court of Canada from the judgment of the Court of Appeal in such an action.

Appeal quashed with costs.

C. C. Robinson, for motion. *Lafleur*, K.C., contra.

EXCHEQUER COURT OF CANADA.

Cassels, J.] THE KING v. WILSON ET AL. [December 7, 1914

Expropriation — Water-lot—Public harbour—Compensation—Market value—Approval of erections by Crown—Expectation of approval as element of market value.

In assessing compensation for lands compulsorily taken under expropriation proceedings any "special adaptability" which the property may have for some use or purpose is to be treated as an element of market value. *The King* v. *McPherson, infra*, followed. *Sidney* v. *North Eastern Railway Co.* (1914), 3 K.B.D. 629, referred to.

2. In such cases the Court should apply itself to a consideration of the value as if the scheme in respect of which the compulsory powers are exercised had no existence. *Cunard* v. *the King*, 43 S.C.R. 99; *Lucas* v. *Chesterfield Gas and Water Board* (1909), 1 K.B.D. 16; *Cedar Rapids Mfg. Co.* v. *Lacoste* (1914), A.C. 569, referred to.

3. The owner of a water-lot in a public harbour under a patent from the Crown granted before Confederation cannot place erections thereon without the approval of the Governor-in-Council as required by ch. 115, part 1, of R.S. 1906.

Held, that the market value of the water-lot is the proper basis for assessment of compensation, but while that value may be enhanced by the hope or expectation of obtaining authority to erect structures on the lot where there is no evidence of market

value to guide it the Court will not assess compensation on a hope or expectation which cannot be regarded as a right of property in the defendant. *Lynch* v. *City of Glasgow* (1903), 5 C. of Sess. Cas. 1174; *May* v. *Boston*, 158 Mass. 21; *Corrie* v. *McDermott* (1914), A.C. 1056, referred to.

Rogers, K.C., and *Tobin*, for plaintiff *Mellish*, K.C., for defendants.

Cassels, J.] THE KING *v.* MACPHERSON. [June 17, 1914.

Expropriation—Market value of land taken—Question as to adding 10% to value considered as a matter of right—Crown's liability to pay bonus due under mortgage on lands expropriated.

On the 14th April, 1913, the Crown, represented by the Minister of Public Works, registered a plan and description under the Expropriation Act for the acquisition of certain property in the City of Toronto for post-office purposes. Five days prior to such registration the defendant H., on behalf of certain other defendants, entered into an agreement for the purchase of the property in question for the sum of $100,000. The Court found that at the date of the agreement to purchase neither H. nor the defendants for whom he bought were aware of the intended expropriation by the Crown, although the property had not been previously in demand in the real estate market.

Held, that the price paid for the property by the defendant H. should be taken at its actual market value for the purpose of compensation.

2. That the defendants were not entitled as a matter of right to have ten per cent. added to the market value of the property.

3. Where there is a mortgage upon property in which the mortgagor stipulates for a bonus to be paid him in case the principal is sought to be paid before the mortgage falls due, the Crown expropriating before that event must assume the payment of such bonus in addition to paying the value of the property taken.

DuVernet, K.C., for plaintiff. *Anglin*, K.C., and *Defries*, for defendants.

Audette, J.] WRIGHT *v.* THE KING. [November 7, 1914.

Principal and agent—Parol contract—Right to recover—Mandate—Art. 1702, C.C.P.Q.

The suppliant, who was not a registered broker, was telephoned to by the Collector of Customs at Montreal and asked to procure

for the Crown an option on certain property which was required for the site of a Customs building in the City of Montreal. Acting upon such instructions, the suppliant took the necessary steps to obtain the option which, after some delay occasioned by the owners, he succeeded in securing.

The Commissioner of Customs was then instructed to proceed to Montreal and arrange to secure the purchase of the property for which the suppliant had obtained the option. The suppliant and the Commissioner met at the Custom House in Montreal, and the latter authorized the suppliant to effect the purchase and asked him about his commission. The suppliant replied that 2½% was the customary commission, adding that he was not a regular broker and that he would leave that part of the matter with the Commissioner to deal with as he deserved. The suppliant then obtained a deed of the property from the owners to the Crown.

Held, that the mandate was not gratuitous under Art. 1702 C.C.P.Q., and that as a matter of law the suppliant was entitled to recover a commission on the purchase of the property in question.

2. That as the evidence established that 2½% was the usual commission paid under such circumstances, the suppliant was fully entitled to his claim which was at the rate of 1½%.

W. D. Hogg, K.C., for suppliant. *F. J. Curran*, for respondent.

Audette, J.] GIBB v. THE KING. [November 7, 1914.

Expropriation—Abandonment of Public work—The Expropriation Act, sec. 23, sub-sec. 4—The Exchequer Court Act, secs. 19 and 20—Interpretation—Damages.

Upon a fair construction of the language of the Expropriation Act, sec. 23, sub-sec. 4, the jurisdiction of the Court is not limited to claims arising out of a partial abandonment of the property, but extends to claims for total abandonment as well.

2. Upon expropriation proceedings being taken it is the intention of the above enactment, so that actions be not multiplied, that the damages are to be assessed once for all in such proceedings, but where the Crown before judgment returns the property to the owner, and discontinues the action, so that damages are prevented from being assessed at all therein, then the owner of the property has a remedy by petition of right under the jurisdiction clauses (secs. 19 and 20 of the Exchequer Court Act).

3. The damage or loss in respect of which the Court will assess compensation must arise out of some physical interference with property or with some right incidental thereto, different in kind from that which all the properties in the neighbourhood are subject to, and must be of such a nature as would be actionable but for the statute authorizing the work. Hence, where the surrounding properties had been temporarily enhanced in value by reason of a projected Government work subsequently abandoned the owner of property no part of which has been taken has no claim to compensation because of the abandonment by the Government of the proposed scheme. On the other hand, where property has been taken and returned all damages arising out of any interference with the owner's rights in respect of leasing the lands during the period the expropriation was effective is a proper subject of compensation. *The Queen* v. *Murray*, 5 Ex.C.R. 69; *Cedar Rapids Power Co.* v. *Lacoste* (1914), A.C. 569, referred to.

4. For the purposes of a projected public work the Crown expropriated a market place and demolished the buildings thereon in the vicinity of suppliant's property. The Crown had also expropriated the suppliant's property which it subsequently returned to the suppliants.

Held, that suppliants had no right to damages for any depreciation in the value of their property arising from the destruction of the market, as any loss so arising to the suppliants was suffered by them in common with the other property owners in the neighbourhood.

Audette, J.] LEAMY ET AL. *v.* THE KING. [January 5.

Navigable river—Title to bed—Crown grant—Construction.

The bed of all navigable rivers is by law vested *primâ facie* in the Crown. But this ownership of the Crown is exercised for the benefit of the subject, and cannot be used in any way so as to derogate from or interfere with the rights which belong by law to the subjects of the Crown. Hence, in a grant of part of the public domain from the Crown to a subject the bed of a navigable river will not pass unless an intention to convey the same is expressed in clear and unambiguous terms in the grant.

2. In the Province of Quebec all grants of the public domain made prior to the Union Act of 1840 are to be read as subject to the limitations, restrictions and reservations conserving the rights of the public as to navigation, and otherwise, contained in

the instructions to Lord Dorchester as Governor of Lower Canada. Since the passage of the Union Act of 1840 grants of the public domain in that Province have been made under the authority of the Provincial Legislature and subject to all such statutory restrictions as have been from time to time imposed

3. Under the decisions of the Seigneurial Court, constituted under the Seigneurial Act of 1854, together with the provisions of Art. 538 C.N. and of Art. 400 C.C.P.Q., navigable rivers are considered as being dependencies of the Crown domain and as such inalienable and imprescriptable. Hence all grants purporting to create rights in the bed of such rivers must be construed as subject to the exercise of the *jus publicum* at all times.

Cassels, J.] [December 19, 1914.

IN RE MICKELSON SHAPIRO CO. AND HENRY DOERR, AND MICKELSON DRUG AND CHEMICAL CO. AND ANTON MICKELSON.

Trade mark—Application for—Drawing—Infringement—Limited jurisdiction of the Exchequer Court of Canada—Passing off—Remedy.

In applying for a trade mark under the Canadian statute the applicant must describe in writing what he claims as his mark. A drawing must also be filed. But the claim in the written application cannot be extended by reason of something appearing in the drawing which has not been claimed.

2. The Exchequer Court of Canada has jurisdiction to restrain any infringement of a trade mark, but has no jurisdiction to entertain an action seeking damages for passing off goods of the plaintiff as those manufactured and sold by the defendant.

3. Trade mark for gopher poison, registered in Canadian Trade Mark Register No. 56, folio 13,708, ordered to be expunged.

W. L. Scott, for plaintiffs. *F. H. Chrysler*, K.C., for defendants

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Audette, J.] [November 19, 1914.

THE QUEBEC, MONTREAL AND SOUTHERN RAILWAY COMPANY *v.* THE KING.

Railway—Insolvency—4-5 Edw. VII. ch. 158—Sale under order of Exchequer Court—Effect of—7-8 Edw. VII. ch. 63—Subsidy—Discretion of Governor-in-Council as to paying same—Order-in-Council and contract to pay subsidy based on mistake of fact—Invalidity.

The South Shore Railway, along with the Quebec Southern

Railway, was sold under order of the Exchequer Court of Canada on the 8th November, 1905. The suppliants acquired all the rights of the vendee under the sale in 1906, and became incorporated by Act of Parliament in that year for the purpose of holding, maintaining and operating the said railways under the name of the Quebec, Montreal and Southern Railway Company. In 1899, by 62-63 Vict. ch. 7, sec. 2, sub-sec. 27, the Governor-in-Council was authorized to grant a subsidy to the South Shore Railway Company from S. J. to L., "a distance not exceeding 82 miles." The South Shore Railway Company previous to January, 1902, constructed some 18½ miles of the projected railway, and was paid a subsidy for 12 miles, but the subsidy for the balance so constructed, namely, 6½ miles, was never paid to any one, presumably because the statutory requirements were not fulfilled. In 1903, by 3 Edw. VII. ch. 57, sec. 2, sub-sec. 12, the subsidy of 1899 was renewed, not in favour of the South Shore Railway Company in particular, but a general grant was made towards the construction of a line of railway from Y. to L. (including the 6½ miles in question), a distance not exceeding 70 miles, "in lieu of the subsidy granted by item 27 of sec. 2 of ch. 7 of 1899." The South Shore Railway did avail itself of this subsidy, and it lapsed. In 1908, by 7-8 Edw. VII. ch. 63, sec. 1, sub-sec. 14, the subsidy last mentioned was renewed, the Act providing that "the Governor-in-Council may grant a subsidy," but it was provided that the railway subsidized was to be completed before 1st August, 1910. The suppliants built the railway so subsidized. Upon a petition of right filed by the suppliants to recover subsidy in respect of the said 6½ miles not constructed by them but by the South Shore Railway Company:—

Held, 1. The language of 7-8 Edw. VII. ch. 63, sec. 1, sub-sec. 14, must be read as permissive and not mandatory, and that a petition of right to recover the subsidy would not lie where the same has not been paid by the Governor-in-Council. *Canadian Pacific Ry. Co.* v. *The King*, 38 S.C.R. 137, followed.

2. A contract entered into between the Crown and the suppliants for the payment of the subsidy in question, founded on an order-in-council passed on the assumption that the suppliants had constructed the 6½ miles in question, which the suppliants had not in fact done, cannot be enforced; and if moneys had been paid under such contract they could have been recovered back by the Crown under Arts. 1040 and 1048, C.C.P.Q.

3. The Crown is not bound by an order-in-council passed inadvertently and on mistake of fact. *De Galindez* v. *The King*, Q.R. 15 K.B. 320, 39 S.C.R., 682, followed.

4. The South Shore Railway Company not being in a position to enforce payment of the subsidy in dispute, the suppliants as assignees of the said company are equally disentitled to recover.

5. In disposing of public moneys under statutory authority, the Crown must adhere strictly to the terms of the statute, and neither by order-in-council nor by contract can the terms of the statute be enlarged or altered. *Hereford Ry. Co.* v. *The King*, 24 S.C.R. 15, followed.

Béique, K.C., for suppliants. *Lafferty*, K.C., for respondent.

Bench and Bar

OBITUARY

LT.-COL. WILLIAM EDWARD O'BRIEN, LL.B.,

BARRISTER-AT-LAW.

A notable Canadian passed from the scene when William Edward O'Brien died at his residence "The Woods," Shanty Bay, Lake Simcoe, on December 22nd, 1914, in his 84th year. By his death the country lost an able statesman, the profession of law a keen legal writer, the militia an active upholder and efficient soldier, and the Empire an ardent Imperialist and a devoted citizen.

Mr. O'Brien was the eldest son of a retired naval and military officer, Col. E. G. O'Brien; his mother being a daughter of Rev. Edmund Gapper, Rector of Charlinch, Somersetshire, England. He was born near Thornhill on March 10th, 1831. About that time his father was placed in charge of a settlement of half-pay officers and others on the shores of Lake Simcoe; afterwards being Chairman of the Quarter Sessions, and Colonel of the Simcoe militia, leading them to Toronto at the time of the Rebellion of 1836-7.

In the winter of 1831 Colonel E. G. O'Brien, with his wife and child, one year old, took up his grant of land on the north shore of Lake Simcoe, crossing the lake on the ice with a party of axemen, who, before night, cleared a sufficient space for and erected three shanties to house the party. This gave the name to the settlement. Under such stern and unusual circumstances W. E. O'Brien began his career. The other members of the family consisted of his brothers, Lucius Richard O'Brien, first

President of the Royal Canadian Academy, Henry O'Brien, K.C., of Toronto, and three sisters. His wife, daughter of the late Col. Loring, and his only child, Mrs. Verner Wilson, survive him.

There being no educational advantages in Simcoe in those days Colonel E. G. O'Brien moved to Toronto with his family; and W. E. O'Brien was educated at Upper Canada College. He then entered the field of journalism, being editor of a daily paper called *The Atlas*, and subsequently one of the editors of *The Colonist*, the Conservative organ of that day. Whilst so engaged he made time to read for his LL.B. degree at Toronto University, which he received in 1861. He then took up the study of the law and was called to the Bar in 1864. He practiced in Barrie for a short time, but his taste for country life took him to his father's old place at Shanty Bay, where he spent the rest of his life. He did not, however, abandon his literary pursuits, and many articles which appeared in the public press on subjects of constitutional law, the defence of the Empire and Imperial subjects were from his pen. Many of these and others of legal interest have appeared from time to time in this JOURNAL. His writings shew a literary style and diction of high order, an exact knowledge and judicial and fair treatment of any subject dealt with.

Early in life, coming of a fighting stock, he became interested in the volunteer movement. He was made captain of the Barrie Rifle Company, which afterwards became part of the 35th Battalion, known as the "Simcoe Foresters," and he was largely instrumental in the formation of that corps. He became its Lt.-Colonel in 1882 in succession to Lt.-Col. McKenzie and so remained until 1897, when he retired, becoming its Honorary Colonel. In the North-West Rebellion of 1885 he was placed in command of a provisional battalion taken from the "York Rangers" and "Simcoe Foresters." During this period he was in Qu'Appelle, and was specially mentioned for bravery and tact in dealing with hostile Indians then on the point of rising. In his book "Soldiering in Canada," Lt.-Col. Geo. T. Denison, speaking of this incident, says "Col. O'Brien went alone with an interpreter (to the Indian Camp), leaving his sword and pistol behind. He reasoned with the Indians and succeeded in arranging all satisfactorily and probably prevented an Indian outbreak. It was found out afterwards that the Indians, suspecting treachery, were ambushed all about the house in which the conference was held, in order to defend their chiefs. The act of Col.

O'Brien was one of the finest things done by any officer in the North-West. It required the highest courage both physical and moral. . . . The Canadian militia should be proud of him." Besides the Fenian Raid and the North-West Rebellion medals, Col. O'Brien held the General Service medal and clasp.

In 1897 he was present, by invitation, as the guest of the British Government, at Queen Victoria's Diamond Jubilee, as one of the representatives of the Canadian militia. In 1901 he was appointed Canadian Commissioner at the Glasgow Exhibition.

His entrance into political life was in 1878, when he unsuccessfully contested, in the Conservative interest, the District of Muskoka and Parry Sound, for the House of Commons. In 1882, however, he was elected for the same constituency, for which he continuously sat until 1896, when, owing to his break with his party hereafter alluded to, he necessarily ran as an independent candidate, but being bitterly opposed by the machine politicians there he was defeated by a small majority. From that day he seldom appeared in politics, though his interest in the welfare of his country remained unabated.

One of the best remembered incidents in the Parliamentary history of this country was the resolution asking for the disallowance of the Jesuit Estate Act of the Quebec Legislature. This matter, it may be noted, was first brought to the attention of the public in this JOURNAL, in several articles from the pen of Col. O'Brien. These articles were entitled, "The history and mischief of the Quebec Jesuit Estate Act" and "The Constitutionality of the Quebec Jesuit Estate Act." These may be found, ante vol. 25, at pages 69, 76 and 130, where the subject was fully explained and luminously treated.

The leading figure in the debate in the House of Commons and in the agitation caused thereby throughout the country, was "The man from Shanty Bay," as he was then often called. He moved the famous resolution, so well known in those days, the fight being continued in the House by the eloquence and force of the late D'Alton McCarthy, M.P., and others. Principal Caven, of Knox College, and other prominent citizens who led the Equal Rights movement, supported the action of the "Noble Thirteen," as they were called, who alone in the House dared to stand out against all political parties to oppose a measure which their conscience rejected as unconstitutional and unjust. The Toronto *Globe* thus refers to the incident:

"The greatest day in Col. O'Brien's life was Tuesday, March 26, 1889, when in the House of Commons he moved as an amendment to the motion to go into supply:—

> "'That an address be presented to the Governor-General setting forth that this House regards the power of disallowing the acts of legislation of the Legislative Assemblies of the Province of Quebec vested in his Excellency in Council as a prerogative essential to the existence of the Dominion; that this great power, while it should never be wantonly exercised, should be fearlessly used for the protection of the fundamental principles of the constitution and for safeguarding the general interests of the people; that in the opinion of this House the passage by the Legislature of the Province of Quebec of an Act entitled "An Act respecting the settlement of the Jesuit estates" is beyond the power of that Legislature; firstly, because it endows from public funds a religious organization, thereby violating the unwritten, but undoubted, constitutional principle of the complete separation of Church and State, and of absolute equality of all denominations before the law; secondly, because it recognizes the usurpation of right by foreign authority—his Holiness the Pope of Rome—in declaring his consent necessary to empower the Provincial Legislature to dispose of a portion of the public domain, and also because the Act is made to depend on his will, and the appropriation of the grant thereby made is subject to the control of the same authority; and, thirdly, because the Society of Jesus is a secret and politico-religious body, the expulsion of which from every Christian community wherein it has had a footing was rendered necessary by its intolerant and mischievous intermeddling with the functions of the civil government.
>
> "'Therefore, this House prays that his Excellency will be graciously pleased to disallow the Act.'

"The force of character necessary to the presentation of this amendment before a hostile House is illustrated in the Parliamentary report of the day in the *Globe* that 'there was not the faintest murmur of applause as Mr. O'Brien resumed his seat. His speech had been received in dead silence.'

"In the closing passages of this speech Col. O'Brien declared that he and those who stood with him were resolved 'that this Dominion must remain British and nothing else, and that no

foreign power, authority or jurisdiction, civil or religious, shall be allowed to exercise powers which interfere with that declaration.' ''

The Toronto *Mail* of that date said:—

"Colonel O'Brien has acquitted himself well. His resolution in amendment to the motion of supply pronounces the Jesuit Acts unconstitutional, first, because the endowment of the Order is a departure from the principle of religious equality and at variance with the view that there should be no connection between Church and State in Canada which was set forth by the Legislature forty years ago; secondly, because by the Act of endowment a foreign potentate is authorized to interfere in our domestic affairs; and, lastly, because the incorporation and endowment of this Order, which has been expelled from many European countries for various high offences, is contrary to public policy. Col. O'Brien supported these propositions in a clear and forcible speech, which will be read with great interest. His arguments on the question of public policy are, in our opinion, unanswerable, as is also his contention that the payment of the Jesuit claim was in direct contravention of the act of the King of Britain in escheating their derelict estates, which act the Legislature had over and over again confirmed, although it required no confirmation. Col. O'Brien deserves the thanks of the community for the manly and independent course he has pursued. He has set an example to the other Ontario members which it is to be hoped, for their own sake, they will follow."

The *Telegram* thus referred to the same incident: "He did more than any other man to acquaint Ottawa with the rare virtue of Parliamentary independence."

Recently the *Mail and Empire* said: "During the fourteen years of his career in the House of Commons no member commanded a greater measure of respect from his colleagues on both sides of the House, and from those holding a different faith, than did Col. O'Brien. It was felt by all that his opposition was based not on prejudice or opportunism, but on a firm belief that, in taking the course he did, he was serving the best interests of the country."

The protest which arose resulted in the "Equal Rights" movement, which stirred the Dominion from end to end and aroused the conscience of the people as nothing has done from the time of Confederation up to the present war.

In 1896 Mr. O'Brien supported D'Alton McCarthy in his

opposition to the Manitoba Remedial School Bill, by which Sir Charles Tupper's Government sought to coerce Manitoba into the restoration of separate schools. Mr. O'Brien and Mr. McCarthy were read out of the party by the Conservative leader, thus depriving him of his two most independent followers, and who were among the most useful members in the House.

Many notices of the late legislator have recently appeared in the public press. It seems fitting that some of these should be quoted, illustrating, as they do, the regard in which he was held by all shades of politics. It also seems more suitable that, owing to his close association with the personnel of this JOURNAL that the thoughts of others should be given rather than our own.

Of him the Toronto *News* said: "Independent, honest, public-spirited and of high integrity, he was as good a type of public man as ever sat in a Canadian Parliament."

The Toronto *Star*, referring to his death, said: "Col. O'Brien was a Canadian of a good type. Born in the forest of Simcoe he may be fairly classed with the pioneers, the men who loved Canada and had faith in Canada when it was small and obscure. In the House of Commons at Ottawa he won a reputation for genuine, sturdy independence. When he differed from his party he seemed to do so because he was constrained by his honesty or sense of fair play. He never became a popular hero, though he might have been one if he had chosen to advertise himself. His independence made him rather a lonely figure at Ottawa. Popular feeling against the Jesuit Estates Act was stronger than the Parliamentary vote would indicate. But Col. O'Brien never attempted to make capital out of the popular feeling. He voted with the thirteen because he thought it was right; and he would have cast his solitary vote against all the rest of the House with the same firmness and with the same modesty. He was an Imperial Federationist when the movement was regarded as a fad. He sought no prominence when the movement became popular. He was an early advocate of a British preference, to be effected by a reduction of the Canadian tariff, and although a Conservative he was not an ardent protectionist. But the important thing is not the nature of the views which he held, but the manner in which he held them; his civic courage and his strong sense of public duty, his unselfishness and his indifference to praise or blame."

The Toronto *Globe* said that "during his entire Parliamentary career of unceasing and strenuous party strife, he never lost

a personal friend or made a personal enemy, and never forfeited either the affection of his friends or respect of his opponents. A cultured gentleman, he always sought to maintain the dignity of the House, and his bearing and language were frequently a severe rebuke to those who did not maintain his own high ideals of personal and official conduct.'' And again, ''He was a fine examplar of those very qualities which have moved Britons to stake their all rather than break their pledged word to little Belgium. Canadians like William O'Brien maintain in this new world the highest traditions of the old. He was an honourable and courageous man, and he bore himself through life with the quiet dignity of a gentleman. To him was given the privilege of living up to the high standard so pithily expressed in the noble words of George Herbert, that good divine of the old Church O'Brien loved and served so well:—

'' 'Lie not, but let thy heart be true to God,
Thy mouth to it, thy actions to them both.' ''

The funeral took place from ''The Woods,'' Shanty Bay, on December 26th. His old regiment desired that it should be a military funeral, and this was carried out with the soldierly precision of that fine corps. Among the clergymen who took part in the service was the Ven. Archdeacon Cody, of Toronto, who referred to the deceased as ''one who, by patient doing of great things, has helped to make the history of our Dominion, and will be seen in the future, even more than in the present, to be one of Canada's outstanding citizens. During the time he was a member of the Dominion Parliament friend and foe alike learned to respect, admire and like him. No one for a moment thought he had any private end to serve. William O'Brien was a man without fear. What his conscience said, that was his conviction. He feared not the frown, neither was he swayed by the fawning of men. He represented a noble type of public servant. His name will go down to fame in Canadian history as one who stood against all the blandishments that could be brought to bear on him; as one who withstood the attacks and criticisms of both friends and foes, because he defended those great principles of religious liberty which had been won in the past at the cost of blood and sacrifice. He was no opportunist in politics or in daily life, but a man of conviction, a man of magnanimity, who could forgive; a man of sympathy, a man who knew that the true foundation of national greatness lay in the character of the citizens.''

HAMILTON LAW ASSOCIATION.

The report of the above association for the past year was presented at its thirty-fifth annual meeting, on December 31, 1914. It states that the present membership is 91, as compared with 86 the previous year. The Treasurer's report gave a detailed statement of receipts and disbursements. The finances of the association were reported as being in good condition, there being no overdrafts. The Librarian stated the number of bound volumes in the library to be 5,248, of which 117 volumes were added during the year; the library being also supplied with all the latest appropriate legal publications. The death of J. W. Nesbitt, K.C., for many years a prominent member of the association, was reported with regret. A marked improvement during the year was the publication of a new catalogue of the books in the library, the last publication having been in 1899.

War Notes.

The sentiment of the most worthy citizens of the United States, that is, the large majority, leaving out Germans and Fenians, has been shewn to be in favour of the stand taken by England in reference to Belgium and the fight of the allies for the freedom of the world from military despotism. William Watson, the Poet Laureate of England has taken occasion to appeal to this sentiment in the following stirring lines:—

TO AMERICA.

Art thou her child, born in the proud midday
Of her large soul's abundance and excess:
Her daughter and her mightiest heritress,
Dowered with her thoughts, and lit on her great way
By her great lamps that shine and fail not?
Yes!

And at this thunderous hour of struggle and stress,
Hither across the ocean wilderness,
What word comes frozen on the frozen spray?

Neutrality! The tiger from his den,
Springs at thy mother's throat, and can'st thou now
Watch with a stranger's gaze? So be it then!

Thy loss is more than hers; for, bruised and torn,
She shall yet live without thine aid, and thou
Without the crown divine thou might'st have worn.

The Judges of the Appellate and High Court Divisions at Osgoode Hall, Toronto, have subscribed a sufficient amount to provide an automatic machine gun, complete, with spare parts, accessories and ammunition, which they intend to present to the Osgoode Hall Rifle Association, on condition that they agree to man it and attach it to one of the Toronto Volunteer Regiments, preferably to the first one to form a Law Students Company. This gift will be subject to the approval of the military authorities, at whose disposal the gun will, of course, be placed. It is thought probable that some of the organizations representing the legal profession, official and otherwise, will make like gifts. If so, it may induce other groups of men, connected with different interests, to follow suit, with the result that a full battery will be provided for the Third Contingent when it is ready to proceed to the front.

We should have noted before this that the Benchers of the Law Society have not been unmindful of the obligations of the Ontario profession to the country in reference to war matters. Towards the close of last year they set aside the sum of $10,000 for the Canadian Patriotic Fund. They have also fitted up a rifle range in the basement of Osgoode Hall and equipped it with a sufficient number of rifles for the use of the Osgoode Hall Rifle Association.

The Ontario Bar Association at its recent meeting passed resolutions requesting the Council to take steps to collect from the members of the profession the sum necessary for the purchase of a machine gun and a like sum to be applied towards the relief of the Belgian sufferers, in all approximately $2,000.

It has been said that law students attending the Law School at Toronto have not responded with the enthusiasm that was expected of them to the invitation to enlist in the ranks of the Osgoode Hall Rifle Association. We trust that this will not be so in the future even if it has been so in the past.

We note that the members of the English Bar in the Probate and Divorce Division, together with their clerks, have presented the Government with a Red Cross Ambulance, fully equipped, at a cost of £400, while the law clerks throughout England and Wales are raising a fund for the purchase of several ambulances for the use of the army authorities.

The unusual spectacle of barristers appearing in Court without regulation dress has been seen in some of the English Courts. Those of the Bar who are engaged in active military duties being allowed to appear in khaki instead of wig and gown.

The Judges of the Ontario Supreme Court have passed a rule to the same effect.

Flotsam and Jetsam.

Women as Lawyers Modern View.

In accord with modern opinion and enlightened practice in other branches of intellectual endeavour, women are now enabled to become registered as members of the medical and its kindred professions, members of royal commissions, visitors of lunatic asylums, inspectors of nuisances, registrars of births, deaths, marriages, members of dispensary boards, road surveyors, overseers of the poor, churchwardens, sextons, parish clerks, local government board inspectors, factory and workshop inspectors, post mistresses, census clerks, poll clerks, Parliamentary egistration agents, members of school boards, insurance commissioners, and members of insurance committees. There are also women carrying on business as accountants and stockbrokers, patent agents and engineers. As we all know, women are enabled to obtain at certain Universities bachelor and master degrees, which include legal degrees. Further, I need hardly enumerate the various civilized countries which have admitted women to practice the profession of the law; amongst other countries they include France, Norway, Switzerland, Australia, Canada, New Zealand, Italy, Egypt, Russia, Japan, partly in India, and the United States of America.

If women who have qualified themselves for the unromantic, serious, and responsible profession of a solicitor calmly and decorously request to be allowed to become solicitors, why should that request be refused? So far as the profession is concerned, there is nothing improper or inexpedient in allowing competent women to become solicitors. Why should woman be prevented from developing her life along the lines for which her particular capabilities may fit her and in which she is most interested, thus depriving the state of her services in any profession in which she may be fitted by nature or education to excel?

I can hardly bring myself to believe that there is an underlying and unexpressed opinion a selfish and timid attitude of

mind— that the profession is overcrowded already. This could not be so when every man who is qualified is allowed to become a member as "of course."

Nowadays it is common ground that a very high percentage of educated and intelligent women have to support or help to support themselves, and there are many of such women who are admirably qualified by nature as well as by education to embellish, and, I venture to think, enhance the value of the profession of a solicitor in the eyes of the public as well as of their brother and sister members.—*London Law Journal.*

Humour is more than a mere plaything to relieve the tension of the brain. But even when it does that it has performed a service for the public speaker that is incalculable. The tension of the minds of an audience and, especially of a jury, is nothing more than the natural resistance of every mind to accepting another's point of view until convinced either by the irresistible logic of the other's reasoning or confidence in his personality. When this tension becomes very severe the adroit speaker stops the fountain of his eloquence and the heavy pressure of his logic, he causes his face to relax, his personality sends forth a warm and familiar glow, and he proceeds to "tell a little story." His auditors are quickly receptive, the facial muscles come to repose and they begin to "fellowship," unconsciously it may be, with the speaker. This fellowship begets confidence and confidence breaks down the instinctive resistance of the speaker's arguments and these arguments are then accepted at their face value. This, in short, is the psychological effect of a good story on the minds of an ordinary company of auditors. It is, indeed, a most powerful aid to the wise public speaker if used with discretion. Of course, if used too frequently it loses its freshness like everything else in life does, and, therefore, loses its effect. — *Central Law Journal.*

SOLOMON MODERNIZED.—A Georgia magistrate was perplexed by the conflicting claims of two negro women for a baby, each contending that she was the mother of it. The Judge remembered Solomon, and, drawing a bowie knife from his boot, declared that he would give half to each. The women were shocked, but had no doubt of the authority and purpose of the Judge to make the proposed compromise. "Don't do that, boss," they both screamed, in unison. "You can keep it yourself."